



Reducing the harm from alcohol by regulating cross-border alcohol marketing, advertising and promotion

A technical report

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ISBN 978-92-4-004650-4 (electronic version)

ISBN 978-92-4-004651-1 (print version)

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Suggested citation. Reducing the harm from alcohol by regulating cross-border alcohol marketing, advertising and promotion: a technical report. Geneva: World Health Organization; 2022. Licence: CC BY-NC-SA 3.0 IGO.

Cataloguing-in-Publication (CIP) data. CIP data are available at <http://apps.who.int/iris>.

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Design and layout by L'IV Com Sàrl

Contents

Acknowledgements	vii
------------------	-----

Abbreviations	ix
---------------	----

Glossary	xi
----------	----

Summary	xvii
---------	------

1. Introduction	1
------------------------	----------

1.1 Bases for concern about cross-border marketing of alcohol	2
1.1.1 Alcohol as a commodity of concern to public health	2
1.1.2 The digital revolution in marketing and promotion	3
1.2 Conceptualizing and defining marketing and cross-border marketing in the digital age	3
1.2.1 Defining marketing	3
1.2.2 When is marketing cross-border?	6
1.3 Impact of alcohol marketing in a world where marketing is increasingly transnational	8
1.4 Previous consideration and initiatives on alcohol marketing by WHO and other United Nations bodies	11
Key messages	14

2. The globalization of alcohol marketing	15
--	-----------

2.1 Globalization of the production and marketing of alcohol	16
2.2 Cross-border control of production, branding and marketing	18
2.3 Value chain integration and the digital transformation of the alcohol industry	19
Key messages	20

3. Marketing of alcoholic beverages: strategies, techniques and channels and their cross-border aspects	21
--	-----------

3.1 Branding: a key marketing device	22
3.1.1 Surrogate advertising through line extensions and brand extensions, and their cross-border implications	22
3.1.2 Product development and packaging	24
3.1.3 Co-branding and its cross-border implications	25
3.1.4 Corporate branding and corporate social responsibility	25

3.2	Market segmentation, targets and exposure and their cross-border implications	27
3.3	Advertising in traditional media and cross-border implications	28
3.4	Sponsorship of sporting, social and cultural events and cross-border implications	29
3.5	Product placement and cross-border implications	30
3.6	Digital marketing and cross-border implications	32
3.7	Behavioural and personalized marketing – developments in marketing automation and artificial intelligence	33
3.8	Peer-to-peer marketing, social influencers and cross-border implications	35
3.8.1	Presence across multiple platforms	36
3.8.2	Ephemeral marketing	37
3.9	Conclusions	37
	Key messages	38

4. Alcohol marketing to specific audiences 39

4.1	Children, young people and adolescents	40
4.2	Heavy and dependent drinkers	41
4.3	Income level and social status: a health equity perspective	42
4.4	Gender issues and promotion of drinking	42
4.5	Market expansion, abstention rates and population growth	43
4.6	Conclusion	45
	Key messages	46

5. Cross-border marketing and issues in international law 47

5.1	Sovereignty, jurisdiction and comity	48
5.2	Human rights and regulation of cross-border marketing	49
5.2.1	The right to health	50
5.2.2	The right to free expression	51
5.3	International trade and investment law as a challenge to national public health controls on alcohol marketing	52
5.4	Conclusions	53
	Key messages	54

6. Regulation of cross-border marketing of alcohol: current approaches and challenges 55

6.1	National regulation of alcohol marketing	56
6.1.1	Norway – Total alcohol marketing ban	57
6.1.2	Lithuania – High consumption, shifting policies, a recent comprehensive marketing ban	57
6.1.3	France – Strong marketing restrictions, including digital, but weakened over time	60
6.1.4	Russian Federation – Digital marketing banned but the ban is not well enforced	61
6.1.5	Thailand – Marketing restricted, but not cross-border	62
6.1.6	Finland – Digital marketing restrictions, but difficult to apply	62
6.2	Regulation of alcohol marketing in the European Union	63
6.3	Co-regulation	64

6.4	Industry self-regulation	64
6.4.1	National industry self-regulation of cross-border marketing of alcohol	65
6.4.2	Global self-regulatory codes for cross-border marketing of alcohol	66
6.5	Alcohol companies' codes of corporate conduct	67
6.6	Digital platforms' codes of corporate conduct	68
6.7	Regulation of digital media affecting cross-border alcohol marketing: Restrictions on the use of personal information	69
	Key messages	71

7. How do international instruments and national laws address cross-border marketing of other commodities? 72

7.1	WHO Framework Convention on Tobacco Control	73
7.1.1	Definition of tobacco advertising, promotion and sponsorship	73
7.1.2	Obligations in respect of tobacco marketing	74
7.1.3	International cooperation	74
7.1.4	Further developments in relation to multilateral action on cross-border marketing of tobacco	74
7.2	Bans on cross-border tobacco marketing in national regulation	76
7.3	United Nations drug conventions	77
7.4	Regulation of marketing of non-medical cannabis	77
7.5	WHO International Code of Marketing of Breast milk Substitutes	79
7.6	WHO Framework for implementing recommendations on the marketing of foods and non-alcoholic beverages to children	80
7.7	Conclusions	81
	Key messages	82

8. Options for regulating cross-border marketing of alcohol 83

8.1	Introduction	83
8.2	Domestic regulation of cross-border marketing	84
8.2.1	Collaborative policy processes	85
8.2.2	Key features of effective regulation of cross-border marketing of alcohol	85
8.2.3	Designing the rules: principles underpinning the national regulation of alcohol marketing, including cross-border marketing	85
8.2.4	Designing the rules: options for banning or restricting cross-border marketing of alcohol	88
8.2.5	Designing the rules: other regulatory options in addition to banning or restricting cross-border marketing of alcohol	90
8.2.6	Compliance and enforcement	92
8.3	Options for multilateral action to address cross-border marketing of alcohol	96
8.3.1	Principles for multilateral action on cross-border marketing of alcohol	96
8.3.2	A WHO mechanism and guidelines for multilateral collaboration	96
8.3.3	WHO Secretariat and a Code on Alcohol Marketing	97
8.3.4	Treaty/Framework Convention on Alcohol Control	98
	Key messages	100

9. Conclusion 101

Key messages	102
--------------------	-----

References 103

Annex 1

Summary of the scoping review on the harmful use of alcohol related to cross-border alcohol marketing, advertising and promotional activities, including targeting young people and adolescents	131
---	-----

Annex 2

Summary of a commissioned paper on the scope and size of global alcohol marketing	136
---	-----

Annex 3

Summary of a commissioned paper on the role of product placement and social media influencers in cross-border alcohol marketing, advertising and promotional activities, including targeting young people and adolescents	140
---	-----

Annex 4

The alcohol industry and corporate social responsibility: marketing functions and cross-border dimensions	143
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Acknowledgements

Within the World Health Organization (WHO) Secretariat, Devora Kestel, Director, and Vladimir Poznyak, Unit Head, Alcohol, Drugs and Addictive Behaviours, in the Department of Mental Health and Substance Use provided vision, guidance, support and valuable contributions to this report. The development and production of the report were coordinated by Dag Rekve, Senior Technical Officer, Department of Mental Health and Substance Use.

The preparation of this report was a collaborative effort involving the Department of Mental Health and Substance Use with the Centre for Alcohol Policy Research (CAPR), La Trobe University, Melbourne, Australia. The contributions from Robin Room and Dan Anderson-Luxford of CAPR and Paula O'Brien of the Melbourne Law School, University of Melbourne, Melbourne, Australia, were critical for the development of the report.

The development of the report was greatly assisted by a commissioned scoping review and a series of background papers. The scoping review on the harmful use of alcohol related to cross-border alcohol marketing, advertising and promotional activities, including targeting youth and adolescents, was produced by the following lead investigators: Sally Casswell, College Of Health, Massey University, Auckland, New Zealand; Nicholas Carah, The University Of Queensland School of Communication and Arts, St Lucia, Australia; Gianna Gayle Amul, National University of Singapore, Singapore; Emeka Dumbili, Nnamdi Azikiwe University, Awka, Nigeria; Karine Gallopel-Morvan, École des hautes études en santé publique, Rennes, France; Ilana Pinsky, University of New York, New York, United States of America (USA); and Maria Neufeld, WHO Regional Office for Europe, Copenhagen, Denmark. A series of commissioned papers were produced by the following authors: Kathryn Angus and Rebecca Howell, University of Stirling, Stirling, United Kingdom of Great Britain and Northern Ireland; Jaspreet Bal, Alexander Barker, Lauren Carters-White, Jeff Collins, Niamh Fitzgerald, Sarah E Hill, Cecile Knai, Nason Maani, Mark Petticrew and Rob Ralston, from the Shaping Public Health Policies To Reduce Inequalities and Harm (SPECTRUM) Consortium; Sadie Boniface and Katherin Serveri, Institute of Alcohol Studies, London, United Kingdom; and David H. Jernigan and Jih-Cheng Yeh, Boston University School of Public Health, Boston, USA. A virtual meeting between those involved in developing the report and the authors of the commissioned papers was held on 22 July 2021.

To advise on the scope and content of a technical report, a virtual technical expert meeting was organized from 10 to 12 June 2020 to discuss, inter alia, cross-border alcohol marketing, advertising and promotional activities. The input to the development of the report was provided by the following meeting participants: Hamad Al Ghaferi, National Rehabilitation Centre, Abu Dhabi, United Arab Emirates; Sawitri Assanangkornchai, Prince of Songkla University, Songkla, Thailand; Tom Babor, University of Connecticut, Connecticut, USA; Guilherme Borges, National Institute of Psychiatry, Mexico City, Mexico; Sally Casswell, College Of Health, Massey University, Auckland, New Zealand; Gopal Gururaj, National Institute of Mental Health and Neuro Sciences, Karnataka, India; Wei Hao, Central South University, Changsha, China; David Jernigan, Boston University School of Public Health, Boston, USA; Evgeny Krupitsky, Bekhterev National Medical Research Center for Psychiatry and Neurology, St Petersburg, Russian Federation; Pia Mäkelä, STAKES Alcohol and Drug Research Group, Helsinki, Finland; Maria Elena Medina-Mora, National Institute of Psychiatry, Mexico City, Mexico; Jacek Moskalewicz, Institute of Psychiatry and Neurology, Warsaw, Poland; Isidor Obot, University of Uyo, Uyo, Nigeria; Charles Parry, South African Medical Research Council, Cape Town, South Africa; Flavio

Pechansky, Federal University of Rio Grande do Sul, Porto Alegre, Brazil; Afarin Rahimi-Movaghar, Tehran University of Medical Sciences, Tehran, Islamic Republic of Iran; Sajeeva Ranaweera, Sri Lanka Medical Association, Colombo, Sri Lanka; Jürgen Rehm, Centre for Addiction and Mental Health, Toronto, Canada; Robin Room, La Trobe University, Melbourne, Australia; Ingeborg Rossow, Norwegian Institute for Alcohol and Drug Research, Oslo, Norway; Emanuele Scafato, Istituto Superiore Di Sanità, Rome, Italy; Tim Stockwell, University of Victoria, Victoria, Canada; Jallal Toufiq, Ar-razi University Psychiatric Hospital, Salé, Morocco; Helal Uddin Ahmed, Bangladesh Association for Child and Adolescent Mental Health, Dhaka, Bangladesh; and Constance Weisner, University of California, San Francisco, USA. WHO is also grateful for the inputs provided by the following reviewers: Tom Babor, University of Connecticut School of Medicine, Connecticut, USA; Gian Luca Burci, Graduate Institute of International and Development Studies, Geneva, Switzerland; Lauren Carters-White, University of Edinburgh, Edinburgh, United Kingdom; and Lars Olsen, Norwegian School of Management, Oslo, Norway.

Country cases were reviewed by Ismo Tuominen, Ministry of Social Affairs and Health, Helsinki, Finland; the General Directorate for Health, Ministry of Health, Paris, France; Gražina Belian and Jelena Talackiene, Public Health Department, Ministry of Health, Vilnius, Lithuania; Bernt Bull, Ministry of Health and Care, Oslo, Norway; Daria Khaltourina, Russian Academy of Sciences, Moscow, Russian Federation; and Orratai Waleewong, Ministry of Public Health, Nonthaburi, Thailand.

The report was developed in consultation with the Department of Health Promotion, the Department of Nutrition and Food Safety and the Secretariat of the WHO Framework Convention on Tobacco Control. In addition, the following WHO staff and consultants from the Department of Mental Health and Substance Use were involved in the development and production of the report: Natacha Carragher, Alexandra Fleischmann, Dzmitry Krupchanka, Mariam Mujiri, Ilinca Radu and Sarah Roache. The following regional office staff were also involved: Nazneen Anwar, WHO Regional Office for South-East Asia, New Delhi, India; Florence Baingana, WHO Regional Office for Africa, Brazzaville, Congo; Eric Carlin, WHO Regional Office for Europe, Copenhagen, Denmark; Carina Ferreira-Borges, WHO Regional Office for Europe, Copenhagen, Denmark; Caroline Lukaszuk, WHO Regional Office for the Western Pacific, Manila, Philippines; Maristela Goldnadel Monteiro, WHO Regional Office for the Americas/Pan American Health Organization, Washington (DC), USA; Maria Neuman, WHO Regional Office for Europe, Copenhagen, Denmark; and Khalid Saeed, WHO Regional Office for the Eastern Mediterranean, Cairo, Egypt.

Abbreviations

AANA	Australian Association of National Advertisers
ABAC	Alcohol Beverages Advertising Code (Australia)
ABV	Alcohol by volume
AI	Artificial intelligence
AMA	American Marketing Association
ANPAA	Association Nationale de Prévention en Alcoologie et Addictologie: French National Association for Prevention in Alcoholology and Addictology, now renamed Association Addictions France
AVMSD	Audiovisual Media Services Directive of the European Union
CCPA	California Consumer Privacy Act of 2018
CESCR	Committee on Economic, Social and Cultural Rights
CNIL	Commission Nationale de l'Informatique et des Libertés (National Commission for Computing and Liberties)
CRC	International Convention on the Rights of the Child
CSR	Corporate social responsibility
ECJ	European Court of Justice
EFTA court	The court of the European Free Trade Area
EU	European Union
FIFA	Fédération Internationale de Football Association (International Federation of Association Football)
GALA	Global Advertising Lawyers' Alliance
GATT	General Agreement on Tariffs and Trade
GBD	Global Burden of Disease
GDPR	The European Union's General Data Protection Regulation
IARD	International Alliance for Responsible Drinking
IBFAN	International Baby Food Action Network
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICT	Information and communications technologies
LMICs	Low- and middle-income countries
MASB	Marketing Accountability Standards Board
MLA	Mutual legal assistance
NCD	Noncommunicable disease
NGO	Nongovernmental organization
NOLO	No alcohol/low alcohol
P2P	Peer-to-peer
PAHO	Pan American Health Organization
PDPA	Personal Data Protection Act (Thailand)
PESO	Paid, Earned, Shared, Owned

RSP	Retail selling price
RTDs	Ready-to-drink beverages
SDGs	Sustainable Development Goals
TAPS	Tobacco advertising, promotion and sponsorship
TF1	Télévision française 1
TIAs	Trade and investment agreements
TNAC	Transnational alcohol corporation
TNC	Transnational corporation
UN	United Nations
UNESCO	United Nations Education, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees
UNIATF	United Nations Interagency Task Force on the Prevention and Control of Non-communicable Diseases
UNICEF	Also known as the United Nations Children's Fund
UNITAR	United Nations Institute for Training and Research
UNODC	United Nations Office on Drugs and Crime
USA	United States of America
VOD	Video on demand
WHA	World Health Assembly
WHO	World Health Organization
WHO FCTC	WHO Framework Convention on Tobacco Control
WPR	WHO Western Pacific Region
WTO	World Trade Organization

Glossary

Advertising	(N) Messages paid for by the sender intended to inform or influence people who receive them. Advertising can be disseminated by various media or can be delivered in person. Advertising is a form of marketing.
Advertising ban	A prohibition on a particular category of advertising. The category can be defined in terms of the subject of the advertising, the medium of transmission (e.g. on commercial television), the timing of the advertising (e.g. not in daytime), the placement (e.g. not on a bus) or the audience (e.g. not to anyone under age 18). The ban can be imposed by any of a variety of actors, including a government, a medium operator, and a product's producer. A total advertising ban is a prohibition on advertising of a particular product or other item on any medium.
Alcohol marketing	"Any form of commercial communication or message that is designed to increase, or has the effect of increasing, the recognition, appeal and/or consumption of" alcohol (WHO, 2010a).
Behavioural marketing	Marketing techniques which rely on analysing consumers' behaviour in order to target the marketing, often on the basis of consumers' individual characteristics, including psychological, demographic and purchasing characteristics.
Brand	"A name, term, design, symbol or any other feature that identifies one seller's goods or service as distinct from those of other sellers" (American Marketing Association, n.d.).
Branding	Branding is the process of assigning a brand to a product (i.e. product branding) or a business (corporate branding). A brand is often owned and legally protected as a trademark.
Co-branding	An alliance between two or more brands – often separately owned (Blackett & Russel, 1999). The level and type of cooperation between brands may vary from a short-term cross-brand promotion or sponsorship strategy (e.g. a fast-food brand releasing a new product range that promotes the release of a movie/game etc.) to longer-term cooperation, including jointly manufacturing and producing products (Blackett & Russel, 1999).
Comity	The general meaning is courtesy and behaviour that is considerate of others with equal status, with an expectation of reciprocity. In international relations, this includes the reciprocal respect by one country of another country's laws and practices within the other country's own jurisdiction. Comity refers to a normative principle rather than an enforceable agreement.

Co-regulation

In a context of law and regulation, co-regulation has diverse and somewhat conflicting meanings. At a minimum it means that the regulatory system involves input from both a governmental or other regulatory agency and the institutions or persons that are regulated. However, other parties may be involved. The term “co-regulation” does not specify the power relationships (how final decisions are made in case of conflict).

In a World Health Organization context, it has been noted that “there are many types of co-regulation arrangements... The key difference between [self-] regulation and co-regulation is that some of the functions undertaken by the industry body are delegated or recognized by the government” (WHO Regional Office for the Western Pacific, 2016). A discussion in the Bulletin of the World Health Organization notes that “co-regulation has often meant that the government sets regulatory targets” and agrees on “a follow-up and accountability process with industry”. So if the targets are not met, the government implements measures to reach the targets (Goiana-da-Silva et al., 2019). WHO’s own work in a regulatory frame is governed by its Framework of Engagement with Non-State Actors (FENSA), which states that any WHO engagement with such actors must comply with a series of principles, including that it must “protect WHO from any undue influence, in particular on the process in setting and applying policies, norms and standards”, and must “not compromise WHO’s integrity, independence and reputation” (WHO, 2018a).

However, the meaning of “co-regulation” varies considerably in the broader literature. Thus, for the Australian Law Reform Commission, “co-regulation typically refers to situations where industry develops and administers its own arrangements, but government provides legislative backing to enable the arrangements to be enforced” (ALRC, 2021:305). Another definition, with multiple parties involved and the decision process unspecified, is offered in a UN document: “Co-regulation involves government, independent regulatory agencies, industry independent self-regulatory agencies, civil society groups and citizens/consumers in an overlapping set of relationships” (Cishecki, 2002).

Corporate social responsibility

There are many definitions and conceptualizations of corporate social responsibility (CSR). For example, the UN Industrial Development Organization (UNIDO) presents CSR as a “management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders”, implying a responsibility to “balance ... economic, environmental and social imperatives” with “addressing the expectations of shareholders and stakeholders” (Collin et al., 2021; UNIDO, 2021). The European Commission similarly defines CSR as “the responsibility of enterprises for their impacts on society”, associating this with an obligation to “have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy”; CSR is here viewed as aiming to maximize shared value for shareholders and society and as entailing businesses “identifying, preventing and mitigating their possible adverse impacts” (European Commission, 2011).

Corporate social responsibility <i>continued</i>	The UN Global Compact organizes its account of the responsibilities of the commercial sector across 10 principles derived from international declarations and conventions traversing human rights, labour rights, environmental protection and anti-corruption (UN Global Compact, 2021b). The International Organization for Standardization (ISO) refers to social responsibility in its voluntary standard ISO 26000:2010, framing this responsibility as extending to organizations beyond industries and private firms. ISO26000 defines “social responsibility” as the “responsibility of an organization for the impacts of its decisions and activities on society and the environment, through transparent and ethical behaviour that: contributes to sustainable development, including health and the welfare of society; takes into account the expectations of stakeholders; is in compliance with applicable law and consistent with international norms of behaviour; and is integrated throughout the organization and practised in its relationships” (ISO, 2017).
Cross-border	Refers to movement, influence or communication between two countries or other geographical jurisdictional entities. While the border involved can be between entities at any level, between local governments and supranational alliances or unions, the primary focus in this report is on borders between nations.
Cross-border marketing	Marketing that involves crossing a national or other jurisdictional border. In minimum terms, “cross-border” indicates that the message was disseminated/published from one jurisdiction and received by an audience, at least part of which was in another country. However, marketing that is transmitted and received in the same country may often be cross-border in the sense that it was decided on, prepared or published in another country.
Direct-to-consumer marketing	The marketing of products by manufacturers directly to consumers, rather than via retail or wholesale intermediaries. For example, a wine producer may promote products that are available for purchase directly from that wine producer.
E-commerce	The buying and selling of goods and/or services via the Internet.
Informal alcohol	About three-quarters of the alcohol consumed in the world is commercially prepared as an alcoholic beverage and sold or served in a legally recognized manner. Informal alcohol is a term for the remaining categories of alcoholic beverages, including those resulting from home brewing or distilling in village or rural environments, as well as untaxed and otherwise illegal alcoholic beverages.
Industry self-regulation	The collective and voluntary initiation and exercise of rule-making and enforcement activities by industry independently of the government.
International investment agreement	Investment treaties may be between two or more countries and set down rules between the parties to promote and protect two-way investment between those parties. These investment rules provide protections and greater certainty for investors in the overseas place, including provisions to ensure non-discrimination, restrictions on expropriation of an investor’s property, and fair and equitable treatment for investments. ¹

¹ See, for instance: <https://www.dfat.gov.au/trade/investment/australias-bilateral-investment-treaties>, accessed 20 February 2022.

Marketing	"Any form of commercial communication or message that is designed to increase, or has the effect of increasing, the recognition, appeal and/or consumption of particular products and services. It could comprise anything that acts to advertise or otherwise promote a product or service" (WHO, 2010a:15). "Marketing" is also used to describe the whole process of deciding on, preparing and transmitting the communication or message.
Marketing communication	As defined by the American Marketing Association: "coordinated promotional messages and related media used to communicate with a market. Marketing communications messages are delivered through one or more channels such as digital media, print, radio, television, direct mail, and personal selling" (MASB, 2020).
Marketing mix	Elements that the marketing profession consider worthy of consideration when developing a marketing strategy or campaign. These may include considerations such as product, pricing, placement and promotion.
Market segmentation	The "process of subdividing a market into distinct subsets of customers that behave in the same way or have similar needs. Each subset may conceivably be chosen as a market target to be reached with a distinctive marketing strategy" (Bennett, 1995).
Media convergence	"The merging of previously distinct media technologies and platforms through digitization and computer networking" (Gasher, 2011). In the context of marketing , this entails the amalgamation of traditional and digital media channels of communication for the purpose of promoting products.
Online behavioural advertising	An extension of behavioural marketing that relies on digital technologies, data analytics and the Internet to monitor online behaviour and target marketing on the basis of the individual characteristics of Internet users.
PESO model	A model for distinguishing between four channels of communication used for marketing purposes – including paid, earned, shared and owned media. The model was introduced in 2014 when a "shared" channel was added to existing models of channels of communication by Gini Dietrich in her book <i>Spin sucks</i> (Dietrich, 2014), in recognition of innovations in modes of marketing in digital media.
Product placement	The practice in which firms pay to place branded products (brand name/logo, package, signage, or other trademark) or references to branded products in the content of mass media programming (Homer, 2009; Carters-White et al., 2021).
Promotion	Closely related to the concept of marketing . In that context, promotion entails commercial communication that is intended to publicize a product or organization and is designed to increase the appeal and/or consumption of a product.
Recorded alcohol	"Alcohol consumed according to the official statistics at country level based on production, import, export, and sales or taxation data" (WHO, 2021a).

Social media (platform)	Websites and digital applications that allow for content-sharing by, and social interaction between, Internet users. Key features of social media include: active engagement by users with the content and users of social media platforms (e.g. liking, sharing and viewing content); the capacity for individual users to produce and share user-generated content; the ability to create a site-specific user profile; and the ability to interact with other individuals and groups (Wildman & Obar, 2015).
Social media influencer	Social media influencers can be defined as a new type of “celebrity” who can influence others, building their audience through social media (Hendriks et al., 2020) and shaping audience attitudes (Freberg et al., 2011) – hence the term “influencers” (Coates et al., 2019b; Coates et al., 2019a). Social media influencers have been categorized as micro-influencers, macro-influencers or mega-influencers, according to the size of their audience (Ruiz-Gómez, 2019). Micro-influencers, with a following up to 99 000 on different social media platforms, form the largest component of influencers (Willoh, 2020). Macro-influencers, or “power middle influencers”, are those who have around 100 000 to 500 000 followers (Ruiz-Gómez, 2019). This mass following can be due to the influencers turning their digital activity into a full-time professional career, employing a business-like approach to social media activity. Mega-influencers are considered the elite of social media influencers, and tend to have over 1 million followers (Ruiz-Gómez, 2019). They are present across multiple platforms and use these effectively for cross-promotion.
Sponsorship	“The provision of resources (e.g. money, people, equipment) by an organization directly to an event, cause or activity in exchange for a direct association (link) to the event, cause or activity” (Lee, Sandler & Shani, 1997).
Surrogate marketing	The promotion of products with the same branding and labelling as other products. Surrogate marketing most frequently occurs when regulation prohibits the marketing of certain products (e.g. alcohol, tobacco etc.) and, as a consequence, other permitted products are marketed with the same labelling and branding as the products which cannot be marketed legally.
Targeted marketing	A form of behavioural advertising . Targeted marketing utilizes the behaviours, interests and purchasing patterns of individual consumers to guide the creation of individualized advertisements.
Trade agreement or free trade agreement.	“Treaties between two or more countries designed to reduce or eliminate certain barriers to trade and investment, and to facilitate stronger trade and commercial ties between participating countries”. ²
Trade and investment agreements	Treaties between two or more countries which include a combination of provisions as found in trade agreements and investment agreements .
Traditional marketing	Marketing that occurs in long-standing media channels, including print media, radio and television.
Transnational corporation (TNC)	An organization “consisting of a parent company and its foreign affiliates, whose activities permeate national borders” which “is organized, integrated and coordinated by the headquarters operating in the home country” of the parent company (Jaworcek & Kuzsel, 2007).

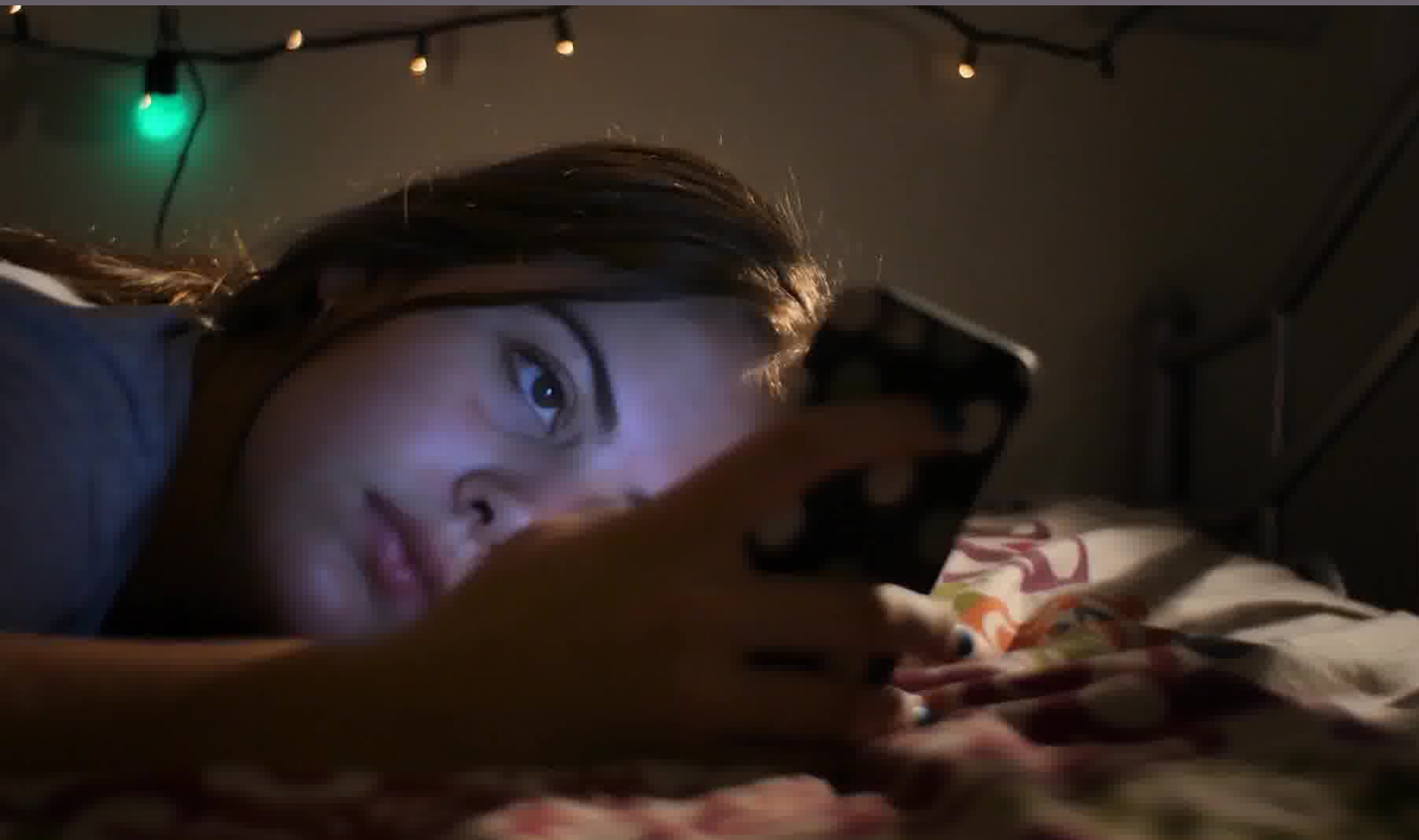
² See: <https://www.dfat.gov.au/trade/about-ftas/about-free-trade-agreements>, accessed 20 February 2022.

**Transnational
alcohol
corporation
(TNAC)**

A **transnational corporation** that engages in the production, distribution, marketing and/or sale of alcoholic beverages.

**Value chain
integration**

“The process by which multiple enterprises within a shared market segment collaboratively plan, implement and manage the flow of goods, services and information along the value system in a way that increases customer-perceived value and optimizes the efficiency of the chain” (Dobbs, 1998).



Summary

At its 146th session in February 2020, the Executive Board requested the Director-General to develop an action plan (2022–2030) that would effectively implement the Global strategy to reduce the harmful use of alcohol (referred to below as the “Global alcohol strategy”)¹ as a public health priority, in consultation with Member States and relevant stakeholders, for consideration by the Seventy-fifth World Health Assembly, through the Executive Board at its 150th session in 2022. Through the same decision, the Executive Board requested the Director-General to develop “a technical report on the harmful use of alcohol related to cross-border alcohol marketing, advertising and promotional activities, including those targeting youth and adolescents, before the 150th session of the Executive Board, which could contribute to the development of the action plan”.²

¹ WHO (2010). Global strategy to reduce the harmful use of alcohol. Geneva: World Health Organization (https://www.who.int/substance_abuse/alcstratenglishfinal.pdf, accessed 5 September 2021).

² WHO (2020). Decision EB146(14). Accelerating action to reduce the harmful use of alcohol. In: Executive Board, 146th session, Geneva, 3–8 February 2020. Resolutions and decisions, annexes. Geneva: World Health Organization:38–39 (EB146/2020/REC/1; https://apps.who.int/gb/ebwha/pdf_files/EB146-REC1/B146_REC1-en.pdf, accessed 10 January 2022).

This technical report describes alcohol as “a commodity of concern to public health” and draws attention to the fact that alcohol products are increasingly being marketed across national borders – often by digital means – and often regardless of the social, economic or cultural environment in receiving countries. Studies show that the marketing of alcohol increases alcohol consumption, that targeted marketing increases consumption among the targeted audiences, and that such marketing frequently appeals most to heavy drinkers.^{3–6}

The Global alcohol strategy, which was endorsed by the Sixty-third World Health Assembly in May 2010 through resolution WHA63.13, defines marketing as: “Any form of commercial communication or message that is designed to increase, or has the effect of increasing, the recognition, appeal and/or consumption of particular products and services. It could comprise anything that acts to advertise or otherwise promote a product or service”. The strategy emphasizes the need to reduce the impact of marketing “particularly on young people and adolescents....The exposure of children and young people to appealing marketing is of particular concern”.¹ WHO’s Global action plan for the prevention and control of noncommunicable diseases 2013–2020 provides that “enacting and enforcing bans or comprehensive restrictions on exposure to alcohol advertising” is a highly cost-effective intervention to protect health.⁷

Cross-border marketing includes both outflowing marketing (originating from a state’s territory) and inflowing marketing (entering a state’s territory). A high proportion of alcohol is produced and marketed by transnational alcohol companies who are also among the highest spenders worldwide on advertising and promotion. Globalization and the growth of digital technologies have made cross-border marketing of alcohol more common, with marketing frequently originating in and controlled from locations outside the receiving country. The report summarizes the range of alcohol marketing practices intended to increase the use of alcoholic beverages and to find new groups of consumers. Classic advertising methods, whether for product or corporate branding, and sponsorship of large-scale (and often internationally broadcast) sports and cultural events, are now accompanied by more evident product placement in films and television shows aimed at international markets, corporate social responsibility campaigns that serve to promote brands, and social media promotion.

While alcohol is rated as one of the most harmful psychoactive substances for global health and in populations with high prevalence of alcohol consumption, controls on its marketing are much weaker than those for other psychoactive products. While all should treat alcohol consumption with caution, some population groups need protection against alcohol marketing. One such group is children and adolescents, but others in need of protection are dependent drinkers or people with alcohol use disorders and persons who seek support in their decision to abstain. A common finding is that well over half of the alcohol consumed by a population is drunk by 20% of current drinkers, making heavy and dependent drinkers a crucial target for alcohol sales and advertising. Alcohol-dependent patients frequently report a stronger urge to drink alcohol when confronted with alcohol-related

³ Noel JK, Babor TF, Robaina K, Feulner M, Vendrame A, Monteiro M (2017). Alcohol marketing in the Americas and Spain during the 2014 FIFA World Cup Tournament. *Addiction*. 112(Suppl. 1):64–73.

⁴ Noel JK, Xuan Z, Babor TF (2018). Perceptions of alcohol advertising among high-risk drinkers. *Subst Use Misuse*. 53(9):1403–10.

⁵ Sargent JD, Babor TF (2020). The relationship between exposure to alcohol marketing and underage drinking is causal. *J Stud Alcohol Drugs*. (Suppl. 19):113–24.

⁶ Maani Hessari N, Bertscher A, Critchlow N, Fitzgerald N, Knai C, Stead M et al. (2019). Recruiting the “heavy-using loyalists of tomorrow”: an analysis of the aims, effects and mechanisms of alcohol advertising, based on advertising industry evaluations. *Int J Environ Res Public Health*. 16(21):4092–108.

⁷ WHO (2013). Global action plan for the prevention and control of NCDs 2013–2020. Geneva: World Health Organization (<https://apps.who.int/iris/rest/bitstreams/442296/retrieve>, accessed 5 September 2021). The Global action plan was endorsed by the Sixty-sixth World Health Assembly in May 2013 (resolution WHA66.10) and extended to 2030 by the Seventy-second World Health Assembly in May 2019 (decision WHA72(11)). Appendix 3 was endorsed, in its updated form, by the Seventieth World Health Assembly in May 2017 (resolution WHA70.11).

cues,⁸⁻¹⁰ yet such persons rarely have an effective way to avoid the content of the advertising or promotion. Similarly, large population groups abstain from drinking alcohol for personal, social or religious reasons, especially women, and yet cannot easily abstain from receiving alcohol promotion.

Although consumption of alcohol in low-income countries is much lower than in high-income countries, the rate of alcohol-attributable harms is higher.¹¹ The “harm per litre” is also much higher for poorer persons than for richer ones. In terms of health equity, there are strong arguments for limiting the marketing and promotion of alcohol more stringently where the audience is poorer and with fewer resources. Decisions about controls on alcohol marketing need to take this factor into account. Similarly, while three quarters of the alcohol that the world drinks is consumed by males, alcohol marketers tend to see the lower rate of women drinking as an opportunity to encourage more to drink, often depicting drinking by women as a symbol of empowerment and equality. However, studies of domestic violence show that violence against the woman is more likely if the woman as well as the man has been drinking, which may decrease rather than increase her power in an intimate relationship.¹²

Much of the growth of alcohol marketing is on social media. The collection and analysis of data on users’ habits and preferences by global Internet providers has provided alcohol marketers with growing opportunities to target persuasive messages more precisely to specific groups. Products can be branded differently for different audiences in different countries. Targeted advertising on social media is especially effective, not only because it makes use of in-depth data on users’ interests and behaviours, but because its impact can be strengthened by social influence. While this happens more explicitly through “social influencers” (who may be paid to promote products or may be unpaid), it can also involve promoting advertisements for brands/products that “friends” have “liked”. This form of peer-to-peer marketing blurs the boundaries between marketing content and online peer activities. Alcohol portrayals on social media platforms are common and overwhelmingly show alcohol positively. These developments in digital marketing and technology have emerged recently and rapidly, posing challenges for regulation. The fast-changing digital ecosystem and the methods employed to invade online personal spaces with alcohol marketing show the urgent need for concerted action by countries and international institutions.

Economic and market interests have generally taken priority over health interests in trade and investment negotiations, and disputes involving alcohol. Care is needed to ensure that such negotiations do not limit states’ capacity to regulate the cross-border marketing of alcohol. Countries have the authority to regulate marketing when it reaches inside their borders, and online marketing is essentially cross-border in nature. In 66% of countries, there is no specific regulation of digital alcohol marketing by governments, with partial restrictions in only 17% and a ban in 18%.¹³

Controlling the cross-border marketing of attractive but problematic items for consumption – in this case, alcoholic beverages which are no ordinary commodity – requires substantial coordination

⁸ Townshend J, Duka T (2001). Attentional bias associated with alcohol cues: differences between heavy and occasional social drinkers. *Psychopharmacology*. 157(1):67–74.

⁹ Mainz V, Drüke B, Boecker M, Kessel R, Gauggel S, Forkmann T (2012). Influence of cue exposure on inhibitory control and brain activation in patients with alcohol dependence. *Front Hum Neurosci*. 6:92.

¹⁰ Babor TF, Robaina K, Noel JK, Ritson EB (2017). Vulnerability to alcohol-related problems: a policy brief with implications for the regulation of alcohol marketing. *Addiction*. 112(Suppl. 1):94–101.

¹¹ WHO (2018b). Global status report on alcohol and health 2018. Geneva: World Health Organization (<https://www.who.int/publications/i/item/global-status-report-on-alcohol-and-health-2018>, accessed 5 September 2021).

¹² Devries KM, Child JC, Bacchus LJ, Mak J, Falder G, Graham K et al. (2014). Intimate partner violence victimization and alcohol consumption in women: a systematic review and meta-analysis. *Addiction*. 109(3):379–91.

¹³ WHO. Global information system on alcohol and health. Geneva: World Health Organization (<https://www.who.int/data/gho/data/themes/global-information-system-on-alcohol-and-health>, accessed 7 January 2022).

and sustained attention at national, bilateral and multilateral levels.¹⁴ The public health interest in protecting minors and people with alcohol use disorders is served by strong national regulation of alcohol marketing. Since much of today's alcohol marketing has a cross-border aspect to it, the control of cross-border marketing must be an integral part of any national efforts to limit harms from alcohol. These national efforts can be supported by appropriate co-regulatory interventions. Analysis of alcohol company codes of conduct has not demonstrated evidence of their effectiveness in reducing the harmful use of alcohol.^{15,16,17,18,19} There may be a role for non-state actors to play in this, but the public health-oriented restrictions on cross-border marketing should be developed by governments, based on public health interests and informed by the best available public health evidence, and persons or organizations with a conflict of interest should not be involved in the formulation of these policies and regulations. In addition, regulations on alcohol marketing are most effective when backed by mechanisms for ensuring compliance, monitoring and enforcement.

The report concludes that bilateral and multilateral cooperation and support between states can augment national regulatory efforts. At the national level, the control or prohibition of alcohol marketing, including its cross-border aspects, should be an integral part of public health strategies to reduce the harmful use of alcohol and to limit harms resulting from alcohol. At the international level, the cross-border aspects of alcohol marketing mean that its effective control requires collaboration between states and an international mechanism for effective cooperation in this area. International cooperation is typically premised on a strong need for action or a high degree of commonality between the laws of the countries in question. In this sense, some degree of consensus on the need to regulate cross-border marketing may be a necessary precursor to successful international cooperation.

¹⁴ Babor T, Caetano R, Casswell S, Edwards G, Giesbrecht N, Graham K et al. (2010). *Alcohol: no ordinary commodity – research and public policy*, second edition. Oxford: Oxford University Press.

¹⁵ Noel JK, Babor TF, Robaina K (2017). Industry self-regulation of alcohol marketing: a systematic review of content and exposure research. *Addiction*. 112(Suppl. 1):28–50. doi: 10.1111/add.13410. Epub 2016 Oct 11. PMID: 27188217.

¹⁶ Noel JK, Babor T F, Robaina K, Feulner M, Vendrame A, Monteiro M (2017). Alcohol marketing in the Americas and Spain during the 2014 FIFA World Cup Tournament. *Addiction*. 112(Suppl. 1):64–73.

¹⁷ Hastings G, Brooks O, Stead M, Angus K, Anker T, Farrell T et al. (2010). Failure of self-regulation of UK alcohol advertising. *BMJ*. 340: b5650.

¹⁸ Noel J K, Babor T F (2017). Does industry self-regulation protect young people from exposure to alcohol marketing? A review of compliance and complaint studies. *Addiction*. 112(Suppl. 1):51–6.

¹⁹ Carah N, Brodmerkel S (2021). Alcohol marketing in the era of digital media platforms. *J Stud Alcohol Drugs*. 82(1):18–27. doi: 10.15288/jsad.2021.82.18.



1. Introduction

At its 146th session in 2020, the WHO Executive Board asked the Organization to develop an action plan for the period 2022–2030 to boost implementation of the Global strategy to reduce the harmful use of alcohol (referred to below as the “Global alcohol strategy”) as a public health priority. To contribute to the development of the action plan, the Executive Board’s Decision 146 (14) requested the WHO Director-General to develop “a technical report on the harmful use of alcohol related to cross-border alcohol marketing, advertising and promotional activities, including those targeting youth and adolescents” (WHO, 2020).

In order to produce the technical report requested by Decision EB146 (14), the WHO Secretariat commissioned a scoping review of cross-border marketing and a series of background papers to inform the process of developing the technical report; summaries of these commissioned papers are included as Annexes 1–4 to this report. The objective of the scoping review was to inform the development of the technical report by critically reviewing the key concepts underpinning the harmful use of alcohol in relation to cross-border alcohol marketing, summarizing the relevant

research literature and research methodologies, and describing the main types and sources of information available. The Secretariat also convened several meetings with experts to discuss and elaborate on cross-border marketing of alcohol. A detailed outline of the report was also discussed at the third Forum on Alcohol, Drugs and Addictive Behaviours in June 2021, and elements of cross-border marketing were discussed with economic operators in dialogue meetings in 2020 and 2021.

Section 1 of this report discusses and defines the main terms used in the report, considers how the scope of alcohol marketing and the place of the cross-border dimension in it have changed and broadened in recent years, and references previous considerations and initiatives on alcohol marketing by WHO and other United Nations bodies. Section 2 considers the globalization of alcoholic beverage production and distribution, including the substantial and growing share of alcohol produced and marketed by transnational corporations, exercising cross-border control over product branding and marketing. Section 3 considers the diversity of marketing strategies and media, and their expansion, and increased cross-border aspects in the digital age. Section 4 considers ethical issues in alcohol marketing to a range of specific audiences – issues particularly poignant in an era in which marketers have increased ability to target specific subcategories of the potential audience.

Section 5 turns to elements of international law which relate to regulation of marketing, and particularly the regulation of cross-border marketing in the public health interest. Section 6 considers the question of how the marketing of alcohol, including its cross-border aspects, is regulated in today's world, with Section 7 examining in a comparative light how other commodities with adverse public health effects are currently addressed in international legal agreements and national laws. Drawing on this experience, Section 8 moves on to discuss options, both at international and at national levels, for strengthening the regulation of alcohol marketing and its cross-border aspects. On this basis, Section 9 draws conclusions concerning paths forward for States in controlling marketing, including its cross-border aspects, and in working together to achieve comity in cross-border regulation and towards multilateral governance of alcohol marketing.

1.1 Bases for concern about cross-border marketing of alcohol

1.1.1 Alcohol as a commodity of concern to public health

Alcoholic beverages are the most widely and commonly used intoxicant. Alcohol is a relatively strong psychoactive substance which adversely affects dexterity, judgement and consciousness, resulting often in injury to the drinker or to others. In studies of the effects globally of risk factors for ill-health or early death, alcohol is commonly among the top 10 risk factors (e.g. GBD 2019 Risk Factors Collaborators, 2020). Such comparisons include very little of the health harm to others – mostly from injury and mental health harm – or the social harms and societal costs of response to alcohol problems, the inclusion of which is estimated roughly to double the level of harm attributable to alcohol (e.g. Bonomo et al., 2019).

Societies have therefore commonly kept alcohol away from children (WHO, 2018b:101–3) and, where alcohol is available to adults, its use is commonly discouraged or forbidden in situations requiring close attention and personal responsibility (Room et al., 2019).

1.1.2 The digital revolution in marketing and promotion

Recent years have seen a rapid change in marketing and promotion of consumer products through the advent and growth of digital media, binding the world together across borders in ways which did not exist 30 years ago. With the advent of the Internet, the invention and wide spread of smartphones, and the growth of social media and of transnational digital platforms which collect detailed information on preferences and characteristics of their users, to be sold and relied upon for marketing purposes, the nature of marketing, advertising and promotion is being transformed, with large increases in its transnational cross-border aspects. As the WHO Global alcohol strategy from 2010 noted:

Alcohol is marketed through increasingly sophisticated advertising and promotion techniques, including linking alcohol brands to sports and cultural activities, sponsorships and product placements, and new marketing techniques such as e-mails, SMS and podcasting, social media and other communication techniques (WHO, 2010a:15).

As part of the changes in consumer marketing in general, alcohol marketing and promotion have strongly utilized the new media, platforms and practices of the digital revolution, which – as further discussed in this report – have many cross-border aspects, not only in the diffusion of communications but also in their organization, chains of command and operation. Apart from describing and analysing these changes, this report considers in Sections 6–8 potential measures to limit the negative effects on public health from the now greatly expanded cross-border aspects of alcohol marketing, advertising and promotion.

Given that WHO is a multinational agency, the primary emphasis here is on borders between nations and measures to limit harm through national policies and international coordination. However, the control of marketing which crosses the borders of supranational bodies, such as the European Union, is also relevant (e.g. Drinks Ireland, 2021). Within federal nations, provincial or state borders may matter a great deal since many government controls of alcohol markets are set at the subnational level. Also, control of some types of alcohol marketing is often located at local government level, so that borders at this level may also matter (e.g. Swensen, 2016). This report focuses on cross-border issues at national borders but is also relevant to cross-border issues at other levels.

1.2 Conceptualizing and defining marketing and cross-border marketing in the digital age

1.2.1 Defining marketing

Marketing in general can refer to any activity a company undertakes to promote the buying or selling of a product or service. The American Marketing Association (AMA) defines marketing as:

... the activity, set of institutions, and processes for creating, communicating, delivering, and exchanging offerings that have value for customers, clients, partners, and society at large (AMA, 2017).

Such a broad definition would not give much guidance for regulatory practices, and a more stringent set of definitions is needed in order to operationalize regulatory options for public health purposes.

In this regard, it can be helpful to distinguish between marketing and marketing communication. The AMA defines marketing communication as:

... coordinated promotional messages and related media used to communicate with a market. Marketing communications messages are delivered through one or more channels such as digital media, print, radio, television, direct mail, and personal selling (MASB, 2020).

As defined in WHO's Global alcohol strategy, marketing includes "any form of commercial communication or message that is designed to increase, or has the effect of increasing, the recognition, appeal and/or consumption of particular products and services. It could comprise anything that acts to advertise or otherwise promote a product or service" (WHO, 2010a:15).

Advertising and promotion are thus terms describing subcategories of marketing. The Global alcohol strategy notes that:

The transmission of alcohol marketing messages across national borders and jurisdictions on channels such as satellite television and the Internet, and sponsorship of sports and cultural events is emerging as a serious concern in some countries (WHO, 2010a:15).

Other existing WHO instruments also recognize the breadth of the concept. For example, WHO's set of recommendations on the marketing of foods and non-alcoholic beverages to children refers to various types of marketing, including "advertising, sponsorship, product placement, sales promotion, cross-promotions using celebrities, brand mascots or characters popular with children, web sites, packaging, labelling and point-of-purchase displays, e-mails and text messages, philanthropic activities tied to branding opportunities, and communication through 'viral marketing' and by word-of-mouth" (WHO, 2010b). This approach recognizes that advertising, promotion, sponsorship and other activities are all forms of marketing communication, and that the term "marketing" is used as an overarching term for marketing communication in this report.

Existing WHO instruments also define elements of marketing, including advertising, promotion and sponsorship. For example, the WHO Framework Convention on Tobacco Control (FCTC) includes the following definitions:

"tobacco advertising and promotion" means any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly.

"tobacco sponsorship" means any form of contribution to any event, activity or individual with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly (WHO, 2003).

In the context of these definitions, parties to the Convention have adopted Guidelines for the Implementation of Article 13. The appendix to the Guidelines for Implementation includes an indicative and non-exhaustive list of forms of tobacco advertising, promotion and sponsorship as follows:

- communication through audio, visual or audiovisual means: print (including newspapers, magazines, pamphlets, leaflets, flyers, letters, billboards, posters, signs), television and radio (including terrestrial and satellite), films, DVDs, videos and CDs, games (computer games, video

games or online games), other digital communication platforms (including the Internet and mobile phones) and theatre or other live performance;

- brand-marketing, including in entertainment venues and retail outlets, and on vehicles and equipment (e.g. by use of brand colours or schemes of colours, logos or trademarks);
- display of tobacco products at points of sale;
- tobacco product vending machines;
- Internet sales of tobacco products;
- brand-stretching and brand-sharing (product diversification);
- product placement (i.e. the inclusion of, or reference to, a tobacco product, service or trademark in the context of communication (see above), in return for payment or other consideration);
- provision of gifts or discounted products with the purchase of tobacco products (e.g. key rings, T-shirts, baseball hats, cigarette lighters);
- supply of free samples of tobacco products, including in conjunction with marketing surveys and taste-testing;
- incentive promotions or loyalty schemes (e.g. redeemable coupons provided with purchase of tobacco products);
- competitions, associated with tobacco products or brand names, whether requiring the purchase of a tobacco product or not;
- direct targeting of individuals with promotional (including informational) material, such as direct mail, telemarketing, “consumer surveys” or “research”;
- promotion of discounted products;
- sale or supply of toys or sweets that resemble tobacco products;
- payments or other contributions to retailers to encourage or induce them to sell products, including retailer incentive programmes (e.g. rewards to retailers for achieving certain sales volumes);
- packaging and product design features;
- payment or other consideration in exchange for the exclusive sale or prominent display of a particular product or particular manufacturer’s product in a retail outlet, at a venue or at an event;
- sale, supply, placement and display of products at educational establishments or at hospitality, sporting, entertainment, music, dance and social venues or events;
- provision of financial or other support to events, activities, individuals or groups (such as sporting or arts events, individual sportspeople or teams, individual artists or artistic groups, welfare organizations, politicians, political candidates or political parties), whether or not in exchange for publicity, including corporate social responsibility activities; and
- provision of financial or other support by the tobacco industry to venue operators (such as pubs, clubs or other recreational venues) in exchange for building or renovating premises to promote tobacco products or the use or provision of awnings and sunshades (WHO, 2013a:17–18).

Although the examples in this list are framed in terms of tobacco products, they all constitute forms of advertising, promotion and sponsorship (and therefore marketing) that are used for other products, including alcoholic beverages.

In the digital age, thinking about marketing communication has focused chiefly on the media channels through which it occurs. The PESO model proposed by Gini Dietrich in 2014 distinguishes four different media channels (paid, earned, shared, owned) of such marketing (Azoury & Daou, 2020). Owned media include media content “fully controlled by the company”, such as a company’s website, social media accounts or mobile applications (Azoury & Daou, 2020). Paid media refers to “traditional advertising and other forms of content commercially contracted between organizations and mass media” (Macnamara et al., 2016), but can include paid content on social

media or other digital domains. Earned media refers to marketing activity that a company “does not directly generate or control” (Colicev, Malshe, Pauwels & O’Connor, 2018; Stephen & Galak, 2012), and includes items such as online reviews, unsponsored blog/news content or customer recommendations. Shared media generally refers to “user-generated content and social media” (Azoury & Daou, 2020) but may also include the “co-production of content” (Xie, Neill & Schauster, 2018). For instance, alcohol companies may post memes and videos to social media that are shared by users, but the companies may also encourage users to post and share their own content through competitions (Carah, 2017). The PESO model thus takes account of the broad expansion in media for promotion in recent decades, including the explosive growth of electronic and particularly of Internet media and platforms.

Shared marketing, in particular, is a rapidly growing category of marketing that includes social media and other online platforms where influencers and shared reactions by audience members become a substantial part of the promotion (Xie, Neill & Schauster, 2018). The increasing prominence of shared social media as a marketing channel has also allowed for the expansion of alcohol marketing techniques, including through the production of sharable content (e.g. memes, videos etc.). Digital platforms as media channels have increased the challenge to distinguish between content that reflects legitimate policy debate or opinion and content that seeks to promote specific products or brands. It can also be difficult to distinguish between commercial and artistic depictions of alcohol use.

1.2.2 When is marketing cross-border?

Cross-border marketing includes both outflowing marketing (originating from a state’s territory) and in-flowing marketing (entering a state’s territory). In this sense, for purposes of this report, cross-border marketing refers to marketing that crosses national borders.²⁰

Marketing crosses borders in a range of different ways, including where:

- print publications containing marketing are produced within one country that are exported to another;
- advertising or promotion is placed on the Internet or made Internet accessible in one country and accessible in another; and
- broadcasts from the territory of one country are received in another.

Cross-border marketing also comes in a variety of different forms across different media types. These include:

- paid advertisements, such as in print publications, in cross-border broadcasts or via the Internet;
- promotions, including paid influencer promotions, event promotions and campaign promotions;
- sponsored content, such as where sponsored sporting events are broadcast, sponsored entities like sports teams display logos or brands in their communications, sponsored ‘news’ or infotainment;
- commercial depictions of alcoholic beverages or alcohol use, such as in online retail stores, product placement in entertainment media, influencer promotions and commercial posts on social media depicting alcohol use;
- marketing on product packaging that crosses borders when the product is traded.

²⁰ Marketing that crosses sub-national borders within a Member State does not fall within the scope of cross-border marketing for purposes of this report because national constitutional and other laws typically govern that movement, making it an issue of national governance and international coordination and cooperation less relevant.

In the case of alcoholic beverages, it is also worth noting that much of the marketing that crosses international borders is part of globally managed approaches to branding and marketing of products that are widely available in different countries. In this sense, global branding and approaches to marketing means that cross-border alcohol marketing is frequently relevant to the markets in which the marketing is received (as opposed to being inconsequential on account of variations in product availability and branding in different markets).

Although existing WHO instruments do not define the concept of cross-border marketing in general, the WHO FCTC does refer to cross-border marketing in the context of tobacco. Article 13 of the Convention states that Parties shall ban cross-border advertising, promotion and sponsorship originating from their territories and recognizes the sovereign right of Parties to apply domestic bans to cross-border forms of tobacco advertising, promotion and sponsorship entering their territory.

The FCTC Guidelines for Implementation of Article 13 note that cross-border advertising, promotion and sponsorship “includes both outflowing advertising, promotion and sponsorship (originating from a Party’s territory) and inflowing advertising, promotion and sponsorship (entering a Party’s territory)”. The former is referred to as “outbound cross-border marketing” and the latter as “inbound cross-border marketing” in this report. The FCTC Guidelines for Implementation also set out examples of cross-border tobacco advertising, promotion and sponsorship, including:

- publications and products printed or produced within the territory of a Party, whether they are targeting persons within the Party’s territory or persons in the territories of other States (para. 47);
- placing of tobacco advertising, promotion and sponsorship on the Internet or another cross-border communications technology by any person or entity within the territory of a Party, whether the material is targeting persons outside or inside that Party’s territory (para. 48);
- broadcasts that can be received in another State (para. 49).

As discussed in Section 3 of this report, with the increased globalization of the alcohol industry in recent years, and the inherently cross-border nature of the Internet and other electronic and digital media, there is a cross-border element in the majority of marketing of major alcohol brands. The advertising and sales campaign of a product of a transnational alcohol corporation in a particular country will often have been planned, designed or approved in another country. The targeting of the campaign to particular consumers will sometimes be determined by an algorithm based on individual consumer preferences tracked and organized cross-nationally by a transnational Internet media company.

Although cross-border elements of alcohol marketing thus reach beyond cross-border marketing channels, there is also an increasing number of such channels. These include inter alia: a) digital platforms (social media, search, streaming and programmatic advertising exchanges); b) satellite or cable television; c) branded global sporting or cultural events (including but not limited to football championships, motor racing, music and performance events, and emerging formats such as eSports); d) lifestyle, entertainment and experiences (such as digital gaming and cruises); and e) use of celebrities (including digital influencers) (Casswell et al., 2021).

Examples of cross-border marketing in digital media include paid advertisements, influencer promotions, commercial promotion of consumer content depicting product use, other depictions of use embedded in commercial content, event promotions, corporate and campaign promotions, product placement and sponsored content.

The discussion in sub-section 1.4 below provides an overview of definitions and terms in relevant WHO instruments, while Section 3 discusses examples of alcohol marketing, focusing on cross-border marketing through novel techniques and digital channels.

1.3 Impact of alcohol marketing in a world where marketing is increasingly transnational

Concern about the impacts of alcohol marketing on alcohol consumption is well established. The preamble to EB 146(14) expresses: “deep concern that alcohol marketing, advertising and promotional activity, including through cross-border marketing, targeting youth and adolescents, influences their drinking initiation and intensity of drinking”. In expressing this concern, the preamble references the WHO Global status report on alcohol and health (WHO, 2018b), which describes marketing restrictions in more detail. The WHO best buy ‘enforcement of bans or comprehensive restrictions on exposure to alcohol advertising (across multiple types of media)’ endorsed by the Seventieth World Health Assembly (WHO, 2017a) is also premised on evidence that there is an inverse association between increased marketing restrictions and total drinking volume (see section 1.4).

The discussion here is primarily of findings on the effect of alcohol marketing in general. In part, this reflects that the research literature does not distinguish cross-border from domestic marketing, and that there are few data available on what proportion of marketing can be defined as cross-border, regardless of how this is defined. However, given the trends described in this report, the approach here also recognizes that it is in any case an increasingly difficult task – for either the audience member or the researcher – to distinguish marketing with a transnational aspect from a totally domestic effort. The relationship between marketing and harmful use of alcohol is not determined by the source of marketing (whether domestic or cross-border), but by other variables such as exposure to, and the power of marketing. In this context, concerns about challenges in addressing cross-border marketing are premised on an assumption that comparable measures are in place, or will be put in place, to address domestic source marketing. Put differently, the discussion of challenges posed in addressing cross-border marketing assumes that government action seeks to treat domestic marketing in an equivalent way.

Can it be shown that alcohol marketing has an impact on whether and how much people drink? Answering this question is complex, since it invites a question in response: in what time frame? The effect might be immediate, as when an advertisement offers a bargain deal only until the following day. It might be short-term, with a change in behaviour within a few weeks or months. Or it may be longer-term, both in terms of the lifetime of audience members (e.g. Snyder et al., 2006), and in terms of broader cultural effects in a longer time frame (Petticrew et al., 2017) so that, for instance, “lifestyle” advertising of alcohol may reinforce or precipitate changes in the place of drinking in everyday life. However, since the longer-term impact of a particular factor on a population’s behaviour is not readily distinguished from other influences, the impact of alcohol marketing at the population level has primarily been measured in terms of shorter-term effects.

One way of measuring the shorter-term effects of alcohol marketing at the population level has been to study the effects of advertising bans. Such studies have generally found small effects at best (Saffer, 2020). However, almost all of the bans which have been studied have been partial bans – for instance, of advertising on television or in other specific media. Under such circumstances, the marketing budget for the product, usually tax-deductible as a business expense, can simply be used on other media. Complete bans across media on alcohol advertising are much rarer. A study of such a ban in Norway in 1975 found a moderate effect of the ban – an immediate and persisting reduction in sales of 7% (Rossow, 2021a, 2021b).

Other evidence on the effects of alcohol marketing primarily comes from multiple studies of the effects of exposure of teenagers or young adults to alcohol marketing on drinking behaviour in the short- or medium-term. Sargent & Babor (2020) set out to answer the question of the effect of alcohol

marketing on drinking behaviour in terms of the classic public health test for causality: whether all nine of the Bradford Hill (1965) criteria are satisfied. These include: (a) strength of association, (b) consistency of relationship, (c) specificity of the association, (d) temporality: the marketing impulse preceding the change in drinking, (e) a dose-response gradient, (f) plausibility, (g) coherence with other knowledge, (h) reproducibility, and (i) analogy: e.g. are there such effects for similar commodities? Sargent & Babor's conclusion is that causality has been established according to the criteria, but they note – in line with Rossow's findings on the effect of the Norwegian ban – that the effect size is not very strong.

The research literature on which Sargent & Babor's analysis is based is primarily from studies before the expansion of alcohol promotion into digital media in the new millennium. For millennial youth, and increasingly for older cohorts too, social media and other websites occupy time and attention to an unprecedented extent (Barry & Russell, 2019). A number of studies have examined patterns in the digital age. Following up Swedish teenagers aged 15–16 for three years, Larm et al. (2019) found substantially larger alcohol use among those with extensive Internet chatting and other social media use. Among Australians aged 18–21 years, Jones et al. (2017) found there was a strong connection between social media use and alcohol consumption. Study participants reported being constantly exposed to, and often influenced by, images on the Internet of people like them enjoying themselves while drinking, with little representation of negative outcomes. In a volunteer sample in India aged 13–25 years, the respondents' usual alcohol consumption was strongly related to how often friends shared alcohol-related information with the respondent on social media platforms (Gupta et al., 2018).

Studies of relationships and the effects of digital marketing of alcohol thus point in the same direction as the literature on the effects of alcohol marketing in traditional media (Noel et al., 2020). However, digital media offer additional paths for marketers, in part because of the absence of some of the controls which apply to other media. Goldfarb & Tucker (2011) compared the effectiveness of online advertisements for alcoholic beverages in different parts of the United States. They measured respondents' intent to purchase alcohol after seeing an Internet alcohol advertisement, comparing those who lived in locations where conventional out-of-home alcohol advertising was banned with those living where it was allowed. They found that the intent to purchase was 8% where the conventional advertising was banned, and 3% where it was allowed, suggesting that online advertising offers marketers an effective way around controls on conventional advertising, undercutting the effectiveness of the controls.

The relationships that have been found between exposure to, and liking for, images of drinking scenes in social media and the viewer's own drinking behaviour point to the issue of the potential adverse effects of such imagery on heavy and dependent drinkers in the audience. In a study of the reactions of US college students to advertisements for alcohol, heavy alcohol consumers found the advertisements more appealing than did other students (Noel et al., 2018), thus potentially reinforcing their heavy drinking. For a dependent drinker who is in remission, the drinking on the screen can act as a cue which sets off cravings and may precipitate a relapse. A rule-of-thumb shared by diverse approaches to treating alcohol dependence is to avoid situations and images that will provide such cues (Townshend & Duka, 2001). (See sub-section 4.2 below).

While alcohol producers and marketers do spend considerable energy and resources on efforts to develop new markets – for instance, among women and in populations with high proportions of abstainers (Robaina et al., 2020:19–25; Bakke, 2015) – the majority of sales of their product will be to heavier drinkers. Examining, from a public health perspective, a series of advertising industry case studies of alcohol advertising, Maani Hessari et al. (2019) found several quotations from the reports

which make clear that often “the target market was heavy drinkers”. A case report on a brand remarked that:

whisky brands are very reliant on a small number of heavy, and increasingly ageing, consumers, to provide the majority of volume.... Our first advertising task was to protect and build this core drinker base by persuading existing consumers ... to choose (the brand) more often. In the longer term we had to attract younger drinkers – the heavy-using loyalists of tomorrow (Famous Grouse case study, 2006).

From the perspective of attracting and holding heavier drinkers, digital alcohol marketing has been a breakthrough opportunity for alcohol marketers and particularly for transnational alcohol corporations (TNACs), which have formed alliances with Internet providers and social media platforms (Kelsey, 2020). Identified in terms of their patterns of web responses and interactions on proprietary websites, heavy drinkers are subjected to an endless barrage of alcohol-involved posts and messages which are potential cues for them to drink more.

As already noted, few studies have explicitly examined the impact of cross-border marketing on drinking behaviour. However, there are clear examples of substantial impacts where marketing extends across borders, such as through the sponsorship of internationally recognized sports and cultural events, or via promotional activities by social media influencers (Casswell et al., 2021). For example, a systematic review of the association between alcohol-branded sports sponsorship and consumption found that all studies included in the review reported positive associations between exposure to alcohol sports sponsorship and increased levels of consumption, including risky drinking among adult sportspeople and schoolchildren (Brown, 2016). Higher alcohol severity scores were recorded for team members who personally, or whose team, received alcohol industry sponsorship (O’Brien, 2014). For audiences of branded events, exposure of the brand in the context of an exciting, entertaining and dynamic sports or cultural event has been shown to increase positive attitudes towards alcohol as well as the specific brand, and these effects seem to rely on non-conscious automatic processes (Zerhouni et al., 2019).

Similarly, cross-border sponsorship of festivals and other public events may influence the frequency and volume of drinking, and contribute to the social acceptance of alcohol as part of the culture and society (Casswell et al., 2021). One of the largest and farthest-reaching industry-sponsored sporting events is the FIFA World Cup. Hosted by Brazil in 2014 and sponsored in part by a large transnational alcohol company, the games were attended by nearly 3.5 million fans, and another billion watched the final game on television. Within Brazil, a “multidimensional experiential platform” consisting of 15 major programmes and over 9,000 activation points was used for the promotion of three alcohol brands (Noel et al., 2017). The company also ran over 80 000 events in 700 cities across the country, reaching more than 15 million people, according to transcripts from the company’s 2014 earnings call. Additionally, over 23 million Brazilians were engaged through social media, and over 5 million special edition promotional products were sold. In the nine months following the FIFA World Cup, beer industry sales volumes in Brazil rose by 6% (Robaina et al., 2020).

Cross-border alcohol marketing strategies such as international sports sponsorship reach international audiences, resulting in large-scale alcohol marketing exposure. Because of the extent of marketing exposure, marketing strategies that reach a large audience can have a substantial impact, even if the individual-level effect on alcohol consumption is small. This is a concern given that alcohol marketing exposure, especially among young people, is likely to have increased with the growing presence of alcohol marketing on digital platforms (Noel et al., 2017).

In summary, there is ample evidence that alcohol marketing exposure increases consumption, and this effect is expected irrespective of where and how marketing is viewed and/or transmitted (i.e. whether cross-border or limited to one national jurisdiction). This report does not seek to fully review the well-established evidence of the impact of marketing or marketing restrictions on harmful use of alcohol. Rather, the focus is on describing the different forms that cross-border alcohol marketing takes.

Chapter 2 of this report describes the large-scale investment by transnational alcohol corporations in marketing, and particularly in recent years in Internet and other marketing which reaches across borders. The extent of this investment is itself evidence of the industry's commitment to marketing as effective in increasing and sustaining sales of its products.

1.4 Previous consideration and initiatives on alcohol marketing by WHO and other United Nations bodies

Banning or comprehensively restricting alcohol marketing is an important intervention supported by WHO for reducing alcohol-related harm, as has been re-emphasized in several WHO initiatives in recent years.

In 2010, the World Health Assembly endorsed the WHO Global alcohol strategy. On the question of alcohol marketing, one of 10 "recommended target areas" for policy action by Member States relates to alcohol marketing and provides for:

- (a) setting up regulatory or co-regulatory frameworks, preferably with a legislative basis, and supported when appropriate by self-regulatory measures for alcohol marketing by:
 - (i) regulating the content and the volume of marketing;
 - (ii) regulating direct or indirect marketing in certain or all media;
 - (iii) regulating sponsorship activities that promote alcoholic beverages;
 - (iv) restricting or banning promotions in connection with activities targeting young people;
 - (v) regulating new forms of alcohol marketing techniques, for instance social media;
- (b) development by public agencies or independent bodies of effective systems of surveillance of marketing of alcohol products;
- (c) setting up effective administrative and deterrence systems for infringements on marketing restrictions (WHO, 2010a).

The Global alcohol strategy also recommends considering a precautionary approach to protecting young people against these marketing techniques. Further, the political declaration of the 2018 United Nations third high-level meeting of the General Assembly on the prevention and control of NCDs invites the private sector to take concrete steps towards eliminating the marketing, advertising and sales of alcoholic products to minors (UN, 2018:para44).

In 2011, WHO's Regional Office for Africa initiated a project to monitor alcohol market practices in African countries. The initial stage of the project was in four countries, but this was expanded to seven in a second stage, with the results externally evaluated (Robaina et al., 2016). Altogether 282 examples of television, radio, print and outdoor advertising by domestic and foreign alcohol producers were collected from both rural and urban areas, and were evaluated in terms of adherence to standards for advertising set by the transnational industry's own "Governing principles for responsible alcohol beverage marketing". The study found that 27% of the advertisements violated one or more of these guiding principles (Robaina et al., 2016).

In May 2013, in response to a request from an earlier High-level Meeting of the United Nations General Assembly on the Prevention and Control of Non-communicable Diseases, the World Health Assembly at its Sixty-sixth session endorsed the WHO Global Action Plan for the Prevention and Control of NCDs 2013–2020 (NCD Action Plan), now extended to 2030 (WHO, 2013b) and adopted a comprehensive monitoring framework, including a set of 25 indicators and nine voluntary targets for a 25% relative reduction in overall mortality from NCDs. In relation to alcohol, WHO set a target of at least a 10% relative reduction in the harmful use of alcohol, as appropriate, within the national context (WHO, 2014). The three indicators for the measurement of the reduction, as appropriate within the national context, are: 1) total per capita alcohol consumption within a calendar year in litres of pure alcohol; 2) age-standardized prevalence of heavy episodic drinking among adolescents and adults; and 3) alcohol-related morbidity and mortality.

With regard to measures to reduce harms from alcohol, the NCD Action Plan repeats the policy options set out in Appendix 3 of the Global alcohol strategy, and identifies three strategies as “very cost-effective”, one of which is “regulating or banning alcohol advertising and promotions” (WHO, 2013b, Appendix 3). The three “best buys” for alcohol of the NCD Action Plan were updated in 2017, and controls on alcohol marketing continue to be included: “enacting and enforcing bans or comprehensive restrictions on exposure to alcohol advertising (across multiple types of media)”, with a note that capacity for implementing and enforcing legislation and regulations is needed (WHO, 2017a:7). In order to support the implementation of the NCD Action Plan, a United Nations Inter-Agency Taskforce on the Prevention and Control of NCDs (UNIATF) was also established in 2013 to support national implementation of the Action Plan, in recognition that a multisectoral approach is needed to make progress in reducing NCDs (UNIATF, 2021).

Alcohol was also identified as a concern in a second general transnational effort undertaken in the mid-2010s, the United Nations’ Sustainable Development Goals (SDGs), adopted by the UN’s General Assembly in 2015. WHO took on special responsibility for Goal 3, on health and well-being, which includes a commitment (Goal 3.5) to “strengthen prevention and treatment of ... harmful use of alcohol”. However, the only substantive attention to alcohol in the 2019 Action Plan on Goal 3, coordinated and published by WHO, was the suggestion that industry could take concrete steps to reduce commercial determinants of NCDs, including to “eliminate the marketing, advertising and sale of alcohol to minors” (WHO, 2019a).

In early 2015, the Pan American Health Organization (PAHO), held a technical meeting on alcohol marketing regulation. The meeting’s report noted that alcohol marketing was moving increasingly to digital and social media, where marketing innovations have far outpaced regulatory efforts. The meeting noted three “key requirements for effective regulation of alcohol marketing”: a significant reduction in exposure to marketing messages; comprehensive controls of the messages; and “a statutory ‘core’ independent of the alcohol industry, regardless of any self-regulatory mechanisms”. Noting that “given the health risks that alcohol poses for adolescents and other vulnerable populations, a common set of norms and standards to govern alcohol marketing is clearly indicated”, the meeting report noted as precedents the Framework Convention on Tobacco Control and the standards on the marketing of food and non-alcoholic beverages to children that had been adopted in the Americas (PAHO, 2016:5–7). The meeting agreed on nine “key concepts for discussion”, including that “governments should prioritize the passage of a comprehensive ban on alcohol marketing”, and should “put into force legal statutory requirements to enhance their regulatory capacity”, including “meaningful sanctions for violations” (pp. 29–30).

In a follow-up to the meeting, PAHO prepared and published a Technical Note, *Background on alcohol marketing regulation for the protection of public health*, which included a discussion of ways in which alcohol marketing potentially violated human rights conventions and treaties (pp. 15–16), and put

forward seven “principles for regulatory control”, nine “regulatory elements for consideration as part of a comprehensive ban” and four detailed “regulatory elements for consideration for countries not in a position to implement a comprehensive ban” (PAHO, 2017:20–25).

WHO, together with UNIATF and in collaboration with international partners launched the SAFER Initiative in 2018 in the context of the United Nations third high-level meeting on prevention and control of noncommunicable diseases (NCDs). The objective of the initiative is to provide support for Member States in reducing the harmful use of alcohol by strengthening the ongoing implementation of the Global alcohol strategy and other WHO and United Nations instruments – including WHO’s Global action plan for the prevention and control of NCDs, and the United Nations’ Sustainable Development Goals (SDGs) target 3.5. The SAFER package of interventions focuses on five key target areas of the Global alcohol strategy, including restriction of alcohol marketing, providing technical support and guidance for WHO members (WHO, 2019b). The SAFER package proposes three main purposes for restriction of alcohol marketing:

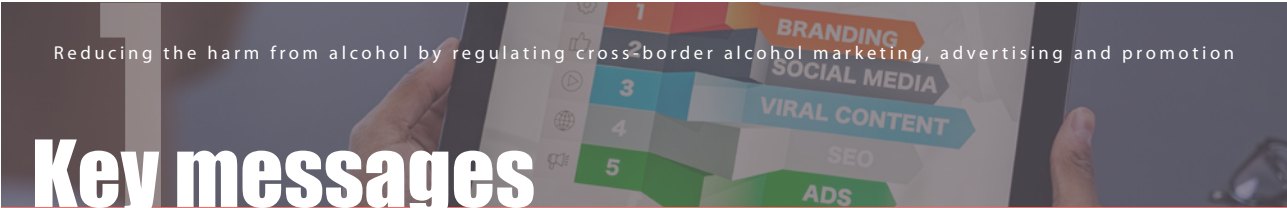
- to prevent young people from being exposed (which is known to influence the decision to start consuming alcohol and to increase alcohol use);
- to reduce the presence of alcohol cues that can induce reactivity and craving in alcohol-dependent persons; and
- to prevent industry influence on social norms relating to consumption in general, given the negative public health, economic and social consequences of alcohol use.

Noting the emergence of digital marketing techniques, the SAFER technical package observes that “the transmission of alcohol marketing messages across national borders and different jurisdictions via channels such as satellite television and the Internet is emerging as a serious concern in some countries”, and that “the biggest barrier to enforcement (at a national level) is likely to be advertising that crosses national borders, for instance via television or the Internet” (WHO, 2019b).

WHO’s Regional Office for Europe has pursued an active programme of alcohol policy monitoring and assistance, centring on WHO’s SAFER policy programme. Its report on developments in the region, *Making the WHO European Region safer: developments in alcohol control policies 2010–2019*, notes that “alcohol marketing messages are promoted across national borders and through different jurisdictions via channels such as satellite television and the Internet. Digital and social media have changed the nature of marketing, with alcohol companies increasingly moving into this area. ... ‘Narrowcast’ advertising directed at viewing on tablets and phones can expose children and young people to marketing while bypassing parental scrutiny” (WHO Regional Office for Europe, 2021a:29).

In 2021 WHO’s Regional Office for Europe released a report on *Digital marketing of alcohol: challenges and policy options for better health in the WHO European Region* (WHO Regional Office for Europe, 2021b). Stressing 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. A snapshot is provided of regulatory contexts in a small selection of countries in the WHO European Region, as well as at the 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, including removing marketing of alcohol altogether from digital spaces.

Despite the inclusion of alcohol issues in United Nations initiatives such as the SDGs, attention to issues of alcohol’s harm to health and welfare by global intergovernmental agencies other than WHO has been scattered and sporadic, and has usually occurred in conjunction with WHO activities (Room, 2021).



Reducing the harm from alcohol by regulating cross-border alcohol marketing, advertising and promotion

Key messages

Alcohol marketing includes “any form of commercial communication or message that is designed to increase, or has the effect of increasing, the recognition, appeal and/or consumption of particular products and services. It could comprise anything that acts to advertise or otherwise promote a product or service”.

Cross-border marketing includes not only outflowing marketing (which originates in a state’s territory and is received elsewhere) and inflowing marketing (which enters a state’s territory from another country) but also marketing that is conceived, controlled, produced and distributed specifically for the purpose of influencing people in other countries. The rising importance of digital media and transnational alcoholic beverage companies means that alcohol marketing has become increasingly cross-border.

Alcohol marketing affects drinking attitudes and behaviour in the short and medium terms, although its impact is less clearly measurable in the long term. For instance, Norway’s complete ban on alcohol advertising across all media had an immediate and lasting, though moderate, impact on consumption levels in the population.

The effect of alcohol marketing appears to have increased in the cross-border digital age. Targeted marketing is facilitated by the collection and classification of audience interests and preferences by digital media. Heavier drinkers and inquisitive teenagers are therefore subjected to intense marketing exposure.

The World Health Assembly has endorsed “enacting and enforcing bans or comprehensive restrictions on exposure to alcohol advertising (across multiple types of media)” as a policy option and highly cost-effective intervention (best buy).



2. The globalization of alcohol marketing

Alcoholic beverages are produced by fermentation or distillation primarily from many varieties of vegetable matter. The traditional mode of production in tribal and village societies, in batches initially from local vegetation, was practised from before recorded history in many (though not all) parts of the world and continues today. Industrial production of beer and spirits from agricultural raw materials started early in the industrial revolution, and for the last century and more it has been the dominant mode of production of all major forms of alcoholic beverages. In the nineteenth century, production and long-distance transport of alcoholic beverages and their ingredients became globalized, along with the growth of the European empires and cross-ocean trade (Phillips, 2014; Jernigan, 2000; Room, 1997). As now, however, alcoholic beverages were generally most often consumed in the same area as where they were produced.

About three-quarters of the alcohol consumed in the world is recorded alcohol, which is roughly equivalent to it being commercial and taxed, with much of the rest produced informally on a relatively small scale (Lachenmeier et al., 2021). Alcohol is prepared from a wide variety of plants by fermentation, and then for spirits by distillation, and the control of these processes is at the heart of alcohol industries. While traditional home or craft production of alcoholic beverages continues, most alcoholic beverages are produced commercially and transferred to retailers for sale to consumers. At the retail level, the product may be sold in bottles or other containers for consumption elsewhere or may be served in a tavern or restaurant. While there are examples of alcohol producers also managing retail stores or taverns, in market economies the retail level of alcohol sales is generally separately organized from the producers. Traditional retail sale of alcohol is generally organized at a national or subnational level and is regulated accordingly, although online sales and delivery – a rapidly increasing part of the market – is amenable to cross-border organization and promotion.

2.1 Globalization of the production and marketing of alcohol

In recent decades, there has been substantial concentration and further globalization in the alcohol market, with TNACs becoming increasingly dominant in the production and branding of alcoholic beverages (Jernigan & Ross, 2020) (Table 2.1).

Table 2.1. Ten largest transnational alcohol corporations by revenue (retail selling price), 2019

Corporation	2019	
	Total value RSP (US\$ millions)	% market share
1. Anheuser-Busch InBev NV	175 304	11.5%
2. Heineken NV	80 996	5.2
3. Diageo Plc.	70 645	4.5
4. Pernod Ricard Groupe	52 189	3.3
5. Carlsberg A/S	41 934	2.6
6. Molson Coors Brewing Co.	34 099	2.1
7. Suntory Holdings Ltd.	32 308	2.0
8. Asahi Group Holdings Ltd.	32 015	1.9
9. Constellation Brands Inc.	20 189	1.2
10. Bacardi & Co. Ltd.	19 974	1.2
Subtotal, 10 largest TNACs	559 651	35.5%
Total, commercial alcohol market	1 576 509	100%

Source: © Euromonitor, 2021 (Reproduced by permission). Retail selling price (RSP) is the end price to the consumer and includes retailer and wholesaler mark-ups and sales tax (except in Canada and the USA) and excise taxes.

Through whatever retail channel alcohol is sold, it is more often than not produced and marketed by a transnational corporation, which may be defined as an organization “consisting of a parent company and its foreign affiliates, whose activities permeate national borders” and which “is organized, integrated and coordinated by the headquarters operating in the home country” of the parent company (Jaworcek & Kuzsel, 2007).

For a globally-available product marketed by a TNAC, there will usually be an integrated marketing approach – such as a global positioning strategy directed by a global brand management team –

Table 2.2. Shares of the global markets in beer, wine and spirits, measured in terms of share of pure alcohol content sold (% of market) for the 10 largest producers of beer, of wine and of spirits

Rank	Beer		Wine		Spirits			
	TNAC	% of market	TNAC	% of market	TNAC	% of market		
1.	Anheuser-Busch InBev NV	25.9	E&J Gallo Winery Inc.	3.3	Diageo Plc	9.5		
2.	Heineken NV	11.2	Accolade Wines Ltd.	1.5	Pernod Ricard Groupe	5.6		
3.	Carlsberg A/S	5.7	Constellation Brands Ltd.	1.4	Kweichow Moutai Co. Ltd.	3.7		
4.	China Resources Holdings Co. Ltd.	5.6	Treasury Wine Estates Ltd.		Bacardi & Co. Ltd.	3.0		
5.	Molson Coors Brewing Co.	4.5	The Wine Group Inc.,		Suntory Holdings Ltd.	2.8		
6.	Tsingtsao Brewery Co. Ltd.	4.0	Castel Groupe	1.2	LVMH Moët Hennessy Louis Vuitton SA	2.2		
7.	Asahi Group Holdings Ltd.	3.1	Viña Concha y Toro SA	1.1	Brown-Forman Corp	1.6		
8.	Beijing Yanjing Brewery Co. Ltd.	1.9	FeCoVitA Coop Ltda.	0.9	Luzhou Lao Jiao Co. Ltd.	1.6		
9.	Kirin Holdings Co. Ltd.	1.4	Pernod Ricard Groupe	0.9	Sujiu Group	1.4		
10.	Constellation Brands Inc.	1.2	Oetker-Gruppe	0.8	Campari Milano SpA, Davide	1.1		
Total, top 10's % share		64.5	Top 10's % share		13.8	Top 10's % share	32.5	
Total, millions of ethanol litres								
Beer		10 072	Wine		11 095	Spirits		2571

Source: © Euromonitor, 2021 (Reproduced by permission).

with local nuances in the brand strategy watched over by local directors who are enmeshed in the local culture but are part of the global team (Amis & Silk, 2010:165–73). The production and marketing arrangements can be complex and may, for instance, involve partnerships between TNACs (Table 2.2). Thus, a particular Japan-identified brand of beer sold in the USA was brewed in Vancouver, Canada, to the Japanese TNAC's specifications by a Canadian TNAC, in part so that it could be labelled and marketed in the USA as imported, but without incurring the shipping costs from Japan (Brandt, 2019).

The market research firm Euromonitor provides data on the volume of the alcoholic beverage trade throughout the world. Table 2.1 shows one accounting of the sales of the 10 largest TNACs, reported by the market research firm Euromonitor in terms of the retail price paid for their products. By this measure, the share of recorded alcohol sold by the 10 largest TNACs rose from 32.0% in 2015 to 35.5% in 2019. Most of the leading TNACs are headquartered in high-income countries or China.

As of 2019, the largest TNAC brewing company in the world by volume produced one in four beers sold throughout the world (Euromonitor, 2021); nearly two-thirds (64.5%) of the global beer market was the product of the top 10 companies selling beer.

Euromonitor finds that volume sales of cider and perry and “ready-to drink” products (sometimes referred to as “alcopops” and disproportionately popular among young people) are also concentrated in the hands of a small number of companies, with 66% and 64%, respectively coming from the 10 largest producers. The global markets in spirits and in wine are as yet less concentrated. Nevertheless, as can be seen in Table 2.2, the top 10 spirits companies sold approximately one third (32.5%) of the spirits, and the top 10 wine companies sold 13.8% of the wine (Euromonitor, 2021).

2.2 Cross-border control of production, branding and marketing

While alcoholic beverage brands can be parochial or have a special local meaning, they often reach across borders, whether with prestigious foreign associations – called “country of origin effect” in international marketing research (Dichter, 1962:162) – or as a recognized cosmopolitan symbol in the global marketplace. The positioning of the brand, in terms of both the meanings and associations it invokes and of the audience segments attracted by those meanings and associations, is a major concern for those in charge of marketing the product and an important consideration in the advertising and promotional messages about it (Amis & Silk, 2010). Branding also has a significant impact on consumption among young people: a series of studies in the USA found that exposure to branded marketing for a product was consistently associated with a greater likelihood of young people consuming that product (Roberts et al., 2016).

Wherever these branded beverages may be produced and sold, the TNAC has direct or contractual control of the production and distribution process. The branding of the beverage and control of its advertising and promotion typically reaches across national borders. Studying the process of creating and managing a global brand of beer in the management offices of a TNAC, Amis & Silk identified three “global positioning strategies” which the TNAC staff used in reaching across national borders: 1) the identification of a single emotional theme with which the brand was identified; 2) a “shift toward a more centralized global marketing strategy”; and 3) “the development of common advertising for transmission across global markets” (Amis & Silk, 2010:168). A conclusion of the study is that the competitive advantage for TNACs is “predicated on the ability of subunits to assimilate knowledge from their external environments and effectively transmit it through their organization, particularly through the use of transnational teams” (Amis & Silk, 2010:167).

In September 2019, a TNAC announced multi-year global partnerships with two major European soccer leagues as part of their “Be a King” campaign (Russo, 2019). The company’s agreements with England’s Premier League and Spain’s La Liga give it “the right to activate across five continents and in more than 20 countries, including the United Kingdom, China, South Africa and India”. The corporation’s Vice-President of Global Marketing explained that they were “platforms that we believed could help us to talk to the planet” from a communications perspective, and the Premier League and La Liga are obviously two of the largest football leagues in the world. He mentioned also China and India as big markets for the company internationally, where “a passion point like football that really appeals to our consumer base has been hugely important to us”, using connecting-points like “exclusive viewing parties, broadcast and media assets and content partnerships which we can activate through social media” (Carp, 2019). The Vice-President continues “I think the idea of us broadening our footprint around the world is an ongoing exercise, and having properties like this allows us to build awareness for the brand as we go. China is our biggest market internationally and we have a huge presence there. I think the idea of building a relationship with the Premier League and La Liga that supports our business in China has been hugely important.”

Six alcohol TNACs are among the 100 highest spenders worldwide on advertising of any product or service, according to Ad Age’s database, which includes advertising, marketing services and other promotion, and social media and other digital marketing (Jernigan & Yeh, 2021: Table 7). Based on Ad Age data for the USA, Jernigan & Yeh (2021) calculated that over 70% of the media spending of leading US alcohol marketers in 2019 was on unmeasured media, such as through promotions, product placement and online advertisements in social media.

2.3 Value chain integration and the digital transformation of the alcohol industry

In recent years, the developments in information and communications technologies (ICT) have been profound. Indeed, some scholars have argued that we are entering “the fourth industrial revolution”, powered by “the combination of cyber-physical systems, the Internet of Things, and the Internet of Systems” (Marr, 2016). These technological changes affect all aspects of the alcohol industry – from manufacturing to marketing and sales. In particular, TNACs have been in the forefront of the changes, often driving them forward. The cross-border nature of their organization and operations has greatly facilitated the linking up of elements in the “value chain” of alcoholic beverage production and marketing.

With the advent of increasingly sophisticated digital technologies, including social media, data analytics and e-commerce platforms, there is now greater collaboration between all parties in the supply chain. Consequently, production, marketing and retail processes have become increasingly integrated. This shift is known as “value chain integration” or “value system integration”. In essence, a “value chain” refers to “the full range of activities that firms and workers perform to bring a product from its conception to end use and beyond, including design, production, marketing, distribution, and support to the final customer” (Höller et al., 2014 citing Gereffi, 2011). Value chain integration, then, is “the process by which multiple enterprises within a shared market segment collaboratively plan, implement and manage the flow of goods, services and information along the value system in a way that increases customer-perceived value and optimizes the efficiency of the chain” (Dobbs, 1998).

E-commerce is now a widely popular approach to the retail sale of products. In simple terms, e-commerce refers to the transaction of goods and services via the Internet. One of the most significant and lasting changes in behaviour within alcoholic drinks prompted by the COVID-19 pandemic is the rise of e-commerce and digital engagement (Ward, 2021). The following overview of some of the key changes brought about by recent technological advances highlights the implications for cross-border marketing.

E-commerce has major implications for the retail sale of alcohol, as it allows alcohol producers to market and sell products to consumers without the need for third party distributors and retailers. Most alcohol sales “still occur in bricks-and-mortar retail and in on-premise outlets” (Colbert et al., 2021), but online alcohol sales have grown tremendously in recent years, with estimates prior to the COVID-19 era suggesting that 1.8% of global alcohol sales were being transacted online (IWSR, 2019).

Whereas previously, alcohol producers most often sold to distributors who on-sold to retail outlets, e-commerce platforms provide greater opportunities for alcohol producers to engage directly in retail sales (Weissman, 2019). While the concept of alcohol producers selling directly to consumers is not new (e.g. winemakers’ “cellar doors”), the Internet has made such approaches more accessible and scalable, and more difficult to regulate and control.

The opportunities provided by digital technology to increase value chain integration have been seized upon by alcohol producers (Casswell et al., 2021). For example, one alcohol company in partnership with a start-up company launched a digitally-enabled refrigerator that tells customers how many beers they have left and sends notifications to an online delivery app which automatically re-orders for the customer so that the beer is delivered within 30 minutes. This system provides data on purchase right down to the minute and the geographical areas in which the consumers are buying the products. “This was a huge goldmine for us, not just from a tech standpoint, but from a data insights perspective” (Williams, 2017).

Reducing the harm from alcohol by regulating cross-border alcohol marketing, advertising and promotion

Key messages

A large proportion of the world's alcohol is produced by transnational alcohol companies (or their contractors) and is marketed by those companies.

Alcohol production and marketing has become increasingly concentrated and globalized, with steep increases in cross-border control and branding by the transnational alcohol companies.

Transnational alcohol companies are among the highest spenders on advertising worldwide among producers and sellers of all products and services.

Through their support for major global, regional and national sporting and recreational events, transnational alcohol companies are able to bring awareness of their brands to new audiences.

Digital technologies have facilitated value chain integration, allowing alcohol producers to develop increased cross-border avenues for integrating production, retail and marketing processes.

The growth of e-commerce has facilitated closer links between alcohol producers and their consumers.



3. Marketing of alcoholic beverages: strategies, techniques and channels and their cross-border aspects

Numerous marketing strategies are deployed by the alcohol industry, both through traditional marketing channels and via digital media. Traditional forms of marketing, such as television and print advertising, may be viewed by international audiences and thus constitute cross-border marketing. Examples of cross-border marketing in traditional media include the international circulation of magazines, satellite television channels, sponsorship of major events, and product placement in popular media. But while the cross-border aspect of these media involves a deliberate decision, most digital marketing content is automatically accessible globally. Consequently, most digital

marketing has the potential to reach international audiences and therefore constitutes cross-border marketing. Digital cross-border marketing includes marketing on social media and networking sites, as well as on websites (published by both alcohol producers and third parties), and search engines more generally. This Section also briefly explores the implications of product and corporate branding.

3.1 Branding: a key marketing device

A particular beverage from a particular producer is identified by a brand (often legally registered) which is controlled by the producer. Branding is a central component of marketing which includes developing a marketable identity for a company and/or the products or services it produces and sells. In some cases, a brand may be unique to a particular product range (i.e. “product branding”), or it may encapsulate the corporate entity that produces the product (“corporate branding”), or further still it may involve some mix of the two (e.g. when both the corporate entity and their products are marketed concurrently) (Xie & Boggs, 2006).

Product and corporate branding differ in their strategic aims, and to some extent, the strategies utilized. Product branding strategies incorporate a range of considerations, such as product design and packaging, and often entail market segmentation, whereby different products are produced and branded to appeal to target audiences. While corporate branding also aims to appeal to consumers, it has a broader aim; namely, “to give credibility in cases such as communications with government, the financial sector, the labour market, and society in general” (Urde, 2003). As such, corporate branding also includes activities aimed at bolstering the “corporate image” and “reputation” of a business (Xie & Boggs, 2006), and thus may include corporate social responsibility (CSR) initiatives.

In the alcohol field, the role of brands is complex and multilevel. At the lowest level is the specific brand and descriptors of a beverage; a particular brand of Scotch whisky, for instance, has the sole right to use its brand name, and shares with other qualifying brands exclusive rights to name its type of spirits and its place of origin. The producer’s corporate name may itself be a brand; Heineken, for instance, is both one of the specific brands owned by a TNAC and the name of that TNAC. There are also specific beverage brands owned by a TNAC which do not have the TNAC’s name; Dos Equis, for example, is a Mexican beer owned by Heineken. The consolidation of alcohol production in recent decades means that there are now many beverage brands which do not share the name of their corporate owner. For instance, when craft beers became fashionable in the USA, the TNAC Anheuser-Busch InBev acquired 17 local craft beers between 2011 and 2020, maintaining each brand under the new ownership (Lakhani et al., 2021). Different marketing strategies apply if the brand relates to a product or to a corporation that has products with their own brand. This is especially visible in global sponsorships and in high-profile corporate social responsibility initiatives – the preferred visible logo will be the corporation’s leading brand in that market and not the corporate name if they are not identical.

3.1.1 Surrogate advertising through line extensions and brand extensions, and their cross-border implications

High costs and risks are involved in introducing new brands and products into the marketplace. One technique that companies use to reduce these costs and risks is through line and brand extension. Line extensions are used to expand an existing product line or category using the same brand name as an existing alcoholic beverage (e.g. no-alcohol or low-alcohol content beer). Brand extension is the term used for entering a completely different category class with the same brand name (e.g. ice cream or hand sanitizers).

Surrogate advertising involves promoting non-alcohol products with the same or similar branding as alcohol products. Techniques used might include line and brand extension, often in combination with philanthropic activities and sponsoring of community events, sports teams, music groups and festivals. These activities may or may not violate restrictions or bans on direct advertising in a jurisdiction. Brand slogans and taglines (Probably..., King of Beer, etc.) and line and brand extensions, ranging from non-alcoholic beverages to airlines, have been widely used to enable brands to be promoted and be recognized by consumers as alcohol brands (Kaewpramkusol et al., 2019).

The marketing of alcohol-free beer as a way around bans or limits on alcohol advertising is not a new phenomenon. Before 1991 in Poland, for instance, when advertising of beer was banned, it was a routine practice:

The name and the label on the bottle or can are identical to beer which contains alcohol, and the information saying that the beer is "alcohol-free" is usually exhibited vertically, in very small print. In one television advertisement, for Bosman alcohol-free beer, the actors were saying "beer", winked to the viewer, then added "alcohol-free". According to (the national public health agency), breweries spend more on advertising alcohol-free beer than they earn in terms of returns from the sales of this type of beverage. It is suggested that their real motive is to advertise their trade name and boost their returns from the sales of beer containing alcohol (Cooke et al., 2004).

The increase in no-alcohol or low-alcohol content beers has recently been drastic, and their mainstream inclusion in advertising campaigns or sponsorship is new. As Miller et al. (2021) note, the marketing of zero-alcohol products with the same brand and in the same bottle or can as the alcoholic drink "provides myriad new opportunities for alcohol companies to display their branding and packaging to bolster brand recognition and allegiance". In practice, surrogate advertising through line and brand extension provide the alcohol industry with an additional avenue for increasing brand equity and awareness, especially in circumstances where alcohol marketing regulation prohibits conventional marketing strategies. In India, for instance, surrogate advertising of tobacco and alcohol products developed following the implementation of a ban on direct advertising (Kumar, Verma, Halder & Datta, 2017). In response, the alcohol and tobacco industries began producing and promoting a range of products, including merchandise (e.g. t-shirts, compact discs etc.), soft drinks, and even sports accessories, with the same branding and logo as their alcohol or tobacco product range (Dodrajka, 2011).

Similarly, surrogate advertising has emerged in Thailand following the implementation of restrictions on alcohol advertising. For example, the Thai Alcohol Control Act of 2008 included regulations on alcohol marketing. However, a company logo can be included if the content of the advertisement is not related to drinking (e.g. celebrating friendship, giving a message of encouragement or promoting the beauty of Thailand's landscape). These logos are now included in digital promotions²¹ which are available to cross-border audiences.

Further, surrogate advertising campaigns often incorporate marketing strategies that extend across borders, like international sporting events and music festivals.

Such strategies pose challenges for states interested in regulating the marketing of alcohol brands, and thus, attention should be paid to including provisions which prevent alcohol producers from marketing differently-regulated no-alcohol or low-alcohol products with the same branding and logos as alcohol products to circumvent regulations put in place to protect public health.

²¹ See for instance: <https://youtu.be/35rB3awLXB4>, accessed 20 February 2022.

3.1.2 Product development and packaging

Responding to global trends, development of new products and appropriate packaging are major cross-border marketing elements in which products are developed, packaged and marketed to the global market (Casswell et al., 2021). A well-known example of a new product category from the 1990s was pre-mixed drinks (“ready-to-drinks” or RTDs) in which spirits or beer were made more palatable to new drinkers by the addition of a soft drink base or fruit flavourings and appropriate packaging (Copeland et al., 2007; Gates et al., 2007). This category is now produced by many TNACS and top brands globally. Consumer demand is especially strong in Japan and the USA, which are the two leading established markets for RTDs (IWSR Drinks Market Analysis, 2020a). However, China and India are also among the largest consumers of RTDs, and the Asia Pacific region holds the largest share of the global RTD alcoholic beverages market (Intrado GlobeNewswire, 2020).

In addition to taste, convenient packaging is an important part of the appeal of RTDs. Prior to COVID-19, RTDs were an expanding segment; the closure of on-premise outlets in the COVID-19 era has further increased demand via off-premise and e-commerce sites. “Canned cocktails are particularly well positioned to resonate with consumers during lockdowns. They mimic an easy cocktail experience for consumers missing the on-premise outlets” (IWSR Drinks Market Analysis, 2020a).

Another new beverage category, relying on convenient packaging and the healthy lifestyle trend, is “hard seltzers” (or alcoholic sparkling water, spritzers or sodas). These have begun to spread globally to become symbolic of a consumer lifestyle: “the drink resonates with consumers who are looking for beverages that deliver on a seltzer’s attributes – typically a slim can (for on-the-go convenience), 100 calories or less, gluten-free, sugar-free and with fun, unique flavour options” (IWSR Drinks Market Analysis, 2020b). Hard seltzers are marketed as suitable for all drinkers and for consumption throughout the day. One marketing campaign, for example, is centred on day-drinking, and brands aficionados as “nooners”, helping to further cultivate the values of the “seltzer” lifestyle (IWSR Drinks Market Analysis, 2020b).

Increasing health consciousness among consumers is perceived by industry analysts as a trend with strong implications for the alcohol industry. They have responded with product development and marketing in relation to limiting sugar and preservatives, adding nutrients and promoting lower potency products (Keric & Stafford, 2019). A TNAC promoted a low-alcohol beer in Dry January, a consumer-driven month of non-drinking, which was reframed in their social media campaign: “Because why go completely dry when you could go Dry-ish?” (Beverage Industry, 2019). The industry is increasingly producing NOLO (no-alcohol/low-alcohol) products (Brewer World, 2019) or “near beer” (Buddy, 2019). These products appeal to the health conscious, those who do not wish to drink and drive, as well as abstainers (Brewer World, 2019). While providing an alternative to alcoholic beverages, they also normalize alcohol consumption as introductory brands (Hello Sunday Morning, 2020) or gateway products.

This approach is being used in countries with religion-based alcohol prohibition policies. For example, a 0.0% zero-alcohol beer was introduced by a TNAC as a line extension in Malaysia, a Muslim majority country, alongside a cross-border marketing campaign. Its marketing campaign tagline “Now you can” seemed to suggest that abstainers could taste beer, but the company said it referred to the new occasions in which their alcohol-free beer allows non-Muslim consumers to enjoy a beer. The company has since clarified that its 0.0% beer is aimed towards non-Muslims only, amid concerns that its name could be misleading for Muslim customers (Malaysiakini, 2019). The company has used the same “Now you can” campaign globally, with it being extended to include “Bring your beer to work” day (The Work Perk, 2019).

While lower alcohol products are being widely promoted in high-income countries, global brands in low- and middle-income countries (LMICs) have been shown to be of higher potency than the same brands sold in high-income countries. Odeigah et al. (2020) compared 13 alcohol brands simultaneously produced in Nigeria and the United Kingdom; they found that products in Nigeria had larger volumes and higher alcohol units and alcohol by volume (ABV) than their equivalents in the United Kingdom.

3.1.3 Co-branding and its cross-border implications

Co-branding is another strategy, entailing an alliance between two or more brands – often separately owned (Blackett & Russel, 1999). The level and type of cooperation between brands may vary from a short-term cross-brand promotion or sponsorship strategy (e.g. a fast-food brand releasing a new product range that promotes the release of a movie or a game etc.) to longer-term cooperation, including jointly manufacturing and producing products (Blackett & Russel, 1999). Co-branding may occur between two distinct sectors (such as a beer company partnering with a cereal company (Sitzmann, 2015)) or within the same sector (such as a foreign beer company partnering with a local brewer to produce/promote a new beer range).

In some cases, co-branding allows transnational alcohol producers to expand into emerging markets by acquiring or partnering with local producers in contexts where local products already have established brand equity and awareness (Schaffmeister, 2015). This constitutes a clear example of alcohol producers engaging in cross-border marketing as it involves the marketing of products by actors in multiple jurisdictions.

3.1.4 Corporate branding and corporate social responsibility

Corporate branding can provide many of the same benefits as product branding in terms of developing a brand identity that appeals to prospective consumers. However, as noted, corporate branding is more nuanced and entails strategic objectives beyond consumer engagement. In particular, corporate social responsibility (CSR), as a branding strategy, provides the alcohol industry with the capacity to improve its reputation and, in doing so, influence government and policy.

CSR activities can take several forms – including corporate social marketing (e.g. supporting a behaviour-change programme), cause promotion (i.e. providing funds/resources to a social cause), cause-related marketing (e.g. contributions to a cause based on sales/consumer behaviour), corporate philanthropy (e.g. a direct donation by a corporation to charity), workforce volunteering and socially responsible business practices (e.g. business practices to support social causes) (Lee, 2016). A recent systematic review identified five main types of CSR initiatives utilized by the alcohol industry, namely: “alcohol information and education provision; drink driving prevention; research involvement; policy involvement; and the creation of social aspects organizations” (Mialon & McCambridge, 2018). In some instances, the stated goal is to reduce alcohol-related harm (e.g. responsible drinking campaigns), while in other cases the CSR initiatives are directed at “non-alcohol issues such as emergency humanitarian aid, arts and culture” (Mialon & McCambridge, 2018).

In particular, some segments of the alcohol industry use CSR activities as a tool that extends across national boundaries, not only to gain political influence for a favourable business environment (e.g. lower excise taxes on alcohol) but also as a form of brand marketing (Casswell et al., 2021). These tactics (e.g. formation of alliances with civil society organizations) are used for marketing purposes to create a favourable regulatory environment and to manage the reputation of a company or a group of producers whose image has been tarnished because of negative publicity. They may also seek to appeal to a particular market segment with the potential function of neutralizing negative

connotations of the product. Thus, Mart & Giesbrecht (2015) found 17 instances of what they termed “pink-washing”, whereby alcohol companies teamed up with and advertised on behalf of breast cancer charities, using the charities’ pink-ribbon symbol, while alcohol consumption is a major cause of breast cancer.

In one study (Babor et al., 2018), more than 1046 CSR actions conducted across six geographical regions were evaluated in terms of their estimated population reach, risk of harm and advertising potential. Despite claims by the global producers that the activities were conducted in support of the WHO Global alcohol strategy, only 27% conformed to recommended WHO target areas for global action to reduce the harmful use of alcohol. The overwhelming majority (96.8%) of industry actions lacked scientific support and 26.5% had the potential for marketing a brand or product. Activities coded as having marketing potential included giving away branded merchandise and adding a responsible drinking message to the product’s commercial advertising materials. Actions conducted in Africa and Latin America were significantly more likely to have marketing potential compared to actions conducted in all other regions.

CSR activities tend to be oriented overwhelmingly toward risk management and the achievement of strategic goals. Research suggests that industry-funded educational campaigns lead to positive views of that industry. As Bond, Daube & Chikritzhs (2009) note, alcohol industry documents further demonstrate the public relations benefit of “responsibility” messages and education campaigns. In Congo and Nigeria, a TNAC painted its logo on school buildings rehabilitated with money from its charity programme (van Beemen, 2019). In terms of the industry’s responsible drinking campaigns and partnerships, studies since the 1990s (Barry & Goodson, 2010; De Jong et al., 1992; Pantani et al., 2017; Pantani et al., 2012) which have analysed the use of such messages (e.g. “drink responsibly”) have concluded that, instead of encouraging moderate consumption, the messages create a favourable image of the alcohol brand without having any influence on excessive drinking. Responsible drinking campaigns can therefore be considered another form of alcohol marketing and may even encourage alcohol consumption (Pantani et al., 2017).

CSR activities are generally coordinated at the transnational level by TNACs and, as far as such practices further the promotion of the corporate brand, can be considered a form of cross-border marketing. While the majority of TNACs are headquartered in high-income countries, many of the CSR initiatives have been targeted in LMICs (Mialon & McCambridge, 2018). For example, one TNAC which owns several popular beer brands and is headquartered in London partnered with a non-governmental organization (NGO) to develop a “Beer for Africa eight-pack”, marketing beers manufactured in six different countries with the aim of raising money to “stop hunger” (Movendi, 2017). Similarly, TNACs have supported large philanthropic and civil society organizations with initiatives that provide international exposure, such as a CSR initiative to support the Global Fund to Fight Aids, Tuberculosis and Malaria (Beaubien, 2018). Regardless of the intended effect of such initiatives, the outcome is substantial positive corporate brand exposure on an international level.

Road safety is another CSR activity that the industry uses to improve its image, given that a major source of unquestionable harm to others from alcohol is traffic casualties from drink-driving. Industry-supported efforts particularly support strategies that do not necessarily reduce alcohol sales, such as “designated driver” programmes (Esser et al., 2016). TNACs have been prominent in NGO road safety coalitions; for instance, a TNAC led the establishment of “Together for Safer Roads” in 2014. In 2018, the same TNAC signed a much-publicized partnership with UNITAR (the United Nations Institute for Training and Research) with the objective of globally reducing the number of road deaths (AB InBev, 2020). These initiatives are linked to the corporation’s projects in developing countries, including Brazil and Mexico.

Alcohol industry CSR actions demonstrably perform significant marketing functions and are structured to advance cross-border strategic interests. This implies that the regulation of CSR and corporate philanthropy should be considered in the development of effective international approaches to regulating alcohol advertising, promotions and sponsorship.

3.2 Market segmentation, targets and exposure and their cross-border implications

Market segmentation is an important component of marketing which entails identifying subgroups of customers based on their differing characteristics, behaviours and needs. Market segmentation has been defined as the “process of subdividing a market into distinct subsets of customers that behave in the same way or have similar needs. Each subset may conceivably be chosen as a market target to be reached with a distinctive marketing strategy” (Bennett, 1995). It is thus concerned with subdivisions within the potential audience for marketing, but from the perspective of the marketer.

Market segmentation aims to identify and target a range of subgroups based on the preferred characteristics of a particular alcohol product and the ways in which the product is perceived and consumed. For example, one company identified three drinker types based on demographics, drinking behaviour and beverage preferences. These types were: “Connoisseurs” (“up-market drinkers” who prefer beverage quality and taste), “Headbangers” (heavy drinkers who prefer alcohol strength) and “Style-seekers” (fashion-oriented, up-market drinkers) (Maani Hessari et al., 2019 citing Stella Artois, 1993).

“Segmenting” often occurs across four key dimensions, described with the terms “geographic”, “demographic”, “psychographic” (e.g. personality, interests, values etc.) and “behavioural” (Goyat, 2011). Behavioural segmentation may be by “purchase occasion” (the reasons for purchases), “benefit” (the perceived benefits derived from a product – prestige, convenience etc.) – and “usage rate” (differentiation into “light, medium, and heavy user groups”) (Beane & Ennis, 1987).

Market segmentation can be applied at the stage of product design and development, and is also commonly deployed to target advertising with the aim of meeting the needs and desires of consumers (Yankelovich & Meer, 2006). Thus, the concept of market segmentation informs considerations about the appropriate “marketing mix” for a particular target audience or segment. This includes considerations about the design and pricing of a product, as well as the choice of branding and promotional strategies, which are derived from understandings of the segmented characteristics, needs and desires of subgroups of consumers. An important additional component of market segmentation, once market segments have been identified, is to assess “the segment’s size, expected growth, purchase frequency, current brand usage, brand loyalty, and long-term sales and profit potential” (Goyat, 2011).

From a market segmentation perspective, LMICs are a good example of a *geographical segment* that yields immense profit potential and expected growth for the alcohol industry. Many LMICs are experiencing rapid economic development, relatively higher abstention rates, an expansion of middle-class consumers, and shifting cultural perceptions about alcohol which collectively provide immense growth and profit potential for the alcohol industry. Further, while per capita consumption has decreased in many high-income countries, alcohol use is increasing in LMICs (Manthey, Shield et al., 2019). Consequently, LMICs are an important target market, with clear examples of alcohol industry expansion in parts of Africa, Asia and Latin America (Esser & Jernigan, 2018).

Several strategies have been deployed by the alcohol industry to expand into emerging markets in LMICs, including CSR campaigns, pricing strategies, and innovate branding and product development.

Young people and women are mentioned in numerous documents as a key growth sector for the alcohol industry and a demographic category of strategic importance (Robaina et al., 2020; Casswell et al., 2021). The average age of the population in Africa and Latin America, for example, is lower than that of countries in North America and Western Europe, thereby providing a huge and growing market that is being targeted for commercial purposes.

As more women join the organized workforce and obtain financial independence, women are seen by producers as a consumer group that could increase sales (Euromonitor 2015). “Understanding the female opportunity” and developing marketing programmes specifically for women are key components of strategies for Latin America of two TNACs (Robaina et al., 2020). These include “developing rituals to make drinking beer more special” by introducing new products and mixed-gender marketing (also termed 360-degree marketing) (Pfanner, 2007; SABMiller, 2010). Such efforts to recruit more women drinkers are not limited to Latin America and the Caribbean.

Heavy drinkers are also an important market segment because they consume most of the alcohol, and thus form a key target market. In an analysis of case studies published by Institute of Practitioners in Advertising, there are clear examples of the alcohol industry targeting heavy drinkers (Maani Hessari et al., 2019). For example, the case study of a TNAC brand notes: “if (the brand) was to be a large profitable brand we had to attract these young heavy drinkers” (Maani Hessari et al., 2019).

The processes of market segmentation are apparent in most, if not all, marketing strategies and inform considerations regarding branding and pricing, and the channels of communication utilized to market products (e.g. social media). In the following sub-sections, examples of market segmentation processes are discussed further in the context of specific marketing strategies.

3.3 Advertising in traditional media and cross-border implications

Traditional media advertising includes marketing and advertising via print media (magazines, newspapers, etc.), television and radio, and billboards. Such approaches have long been utilized by alcohol producers to promote their products. While there has been a substantial decline in the viewership/readership of certain traditional marketing channels – e.g. substantial declines in the popularity of print media, and to a lesser extent television have been reported (Twenge, Martin & Spitzberg, 2019) – such approaches remain popular avenues for alcohol marketing and have the potential to expose audiences internationally. Advancements in technology have also created further opportunities for traditional media outlets to facilitate international marketing exposure.

Television advertising has been a major mechanism for alcohol marketing since the widespread uptake of television in the 20th century. From the 1980s, satellite television has facilitated the broadcast of marketing to international audiences. For instance, satellite television programmes broadcast from countries such as the United Kingdom and the USA are viewed globally and pose challenges for states interested in limiting alcohol marketing exposure. Thus, despite a nationwide ban on alcohol advertising in Norway, alcohol advertising was broadcast via satellite television from the United Kingdom (Rossow, 2021a). Similarly, alcohol marketing on satellite television stations was broadcast from the United Kingdom to Sweden, contravening Swedish national regulation (see Section 8).

Alcohol advertising in print media, particularly in magazines and newspapers, remains a popular advertising strategy (Ross et al., 2014). Magazines provide alcohol producers with the opportunity to target alcohol marketing at young people by placing advertisements in magazines with a large proportion of young readers (e.g. Ross et al., 2014). Most prominent print media outlets now have an online presence, adding marketing value, and creating additional potential for cross-border marketing exposure. However, putting aside the digitization of print media, the potential for marketing in this form to cross-national jurisdictions remains. This is most apparent with major magazines with an international readership, such as Time magazine, National Geographic and Rolling Stone.

Radio advertising, traditionally at least, is generally confined to national jurisdictions – due to the limited range of the frequencies on which radio stations broadcast (with the exception of short-wave radio, or where broadcasting occurs in border locations). However, most radio stations now stream shows online, and thus there is still a potential for cross-border marketing exposure.

3.4 Sponsorship of sporting, social and cultural events and cross-border implications

Sponsorship in a marketing context can be understood as “the provision of resources (e.g. money, people, equipment) by an organization directly to an event, cause or activity in exchange for a direct association (link) to the event, cause or activity” (Lee, Sandler & Shani, 1997). This commercial exchange regularly provides the platform for sponsorship-linked marketing activities, including conventional advertising and other forms of promotional activities (Johnston & Spais, 2015). Sponsorship activities by the alcohol industry occur across a broad range of popular platforms.

Sports and cultural events, particularly those with appeal to young people, are widely sponsored by alcohol brands (Casswell et al., 2021). These “branded events” provide a direct way for the alcohol industry to promote their products and to create a positive, even emotional, relationship between the brand and consumers (Zerhouni et al., 2019). Loyalty and personal brand connections contribute to ongoing purchases (AB InBev, 2014; Maani Hessari et al., 2019). Sponsorship includes sports events and teams, youth events, concerts and celebrations. Sporting events, including e-sport events, attract substantial audiences – particularly young men (Long et al., 2018) who are the heaviest consumers of alcoholic beverages (WHO, 2018b). These events also attract a substantial audience of children and adolescents (Barker et al., 2020a). By sponsoring games or a team, the industry is able to build the brand name into the event’s publicity, including sports commentaries, signage on clothing and products sold to fans, including beverages available at the venue.

In 2021, the estimated global market revenue for e-sports (electronic sports, such as competitive video gaming events) is US\$ 1.08 billion (Statista, 2021a). E-sport events are broadcast and streamed on popular Internet platforms as well as through traditional media channels, such as broadcast television (Long et al., 2018). In recent years, the alcohol industry has capitalized on the popularity of e-sports that reach large international audiences. Several TNACs have engaged in sponsorship activities with popular e-sport events, such as *Overwatch League* and *Complexity* events, with brand logos appearing prominently in the broadcasts (Chambers, 2020). Nielsen’s Sport Report: Alcohol claims e-sports provide the best return on investment for alcohol companies (Atlee, 2019; Casswell et al., 2021). The estimated cost to reach each fan in e-sports is US\$ 1.82 compared to US\$ 26 per fan in the US National Football League. Young males – the audience segment most likely to be heavy drinkers – are overrepresented in the e-sports audience (Long et al., 2018). E-sports sponsorship also poses distinct challenges for sports sponsorship regulation, as some jurisdictions still do not classify e-sports as a “sport” per se, posing the risk of loopholes in existing regulatory arrangements (Chambers, 2020).

Sponsorship is often cross-border in nature: in relation to TNACs, sponsorship campaigns involve strategy and content directed by the parent company in one country and activated in another country. This also complicates the definition of cross-border marketing, since the market manifestation of a global sponsorship deal in a specific country may or may not have any cross-border elements in it as such, other than the rights to use the logo of the property being sponsored. Further, sponsored events are now frequently broadcast overseas via satellite television, streaming services and through promotion on social media platforms. With the advent of “over-the-top streaming platforms”, live events are easily accessible to large international audiences (Hutchins, Li & Rowe, 2019). For instance, one popular streaming platform offers live access to the American National Football League to subscribers in over 200 countries and territories (Hutchins, Li & Rowe, 2019). Similarly, major music festivals provide live streaming options via media sharing platforms (Mlot, 2021), and footage from the festival is uploaded – by both attendees and festival organizers – to social media and shared widely. These trends have been exacerbated by the COVID-19 pandemic, whereby live streaming of events, including concerts and music festivals, have become a popular alternative to in-person events (Millman, 2020).

In an initiative for a beer brand in Brazil, referred to as their “soccer platform”, one TNAC established partnerships with nine local teams in the region and set up fan pages on a social media platform “in order to find new ways to constantly and consistently engage with the fan base, enabling us to build more and more loyalty over time” (cited by Robaina et al., 2020:23). During the 2018 Formula 1 race in Mexico, A TNAC provided over 200 000 people with samples of one of their whiskey brands through four branded rooms, 22 branded bars and other bespoke events (cited by Robaina et al., 2020:23).

Product development and packaging is frequently linked to sports and cultural events. In a cross-border transaction in the other direction, a traditional Chinese spirit was repackaged for normalization in other contexts such as international sporting occasions. This was a “major milestone for the internationalization of the distinctive Chinese liquor as well as (the manufacturer’s) journey to becoming a giant in the global liquor industry” (Cision PR Newswire, 2018).

Previous studies have established evidence, both direct and indirect (e.g. via changes in alcohol-related norms and cognitions), that alcohol exposure, including via sponsored content, increases the risk of alcohol consumption (Brown, 2016; Rossen et al., 2018; Stautz et al., 2016). The global reach and potential for youth exposure via the sponsorship of sports and cultural events suggests the importance of robust regulation in this area.

3.5 Product placement and cross-border implications

Product placement is the practice in which firms pay to place branded products (brand name/logo, package, signage or other trademark) or references to branded products in the content of mass media programming. This form of marketing has existed for a long time, with the earliest examples dating from the early 20th century and the early days of film (Lehu, 2007). Alcoholic product placement was quickly adapted as a way to communicate products to consumers and continues to this day across a wide variety of media, including films (Hanewinkel et al., 2014; Hanewinkel et al., 2012; Lyons et al., 2011; Sargent et al., 2006), television (Lyons et al., 2014; Barker et al., 2018), video-on-demand (VOD) services (Barker et al., 2019; Alfayad et al., 2021), and video sharing websites such as YouTube (Cranwell et al., 2015). Modern patterns of access to entertainment content provide increased opportunities for cross-border marketing and influence via product placement. Sports sponsorship also provides a unique opportunity for alcohol product placement, in media and formats ranging from television programmes and influencer posts to activities badged as CSR.

Product placement can be categorized as two dimensions – modality and centrality (Russel, 2002; Yang & Roskos-Ewoldsen, 2007). Modality refers to whether the brand is solely seen (e.g. as a logo) or whether it is mentioned – i.e. verbal and visual modalities. Centrality refers to the relevance of the promoted product to the narrative of the programme. Centrality has been distinguished at three levels. “Background centrality” is when the product is shown or mentioned in a scene but is not used by any of the main persons (e.g. a branded bottle on the shelf in the background). “More central” refers to when the product is utilized by the main character but in a manner of no relevance to the storyline. “Most central” is when the product is used as an integral item within the scene or story. Research looking at the efficacy of product placement, using measures of explicit memory via recall and recognition (Gupta & Lord, 1998) and implicit memory (Law & Braun, 2000; Yang and Roskos-Ewoldsen, 2007), has demonstrated that products placed prominently within the scene (“most central”) have a larger impact on recognition and recall than products placed subtly (“background centrality”), though this may or may not have an impact on product preference.

Product placement can be paid for, whereby a financial or beneficial relationship exists between the alcohol brand and programme, or branded products may be included in programmes as donated props. Paid-for product placement of alcohol products in television programmes is prohibited in the United Kingdom (Ofcom, 2017), whereas the inclusion of branded goods as freely acquired props is not (Ofcom, 2011).

Hollywood films have traditionally been a target of alcohol product placement, particularly in films with a significant appeal to teenagers and children (Evans & Kelly, 1999). In analysis of the 100 highest grossing box office US movies each year between 1996 and 2015, alcohol use was portrayed in 87% of them, with alcohol branding being shown in 44%. The vast majority of alcohol depictions in films are now likely to involve product placement (Smithsonian, 2017). A similar pattern occurs in Europe: in 2009, 100% of European films contained alcohol content and 12.5% contained alcohol brand promotions (EUCAM, 2010). Alcohol branding occurred in 35% of the top 15 United Kingdom box office films between 1989 and 2008, with the rate remaining stable during this time period (Lyons et al., 2011).

On prime-time television in the United Kingdom, alcohol brand appearances can be seen in approximately 20% of programmes between 6 pm and 10 pm (Lyons et al., 2014; Barker et al., 2018). However, certain genres of programmes may contain more branded content than others, such as reality television programmes (Barker et al., 2020b; Lowe et al., 2018) and soap operas (Barker et al., 2020c).

Viewing habits are changing, and online VOD services allow users to watch whatever they choose at any time of day, becoming more popular, especially with younger people (TV Licensing, 2011; TV Licensing, 2017; Coughlan, 2016). Recently, emerging research suggests that alcohol brands can be seen in highly-rated programmes (32% of episodes from a highly-rated sample in 2016) and films available (6% with interpolated advertisements in a sample of highly rated films in 2017) on VOD services (Barker et al., 2019; Alfayad et al., 2021).

A content analysis of United Kingdom’s top 40 music videos available on video sharing platforms from November 2013 to January 2014 showed that alcohol brands featured in 7% of music videos (Cranwell et al., 2015). E-sports (online gaming tournaments) are now being targeted for alcohol product placement, with tournaments featuring advertising for alcohol brands through naming rights, venue branding or product placement through games (Movendi, 2019).

As noted, alcohol marketing exposure has been shown to have both immediate and longer-term impacts on alcohol consumption. However, the use of popular media and celebrities to market

alcoholic beverages may pose additional risks, especially for young people. If a viewer associates with a particular character, actor or celebrity, and viewers see their interests as aligned with that person/programme, they are far more likely to recall a branded product placement (Scott & Craig-Lees, 2010). Social learning theory also states that people are more likely to imitate behaviours of influential others; alcohol brands are often positively connected with celebrities such as characters, actors or sports personalities (McLeod, 2016). Media produced in a single country may abide by the local rules and regulations; however, such media are often popular or can be accessed internationally, although the rules elsewhere may be different. In the emerging example of VOD services, different services abide by different regulations according to where they are based. As with social media influencers, content online is borderless, and the increase in online media consumption leads to difficulties in regulating content. Sporting events are often popular internationally, and while regulations may be enforced in the country where the event is filmed, this content is widely seen in other countries despite their different regulations.

3.6 Digital marketing and cross-border implications

Advances in technology have facilitated new approaches to alcohol marketing and created substantially greater opportunity for marketing within and between jurisdictions. Digital marketing can be understood as “an adaptive, technology-enabled process by which firms collaborate with customers and partners to jointly create, communicate, deliver, and sustain value for all stakeholders” (Kannan, 2017). The uptake of Internet use in the 1990s and 2000s precipitated new avenues for marketing strategies, with early developments such as paid advertising on websites (e.g. banners, pop-up advertisements etc.), direct-to-consumer email marketing, online product reviews and recommendations, and search engine optimization. Current estimates suggest that 4.66 billion (59.5%) of the world’s population are “active Internet users”, while 4.32 billion and 4.2 billion are “active mobile Internet users” and “active social media users”, respectively (Statista, 2021b).

More recently, new approaches to marketing have emerged from developments in data collection and analytics, and the widespread use and availability of smartphone technology and social media and other social networking sites, radically altering the way in which marketing is conducted. In this section, an overview of key digital marketing strategies is provided, including the use of marketing automation and artificial intelligence, customer segmentation and behavioural marketing. Marketing via digital technology is generally intended to be accessed by consumers globally. It is, in this sense, intrinsically cross-border in nature.

Digital marketing utilizes a range of channels of communication and approaches to promote products online. Websites provide avenues for paid alcohol advertisements, including banners, pop-up advertisements and video advertisements. Similarly, many alcohol producers create online content, including applications and video games, which are promoted on alcohol producers’ websites and social media pages (i.e. “owned media”). The online domain also provides new avenues for engaging consumers via “earned” and “shared” media; as outlined in the following sections, this often occurs through social media platforms.

While cross-border marketing continues to occur via mass broadcast and niche media, integrated marketing campaigns are common, including elements of digital marketing, such as live streaming via the Internet, campaign products available on video sharing platforms, and activations of fans via social media, including in LMICs (Casswell et al., 2021). Globally, digital advertising revenue in 2019 for the three largest Internet advertising media was US\$ 200 billion (Enberg, 2019). Advertising Age estimates that, for all advertisers, digital spending is likely to have eclipsed other forms of spending; however, no breakdown of these overall estimates is available (Advertising Age-Neustar, 2018).

Statista data for 2019 indicates that in the Asia Pacific region, digital advertising expenditure (US\$ 94.83 billion) is higher than traditional advertising expenditure (Statista, 2020). Digital advertising is forecast to increase by 8.9% across the region (the only advertising medium with forecast growth in expenditure), accelerated by the impact of COVID-19 (Statista, 2021c). Social media is a large component of digital marketing, and global advertising spending on social media is expected to show an annual growth rate between 2020 and 2024 of 7.9%, resulting in a market volume of US\$ 51 520 m by 2024 (Statista, 2020).

Alcohol producers were early adopters of the opportunities provided by digital marketing. One prominent alcohol company entered an agreement with a social media platform in 2011 (Shearman, 2011), and cross-appointments of senior staff and on governing boards quickly allowed expertise to be shared (Bevnet, 2014). By 2012, alcohol brands were reported to have the highest engagement rate on one of the largest social media platforms of any industry (Social Bakers, 2012). That year a TNAC committed to spending US\$ 10 million on advertisements with the social media platform, and the platform provided aid in “fan collecting” (i.e. the promotion of the brand’s page with the aim of increasing the number of “fans”) and consultancy to support their brands (Bradshaw, 2011). This TNAC now conducts most of its online presence through the social media platform and was among the top 20 advertisers there in 2019 (Joseph, 2020), spending approximately US\$ 1 080 250 on advertising during the month of July 2019.

A transnational brewing company entered a partnership with an Internet company in 2011 to enhance its exposure through their video sharing website. By 2017 it had concentrated its advertising and marketing budget on digital platforms in place of traditional broadcasting (Joseph, 2020). In 2013, another transnational brewer was among the top 20 biggest advertisers on Facebook (Edwards, 2013). Its vice president of digital marketing for North America said the company had been able to show that “for every dollar we spent on (the platform), we realized a six-dollar return, through beer sales”. He added that in several cases “digital has proven to have better returns on investment than TV” (WARC, 2013). In cross-industry comparisons, alcohol brands elicit the highest digital engagement rates (Feehan, 2019). One transnational brewer was estimated to have spent US\$ 595 million in the USA in the measured media (print, radio and television) in 2017 and an additional US\$ 947 million on “other marketing”, which includes digital. Another brewer spent US\$ 456 million above its measured media expenditure of US\$ 429 million (Advertising Age-Neustar, 2018).

While some online alcohol marketing is localized (i.e. targeted to a specific national jurisdiction), content on digital platforms, and the Internet more generally, is often transmitted to an international audience and therefore constitutes cross-border marketing. Alcohol-sponsored events and content are often streamed and viewed in multiple jurisdictions, and social media influencers often attract followers globally. The implications of this are discussed in subsequent sub-sections.

3.7 Behavioural and personalized marketing – developments in marketing automation and artificial intelligence

As described above, customer segmentation and targeted marketing are not new approaches and have been a cornerstone of marketing strategies for many years. Nonetheless, targeted marketing has become increasingly sophisticated and is rapidly developing with the advent of digital marketing, driven by technological developments in artificial intelligence (AI) and data analytics, and made possible through the collection of large amounts of data.

The collection of Internet users' data and information is an integral component of current "data-driven business models" on the web, which generally takes one of three forms: "search engines, e-commerce (platforms) and social media" (Böhmecke-Schwafert & Niebel, 2018). Whatever the model, the profitability of this approach relies on the ability to collect and analyse user data, which can then be sold and used for, among other things, facilitating personalized and targeted advertising (Anderson-Luxford et al., 2021).

Often termed "online behaviour advertising" (OBA) or "targeted marketing", data-driven business models rely on "the use of tracking technologies, profiling and interest-based analytics to target online advertisements to consumers" (Mathews-Hunt, 2016). Commonly, this includes tracking Internet users' web activity using cookies, and provides a wealth of information on consumer behaviour (Hovland, 2015). However, further developments in tracking technologies have provided advertising platforms with "real-time dynamic statistics concerning both users and their online actions" which provides even more detail than traditional third-party cookie tracking (Semerádová & Weinlich, 2019).

Consequently, the data collected by social media platforms and search engines can be used to develop psychometric profiles of Internet users, as well as detailed accounts of consumer and browsing behaviour (Winter, Maslowska & Vos, 2021). This allows for the tailoring of marketing messages towards the "specific persuasive susceptibilities" of users, whereby advertisements are personalized to reflect the traits and interests of subsets of the population (Winter, Maslowska & Vos, 2021). For instance, based on the data collected from users' behaviours on social media and on the Internet more generally, it is possible for algorithms to create a profile of users based on the "Big five" personality traits (e.g. openness to experience, extraversion versus introversion etc.) (Winter, Maslowska & Vos, 2021). Advertisers can then create "personalized" content that appeals to those traits – e.g. "a person with high openness to new experiences would be exposed to an advertisement that focuses on novel features of a product, while a person with low openness to experience would be shown an advertisement that highlights the long tradition and classic features of a product" (Winter, Maslowska & Vos, 2021). There is some evidence that targeted advertising which "personalizes" advertisements to users' interests and online behaviours leads to higher engagement than non-targeted advertisements (Seckelmann, Bargas-Avila, & Opwis, 2011). Studies have shown that well developed personalized advertisements often result in a higher click-through-rate (i.e. the proportion of all users who view the web page and click on the advertisement) and thus can be more effective at engaging consumers (Bleier & Eisenbeiss, 2015), although this depends on the individual characteristics (e.g. concern for privacy) of users (Bleier & Eisenbeiss, 2015). Targeted advertising on social media is especially effective, not only because it combines in-depth data on users' interests and online behaviours, but because it can also "utilize the power of social influence" (Li, Lin & Chiu, 2014). While this can occur more explicitly through "social influencers", it can also involve promoting advertisements for brands/products that "friends" have "liked", for instance, thereby increasing the persuasive influence and efficacy of the advertisements (Li, Lin & Chiu, 2014).

In the context of alcohol marketing, this ability to prey on users' susceptibility to certain types of messaging is especially problematic because: 1) it is likely to increase the effectiveness of alcohol advertisements; and 2) it may unduly target users who should not be receiving it (e.g. because they are underage). A recent report by Reset Australia indicates that social media platforms currently have inadequate controls to protect against advertising targeted towards young people. Some social media platforms collect data on underage users to create profiles of young people with harmful or risky interests such as 13–17-year-olds interested in smoking, gambling, alcohol or extreme weight loss (Williams, McIntosh & Farthing, 2021). The report found that an advertising campaign based in Australia could reach "a thousand young people profiled as interested in alcohol" for as little as about US\$ 2. Thus, young people are being targeted, and the current regulatory framework is clearly not providing adequate protection against exposure to alcohol advertising.

Further, there is a risk that targeted advertising may increase the likelihood of alcohol advertising exposure for those with alcohol use issues. For instance, the algorithms used to target marketing may register the online purchasing of alcohol or numerous Internet searches for “alcohol” or “alcohol counselling” or similar terms among persons with alcohol use disorders, and then provide highly appealing and tailored alcohol advertisements. This risk, elucidated in a recent article (Hern, 2021), demonstrates how the collection of personal data, including search histories, can have a devastating impact. A social media platform was forced to apologize when it was discovered that it was inadvertently promoting “weight-loss content to users with eating disorders” (Hern, 2021). This occurred because the platform’s algorithms were providing tailored content derived from the personalized data of these users. It then follows that similar issues are likely in the context of alcohol content on social media; however, further research is required to examine this.

3.8 Peer-to-peer marketing, social influencers and cross-border implications

Peer-to-peer (P2P) marketing is arguably one of the oldest forms of marketing. It entails customers recommending products to other (potential) customers, traditionally through word-of-mouth. With the advent of digital technologies and online platforms, P2P marketing has extended beyond traditional word-of-mouth recommendations to a larger, more systematized set of marketing techniques (Carters-White et al., 2021).

Social media influencers can be defined as a new type of celebrity who can influence others, building their audience through social media (Hendriks et al., 2020), and shaping audience attitudes (Freberg et al., 2011) – hence the term “influencers” (Coates et al., 2019b; Coates et al., 2019a). Social media influencers build their audience through the content they produce and disseminate online. They may be paid, indirectly paid (e.g. through gifting of products) or unpaid. Our concern here is with marketing by social media influencers who have a commercial arrangement with an alcohol brand, or a third party, promoting alcohol products.

Social media influencer marketing could be conceptualized as a new digital form of P2P marketing. Due to the two-way mechanism of social media influencer advertising, consumers are able to engage actively with influencers through their social media and any advertising they undertake (Willoh, 2020). Marketing by social media influencers is a clear form of P2P endorsement, and occurs not only between a social media influencer and follower, but also when followers engage in the influence diffusion, through liking, commenting and sharing) the social media influencers’ content amongst their own peers (Hendriks et al., 2020). This form of P2P marketing blurs the boundaries between marketing content and online peer activities, which could make it difficult to differentiate between marketing and unsponsored entertainment. It is also demonstrative of how advertising practices online have fundamentally changed advertising, in that it is much more integrated into people’s daily entertainment practices. Brands are continuing to exploit this development (Montgomery et al., 2012).

Social media influencers engage across a range of social media platforms. Each of the platforms engages in different ways and with different types of audiences. YouTube is a video streaming service in which users can upload and share videos. Facebook, Instagram, Snapchat, TikTok and Twitter are social networking platforms that allow users to interact and share content. These platforms are largely only available to those who are aged 13 years or older. However, children are arguably present across all, even if technically not allowed to register an account due to age (Coates et al., 2019b; Coates et al., 2019a).

Alcohol portrayals across these social media platforms are common and overwhelmingly portray alcohol in a positive light (Russell et al., 2021). A recent investigation of the top 100 alcohol videos on a social media platform found that 98% of them included a “pro-alcohol sentiment”, with many displaying harmful drinking practices (e.g. “consuming multiple drinks quickly”) (Russell et al., 2021). Likewise, a recent study conducted in the Netherlands examined the portrayal of alcohol-related posts on another social networking platform via Dutch social media influencers (Carters-White et al., 2021; Willoh, 2020). The study conducted a quantitative content analysis of 120 Dutch social media influencers’ posts on the platform. For each social media influencer profile, four posts were extracted where alcohol was portrayed (n=480). Visual as well as textual components of the posts were extracted. The study reported that when alcohol is present in the influencers’ posts, they are mainly portrayed in positive social contexts (84.4% of posts), with only two out of 480 posts showing alcohol in a negative context (not making it through “Dry January”). Alcohol was primarily depicted in commercial settings (e.g. pubs or restaurants) or in public settings (e.g. parks).

A further study conducted in the USA by Hendriks et al. (2020) undertook a content analysis of posts in a social networking platform by 178 social media influencers (Carters-White et al., 2021). The study examined 17 800 posts of social media influencers who had 10 000 or more followers. These influencers were selected via a pilot study conducted with young people to establish who are considered popular influencers. The study reported that the majority of influencers had posted about alcohol recently (63.5%), and the posts on alcohol were positive and showed drinking in a social context as well as having been primarily posted by “lifestyle” influencers. Additionally, despite 19.5% of alcohol posts showing a clear alcohol brand, only a minority of these disclosed that they were an advertisement or included an education slogan or hashtag (e.g. #no18noalcohol).

Despite there being increasing evidence documenting the amount of alcohol marketing through social media, to date, there is limited evidence documenting and/or monitoring the techniques of social media influencer advertising of alcohol products. Much of the research focuses on the types and effects of such advertising, with limited attention to how social media influencers and brands interact in producing social media influencer advertising.

3.8.1 Presence across multiple platforms

A key technique employed by social media influencers to increase their following and popularity is to have a digital presence across multiple social media platforms (Ruiz-Gómez, 2019); this allows social media influencers to target different groups of people in ways that are unique to those varying platforms. It may also enable social media influencers to be more attractive to alcohol brands, as they can engage with different audiences.

Employing different social media platforms also allows social media influencers to use different techniques to advertise to and engage with consumers. For instance, on Instagram, social media influencers can place the product in their media content without any direct mention, place links to the product in their media description box or include “swipe-up” links in their Instagram stories (see below on Ephemeral marketing) that takes the consumer directly to the linked website or product. In YouTube, social media influencers can include links in their video content that consumers can click on to take them directly to the brand or product mentioned. TikTok, a short-form video streaming and sharing app, has recently become a platform with which social media influencers are engaging, posting short videos promoting products (Geyser, 2021).

3.8.2 Ephemeral marketing

Ephemeral marketing is where content, primarily images and videos, is accessible only for a brief period of time (commonly no more than 24 hours) (Digital Marketing Institute, 2017). This form of marketing has increased since 2011 through the introduction of the social media platform Snapchat (Lopez et al., 2021). On Snapchat and Instagram, users can send photographs that can be viewed only once or twice before they disappear. The content can be sent to individuals, groups or posted on publicly available “stories” (Digital Marketing Institute, 2017). These stories can be narrative tales, images, product demonstrations or a series of videos. It is considered to be a key medium for rapid content creation and allows for social media influencers to immediately engage with their followers and create a sense of immediacy when promoting products since the content is available only temporarily and thus, can create a “fear of missing out”.

The purpose of such marketing is to increase sales or create a “lead generation” (identifying and cultivating potential customers) (Digital Marketing Institute, 2017). Using ephemeral marketing via social media influencers’ stories allows links to be added so that potential customers can click through or swipe up to the promoted brand’s website.

3.9 Conclusions

Evidently, cross-border communication is apparent in a broad range of marketing strategies deployed by the alcohol industry, in both direct and less obvious ways. The processes of globalization, and the development of digital technologies, means that marketing, advertising and promotion created and intended for one jurisdiction often appears in another. Furthermore, considering the large alcohol market share controlled by TNACs with international and cross-border operations, whereby marketing strategies are conceptualized in one jurisdiction and implemented in another, most alcohol marketing now entails some form of cross-border communication.

The digital revolution in marketing is transforming the relationship between the marketer and the consumer in several ways. First, marketing is now transmitted globally at a rapid pace and is accessible by anyone with a smartphone and Internet access. Second, the immediacy and apparent informality of social media and other platforms for electronic communication have proved to be a lasting attraction and distraction for many consumers, and a potent set of sales devices for reaching and persuading them. Third, the enormous data troves of global Internet platform providers are providing marketers such as the TNACs with unprecedented detail on the habits and preferences of individual customers, which is then used to inform and direct customized marketing efforts. These three aspects of the digital revolution have greatly increased the degree to which borders are crossed in planning, informing, organizing and implementing the marketing of alcoholic beverages.

These developments in digital marketing and technology pose challenges for regulation in the public health interest, as discussed in the following sections of this report.

Reducing the harm from alcohol by regulating cross-border alcohol marketing, advertising and promotion

3 Key messages

Modes of marketing of alcoholic beverages are diverse and have considerably expanded in the digital age.

Alcohol marketing strategies cross borders through both traditional and digital media channels.

Cross-border marketing of alcohol is considerably more apparent with the advent of digital technologies and the processes of globalization. Consequently, marketing frequently originates and is controlled from locations other than in the receiving country.

Digital technologies have created substantially greater opportunities for cross-border alcohol marketing, especially with the rise of peer-to-peer and influencer marketing, with consequent new challenges for regulation.

The harvesting, accumulation, and analysis of data on their users' habits and preferences by the global Internet providers has offered alcohol marketers unprecedented opportunities to target persuasive messages more precisely to specific groups.



4. Alcohol marketing to specific audiences

Consumption of alcohol, a psychoactive and toxic substance with adverse health and social effects, has consistently been among the top 10 risk factors for health in Global Burden of Disease estimates (e.g. GBD 2016 Risk Factors Collaborators, 2017). There is wide acceptance of the appropriateness of strongly constraining the marketing of other psychoactive substances, even in a pharmaceutical context. Many countries ban direct-to-consumer marketing of prescription pharmaceuticals. In the USA, where direct marketing of such pharmaceuticals is permitted, litigation relating to the marketing of powerful opioid painkillers by pharmaceutical companies has resulted in punitive findings or settlements against the companies (e.g. McGreal, 2021). In accordance with the Framework Convention on Tobacco Control, WHO urges states to ban tobacco advertising, promotion and sponsorship (TAPS) (WHO, 2013a). WHO reports that by 2018, of 195 countries reporting, 48 had comprehensive TAPS bans, while 103 more had some limitation on tobacco advertising and promotion (WHO, 2019a:102). For alcohol, some restrictions on marketing are also well accepted

and widespread, but the restrictions tend to be relatively weak. Thus, a majority of 154 countries reporting to WHO reported some restrictions on alcohol advertising, but the restrictions were usually no more than partial, and applied only to selected media (WHO, 2018b:104–6) (See Part 8 below).

The primary policy attention to limitations on alcohol advertising has been on keeping the advertising away from those under the minimum drinking age. Both the content of alcohol marketing and the amount of exposure of young people to that marketing are crucial issues. The Global alcohol strategy suggests that a precautionary approach to protecting young people against these marketing techniques should be considered and a 2018 United Nations resolution on NCDs encourages the private sector to take concrete steps, where relevant, towards eliminating the marketing and advertising of alcoholic products to minors.

Reflecting this focus, the literature on the effects of alcohol advertising has also focused on the effects on children, although there are also public health and other policy-related grounds for understanding and documenting effects on other audience groups (Meier, 2011; Critchlow & Moodie, 2021). This section discusses groups of the population and circumstances where there are strong arguments on public health and ethical grounds for limiting access to them by alcohol advertisers and promoters. The counterargument to this will be, at least concerning adults, that access to such activities should be a matter for the potential consumer's free choice. However, exposure to advertising in the modern world of multiple and convergent media is mostly not a matter of free choice; audience members may have bought and be reading a newspaper which includes a full-page advertisement, may have opened a website on which a banner advertisement for alcohol appears, or in browsing their social media may be exposed to advertising or persuasion by a paid "influencer" – in all these cases without adequate opportunity to avoid the material or to choose the topic or framing of that exposure.

The focus on specific audiences considers particular reasons why that audience should not be bombarded with alcohol promotions. As the Global alcohol strategy points out, it is very difficult to target young adult consumers without exposing cohorts of adolescents under the legal age to the same marketing. Selective bans applying to specific audiences are problematic in that efforts to apply the ban may then involve the collection of personal details from the audience, as well as that the restriction may be easily evaded.

4.1 Children, young people and adolescents

Of the 164 countries answering the question in a 2016 WHO survey, 93% reported that they had a national or subnational legal minimum purchase age for alcoholic beverages (WHO, 2018b:102). A legal prohibition on sales of alcohol to minors, although uncommon before a century ago (Bullock & Room, 2006), is thus among the most common restrictions on the alcohol market. For most countries, the minimum purchase age is 18 years, with almost all between 16 and 21 years.

Legal restrictions on access to alcohol and drinking in childhood are linked to alcohol's intoxicating and disinhibitory effects, and to concepts of mental development (Courtney et al., 2020) and coming of age (Room, 2004). The restrictions are a preventive measure to avoid the dangers to the child and to others which may follow from the drinking. Teenage drinkers report much more hazardous and delinquent behaviour per litre of alcohol than older drinkers (e.g. Livingston & Room, 2009), and low-risk drinking guidelines accordingly often advise against drinking below a specified age – e.g. 18 years for the current Australian guidelines (NHMRC, 2020:41–5). Longitudinal studies have shown that starting use of alcohol at a young age is a predictor of hazardous drinking in young adulthood

and beyond (Enstad et al., 2019). Also, with respect to drinking as with other risky behaviours, there is a strong norm in most societies that outside influences, including advertising, should not seek to undercut a parent's responsibility and custody of the child. Even where there are no legal restrictions, parents and other adults around the child commonly limit or forbid drinking alcohol (Engels et al., 2007), and advertising and promotion of alcohol which reaches the child undercuts these parental choices.

Responding to such considerations, WHO's Global alcohol strategy emphasizes the need to reduce the impact of marketing "particularly on young people and adolescents ... The exposure of children and young people to appealing marketing is of particular concern" (WHO, 2010a, sections 29–30).

A high proportion of children in today's world have a mobile telephone or other means of regular access to the Internet, which in most countries contains much cross-border content. In 2020, for instance, a majority of children in the United Kingdom had their own mobile telephone by age 7 (PA Media, 2020), and 88% of Swedish children had one by age 10 (Vom Orde & Durner, 2020:95). UNICEF reports that 86% of children in high-income countries have Internet access at home, although the rate declines across the four national-income categories, so that the overall global rate is 33% (UNICEF, 2020). While websites promoting alcohol often limit access in principle to those above a defined age, this limit is easily evaded. For instance, the viewer may be asked to submit his or her age, and an answer of an adult age is not further questioned (Jones et al., 2014).

4.2 Heavy and dependent drinkers

A common finding concerning the distribution of alcohol consumption is that considerably more than half of the alcohol consumed by a population is consumed by 20% of current drinkers (Babor et al., 2010:30). Heavy and dependent drinkers are therefore a crucial target audience for alcohol sales interests, and are an audience especially responsive to cues such as alcohol advertising (Townshend & Duka, 2001). An important mechanism for touching off a drinking episode in alcohol-dependent drinkers is cue exposure; a common research finding is that "alcohol-dependent patients report a stronger urge to drink alcohol when confronted with alcohol-related cues" (Mainz et al., 2012; Babor et al., 2017). In treatment for alcohol disorders, it is thus common to counsel patients to prevent relapse by avoiding "high-risk situations" such as taverns and other stimuli suggesting drinking (Smith, 2020). Yet those in the audience for mass media who wish to avoid portrayals of alcohol have no effective way of filtering them out of what they are exposed to. In particular, they have no control over the content of the advertising or other promotion.

For social media and other Internet platforms, there is the further complication of user contributions, which are not treated or labelled as advertising on the websites. Transnational alcohol corporations have been "clear forerunner(s)" in using this "covert marketing" strategy in a variety of ways (Mayrhofer et al., 2020). An experimental study found that, while young adult audience members were somewhat sceptical about alcohol advertisements identified as such, they were caught off-guard and more likely to be persuaded to purchase by user-generated content (Mayrhofer et al., 2020). These new and inherently cross-border media thus pose redoubled risks of cue reinforcement and successful persuasion for heavy drinkers seeking to limit or quit their drinking. The public health argument for controls on alcohol advertising and promotion is thus particularly strong for these cross-border modes of marketing.

4.3 Income level and social status: a health equity perspective

The risk of harm from a given level or pattern of drinking varies considerably with income level and socioeconomic status. This is true at a collective level concerning societies. The World Bank divides the world's countries into four categories of wealth on the basis of Gross National Income: low-income countries (up to US\$ 1045 per capita in fiscal year 2022), lower middle-income (US\$ 1046–4095), upper middle-income (US\$ 4096 – 12 695), and high-income countries (>US\$ 12 695; Hamadeh et al., 2021). The alcohol consumption per adult in low-income countries, which is 3.8 litres of pure alcohol per annum, is only about two fifths of the amount in high-income countries (9.8 litres of pure alcohol per annum), but the total rate of alcohol-attributed health harms in the low-income countries is considerably higher (1978.5 disability-adjusted life-years per 100 000 population versus 1375.5; WHO, 2018b:57, 83). Thus the “harm per litre” of alcohol in low-income countries is 3.7 times the rate in high-income countries.

The “harm per litre” is also considerably higher for poorer persons than for richer ones. For instance, the alcohol-attributable hospitalization or death rate in the lowest income quintile of the Scottish population is 4.41 times the rate in the highest income quintile (after controlling for age and gender). Adding controls for binge drinking and alcohol consumption level changes the discrepancy very little (the ratio rises to 4.85 times) (Katikireddi et al., 2017). Multiplying together the two ratios, the “harm per litre” for poorer drinkers and their families in low-income countries is likely to be over 10 times the “harm per litre” for well-off drinkers in high-income countries.

Research on the effects and effectiveness of alcohol policies comes primarily from a limited number of richer countries. Yet the comparisons of “harm per litre” underline that there are much higher risk levels from drinking in poorer circumstances – influenced by many interacting circumstances ranging from individual health status to risks in the built environment (Schmidt et al., 2010). From the perspective of health equity, there are strong arguments for limiting the marketing and promotion of alcohol more stringently where the audience is poorer and with fewer resources to counter or prevent alcohol-related harms.

The lack of regulatory instruments and controls at the international level on the marketing and promotion of alcohol, in contrast to the situation for tobacco and other psychoactive substances, can be seen as a reflection of alcohol's status as “our drug”, with lower risks of harm, for those in more affluent circumstances. However, it shows a failure at the global level to acknowledge and act on the much greater “harm per litre” for poorer persons, families and societies.

4.4 Gender issues and promotion of drinking

Almost three-quarters of the alcohol that the world drinks is consumed by males (WHO, 2018b:55). In view of this, it is unsurprising that a study of the managerial thinking of a transnational brewer found that a primary target of its marketing's global positioning strategy was “men aged 18 to 35” (Amis & Silk, 2010:168). While in traditional and village societies, alcoholic beverages were often brewed or distilled by women, which gave them some say in their men's drinking, the distribution structure of industrial alcohol which has increasingly replaced home-brew tends to be controlled by men, both locally and from afar (Schmidt & Room, 2012). In present-day Africa, therefore, “the move away from community-level production of alcohol to production by big, multinational companies has made it harder to hold producers accountable for alcohol-attributable harm as they are no longer part of their communities” (Morojele et al., 2021). In gendered and domestic violence, male drinking is

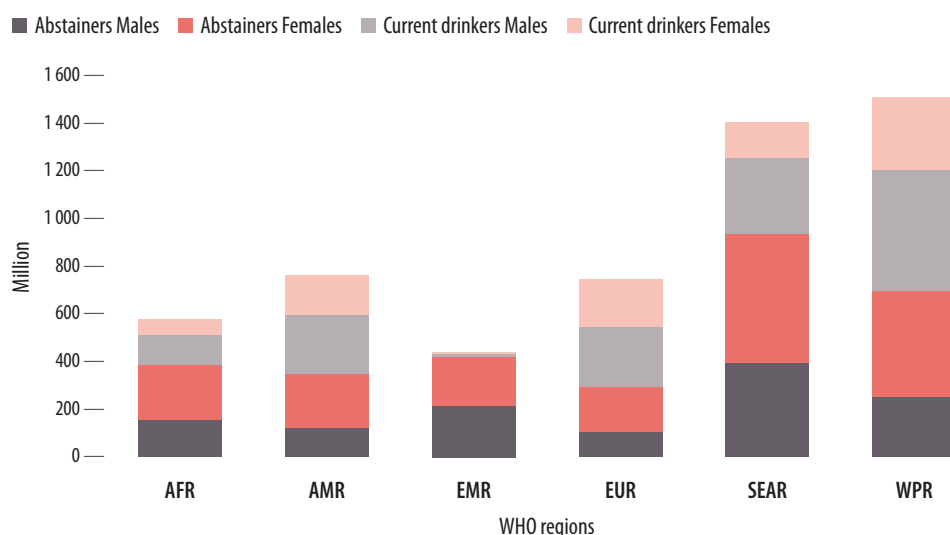
frequently involved as a precipitating or exacerbating factor (e.g. Laslett et al., 2021). In regard to such harms, promotion of more drinking by men potentially increases harm to women.

On the other hand, global alcohol corporations have seen as opportunities to be seized for marketing and promotion the much lower rate of women drinking at all (particularly in lower-income countries) and the general tendency of drinking women to drink less than the men around them. The marketing aimed at women often presents drinking by women as a symbol of empowerment and signal of equality (Atkinson et al., 2019). However, studies of correlates of domestic violence victimization have found that violence against the woman is more likely if the woman as well as the man has been drinking (Devries et al., 2014): a woman's drinking may decrease rather than increase her power in an intimate relationship. Marketing that targets women potentially also conflicts with the health advice for women who are pregnant or trying to become pregnant, to refrain from drinking to avoid harm to the fetus through fetal alcohol spectrum disorders (e.g. NHMRC, 2020:46–52). Success in increasing women's drinking will also increase rates of breast cancer (Shield et al., 2016), as well as disorders common in both sexes, pushing women's disability and death rates attributable to alcohol up towards the much higher rates for men.

4.5 Market expansion, abstention rates and population growth

According to WHO's Global status report on alcohol and health, worldwide in 2016, 57% of the population (15+ years) had not consumed alcohol in the previous 12 months – i.e. 3.113 billion people worldwide aged 15 years and above. Alcohol is consumed by more than half of the population in three WHO regions – the European Region (EUR) (59.9% of current drinkers), the Region of the Americas (AMR) (54.1%) and the Western Pacific Region (WPR) (53.8%).

Fig. 4.1. Number of abstainers (lifetime and last 12 months) and current drinkers 15 years and older by gender and WHO region (2016)



Source: WHO (2018b).

WHO's Global alcohol strategy states that "children, teenagers, and adults who choose not to drink alcohol beverages have the right to be supported in their non-drinking behaviour and protected from pressures to drink" (WHO, 2010a: section 12.g). At the individual level, a majority of the world's adults do not drink alcohol (Figure 4.1), for a variety of reasons – religious, cultural and healthy living, among others. They have a right to be supported in this choice by not being exposed to advertisements or other promotional material concerning or referring to alcoholic beverages.

Where alcoholic beverages are forbidden within a country for all or certain groups, it could be argued that the country should be able to restrict alcohol marketing from reaching its territory. Such national laws could also be respected by other countries so that they do not allow cross-border marketing of alcohol to a place where it is forbidden. Such respect and recognition of another country's domestic law is a central meaning of comity in international law (Schultz & Ridi, 2017).

WHO's Global alcohol strategy also notes as a matter of "particular concern ... the targeting of new markets in developing and low- and middle-income countries with a current low prevalence of alcohol consumption or high abstinence rates" (WHO, 2010a, section 30). Africa is the fastest growing continent in the world; its current population of 1.3 billion is projected to grow to 1.7 billion by 2030, 2.5 billion by 2050 and 4.3 billion by the end of the century. The current abstention rate in the region among adults is around 70%, and 40% of the population is under 15 years of age (Figure 4.2). Countries in Africa are also among the least restrictive countries regarding regulations on alcohol marketing, surpassed only by the Americas (WHO, 2018b).

Fig. 4.2. Current and projected population structure by age and gender in Africa in 2020 and 2100



Source: Adapted from World Population Prospects 2019.

Strong population growth combined with expected economic development in Africa will be accompanied by strong efforts to “build the market” for alcoholic beverages, both from entrepreneurs within the society and from the transnational firms (Van Beemen, 2019), which now increasingly dominate the alcohol industry. However, any economic gain from increased alcohol consumption will be outweighed by the costs and harms in terms of public health. Given the higher “harm per litre” for poorer drinkers, increased alcohol consumption will also tend to increase health and social inequalities – between genders as well as social classes. From the perspective of public health and the public interest, sustainable development requires strengthening rather than loosening of market controls on the availability, price and marketing of alcohol in a growing economy and a growing population.

4.6 Conclusion

In consideration of whether and why the marketing and promotion of alcoholic beverages to particular segments of the population should be restricted, the primary attention has been on persons under the legal drinking age. However, particularly in an era when marketers are enabled by digital algorithms to target specific segments of the population to be bombarded with persuasive messages, arguments for limiting advertiser access to other specific subpopulations should also be considered. Arguments against such targeting should take into account not only the potential harm to the drinker if the sales pitch is accepted, but also the potential harm to those around the drinker – whether family members, coworkers, or the car driver in the adjacent lane. This section has accordingly considered several classes of persons which marketers might well be instructed not to target for various reasons. These include heavy and dependent drinkers whose harmful habit is potentially reinforced by cues from advertising, and poor drinkers whose drinking is associated with a considerably greater than average “harm per litre” both to themselves and to those around them.

Diverse reasons have been suggested to reconsider targeting women in marketing alcohol. There are also grounds for honouring the choice of the substantial proportion of adults who have chosen to be abstinent, rather than subjecting them to a marketing campaign to persuade them to drink. The algorithms of personal characteristics and preferences collected by digital media are currently sold to marketers and used to single out persons to target for marketing; the same data could also be used to identify individuals in subgroups of the population which should not be subjected to such marketing. Finally, alcohol marketing efforts targeting specific geographical areas with substantial population growth, high abstention rates and weak alcohol control policies may lead to a considerable increase in alcohol consumption and alcohol-related harms unless protective measures are put in place.

If one adds up the proportions represented by these different subpopulations who have vulnerabilities that warrant additional protections from alcohol marketing, and combine these individuals with those who choose not to drink, the vast majority of the global population should be considered as inappropriate targets for alcohol marketing.

Reducing the harm from alcohol by regulating cross-border alcohol marketing, advertising and promotion

4 Key messages

Alcohol is rated as one of the most harmful psychoactive substances at the population level, but controls on marketing it to consumers are much weaker than controls for other psychoactive substances.

There are other segments of the population besides children who deserve to have the ability to protect themselves from alcohol marketing – e.g. heavy drinkers and those desiring support in their decision to abstain.

Decisions on controls on alcohol marketing need to take into account that the “harm per litre” of alcohol for a poor drinker in a low-income country is over 10 times the rate for a well-off drinker in a rich country.

Countries may want to control cross-border marketing coming into their territory. This is particularly an issue in countries where there are bans or comprehensive restrictions on alcohol marketing, or alcohol sale is legally banned.



5. Cross-border marketing and issues in international law

As discussed in Section 2, a large and growing proportion of alcoholic beverages are controlled and sold by transnational corporations who also play a leading role in designing, commissioning and paying for their marketing, advertising and promotion. TNACs moved early and strongly into marketing in social media and other Internet media, forming alliances with transnational Internet giants (Carah, 2017). The rise of digital media as an added means for marketing and promoting alcoholic beverages across borders has created new challenges for regulation. This means that, although much alcohol is sold in the country in which it was produced, the plans and instructions about its production, marketing and sale are very often made or approved across national borders. The onus is therefore on national or subnational governments to regulate and control cross-border marketing of alcohol. The range of options for regulation of cross-border marketing are discussed in detail in chapter 8. This section discusses the way in which international law can contribute to or be a barrier against improved national regulation of cross-border alcohol marketing. There are

some challenges from international law to regulation at the national level, but none of these poses insurmountable obstacles to national action.

5.1 Sovereignty, jurisdiction and comity

Under international law, states have the right to exercise control over their territory, including material or content entering their territory from another territory (Crawford, 2019, p 432; Kenyon & Liberman, 2006). The sovereign right of states to regulate cross-border marketing of tobacco products is expressly dealt with in FCTC Article 13, which states that a Party shall, in accordance with its constitution or constitutional principles, undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship. This shall include, subject to the legal environment and technical means available to that Party, a comprehensive ban on cross-border advertising, promotion and sponsorship originating from its territory. The FCTC also affirms that “Parties which have a ban on certain forms of tobacco advertising, promotion and sponsorship have the sovereign right to ban those forms of cross-border tobacco advertising, promotion and sponsorship entering their territory and to impose equal penalties as those applicable to domestic advertising, promotion and sponsorship originating from their territory in accordance with their national law” (Art. 13.7).

Under international law, “jurisdiction is an aspect of sovereignty: it refers to a state’s competence under international law to regulate the conduct of natural and juridical persons” (Crawford, 2019, p 440). The term “jurisdiction” refers to the legal competence or authority of a state “to make, apply, and enforce legal rules”. (Hernandez, 2019). Questions about jurisdiction arise irrespective of cross-border marketing of alcohol because states may wish to regulate and enforce their regulations, against actors who are either inside or outside the state’s borders. The state may wish to regulate outbound cross-border alcohol marketing – i.e. marketing created and distributed by persons within its borders for receipt by persons outside its borders. The state may also wish to regulate inbound cross-border alcohol marketing – i.e. marketing created and distributed by persons outside its borders and received by persons inside its borders.

The jurisdiction of a state to legislate or regulate in relation to persons acting within its territory is a well-established principle in international law (Crawford, 2019; p 442). This is called “territorial jurisdiction”. Territorial jurisdiction allows states to regulate outbound cross-border alcohol marketing, primarily on the basis that the rules are being applied to the conduct of natural or legal persons who are physically or legally within its territory. This is called “subjective territoriality”, whereby “a state claims to regulate an act or incident which is initiated within its territory but only consummated outside it”. Generally, under international law, persons are considered to be subject to the laws of the state in which they find themselves (Hernandez, 2019).

A state also has jurisdiction to make laws to apply to inbound cross-border alcohol marketing. The primary source of jurisdiction for such laws is what is called “objective territoriality”, which gives a state jurisdiction over “an act or incident which originated outside its territory, but which is consummated within it” (Hernandez, 2019; also Crawford, 2019, pp 442-443). With respect to inbound cross-border marketing, the distribution of the marketing begins outside the borders but it is completed when it is received by a person inside the state’s borders.

Another potential basis for regulating the conduct of actors in other countries in respect of inbound cross-border alcohol marketing relates to the nationality of the actor. There are examples of states regulating the conduct of their nationals where the conduct occurs outside the state’s jurisdiction. Crawford has found that “the United Kingdom legislature has conferred jurisdiction on its courts in respect of, inter alia, treason, murder, bigamy, soccer hooliganism, child sexual abuse, and breaches

of the Official Secrets Acts wherever committed by British nationals or residents” (Crawford, 2019). However, even if a state has the authority to prescribe rules to apply to persons creating or disseminating inbound cross-border marketing, there may be some difficulties with the operation of rules applying to persons outside the territory of the regulating state; a state only has authority to enforce its laws in another state’s territory if that other state provides its consent (Crawford, 2019:462 referring to *R v Hape* (2007)). This is a core principle of international law based on respect for the sovereignty of another state. One enforcement issue which arises in respect of cross-border marketing concerns the collection of evidence, which may be very complicated in relation to digital platforms for which documents and information may be located in multiple countries or in clouds with moving locations (Clough, 2015).

Mutual legal assistance (MLA) provides one avenue through which states can address evidence or information gaps in the investigation and prosecution of offenses. This may be the case, for example, where an economic operator or data relating to it is located outside of the investigating jurisdiction and there is a need to secure access to that information or evidence. Formal MLA is often premised on the existence of an international treaty establishing MLA obligations between the states in question, as well as the existence of criminal offences that are common to the jurisdictions in question. As the nature of MLA suggests, it seeks to address information and evidence gaps in investigation or prosecution.

Enforcement of foreign judgements involves one state seeking to enforce a judgement from its courts in a foreign jurisdiction. As the concept suggests, the process involves presenting a judgement to a foreign court while seeking an order to the effect that the judgement will be enforced in the foreign court’s jurisdiction. This is often used where the presence of a defendant or its assets cannot be secured in the original jurisdiction in which the judgement was granted. Although domestic laws govern enforcement of foreign judgements, international treaties are also often used to establish an obligation to enforce foreign judgements and to govern the conditions under which such enforcement will be granted. Often, courts will not enforce foreign judgements where doing so would be contrary to public policy in the state asked to enforce the foreign judgement.

The creation of an international instrument to govern alcohol could usefully include a similar provision. However, in the absence of such a commitment, the international principle of comity may operate to resolve tensions between the states (Schultz & Ridi, 2017). Comity refers to a notion of respectfulness between nation states in the absence of applicable legal obligations, “a consideration of what is fair as between sovereign states in all the circumstances, informed by ‘a sort of moral necessity to do justice in order that justice may be done to us in return’” (Kenyon & Bosland, 2007 citing Story & Bigelow, 1883). In deference to this principle, care needs to be taken by the regulating state with respect to the extent of its reach into another state’s territories. The principle may also run in the opposite direction, with support being given to regulating states who wish to take action on cross-border alcohol marketing.

As these brief descriptions of different types of international cooperation suggest, international cooperation is typically premised on a high degree of commonality between the laws of the countries in question or a strong need for common action.

5.2 Human rights and regulation of cross-border marketing

The regulation of cross-border marketing of alcohol raises issues of human rights under international law. Most of WHO’s Member States are parties to global and regional human rights treaties, and are therefore bound to act in accordance with the obligations created by these treaties.

5.2.1 The right to health

The right to the “highest attainable standard of health” is recognized in the Constitution of WHO²² (WHO, 1946) and several other human rights treaties, including Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 2(1) of the ICESCR obliges states to realize progressively the rights enshrined in the treaty, including the right to health. The Committee on Economic, Social and Cultural Rights has explained that Articles 2 and 12 oblige states to respect, protect and fulfil the right to health (CESCR, General Comment 14, 2000). The obligation to “protect” the right specifically requires states to take measures to control the actions of third parties which may interfere with, and be detrimental to, the realization of the right to health. This obligation extends to the activities of corporations “domiciled” in a state’s territory where the activity has extraterritorial effects (i.e. effects felt in another territory) (CESCR, General Comment 24, 2017). The right to health includes access to necessary medical care, but it also includes protections for the social determinants underpinning good health. The Committee on Economic, Social and Cultural Rights advises that states may violate the obligation to protect the right to health if they fail to “discourage production, marketing and consumption of tobacco, narcotics and other harmful substances” (CESCR, General Comment 14, 2000), and it specifically envisages that “direct regulation and intervention” may be necessary against private sector actors to meet their obligation to protect. It suggests that “States parties should consider measures such as restricting marketing and advertising of certain goods and services in order to protect public health, such as of tobacco products, in line with the Framework Convention on Tobacco Control, and of breast milk substitutes, in accordance with the 1981 International Code of Marketing of Breast milk Substitutes and subsequent resolutions of the World Health Assembly” (CESCR, General Comment 24, 2017).

A right to health is included in most of the major international and regional human rights treaties, such as the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child (CRC), and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights. These treaties also include a right to life, which has been interpreted in a manner consonant with the interpretation of the right to health outlined above, to require attention by states to the social determinants of health. In Bangladesh and India, as found in those countries’ domestic constitutions, the right to life provided the basis for their respective judiciaries to require a ban on certain forms of tobacco marketing (Bhojani et al., 2014).

The CRC directly addresses the issue of harmful marketing to children through several provisions. Article 17 encourages the development of appropriate guidelines for the protection of the child from information and material in mass media injurious to his or her well-being. Article 32 states that children have the right to be protected from economic exploitation. Under Article 33, States Parties must take all appropriate measures, legislative, administrative, social and educational, to protect children from the illicit use of narcotic drugs and psychotropic substances. The Committee supervising the operation of the CRC has given guidance on preventing harm to children through controlling the practices of commercial interests, including “effective regulation and monitoring of advertising and marketing industries ... to create an enabling environment for business to respect children’s right to life and health” (Committee on the Rights of the Child, 2013; Chapman, 2017).

These human rights instruments create obligations only for the states who are parties to them. The United Nations Human Rights Council endorsed the Guiding Principles on Business and Human Rights in 2011. One of the foundational principles is that “(b)usiness enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved” (United Nations Human Rights Council, 2011a). The

²² See: https://www.who.int/governance/eb/who_constitution_en.pdf, accessed 20 February 2022.

so-called Ruggie Principles (developed by John Ruggie, the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises 2005–2011) are not binding legal obligations. However, they make clear that the responsibility to respect human rights, including the right to health and all of the rights contained in the International Bill of Rights, is:

a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights. Addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation and, where appropriate, remediation. Business enterprises may undertake other commitments or activities to support and promote human rights, which may contribute to the enjoyment of rights. But this does not offset a failure to respect human rights throughout their operations. Business enterprises should not undermine States' abilities to meet their own human rights obligations... (United Nations: Human Rights Committee, 2011).

Some businesses have also signed up to the United Nations Global Compact, "the world's largest corporate sustainability initiative", which is a voluntary set of commitments by corporations to "Ten Principles" relating to human rights, environment and labour standards, and to the advancement of the Sustainable Development Goals (United Nations Global Compact, no date). The United Nations Global Compact is not a United Nations body but a private organization, although its work is "welcomed" by the United Nations General Assembly (United Nations General Assembly, 2018). In relation to human rights, the Compact states that "businesses should support and respect the protection of internationally proclaimed human rights ... (and) make sure that they are not complicit in human rights abuses" (United Nations Global Compact, no date). Some of the world's largest alcohol producers are signatories to the Compact.

5.2.2 The right to free expression

The right to freedom of expression for individuals is enshrined in Article 19 of the Universal Declaration of Human Rights and also covered in Article 19 of the International Covenant on Civil and Political Rights, which guarantees everyone's "right to hold opinions without interference and to seek, receive and impart information and ideas of all kinds, regardless of frontiers and through any media, including in the form of art" (United Nations General Assembly, 2016). The United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Expression has reiterated the importance of the right being enjoyed in both offline and online environments (United Nations Human Rights Committee, 2011). The right "carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary ...for the protection of national security or of public order (ordre public), or of public health or morals" (Article 19(3)). A strict necessity and proportionality test is applied to restrictions on the right to free expression, meaning that laws which affect free speech must be tightly drafted and must represent the least restrictive means of achieving the goal in question, such as protection of public health (United Nations Human Rights Council, 2011b).

The right to free expression under international law is implicated in the regulation of cross-border marketing of alcohol. Restrictions on user-generated content about alcohol may not be compatible with the right to free expression if the user generating the content is not connected to the alcohol industry (e.g. not a compensated social media influencer) and not seeking to pursue any commercial interests. Although political speech has been prioritized for protection in international law, all kinds of speeches are offered protection under the right to free expression within the aforementioned limits. Consistently with Article 19 (Hamilton, 2021), the FCTC Guidelines for the Implementation of Article 13

recognize that “implementation of a comprehensive ban on tobacco advertising, promotion and sponsorship should not prevent legitimate journalistic, artistic or academic expression or legitimate social or political commentary” (WHO, 2008a:29). The FCTC Guidelines for Implementation also acknowledge that there may be commercial elements in journalistic, artistic or academic expression, or legitimate social or political commentary, which can be properly regulated where it occurs. There can be difficulties in distinguishing user content from commercial content, as was found in the study of Finland’s laws on digital marketing of alcohol (see sub-section 6.1.6). If content is commercial, restrictions banning or limiting such content are less likely to be seen as infringing the individual user’s rights, as they may be able to be justified according to the requirements set out above. While some of this content may technically be user-generated, it is arguably a form of commercial speech by the alcohol industry in the same way as paid-for advertising by industry.

5.3 International trade and investment law as a challenge to national public health controls on alcohol marketing

The sovereign authority to ban or restrict marketing may be limited under specific international commitments, such as trade agreements. As a general rule, trade agreements permit States Parties to adopt measures that are necessary to protect human life or health. However, trade agreements may also include commitments on issues such as broadcasting, telecommunications, e-commerce, internet governance and alcohol labelling, which may put limits on interventions that can be used.

In 1947, the General Agreement on Tariffs and Trade (GATT, 1947) was provisionally applied and became a global instrument. In 1995, the Agreements of the World Trade Organization (WTO) came into force, with the GATT given a formal and continuing effect in respect of goods (GATT, 1994). These WTO Agreements continue to shape international trade in goods and services significantly, with an emphasis on ensuring non-discrimination between domestic and foreign goods and services (and between goods and services from different exporting nations), and removing unnecessary or unjustified barriers or restrictions to international trade. The rules also seek to balance trade liberalization with other important social values, such as public health. This is seen in the exceptions created for government measures necessary for the protection of human life or health (e.g. GATT 1994, Article XX(b)) or in the interpretations which have been given to the rules in WTO adjudication. Alcohol marketing measures have not been the subject of the WTO’s dispute settlement processes, although alcohol taxation measures have been (WTO, 1996; WTO, 1999). However, the experience with challenges to other public interest measures (including country of origin labelling, bans on clove tobacco flavourings, tobacco plain packaging) would suggest that state regulation of cross-border alcohol marketing would be either consistent with the rules of the WTO or preserved through one of the exceptions – if it is non-discriminatory and designed in accordance with sound evidence about the incidence and effects of alcohol marketing – and the measures are – or are likely to be – proportional and effective in reducing its incidence and effects (WTO, 2011a; WTO, 2011b; WTO, 2011c; WTO, 2012a; WTO, 2012b; WTO, 2015; WTO, 2018; WTO, 2020; McGrady, 2011; O’Brien, Gleeson, Room & Wilkinson, 2017). Such measures may nonetheless be subject to informal discussions in one of the WTO forums, such as the Committee on Technical Barriers to Trade, or to a formal dispute settlement. The attacks on its graphic alcohol warning labels in the Committee on Technical Barriers to Trade committee (see, e.g., WTO TBT Committee, 2010; O’Brien, 2013) contributed to Thailand’s decision to suspend its plans to require the labels (Mencimer, 2018).

In addition to the WTO, many states have also entered into bilateral or regional trade and investment agreements (TIAs) and customs unions. TIAs include new types of rules that are not part of the WTO agreements, providing “legal infrastructure for a global reorganization of production in which cross-border trade takes place within the networks of affiliates, contractual partners, and suppliers of

transnational corporations, which coordinate as much as 80% of world trade” (McNeill et al., 2017). These TIAs may be drafted in a manner which impacts on the ability of national and subnational governments to regulate markets to fulfill health and welfare aims, including policies to reduce alcohol-related problems. For example, recent trade and investment agreements have included clauses intended to keep digital marketing data away from government or judicial oversight and to prohibit requirements that marketing platforms have a physical presence in their country (CPTPP, 2018, chapter 14; Kelsey, 2020). Another example is seen with alcohol labelling. Some recent TIAs have made provision for alcohol label information to be placed on “supplementary labels”, rather than the main label (see for instance, the CPTPP, Annex 8-A; Gleeson & O’Brien, 2021; Mitchell & O’Brien, 2020; O’Brien et al., 2017). Although some of these TIAs have included a form of exception for health-related labelling (see for instance, the Australia–Hong Kong Free Trade Agreement), these new alcohol-specific provisions in TIAs highlight the importance of negotiations for future TIAs to not create barriers to the regulation of cross-border marketing.

Customs unions are a deeper form of economic integration involving the formation of a single customs territory between two or more states. As with TIAs, substantially all restrictive regulations of commerce are eliminated for trade between the territories involved. In addition, the territories of a customs union apply substantially the same regulations (such as tariffs) to the importation of goods from territories not forming a part of the union.

5.4 Conclusions

Under international law, states may regulate outflowing and inflowing cross-border marketing. The enforcement of such marketing may require assistance and cooperation with other states, as a state has no right to enforce its law in the territory of another state without that state’s consent. Such cooperation is common in other domains. As discussed in Section 8, states also have regulatory options available which do not raise such cross-border enforcement issues. The focus of the regulation should be on commercial speech. The rules of the WTO are unlikely to create obstacles to well-designed, evidence-based restrictions on marketing.

Reducing the harm from alcohol by regulating cross-border alcohol marketing, advertising and promotion

Key messages

Digital media and marketing are inherently cross-border, and nations generally have the power to regulate such marketing when it reaches inside their borders.

Enforcing regulation of cross-border marketing against actors outside a country's borders requires cooperation with other countries.

Human rights treaties recognize a right to the highest attainable standard of health and have been the basis for some legal decisions on limiting the marketing of risks to health, as in the case of tobacco.

Freedom of expression and opinion is protected under international human rights law. Although banning or restricting alcohol marketing may be justifiable as necessary to protect public health, the right to freedom of expression does impose limits on state action, principally requiring protection of legitimate expression, including expression by individuals which promotes alcohol but is not connected to the alcohol industry and not seeking to pursue any commercial purposes.

Economic and market interests have generally taken priority over health interests in negotiations and disputes involving alcohol; and care needs to be taken that future agreements do not limit states' capacity to regulate cross-border marketing of alcohol.



6. Regulation of cross-border marketing of alcohol: current approaches and challenges

The specific primary focus of this section is the control of alcohol marketing. However, there may also be general controls on marketing which also affect the marketing of alcohol. There may well be legislation and jurisprudence on “truth in advertising”, for instance, which outlaws and provides penalties for misstatements of fact in advertising, or for unproven medicinal claims concerning a product.

There have been growing political concerns about the power and effects of marketing on social and other digital media – both within jurisdictions and across borders (Room & O’Brien, 2021; Freedland, 2021). Alcohol marketing has not been a focus of these discussions, but potential controls on digital media and on marketing on these media might substantially affect it. For instance, controls on

the accumulation and use of personal data on habits and preferences would affect the ability of alcohol marketers to target their material. We return to the potential of these more general controls for regulating alcohol marketing by discussing options in Section 8.

6.1 National regulation of alcohol marketing

Alcohol marketing regulation within a country may be the concern of the national government or a subnational unit of government, including at the state/territory/province level or the local/council level, depending on the country's constitutional arrangements for the division of powers between levels of government. The diverse forms which alcohol marketing takes means that different levels of government may be involved in the regulation. For instance, point of sale or billboard advertising may be under the purview of the local level of government which controls public spaces within its jurisdictional boundaries (Swensen, 2016). In federal countries, rules on alcohol marketing may vary considerably from one state/territorial/provincial jurisdiction to another, and there may be substantial legislation and jurisprudence on "cross-border" issues *within* the country. The advent of cross-border advertising on the Internet has substantially reduced the effectiveness of marketing restrictions at the subnational level (Goldfarb & Tucker, 2011).

Some national regulatory systems are designed to address alcohol marketing in general or in specific media. Others are concerned with marketing more broadly. Many of the regulatory systems discussed in this section do not make specific mention of cross-border alcohol marketing. In some instances the law may be constructed in such a manner that cross-border marketing is covered, but in other instances it may not be. Legal rules on what is allowed in digital marketing, satellite television and telecommunications are particularly important to the control of cross-border marketing. In some instances, these laws will capture cross-border marketing without making specific reference to it; in other instances, the laws may be crafted in order to ensure their extension to cross-border marketing.

As of 2018, it was found that, while most countries have some form of regulation for alcohol marketing in traditional media, almost half have no regulation in place for Internet (48%) and social media (47%) marketing of alcohol (WHO, 2018b). In 2020, WHO's Regional Office for Europe reported that alcohol marketing is adapting to new realities faster than current legal regulation across the European Region, with industry using opportunities offered by digital platforms to sell their products in a largely unregulated market. The report identified that very few countries in Europe have statutory bans that prohibit or limit the marketing of alcoholic beverages by law (WHO Regional Office for Europe, 2020). A study of the adoption of policies to combat risk factors for NCDs in 151 countries has shown that restrictions on alcohol marketing is one of the least well enacted areas (Allen et al., 2020). Where restrictions exist, they tend to be partial, covering only certain media or only imposing restrictions in terms of content, time or place. It is also questionable whether cross-border marketing is sufficiently covered.

Table 6.1, compiled by Casswell et al. (2021) primarily from WHO's GISAH database (with most data last reported in 2016) and from a report of the Global Advertising Lawyers' Alliance (GALA, 2015), summarizes the range of national restrictions on the digital marketing of alcohol. Many of the 31 countries with a total ban on the digital marketing of alcohol are Muslim-majority countries that also have bans on the sale of alcohol. However, the list also included Lithuania, Norway and the Russian Federation. There were 28 countries with partial restrictions on content, placement and/or timing. Another 29 had guidance for self-restriction by websites and other media providers, while 83 countries had no restrictions, except that a few had restrictions for particular media or types of alcoholic beverage.

Case studies of countries with relatively strong regulation of alcohol marketing described in the research literature are set out below with a discussion of what is known about the effectiveness of

their regulatory model. While cross-border marketing would be covered in most of their restrictions (although not in Thailand), restrictions on it often appear to be relatively ineffective.

6.1.1 Norway – Total alcohol marketing ban

Retail sale of alcohol above 4.7% ABV for off-premise consumption in Norway is done through a state monopoly, reflecting the national tradition of strong control of the alcohol market and relatively low alcohol consumption levels compared with the rest of Europe. Norway has had a complete ban on alcohol advertising in place since 1975, with an immediate and lasting reduction in alcohol consumption when the ban was imposed of 7.4% (Rossow, 2021a, 2021b). Under Section 9-2 of the first paragraph of the Act on the Sale of Alcohol etc.,²³ it is forbidden to advertise alcoholic beverages and to advertise goods with the same branding or identifying features as alcoholic beverages. The latter provision is designed to cover advertisements for non-alcoholic and low-alcohol products which, in reality, serve as advertising for alcoholic drinks. In addition, it is not allowed to include alcoholic beverages in the marketing of other goods or services. Digital and cross-border satellite television marketing of alcohol is limited, which may reflect the longstanding and comprehensive ban on alcohol marketing and the relatively small size of the market. The ban has been defended on two occasions in the Norwegian Supreme Court²⁴ and once in the court of the European Free Trade Association (EFTA)²⁵. The ban is also strictly enforced: the Social and Health Directorate imposed a six-month ban preventing a TNAC from importing or selling any product in Norway following a breach of the marketing regulations (Mason, 2002), and influencers receive notifications from the Health Directorate for infringements of the ban (Aronsen, 2021).

6.1.2 Lithuania – High consumption, shifting policies, a recent comprehensive marketing ban

Lithuania had a high and increasing alcohol consumption level in the 1990s. Since then, there has been a complex history of alcohol control legislation, with the level of control shifting up and down (Miščikienė et al., 2020). The Law on Alcohol Control (No I-857) in 1995 (Parliament of the Republic of Lithuania, 1995) included a complete ban on alcohol advertising across radio, television and print media, as well as indirect advertising (Miščikienė et al., 2020). In the following 20 years or so, the law was amended several times, with the revocation and reintroduction of advertising restrictions occurring multiple times (Parliament of the Republic of Lithuania, 2017; Paukštė et al., 2014; Miščikienė et al., 2020). In 2008, a partial ban was implemented, prohibiting marketing on television and radio during the daytime. In 2017 the Parliament of Lithuania amended the law to institute a total ban on alcohol advertising across all media platforms, including digital media (Parliament of the Republic of Lithuania, 2017). There are some exemptions, such as the ability to display brand name, ethanol content, country of origin etc. on websites and at the point of sale; however, these are minimal (Parliament of the Republic of Lithuania, 2017; Midttun, 2017).

A recent study by Štelemėkas and colleagues (2021) utilized interrupted time-series analysis to assess the impact of several alcohol policy changes on all-cause mortality. They found that neither the 2008 ban nor the 2018 advertising ban had an immediate impact on all-cause mortality (Štelemėkas et al., 2021). Given that the 2008 ban was partial and did not include digital marketing, the authors did not find it surprising that it did not have a large impact. However, they conclude that, even if the 2018 ban did not have any immediate effect, it may well have longer-term effects on alcohol use and related harm (Štelemėkas et al., 2021; Rehm et al., 2021).

²³ See: Lov om omsetning av alkoholholdig drikk m.v. (alkoholloven) at <https://lovdata.no/dokument/NL/lov/1989-06-02-27>, accessed 20 February 2022.

²⁴ See: https://www.domstol.no/globalassets/upload/1_x-dokumenter-pa-rot/saknr2009-43.pdf and <https://www.domstol.no/enkelt-domstol/hoyesterett/avgjorelser/2000/hoyesterett-sivil/Alkoholreklame-pa-idrettstoy-/>, accessed 20 February 2021.

²⁵ See: <https://eftacourt.int/download/4-04-judgment/?wpdmdl=1575>, accessed 20 February 2022.

Table 6.1. Reported limitations on digital marketing of alcoholic beverages, by country, in mid- to late-2010s

Digital marketing	Countries ^a	Examples ^b
Total ban	32 countries including: Afghanistan, Algeria, Armenia, Bangladesh, Bhutan, Chad, Comoros, Djibouti, Egypt, Indonesia*, Iran (Islamic Republic of), Jordan, Kazakhstan, Lao People's Democratic Republic, Libya, Lithuania, Maldives, Mauritania, Mauritius, Mongolia*, Norway, Oman, Pakistan, Russian Federation, Senegal*, Somalia, Sri Lanka*, Sudan, Turkey, Turkmenistan, United Arab Emirates, Uzbekistan, Yemen	• Norway: Advertising of alcoholic beverages is prohibited. • Turkey: The amount of the monetary fine to be imposed by the Advertisement Board is currently TL 55 055 (approximately € 20 000) if the advertisement is broadcast on the Internet; and TL 27 527 (approximately € 10 000) if the advertisement is broadcast via SMS.
	Note: • Indonesia banned Internet advertisements but had voluntary restrictions for beer advertisements on Internet. • Mongolia banned only Internet advertisements but had voluntary/self-regulatory codes for social media advertisements. • Senegal had no restriction for beer advertisements on social media.	
Partial restrictions	16 countries have partial restrictions on content: Australia, Bulgaria, China, Czechia, Denmark*, Eswatini, Finland*, Georgia*, Ghana, Montenegro*, Poland*, Portugal, Romania, Slovenia*, Sweden*, Switzerland, Thailand • 4 countries have partial restrictions on content/time: Bosnia and Herzegovina, Costa Rica, Equatorial Guinea, Israel • 4 countries have partial restrictions on content/place: France, Hungary, Latvia • 2 countries have partial restrictions on content/place/time: Belarus*, Ecuador* • 2 countries have partial restrictions on place: Myanmar, Tajikistan* Note: * Denmark had partial restrictions on Internet advertisements but had voluntary restrictions on social media advertisements. * Finland, Georgia, Slovenia and Sweden banned advertisements for spirits. * Montenegro banned advertisements for spirits but had no restriction for advertisements for wine. * Belarus banned advertisements on social media. * Ecuador and Poland banned advertisements for spirits and wine. * Tajikistan had voluntary/self-regulatory codes for spirits.	• Australia: Users need to register and provide their date of birth; no alcohol-related pages, sites and content to users under 18 years of age. Any Internet advertising for the supply of alcohol must contain the following statement: "IT IS AN OFFENCE TO SUPPLY ALCOHOL TO A PERSON UNDER THE AGE OF 18 YEARS – PENALTIES APPLY". • Finland: The advertising of mild alcoholic beverages must not utilize user-generated content or provide consumers with any content for sharing through Internet services. Advertising for spirits is banned. • France: Advertisements should not be intrusive – such as a pop-up – or interstitial, and remain, in any case, prohibited on websites which are, by their character, presentation or purpose, mainly used by young people. Advertisements are prohibited where it is reasonable to think that the audience is not composed of at least 70% of persons aged 18 years or older. All digital advertisements must display the warning "Alcohol abuse is dangerous for health". • Hungary: No advertisement may be placed/displayed on the home page of a website. The advertiser must ensure that the site can only be visited by those who are above the age limit (18 years or older). A clear notice regarding alcohol responsibility must be posted on the Internet site of the company or the brand. • Portugal: It is prohibited to associate alcohol with national symbols (e.g. the national flag and anthem). Alcohol marketing cannot be addressed specifically to minors (i.e. under-18s). • Sweden: Marketing must not be directed towards or depict children or young people who have not yet reached 25 years of age. All marketing of alcohol beverages (spirits, wines and beers with more than 2.25% by volume) must apply special moderation.

Table 6.1. Continued

Digital marketing	Countries ^a	Examples ^b
Voluntary/self-restricted	29 countries including: Austria, Belgium, Brazil, Colombia, Cyprus, Dominican Republic, Germany, Greece, India, Iraq, Ireland, Japan*, Malaysia*, Netherlands, New Zealand, Nicaragua, Peru, Saint Lucia, Slovakia, South Africa, Syrian Arab Republic, Togo, Trinidad and Tobago, Uganda, Ukraine*, United Kingdom, United States of America, Zambia Note: * Japan and Malaysia had voluntary restrictions on Internet advertisements but no restrictions on social media advertisements. * Ukraine had no restrictions on social media advertisements and no restrictions on spirit and wine advertisements.	• Belgium: There is a need to use the educational slogan "Beer brewed with knowledge should be consumed wisely", and a need to mention the JEP on the website so customers know where to file complaints. • Brazil: Websites must contain a provision for selective access to prevent site navigation by minors. • Germany: Marketing must not be directed at minors or be especially designed to appeal to minors by way of presentation. • Greece: Advertising can be placed only where at least 70% of the audience are reasonably expected to be 18 years of age or older. Access to official brand websites for users under 18 years must be restricted. • Ireland: Advertisements must obtain prior clearance from CopyClear (and receive a CopyClear licence number). • Netherlands: The advertiser needs to verify that the person reached by the advertising is at least 18 years of age or that this person has stated that he or she is at least 18 years of age. Since Twitter introduced an age-check for alcohol brands, new followers of an alcohol brand must certify that they are 18 years or older to be allowed to follow the company. • South Africa: Marketing may not be directed at persons under the age of 18 years. • United Kingdom: Advertising must follow CAP Code which states that (among other things) alcohol advertisements must not be aimed at or appeal particularly to under-18s; feature people under 25 years of age; encourage excessive drinking; portray alcohol as indispensable; link alcohol with success or well-being. • USA: Marketing must follow self-regulatory guidance plus additional guidelines on how to avoid targeting underage drinkers, including "age-gating" websites, monitoring websites for inappropriate content, best practices for keeping online advertising away from underage drinkers.
No restrictions	82 countries including: Albania, Andorra, Angola, Antigua and Barbuda, Argentina, Azerbaijan, Bahamas, Barbados, Belize, Benin, Botswana, Burkina Faso, Burundi, Cabo Verde, Cambodia, Cameroon, Canada, Central African Republic, Chile, Congo, Côte d'Ivoire, Croatia*, Democratic Republic of the Congo, Dominica, El Salvador, Eritrea, Ethiopia, Gabon, Gambia, Guinea, Guatemala, Guyana, Honduras, Iceland, Italy, Jamaica, Kenya, Kiribati, Lebanon, Lesotho, Liberia, Luxembourg, Madagascar, Malawi, Mali, Malta, Marshall Islands, Mexico, Morocco, Mozambique*, Namibia, Niger, Nigeria, Panama, Paraguay, Philippines, Republic of Korea, Republic of Moldova, North Macedonia, Rwanda, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Serbia, Seychelles, Sierra Leone, Singapore*, South Sudan, Spain, Suriname, Timor-Leste, United Republic of Tanzania*, Uruguay, Vanuatu, Venezuela (Bolivarian Republic of), Viet Nam*, Zimbabwe. Note: * Croatia banned spirit advertisements on the Internet. * Mozambique had no restriction on Internet advertisements but had voluntary/self-regulatory codes for beer advertisements on social media. * Singapore and United Republic of Tanzania had no restriction on Internet advertisements but had voluntary/self-regulatory codes on social media advertisements. * Viet Nam banned advertisements for spirits.	

^a Source: WHO GSAH database: <https://www.who.int/data/gho/data/indicators/indicator-details/GHO/advertising-restrictions-on-the-Internet> and <https://www.who.int/data/gho/data/indicators/indicator-details/GHO/advertising-restrictions-on-social-media>, accessed 20 February 2022.

^b Source: Alcohol advertising: a global legal perspective. New York (NY): Global Advertising Lawyers Alliance; 2015.

^c Sri Lanka formally banned alcohol advertising in 2006 (Parliament of the Democratic Socialist Republic of Sri Lanka. National Authority on Tobacco and Alcohol Act, No. 27 of 2006, certified 29 August 2006 (http://documents.gov.lk/files/act/2006/8/27-2006_E.pdf, accessed 21 February 2022).

* An asterisk indicates that there is an asterisked note about the country below the listings.

6.1.3 France – Strong marketing restrictions, including digital, but weakened over time

The Loi Évin restricting alcohol marketing in France was passed in 1991 (République Française, 1991).²⁶ A “positive list” approach was adopted that listed the venue/mode of marketing allowed and avoided the difficulties inherent in enforcement of a “negative list” approach (Montonen & Tuominen, 2017). Marketing in any medium not listed in the Évin Law was banned, including on television, in cinemas, at certain festivals, cultural and sporting events, and in the form of sponsorship. In permitted situations, the Loi Évin provided that product information must contain only factual/informative data with objective qualities (e.g. proof, origin, composition and means of production). All permitted advertising was required to appear with a health warning stating “Alcohol abuse is dangerous for health”.

The Loi Évin has been subject to legal challenge in the courts. In 2002, a TNAC sought to restrain Télévision Française 1 (TF1) and its agents from “put(ting) pressure on foreign clubs to refuse to allow one of its brand names to appear on advertising hoardings around sports stadiums”. These alleged actions were being undertaken by TF1 to secure compliance with the Loi Évin in respect of cross-border broadcasts of sporting matches from other European Union (EU) countries into France, where the hoardings at the matches contained alcohol marketing, including of the TNAC’s products. The TNAC’s argument was that the Loi Évin and the actions of TF1 pursuant to the Loi Évin were not compatible with EU law, in particular the principle of the free movement of television broadcasts within the Union. In the French courts, the company sought injunctions against TF1. The company lost in the first instance and on appeal, and then appealed again on a point of law. The French Court of Cassation sought the opinion of the European Court of Justice (ECJ) on the question about EU law raised by the matter. The ECJ concluded that the Loi Évin provision did interfere with the free movement of services, yet such a law served the objective of public health and was proportionate to the attainment of that objective. The Loi Évin was therefore compatible with the EU law.²⁷

The Loi Évin has nonetheless been constantly attacked by active lobbying from alcohol and wine producers and retailers. For instance, billboard advertising had been initially restricted to production and sale settings, but was permitted everywhere from 1994 (“zone of production” amendment, p.38; Gallopel-Morvan et al., 2017; Reynaud et al., 2015). Furthermore, in 2009, the Bachelot Law (République Française, 2009) added online alcohol communication to the “positive” list of permitted modes of alcohol marketing with some restrictions (Loi n°2009-879, 2009). Alcohol advertising is now allowed online (with the exception of sports websites and websites targeting young people), provided that advertisements are not intrusive (Public Health Code, 2021). The health warning “alcohol abuse is dangerous for health” is also required in digital marketing, but this is not always enforced (République Française, 2009).

In 2013, a French alcohol producer used an Internet platform to promote one of its alcohol brands. The social media platform included a video about the product and, if consumers collected passwords, they could access recipes for the brand which they could then post on their individual social media platform pages. The company was found in breach of France’s advertising laws in that its content constituted “a direct incentive” to drink its product, including through the use of colours, images and hashtags in the advertising campaign. Furthermore, the use of social media platforms to spread the advertising from user to user, without any legal health warnings, meant that the advertising was “intrusive” and in breach of the rules²⁸ (Day, 2013).

²⁶ See the current version of the Loi Evin: Chapitre III : Publicité des boissons. (Articles L3323-1 à L3323-6) - Légifrance (legifrance.gouv.fr), accessed 20 February 2022.

²⁷ See: Bacardi-Martini SAS v Television française 1 SA (TF1) and others (C-429/02) [2004] ECR I-6613 at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62002CC0262>, accessed 20 February 2022.

²⁸ See: Cour de cassation, civile, Chambre civile 1, 3 juillet 2013, 12-22.633, Inédit at https://www.legifrance.gouv.fr/juri/id/JURITEXT000027670955?page=1&pageSize=10&query=+facebook+ricard&searchField=ALL&searchType=ALL&tab_selection=all&typePagination=DEFAULT, accessed 20 February 2022.

However, in 2014, litigation in France for breach of the alcohol advertising rules by two companies was not successful.²⁹ The French National Association for Prevention in Alcoholology and Addictology (ANPAA) took the alcohol producer and the social media company to court for their advertising practices, including click-throughs, “which they alleged triggered unauthorized and intrusive advertising, the use of a platform likely to be accessed by youth and a lack of age screening to authorise access” (Kelsey, 2020). However, neither company was held liable. The ruling in the social media company’s favour is important because it relates to the lack of cross-border application of France’s laws. The company was held not legally responsible on the grounds that it was hosted and operated from the USA and Ireland. The company had a corporate presence in France but the court found that this was only the commercial arm of the company and “because it had no power to place or edit the content posted on (the platform) and did not act as a service provider for the sale of advertising spots, (the company’s office in) France was not legally responsible for the content posted...” (Kelsey, 2020). The alcohol producer was found not liable on the grounds that underage users who sought to access its webpages were automatically redirected to the social media company’s home page, which met the requirements for age screening. The advertisements were held not to be intrusive because they were generated by the users who controlled the information they wanted to receive, and to whom they wanted to communicate through “like” and “friends” buttons.

Further litigation by the National Association for Prevention in Alcoholology and Addiction (ANPAA) against an alcohol producer in 2015 for breaches of France’s alcohol marketing laws was successful in the Court of Cassation, on appeal from the Paris Court of Appeal.³⁰ ANPAA had alleged the company had breached the restrictions in its advertising of beer by the use of a mythical animal and/or a reference to a current, popular television series. The Paris Court of Appeal had held that the requirements for objectivity in advertising only applied to the description of the product’s colour, smell and taste. An advertiser could be “hyperbolic” in its presentation of the origin of the product, its name or its composition (Bouchenard, 2020). The Court of Cassation rejected this position, stating that all the information that was permitted in alcohol advertising was to be objective and informative in nature (Bouchenard, 2020).

6.1.4 Russian Federation – Digital marketing banned but the ban is not well enforced

In a recent review of alcohol control policies in 15 Eastern European countries, Neufeld and colleagues reported that comprehensive marketing bans (i.e. all media types) have been established in Kazakhstan, Turkmenistan and Uzbekistan, while seven of the countries assessed (these three plus Kyrgyzstan, Lithuania, Russian Federation and Tajikistan) had a ban on digital marketing (Internet and social media advertising). In particular, Russia’s Federal Law No. 38 regulating alcohol advertising was amended in 2012 to include prohibition of such advertising on the Internet and social media (Neufeld et al., 2021). However, Neufeld and colleagues note that there are several issues which reduce the ban’s overall efficacy.

However, while content on websites and social media are prohibited from encouraging alcohol use, display of branded alcohol in social media, as well as information “including special offers” on manufacturers’ webpages are not considered advertising in some cases by the Federal Antimonopoly Service, which is the enforcement agency. Similarly, although indirect advertising or “surrogate advertising” (e.g. marketing non-alcoholic beverages with an alcohol-associated brand) is prohibited, enforcement is still a concern. Also, Russia has exemptions allowing for the advertisement of domestic wine products on television and radio, which are likely to offset the efficacy of online regulations.

²⁹ See: Tribunal de Grande Instance Paris (2014). *France Association Nationale de Prevention en Alcoologie et Addictologie v SAS H Enterprise Heineken Enterprise et SARL Facebook France*, 59961/13 (<https://www.pechenard.com/wp-content/uploads/2017/09/Ordonnance-de-refere-TGI-Paris-20.02.2014.pdf>, accessed 28 December 2021).

³⁰ See: Cour de cassation, civile, Chambre civile 1, 20 mai 2020, 19-12.278, Publié au bulletin). *France Association Nationale de Prevention en Alcoologie et Addictologie v Krounenberg*, C100315 (<https://www.legifrance.gouv.fr/juri/id/JURITEXT000041974948>, accessed 29 December 2021).

6.1.5 Thailand – Marketing restricted, but not cross-border

Thailand has a fairly comprehensive law against advertising, including marketing communication, or displaying “the name or trademark of any alcoholic beverage in a manner showing the properties thereof or inducing another person to drink” (Alcoholic Beverages Control Act, BE 2251 (2008), s 32). Advertising is limited to giving social creative knowledge, which may include showing the symbol or logo associated with the product and its manufacturer. But an express exception is created that these rules do not apply for “any advertisement broadcast from outside of the Kingdom”. Cross-border marketing originating from outside Thailand therefore escapes regulation, while an effective enforcement of regulation on alcohol marketing via the Internet and social media remains a major challenge.

6.1.6 Finland – Digital marketing restrictions, but difficult to apply

Finnish legislation, first enacted in 2015,³¹ illustrates a novel approach to the restriction of alcohol advertising in social media focused on the techniques of social media marketing and responding to the importance of the participatory aspect of social media marketing (Carah, 2017). In addition to prohibiting the advertising of alcohol in and with games, lotteries and competitions (in any medium, including online), the legislation prohibits marketers from creating material for P2P transmission and from using any consumer-generated material in advertising (Montonen & Tuominen, 2017). The restrictions apply to Finnish domestic marketing material and any from outside of Finland that is aimed at the Finnish audience. The specificity of the Finnish language makes such an assessment plausible, whereas the same would not be true in many jurisdictions.

A study comparing public posts by alcohol brands on social media in Finland and Sweden from 2014–2017 reported that the Finnish legislation seems to not have reduced the brands’ use of social media in general, nor their deployment of techniques on social media to elicit consumer interaction (such as hashtags and collaborations with retailers and others) (Kauppila et al., 2019). There was no disabling by the social media platforms of users’ ability to share or comment on public posts. While the Finnish amendment could be interpreted as requiring a total ban, in that alcohol marketers are prohibited from generating any content that could be shared, this has not been enforced for environments built on the premise of content-sharing (Katainen et al., 2020).

The Finnish case illustrates the difficulties of trying to regulate the participatory aspects of alcohol marketing on digital platforms where consumers play a role in sharing messages, particularly in a cross-border context. One aspect of these studies (Kauppila et al., 2019; Katainen et al., 2020) that is worth noting is the difficulty the researchers had in coding whether the content of the posts complied with the 2018 guidelines issued by the Finnish supervisory authority responsible for enforcing the 2017 law. It was easy to agree in coding whether the post did not comply with another provision in the law – i.e. that it should not include a link to a game, a competition or a lottery. However, it turned out not to be easy to agree whether the post included consumer-produced content, or a consumer’s recommendation, or a shared suggestion (Katainen et al., 2020). These “challenges of social media as a research subject” also suggest potential difficulties for enforcement agencies in regulating the content of social media.

³¹ Alkoholilaki [The Alcohol Act] 1143/1994 Helsinki: Ministry of Social Affairs and Health Finnish at https://www.finlex.fi/fi/laki/kaannokset/1994/en19941143_20140152.pdf, accessed 5 May 2022.

6.2 Regulation of alcohol marketing in the European Union

The Audiovisual Media Services Directive (AVMSD, 2010) sets basic standards for the regulation of alcohol marketing in the European Union. The AVMSD applies to “audiovisual media services” which include “audiovisual commercial communications”, forms which “include, inter alia, television advertising, sponsorship, teleshopping and product placement” (Art. 1.1). Under the AVMSD, EU Member States must ensure that media service providers under their jurisdiction comply with the requirement that “audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages” (Art. 9.1(e)). The AVMSD also encourages the development of co-regulation and self-regulation of “inappropriate audiovisual commercial communications for alcoholic beverages” (Art 9.3). In accordance with the AVMSD, all television advertising of alcohol must also comply with certain basic principles, including not “present(ing) abstinence or moderation in a negative light” (Art. 22.1(e)). These standards have been criticized for their lack of detail and their focus on restricting advertising aimed at minors, which misses the issue of alcohol marketing which is not aimed at minors but nonetheless is attractive to them and likely to influence them (Bartlett & Garde, 2013).

Members are obliged to ensure “freedom of reception and shall not restrict retransmissions on their territory of audiovisual media services” from other EU members “for reasons which fall within the scope of (the) Directive” (Art 3.1). This “country of origin” principle aims to provide consistency of regulation of audiovisual media services across the 28 member countries of the EU and “to protect media service providers established in one Member State from (additional) restrictions imposed by other EU Member States receiving their services” (European Commission, 2018). In limited circumstances, the AVMSD does allow EU members to impose “more detailed or stricter rules” than those in the AVMSD on media service providers under the member’s jurisdiction (Art. 4.1).

Several EU Member States – e.g. France and Sweden – have previously chosen to implement stricter marketing standards than those in the AVMSD. However, the right to lift the standards for alcohol marketing regulation has faced difficulties in its application to cross-border marketing. The country of origin rule prevented Sweden from applying its rules on alcohol marketing to two broadcasters who had established themselves in the United Kingdom, starting in 1987, and who broadcast in Swedish to Sweden in a manner that was inconsistent with Sweden’s stricter rules on alcohol marketing. Sweden notified the European Commission that it wanted to take measures against the two broadcasters under Swedish law. In 2018, the European Commission decided that Sweden “could not derogate from the State of Establishment principle and rejected the claim that the broadcasters had established themselves in the United Kingdom in order to circumvent the stricter Swedish alcohol advertising rules” (Garde, 2020; European Commission, 2018). The decision of the Commission has been criticized, including for its testing of the broadcasters’ intention to circumvent Sweden’s laws at the time they were established (which is very difficult to show if establishment was many years earlier) (Dramstad, 2018). Furthermore, the matter shows how cooperation is needed between states if cross-border marketing is to be controlled – including their willingness to control cross-border marketing emanating from their territory where it is received by audiences in other countries which adopt stricter standards for alcohol marketing.

With Britain leaving the EU in 2020, the broadcasters lost the protection of their Swedish-language cross-border advertising under the EU ruling. At the beginning of 2021 they moved their broadcasting licences back to Sweden, announcing they were applying Swedish rules, including the Alcohol Act, to advertising on their channels,³² which meant losing the legal right to broadcast alcohol advertising on television or radio (Article 10).³³

³² See: <https://www.nentgroup.com/sustainability/our-culture-conduct-and-content>, accessed 20 February 2022.

³³ For Sweden’s Alcohol Act, see: https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/alkohollag-19941738_sfs-1994-1738, accessed 20 February 2022.

6.3 Co-regulation

Co-regulation of alcohol marketing is envisaged in the Global alcohol strategy and the SAFER technical package. For example, the SAFER technical package (WHO, 2019b) states that countries should have:

- bans or comprehensive restrictions on exposure to alcohol advertising (which) can be enacted and enforced by setting up regulatory or *co-regulatory frameworks, preferably with a legislative basis*, and (which are supported) when appropriate by self-regulatory measures that contribute in particular to eliminating the marketing and advertising of alcoholic products to minors; and
- public agencies or *independent bodies* (which) can develop effective systems of surveillance of marketing of alcoholic products.

Co-regulation can be distinguished from self-regulation. In an EU context, co-regulation has been defined as “the mechanism whereby a Community legislative act entrusts the attainment of the objectives defined by the legislative authority to parties which are recognized in the field (such as economic operators, the social partners, non-governmental organizations, or associations)” (European Parliament, Council and Commission, 2003). This sharing of regulatory responsibility between government and another actor, whether industry or a profession or civil society, is a distinguishing feature of co-regulation. As noted above, a guiding principle for the Global alcohol strategy is that public policies and interventions to prevent and reduce alcohol-related harm should be guided and formulated by public health interests and should be based on clear public health goals and the best available evidence. Having a statutory basis for the regulation strengthens the capacity of co-regulatory models to meet public health goals, as government processes of law-making, scrutiny, oversight and accountability are applied to the co-regulatory arrangements even if a non-state actor has a critical role to play.

6.4 Industry self-regulation

At national and international levels, the alcohol industry and other commercial actors operate regulatory schemes and codes of conduct which cover alcohol marketing. These schemes can be referred to as “industry self-regulation”. In this technical report, industry self-regulation refers to the collective and voluntary initiation and exercise of rule-making and enforcement activities by industry *independently* from government. Government may accept the existence of these initiatives but there is no statutory basis for these industry schemes, and government plays no part in the design or operation of the schemes. This distinguishes these schemes from co-regulation (see above).

By emphasizing industry accountability and the success of self-regulation, disputing the effectiveness of statutory regulation, and focusing on individual responsibility, the alcohol industry argues against statutory control on marketing (Savell, Fooks & Gilmore, 2016). Analysis of industry regulatory schemes and codes of conduct has not demonstrated evidence of their effectiveness in reducing the harmful use of alcohol (Noel, Babor & Robaina, 2017; Noel et al., 2017; Hastings, Brooks, Stead, et al., 2010; Carah & Brodmerkel, 2021). They are inadequate in their coverage, as many are membership-based; if an industry actor has not joined the scheme, their marketing is not subject to the scheme’s rules. Additionally, some forms of alcohol marketing are not covered by the schemes. This may reflect entrenched unwillingness on the part of industry to bring those forms of marketing within the scheme. Sponsorships are a key example; they are carved out from the application of many self-regulatory schemes. Furthermore, the self-regulatory schemes generally extend only to marketing communications over which the marketers have a reasonable degree of control. For instance, if

a marketer solicits comments from consumers on a social media page run by the marketer, that marketer is responsible for moderating those comments to ensure their compliance with the code. However, if a marketer creates a hashtag and encourages consumers to use it on their own profiles, the marketer is generally not responsible for the content consumers publish when they use that hashtag.

The industry schemes may also lag behind the industry's innovation of new products or new marketing methods. Brand extensions or surrogate advertising are one example. This has long been a controversial issue where the brand extension related to non-alcoholic beverages, such as alcohol-flavoured ice-creams or sauces. However, it has become more complex where the other product is a non-alcoholic version of a traditional alcoholic beverage such as beer. Self-regulatory codes seem to have allowed some leeway to global producers, permitting them, for example, to advertise their zero-alcohol products under the same livery as their alcoholic beverages, and accepting marketing images and associations which would not be acceptable for alcoholic beverages (such as operating a water-sports vehicle) (Burnett, 2021).

A further issue is that the standards set in these self-regulatory schemes tend to be weak and fail to control alcohol marketing to protect minors and others from exposure. These schemes generally focus on regulating the content and give less, if any, attention to the form or volume of alcohol marketing. Content regulation is very complex and tends to favour advertisers and not consumers, both in its content and its application. It is, however, the dominant form of regulation in many countries, where the acceptability of marketing is generally tested from the perspective of a reasonable community member. Content rules may be flawed because they fail to encompass problematic content, such as in marketing which commonly reaches children but is not technically in breach of rules prohibiting marketing which "targets" children. This formulation ignores the presence a considerable number of children in audiences which include a majority of adults, and the fact that marketing regularly uses themes and concepts which are appealing to children, such as humour and cartoon characters (Pettigrew et al., 2012, 2020). Self-regulatory rules may also be too vague and open to differing interpretations (Noel et al., 2017). This issue is seen with the many codes which include prohibitions on marketing communications that suggest that alcohol beverages can enhance sexual, physical, sporting and mental ability or social or financial status.

Other weaknesses in the self-regulatory approach to alcohol include that the systems tend to be dominated by the industry and use organizations which are not independent for rule development, administration, compliance or enforcement. Compliance systems often rely on individuals or interested organizations making complaints about a specific advertisement's alleged non-compliance with the self-regulatory rules. If the complaint proceeds through the system, compliance, is determined by a panel whose members are often appointed by industry representatives (Noel & Babor, 2017). Multiple studies across multiple countries have found that alcohol marketing regularly violates the industry's own rules and is either not subject to any enforcement proceedings or is subject to enforcement proceedings before the industry's adjudication panel, but is cleared of any breach (Noel, Babor & Robaina, 2017).

6.4.1 National industry self-regulation of cross-border marketing of alcohol

Industry self-regulation of marketing, including in relation to alcohol, is common in many countries. The self-regulatory schemes that apply to alcohol marketing may be created by different industries: alcohol producers; advertisers; or owners of specific media (such as radio, television, outdoor media or digital platforms). Alcohol marketing may be concurrently subject to multiple self-regulatory schemes. Some of these schemes will deal specifically with alcohol marketing while others set

standards for all marketing, with alcohol marketing covered by those general standards. Some schemes control certain aspects of alcohol marketing, such as its content but not its frequency. Schemes may also set different substantive standards. One marketing communication – e.g. a single television advertisement – could be subject to regulation under multiple self-regulatory regimes. Even with this multitude of regulatory schemes, there may be forms of alcohol marketing that are not covered by any rules at all.

An example can be seen in Australia's ABAC Responsible Alcohol Marketing Code. The ABAC Code is a membership-based initiative, consisting of and funded by Australian trade associations for beer, wine and spirits producers, along with many alcohol retailers. The ABAC Code sets rules relating to "marketing communications in Australia generated by or within the reasonable control of a Marketer" (a producer, distributor or retailer of alcoholic beverages who is a member of ABAC). The Code mainly sets rules on content, such as prohibiting marketing that promotes excessive or rapid consumption of alcohol. More recently, rules relating to the placement of marketing have been added to the ABAC Code, such that a "marketing communication may only be placed where the audience is reasonably expected to comprise at least 75% adults (based on reliable, up-to-date audience composition data, if such data is available)" and "Available Age Restriction Controls" must be used to exclude minors. The ABAC Code provides guidance from the International Alliance for Responsible Drinking (see sub-section 6.4.2) on how to implement the "Available Age Restriction Controls" on social media platforms. The standards in the ABAC Code are enforced through a complaints-based system, with adjudication by a group appointed by the industry members of the scheme. The scheme is managed by a Committee of Management consisting of representatives from the alcohol industry and one government representative.

The ABAC Code does not expressly apply to cross-border marketing. It seems that it would not be applied to advertising generated in Australia but not viewed in Australia. The ABAC Code does not apply to non-members, so marketing generated outside Australia, with no involvement of an ABAC member in Australia, will not be covered, even if the marketing is received by audiences in Australia.

6.4.2 Global self-regulatory codes for cross-border marketing of alcohol

The International Alliance for Responsible Drinking is an industry organization whose stated aim is to contribute to the achievement of the WHO target of "at least 10% relative reduction in the harmful use of alcohol" by 2025. The IARD has 12 members who are most of the world's leading alcohol companies (IARD, 2021b). A further 51 trade associations and social aspects organizations from countries around the world are part of IARD's partnership council (IARD, 2021c). There is no specific mention of cross-border marketing on the IARD website. However, it has made commitments in terms of regulation of alcohol marketing and of digital marketing in particular. Given that the IARD members are TNACs, they should be in a position to apply the commitments discussed below to all the alcohol marketing created by the parent and affiliate companies, much of which will be cross-border in nature – i.e. marketing concepts and materials that they are creating in one jurisdiction and disseminating in other jurisdictions. The IARD makes no commitments about satellite television or other forms of cross-border marketing, such as sponsorships.

In 2011, the International Center for Alcohol Policy, the forerunner to IARD and with much the same membership, launched "Guiding principles: self-regulation of marketing communications for beverage alcohol to apply to its members" ("guiding policy") (International Center for Alcohol Policies, 2011). Despite there being no barriers to applying the commitments made in the guiding policy to cross-border marketing, the guiding policy was found to have been breached in 75 out of 87 unique alcohol advertisements broadcast from Brazil by satellite to multiple countries during the FIFA World Cup in 2014 (Noel et al., 2017).

In 2014, IARD then launched the “Digital marketing principles – self-regulation of marketing communications for beverage alcohol” as part of its “Producers’ commitments” (2013–2017) (“digital principles”) (IARD, 2014). The IARD digital principles, which apply only to the 12 members of IARD, provide for:

- in relation to minors: use of age affirmation mechanisms; limiting placement of marketing communications to contexts where more than 70% of the audience is expected to be of legal purchasing age; on platforms which allow for sharing of content, inclusion of forwarding content notices warning about sharing of content with minors;
- support for responsible consumption by including responsible drinking messages; and monitoring user-generated content on their company-controlled websites and removing inappropriate content;
- transparency, in that alcohol companies should not falsely represent their commercial purpose by implying they are an ordinary consumer;
- respect for consumer privacy by requiring consumer consent to receive direct marketing communications; and abiding by laws regulating data collection in the country of activity.

These digital principles apply only to content created by or on behalf of the IARD member companies *and* where they control the platform on which the content appears. This leaves considerable gaps in the application of the safeguards, since neither the platforms nor the companies are responsible for distribution on social media when this is not part of a commercial relationship. This gap was closed slightly in 2019 by a collaboration between IARD, Facebook (including Instagram), Snapchat and YouTube, focusing on screening for age on the platforms and allowing users to block alcohol marketing (IARD, 2019). IARD commits that these safeguards will be in place for “at least 95% of our online alcohol marketing by 2024, with an objective to reach complete compliance at the earliest opportunity” (IARD, 2021a). IARD has also declared its commitment not to market alcohol-free extensions of alcohol brands to minors (IARD, 2021a).

IARD has also recently developed “responsibility standards for the use of social influencers in alcohol marketing” (IARD, 2021b). These new standards represent a collaboration between IARD members and major marketing and media firms. The standards include the following:

- posts being clearly identified as marketing content;
- influencers not making health claims, not promoting illegal behaviour or excessive consumption, not encouraging alcohol consumption by those under legal purchase age, not linking products to social and sexual success, and not positioning abstinence negatively;
- using age-affirmation mechanisms where possible or using influencers that are at least 25 years of age where effective age-affirmation is not possible;
- promoting understandings of responsible drinking and referring people to online resources and messages that discourage heavy drinking, drinking during pregnancy, drink driving and drinking if underage.

IARD has committed to regular auditing and monitoring for compliance. If breaching material is found, IARD members say that they will ask the social media influencer to remove the material and, if not done within 72 hours, they “will reassess their relationship” with the influencer.

6.5 Alcohol companies’ codes of corporate conduct

Individual alcohol companies may have their own codes of conduct for alcohol marketing of their products. These are not industry-wide standards. Rather, they are made voluntarily by the company

and contains broad statements of principles or basic rules about the company's practices regarding the marketing of its product. They usually also commit the company to abide by any national laws or industry codes of conduct, such as codes relating to advertising standards. They may establish some architecture for monitoring and review of company compliance with the policy, which may or may not involve an independent third party. The focus of these policies is on not targeting young people below the legal drinking age and not encouraging excessive or irresponsible drinking. They often propose age-gating, which has not been shown to be effective in preventing access to alcohol company websites in the USA (Barry et al., 2021).

6.6 Digital platforms' codes of corporate conduct

Digital platforms state that alcohol marketing must abide by the laws in specific countries. Consequently, alcohol marketing is prohibited or restricted in line with country-specific regulation – e.g. in Lithuania, Norway and the Russian Federation. They require basic age-gating tools to be available, and their recent arrangement with IARD might increase the age monitoring technology which is used (see sub-section 6.4.2 above). Age-gating tools are limited to gating the accounts and advertisements of alcohol advertisers and do not apply to social media posts by others. They are also effective only if users have entered their age accurately at sign up and only access the platform through their own profile. One company has now introduced guidelines for branded content produced by social media influencers. Users of the platform, including social media influencers, who wish to promote branded content are now required to disclose the sponsorship arrangement by registering the arrangement through the company's "branded content tool" which "tags" the sponsor and acknowledges the post as paid content (Facebook, n.d.). The company also states that it offers the capacity to set a "restricted audience" for pages or posts to pages, and to curate one's news feed to reach a targeted audience (Facebook, n.d.A). However, these tools and policies do not extend to unsponsored individual posts.

Platforms also ask advertisers not to "engage in predatory advertising practices". This guideline is effectively self-regulated. There is no independent monitoring and assessment of targeting on platforms. The advertising models of platforms are tuned to find high-value consumers. In the case of alcohol advertising, this orients them towards finding heavy drinkers, and no controls exist to prevent alcohol advertisers from targeting such drinkers. Some platforms allow individual users to "self-exclude" from alcohol advertising, although these settings are not clearly publicized and are difficult to find.

Since 2018, one company has published "community standards" which outline a range of prohibited behaviours for individual users. For example, with regard to tobacco and alcohol, the company prohibits "content that attempts to buy, sell, trade, donate or gift alcohol or tobacco products and is not posted by a page, or group representing a real brick-and-mortar shop, legitimate website or brand" (Facebook, n.d.A). There are also specific policy documents outlining content which is prohibited or restricted for the purposes of paid advertising (Facebook, n.d.B) and commercial sale (Facebook, n.d.C). While there are policy documents that provide general guidance regarding permitted content, the processes associated with applying the guidelines are somewhat opaque.

In essence, the social media platform's moderation process works as follows (Barret, 2020): content that is allegedly in violation of the community standards or any other policy (e.g. misinformation), may be flagged automatically by artificial intelligence algorithms, or it may be reported by the platform's users. This content (e.g. a post, video etc.) is then sent to a content moderator who is tasked with determining whether it violates the standards. If so, the platforms may remove the content and the user(s) may be banned or suspended as a result. One company provides content

moderators with a set of detailed guidelines outlining when and under what circumstances content is prohibited; however, these are not available to the public (Hern, 2021). As of 2020, one of the companies reportedly employed some 15 000 content moderators, many of whom are outsourced, who are given minimal time (approximately 150 seconds) to assess the appropriateness of flagged content before making a decision (Koetsier, 2020; Hern, 2021). Its moderation processes have been heavily criticized as ad hoc; in some cases, missing content that is perceived to be harmful, while also removing content considered by some to be benign (Barret, 2020).

Studies assessing the effectiveness of social media platforms' self-regulatory frameworks of alcohol advertising regulation have largely been limited to examining the extent to which young people are protected from exposure through age-restriction mechanisms (e.g. age-gating) (Pierce et al., 2021; Williams, McIntosh & Farthing, 2021). In general, alcohol marketing exposure – including through user- and brand-generated content – is substantial, suggesting that current mechanisms may be inadequate (Jones et al., 2016).

However, given that tobacco marketing is prohibited on some social media platforms, these platforms provide a case study for assessing the companies' capacity to monitor and enforce a potential ban on alcohol advertising. The sale and promotion of tobacco and tobacco-related products (e.g. e-cigarettes, smoking paraphernalia etc.) are prohibited under Facebook's Advertising and Commerce Policies (Jackler et al., 2019). This does not extend to the sharing of tobacco-related content – "as long as the service does not lead to the sale of tobacco or tobacco-related products" (Facebook, 2018 cited in Jackler et al., 2019). It also does not extend to brand-stretching activities such as the promotion of tobacco-related merchandise (e.g. t-shirts). An evaluation by Jackler and colleagues (2019) found varying levels of tobacco-related marketing on Facebook, depending on the product type. Overall, 28% of the 388 tobacco brands had brand-sponsored pages.

6.7 Regulation of digital media affecting cross-border alcohol marketing: restrictions on the use of personal information

Many companies collect information on their users which is stored and analysed to enable differential targeting of particular users. This practice has accelerated with the rise of digital platforms, with search engine, social media, mobile telephone and e-commerce companies making use of this information to promote products to prospective customers. As noted in sub-section 3.7, the collection of personal data has been used to facilitate targeted alcohol marketing. A media platform has the technical ability to exclude customers who request such exclusion ("opt out") from receiving advertising or other promotional material concerning or referring to alcoholic beverages. Such platforms might be required, in accordance with the personal data protection laws applicable to them, to communicate to users their right to request such an exclusion. However, it is not clear that the "opt out" is used by those customers who have the most to gain from not being exposed to alcohol marketing.

Regulation that limits the collection of personal information may be another avenue for reducing the impact of alcohol marketing in digital media. Several jurisdictions have data protection laws which provide for a very high standard of personal data protection (Breitbarth, 2019). These include the United Kingdom (Information Commissioner's Office, 2021) and California with its Consumer Privacy Act of 2018 (CCPA). Another example of a stringent personal data protection regime is the EU's General Data Protection Regulation (GDPR, 2016). The GDPR aims to provide individuals with greater control over their personal data and requires that data controllers, including website operators,

seek consent from individuals to collect information (e.g. third-party cookies) (Hu & Sastry, 2019). This consent must be “freely given, specific, informed and unambiguous” (GDPR, 2016 art 7). Other provisions in the GDPR include: 1) the right to access one’s personal information and data; 2) the right to be forgotten (i.e. one can request the erasure of personal data); and 3) the right to object to the use of personal data for direct marketing purposes (Hoofnagle, van der Sloot & Borgesius, 2019; Information Commissioner’s Office, 2021). The latter is particularly relevant, given that online targeted marketing/behavioural advertising relies on personal data in order to be effective.

Since 2018, several EU member states have actively enforced the GDPR provisions in their national contexts and sanctioned violations. According to a recent report, “there have been more than 281,000 data breach notifications since the application of GPDR”, and “€272.5 million” in fines have been imposed (McKean, Kurowska-Tober & Waem, 2021). In January 2019, the Commission Nationale de l’Informatique et des Libertés (CNIL), France’s data protection authority, fined an Internet company €50 million for breaching several articles of the GDPR (Tambou, 2019). Among other things, CNIL claimed that the company provided insufficient information about its data collection and privacy practices, and was collecting and processing data for personalized advertising without “valid consent” (Tambou, 2019). It was deemed that the “consent (was) neither unambiguous nor specific” because “pre-ticked boxes” were used and “users need to click on the button ‘more options’ to see what the alternatives are” (Tambou, 2019).

A common component of any stringent personal data protection regulation is to ensure that meaningful consent is sought prior to collecting data from users. Whereas the collection of personal information on websites has often been on the basis of implied consent (e.g. creating an account or viewing a website is considered to amount to consent, with little opportunity to opt out), the new direction in privacy regulation is to require that consent be indicated by an affirmative act by the user. Under this explicit consent model, it is not enough to display “implied consent” notices, pre-selected checkboxes, or cookie walls, and it must be as easy for users to withdraw consent as to give it (O’Neill, 2018). This model has been adopted by the EU in the GDPR, as well as in several other countries. This is the approach taken in Thailand in its Personal Data Protection Act. Under the Thai law, “prior consent” of the data subject is required for the collection, use or disclosure of personal data, with only limited exceptions permitted, such as for suppressing danger to a data subject’s life (One Trust Data Guidance, n.d.). A valid consent must be explicitly made in a written statement or electronically, the request for consent must be distinguishable from other content provided to the data subject, and the request must be easily accessible and intelligible, in plain language, and must not be deceptive or misleading (One Trust Data Guidance, n.d.). Brazil is another jurisdiction which has created more demanding requirements for proving the consent of a data subject to the collection of their personal information. The Brazilian General Data Protection Law provides that “consent shall refer to particular purposes, and generic authorizations for processing personal data shall be considered void”. (IAPP, 2020)

Given the move towards “personalized” and targeted advertising on social media, one obvious challenge is that monitoring and identifying advertisements is especially difficult (Centre for Data Ethics and Innovation, 2020). This also renders attempts to document and research alcohol marketing strategies more difficult. Unlike traditional advertisements, which are easily accessed by the public, targeted alcohol advertisements may be buried in the newsfeeds of particular users and thus be “invisible” to researchers and/or regulators. Despite growing awareness among governments internationally that further regulation of the data collection and usage practices of large technology firms is needed, there is “extreme asymmetry” regarding access to information (Centre for Data Ethics and Innovation, 2020). For the most part, governments and regulators are not fully informed about how data are collected and utilized for targeted marketing. The Canadian Government has explored a reform option to address these issues, proposing the concept of “algorithmic transparency”, meaning

“businesses would have to be transparent” about how they use artificial intelligence systems “to make significant predictions, recommendations or decisions about individuals.... Individuals would also have the right to request that businesses explain how a prediction, recommendation or decision was made ... and explain how the information was obtained” (Government of Canada, 2020). Such changes would assist in efforts to monitor and enforce targeted marketing by providing regulators with insight into the functioning of the algorithms that target marketing.

Reducing the harm from alcohol by regulating cross-border alcohol marketing, advertising and promotion

Key messages

Most countries do not specifically regulate digital alcohol marketing according to WHO's GISAH database. There is no specific regulation of digital alcohol marketing by national governments in 66% of countries, with partial restrictions in only 17% and a ban in 18%.

Some countries have introduced good regulation of alcohol marketing. It is beneficial for all countries to understand the challenges that these countries face in implementing their regulation.

Individual consumers should have the possibility to opt out of targeted alcohol marketing.

The self-regulatory mechanisms used for controlling alcohol marketing at both national and international levels have not been adequate.

Cross-border alcohol marketing on digital platforms is only weakly addressed by “moderators” employed by web platforms. There is potential for improvement through digital data privacy requirements.



7. How do international instruments and national laws address cross-border marketing of other commodities?

7.1 WHO Framework Convention on Tobacco Control

The WHO Framework Convention on Tobacco Control (FCTC) was adopted by the Fifty-sixth World Health Assembly on 21 May 2003 (Resolution WHA56.1). The WHO FCTC became the first convention to be adopted under Article 19 of the WHO Constitution. It came into force in 2005 and there are currently 181 states as well as the European Union which are Parties to the FCTC, covering 90% of

the world's population (WHO, n.d.) The Convention is governed by its Conference of the Parties and provides for a Secretariat, which is hosted by WHO. The Convention's Article 13(2) provides that Parties must apply "restrictions or a comprehensive ban on advertising, promotion and sponsorship originating from its territory with cross-border effects". The FCTC envisages that the Parties may adopt a protocol – a legally binding agreement under the auspices of the WHO FCTC – to implement the comprehensive ban on cross-border marketing (Art. 13.8). This protocol has not proceeded, although a template for such a protocol was provided to the Conference of the Parties in 2007 (discussed below) (WHO, 2007). Rather, the Guidelines for the Implementation of Article 13 were elaborated by the Conference of the Parties in 2008 to assist Parties in implementing their obligations concerning cross-border marketing. The FCTC contains "detailed provisions" and "strong obligations" (Lieberman, 2014), and presents a possible model for controlling cross-border marketing of alcohol.

Parties to the WHO FCTC "recognize that a comprehensive ban on advertising, promotion and sponsorship would reduce the consumption of tobacco products" (Art. 13.1). This acceptance of the role of tobacco marketing in driving demand for tobacco products relates to the obligation on the parties to institute a comprehensive ban of all "tobacco advertising, promotion and sponsorship" (Art. 13.2). Where the constitutional arrangements of the country do not allow for a comprehensive ban (such as in the USA where there is more extensive protection of commercial speech), the WHO FCTC obliges the Parties to apply restrictions to "tobacco advertising, promotion and sponsorship" (Art. 13.3), obligations which extend to cross-border tobacco advertising, promotion and sponsorship originating in its territory (Arts. 13.2 and 13.3).

7.1.1 Definition of tobacco advertising, promotion and sponsorship

Tobacco advertising and promotion is defined in the WHO FCTC to mean "any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly" (Art. 1(c)). "Tobacco sponsorship" is defined to mean "any form of contribution to any event, activity or individual with the aim, effect or likely effect of promoting a tobacco product or tobacco use, either directly or indirectly" (Art. 1(g)). The Article 13 Guidelines for Implementation confirm that all media formats are intended to be covered by the bans or restrictions, so that the tobacco industry cannot simply move its marketing from regulated to unregulated media. The Article 13 Guidelines for Implementation also state that the WHO FCTC applies to tobacco marketing which does not *intend* to promote the product or its use, but which has the *effect* of doing so. This is reflected in the language of the WHO FCTC definition of "tobacco advertising, promotion and sponsorship" which extends to "communications", as well as "recommendations" and "actions" (Article 13 Guidelines for Implementation (8)). The inclusion of "recommendations" and "actions" captures "various sales and/or distribution arrangements" (such as point-of-sale advertising, free gifts and coupons); product placement; and "the association of tobacco products with events or with other products" (such as by brand-stretching). The Article 13 Guidelines for Implementation also confirm that promotional effects may occur through mention of the name of the tobacco company and no particular tobacco product. CSR activities are covered by the definition of "tobacco sponsorship" (Article 13 Guidelines for Implementation (25)–(28)) and are also governed by Art. 5.3 and its guidelines on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry (Article 5.3 Guidelines for Implementation). A non-exhaustive list of the forms of tobacco advertising, promotion and sponsorship which are covered by the WHO FCTC is contained in the Appendix to the Article 13 Guidelines for Implementation.

7.1.2 Obligations in respect of tobacco marketing

In terms of a Party's obligations to ban or restrict cross-border marketing originating from its territory, the Article 13 Guidelines for Implementation explain that the FCTC contemplates that a Party will extend the ban/restrictions that it applies to marketing that originates and is received in its territory to any marketing originating in its territory and received in another Party's territory (Article 13 Guidelines for Implementation, (47)–(49)). This reflects the notion of "neighbourliness" or "respect for other sovereigns" embodied in the concept of comity, at least concerning other nations which similarly seek to ban or restrict tobacco marketing (Schultz & Ridi, 2017; see Section 5.1 above). The jurisdiction of the Party over such activities is straightforward and rests on the idea that a state has authority over activities occurring in its territory, such as the dissemination of tobacco marketing. In 2020, 81 Parties reported to the FCTC Secretariat that they had a ban on cross-border tobacco marketing originating from their own territory (WHO, 2016a, C2729). A further eight countries reported having restrictions short of a ban (WHO, 2016a, C275). The FCTC also provides that "Parties which have a ban on certain forms of tobacco advertising, promotion and sponsorship have the sovereign right to ban those forms of cross-border tobacco advertising, promotion and sponsorship entering their territory and to impose equal penalties as those applicable to domestic advertising, promotion and sponsorship originating from their territory in accordance with their national law" (Art. 13.7). This provision confirms the right of parties to control tobacco marketing originating from outside their territory but received inside their territory.

Where a complete ban on tobacco advertising, promotion and sponsorship is not possible because of constitutional restrictions, a Party must require "the disclosure to relevant governmental authorities of expenditures by the tobacco industry on advertising, promotion and sponsorship not yet prohibited" (Art. 13.4(d)). This information may be made available to the public and the FCTC Conference of the Parties as part of the reporting and exchange arrangements envisaged in Art. 21 of the FCTC (see below). This is intended to discourage the tobacco industry from engaging in advertising, promotion and sponsorship practices (Lee, 2018).

7.1.3 International cooperation

The WHO FCTC makes extensive provision for formal mechanisms for international cooperation concerning tobacco control, including in respect of tobacco marketing (Arts. 20–22). It also provides that "Parties shall cooperate in the development of technologies and other means necessary to facilitate the elimination of cross-border advertising" (Art. 13.6). In 2020, 49 Parties reported to the FCTC Secretariat that they had been "cooperating with other Parties in the development of technologies and other means necessary to facilitate the elimination of cross-border advertising".

7.1.4 Further developments in relation to multilateral action on cross-border marketing of tobacco

It is possible that the cross-border aspects of the WHO FCTC will be strengthened in the future. A draft of specific guidelines on cross-border marketing was to be provided to the Conference of the Parties in November 2021 (Conference of the Parties to the WHO FCTC, 2018), but this was deferred as, in a COVID-era virtual meeting, the agenda was limited to non-substantive aspects of treaty governance. The Parties have not, at this stage, taken steps to pursue a protocol under Article 13.8. The template for the protocol which was developed in 2007 emphasized the importance of international collaboration in dealing with cross-border marketing (WHO, 2007:5). It stated:

Cooperation is required in respect of the sharing of information and expertise about the nature of the problem, its manifestations and responses to it, as well as the development of more effective responses to the problem. When the problem is dealt with by law, cooperation is also required with respect to the reporting, investigation and prosecution of offences, as well as understandings in respect of the exercise of jurisdiction by entities and the enforcement of judgements made in one entity within the territory of another.

Resting on this idea of cooperation, the template for the protocol in 2007 put forward the idea of each Party creating a “contact point” so that when a country identifies problems with marketing created in and flowing from another jurisdiction, the contact point from the other jurisdiction could be informed about the purportedly problematic marketing and it could then act against the local person/entity responsible for the marketing (WHO, 2007:6). This would overcome the difficulties of the complaining country having to take action against an offshore person/entity, with all of the attendant difficulties of enforcing judgements (including penalties) against someone not in its own jurisdiction. However, the template also acknowledges that there may be occasions when a country may wish to take enforcement action against a person/entity in another country. It proposed that there be machinery for the other country to assist the prosecuting country with the collection of evidence (either in the form of documents or witness testimony) (WHO, 2007:9 (19)–(21)). It was also envisaged that the parties to the protocol would develop an agreement about which party would exercise jurisdiction in which circumstances (WHO, 2007:9–10 (22)–(26)). Finally, the protocol was intended to make provision for states to agree to enforce judgements from courts and tribunals in another jurisdiction against persons/entities found to have breached marketing bans or restrictions (WHO, 2007:10–11 (27)–(28)).

As to domestic measures to ban or restrict cross-border marketing, the annex to the template protocol from 2007 proposes two novel ideas pertinent to cross-border alcohol marketing:

- All manufacturers, wholesalers or importers who wish to operate within the territory of a Party must be licensed in that territory. A licensing requirement of this nature is also part of the WHO FCTC Protocol to Eliminate Illicit Trade in Tobacco Products (FCTC Protocol, Art. 6) (WHO, 2013c). A breach of the cross-border marketing laws by the licensed party or by a related body corporate (such as a parent company) would constitute a licence breach by the local entity with associated consequences. These could include revocation or suspension of the licence (WHO, 2007:14, (43)–(44)). Other consequences could be additional conditions on the licence. The conduct for which the licensee is made responsible could go beyond that of the parent company and could extend to conduct by any company which creates or disseminates marketing material for the product which is being manufactured, wholesaled or imported by the licensee.
- A breach of a local ban or restriction on tobacco marketing by a related offshore person/entity would lead to a local prohibition on relevant domestic bodies on the supply or sale of the product or brand which featured in the marketing for a set period (WHO, 2007:14 (43)–(44)). The related offshore person/entity could be in the same corporate group as the domestic body responsible for the supply or could be otherwise connected to the local supplier or seller.

Both of these proposals seek to remove the difficulties of enforcing bans or restrictions on marketing against offshore entities. The dissuasive effect of these rules would first be felt by the local actors, who it is assumed would be motivated to urge their offshore counterparts to comply with local laws in the creation and dissemination of cross-border marketing for the product.

7.2 Bans on cross-border tobacco marketing in national regulation

Considerable progress has been made by states to implement bans or restrictions on tobacco marketing. WHO nonetheless considers that tobacco advertising, promotion and sponsorship bans are an “under-adopted measure”, with only 57 countries (21% of the world’s population) having adopted comprehensive bans (WHO, 2021b:80). Over 40% of low-income countries have such bans, whereas the number drops in middle-income countries to around 30% and to 23% in high-income countries. A large number of other countries have restrictions on marketing on national television and radio and in print media, along with some other forms of marketing. The WHO FCTC envisages that cross-border marketing, both outgoing and incoming, would be covered by a comprehensive ban. In 2020, 89 parties reported to the FCTC Secretariat that they had a ban on cross-border tobacco marketing entering from outside their territory (WHO, 2016a, C27210).

Cross-border restrictions may be achieved in several ways. In preparing for drafting a protocol to the WHO FCTC on cross-border marketing, it was noted that the regulation of material *originating inside* the territory is more straightforward than regulating material *originating outside* the territory’s jurisdiction. It is therefore possible for states to have some impact on other countries’ receipt of tobacco advertising by implementing strict controls on the advertising created in their own jurisdiction.

Countries have also attempted to impose limits on tobacco marketing originating from outside their jurisdiction and which is then introduced into their jurisdiction. However, gaps are more likely to be seen in this regulation; at the least, it is likely that enforcement difficulties might arise where the target for prosecution is an offshore person/entity with no person/entity within the jurisdiction who is linked to this external person/entity.

Some examples of attempts to limit cross-border marketing include:

- Brazil bans tobacco advertising and promotion in television, newspapers and magazines, as well as the sponsorship of cultural or sporting activities. Furthermore, tobacco sponsorship is prohibited at international events located in the territory of Brazil (Lee, 2018:7). Brazil also bans the broadcasting into its territory of sporting or cultural events which show tobacco images generated abroad or which are sponsored by tobacco companies or affiliates (Lee, 2018).
- Chile prohibits the broadcasting of tobacco advertising on international television channels available in Chile or on Internet sites with the domain name ending in “.cl” (Lee, 2018:13)
- India requires health warnings to appear before and during films or television programmes which include tobacco products (Lee, 2018:17). Malta operates a similar system.
- Kenya bans the “outflow” to other countries of tobacco advertising which is banned in Kenya. It also applies a ban to advertising flowing into Kenya from other countries. Additionally, Kenya has a ban on tobacco advertising in electronic media which covers cross-border marketing (Lee, 2018:5).
- Singapore prohibits the electronic publication of tobacco advertising originating from Singapore (Lee, 2018:7).
- Australia bans the broadcasting (television and radio) or publication of tobacco advertising within Australia. The ban covers the act of broadcasting or publishing in Australia, even if the publication or broadcast is received elsewhere. Australia also bans publication by electronic means “in Australia”. To be electronically published “in Australia”, a tobacco advertisement must originate in Australia (even if it is received elsewhere) or – if the advertisement does not originate in Australia – the advertisement has to have an “Australian link” and must be accessible, or be intended to be accessible, by the public or a section of the public in Australia.

This electronic publication provision potentially captures offshore electronic publication which reaches Australian audiences so long as the Australian link is present (i.e. inbound cross-border marketing). This link depends on the publication being by an Australian national or long-term holder of an Australian visa, or a company incorporated in Australia. This provision leaves out of the prohibition electronic tobacco advertising that is created by an entity offshore which is entirely unconnected to Australia. Many offshore corporations will fall into this category. The law also exempts carriers, carriage service providers, Internet service providers and Internet content hosts from the prohibition, which means that they cannot be held liable for their role in bringing electronic tobacco advertising to Australia (Australian Government, 2015). Furthermore, tobacco advertisements in foreign periodicals which reach Australia are not prohibited.

7.3 United Nations drug conventions

The preparation, trade and sale of an extensive list of psychoactive substances are controlled under three drug conventions, adopted under the auspices of the United Nations in 1961, 1971 and 1988 (UNODC, 2013), and replacing and extending earlier international agreements dating back to 1912 (Bruun, Pan & Rexed, 1975). The treaties have the dual purpose of creating and controlling markets in psychoactive medications, primarily for medical prescription, and of eliminating markets in psychoactive substances for non-medical consumption. The implementation of the treaties is governed by the Commission on Narcotic Drugs, with Member State representatives elected by the Economic and Social Council of the United Nations and with many functions assigned to a body of experts, the International Narcotics Control Board and its secretariat.

The 1961 and 1971 treaties include detailed and exacting provisions for the control of the legal international trade in psychoactive medications and the plants and chemicals used in their manufacture or preparation. This includes requirements for import and export licences for each shipment of substances or medications, with the receiving country's government required to authorize each shipment, and the exporting government committed to "not knowingly permit(ting)" an export shipment to a country where the shipment's drugs would be against the country's laws or regulations.

The drug conventions do not have much to say explicitly on advertising or other promotion, and nothing to say on trans-border promotion. The 1961 and 1971 conventions give some requirements for warnings and information on consumer labels for medications. The 1971 convention includes a provision (Article 10(2)) calling for prohibition of advertising of substances covered by the convention to the general public: "Each Party shall, with due regard to its constitutional provisions, prohibit the advertising of such substances to the general public". The 1988 Convention includes a provision (in Article 3(1)) concerning substances controlled by the 1961 and 1971 conventions that calls for their "offering" and "offering for sale" to be made a criminal offence. This can be seen as seeking to outlaw some forms of promotion of non-medical use. However, the conventions' provisions against promotion have proved weak in practice: the recent North American epidemic of use and harm from strong opioid medications was fuelled by extensive promotional campaigns by pharmaceutical TNCs (Marks, 2020; Horwitz et al., 2019).

7.4 Regulation of marketing of non-medical cannabis

As of 2021, under the 1961 and 1988 drug conventions, non-medical cannabis remains a forbidden consumer product, with signatory nations committed to forbidding both its sale and possession. There is thus essentially no discussion at the international level of cross-border marketing of cannabis

or its control, although it is clearly on its way to becoming a substantial issue. A number of articles by researchers have considered the lessons for cannabis regulation – including for control of marketing and promotion – from tobacco and alcohol. For instance, a review laying out a vision for public health-oriented cannabis control noted that “one of the most important lessons of the commercialization of tobacco and alcohol is that product promotion is a significant driver of consumption and related harms. Branding of products is critical to promotion and, once branding is allowed, promotion is very difficult to prevent. Therefore, all branding and promotion of cannabis products should be prohibited, and plain packaging should be required (i.e. no logos, brand names, or colourful packaging)” (Haden & Emerson, 2014; see also: Engelsman, 2003; Room et al., 2010; Pacula et al., 2014; Room, 2018).

Developments regarding non-medical cannabis have occurred in the Americas, in particular in Canada, Uruguay, and a number of US states. These developments were initiated by popular referenda in several US states, with Colorado and Washington leading in 2012. As of mid-2021 non-medical use of cannabis was legal in 18 US states, two territories and the District of Columbia (Hartman, 2021). Canada has been moving gradually towards legalized markets in cannabis, with the initiative coming from the national government in 2018 (Government of Canada, 2021). The form of the legal market is determined at the level of the province or territory, with substantial variation in the arrangements (Lancione et al., 2020).

At the level of the federal government of the USA, non-medical cannabis is still banned, resulting in substantial differences across state borders in the legal status and provisions concerning a legal market in cannabis, with states which have legalized a within-state market sharing a border with states which have not, but without much in the way of formal arrangements for dealing with the conflict in laws.

The tangled legal situation in the USA has led to considerable lack of clarity about limits on advertising, marketing and promotion of non-medical cannabis in the country, with federal law still prohibiting its advertisement. One result of this has been that, even more than for other products, much of the advertising and promotion has been online, which means that it reaches across state borders, between states whose law allows it and those who forbid it. A guide for Californian business on “cannabis advertising regulations in California” (Carter, 2020) notes that the Californian legislation provides that cannabis advertisements “can only be displayed where 71.6% or more of the audience is suspected to be 21 years of age or older” (the legal age for purchase), and lists several other restrictions, but makes no mention of any cross-border issues. United States studies of cannabis marketing on the Internet have found that they often do not comply with even the lax requirements of state laws. Thus, both Colorado and Washington state require underage prohibitions on access to online advertisements, yet a study found that only 54% of sites in Colorado and 59% in Washington state had even a “yes” button to click that the user was 21 years of age or older, and only 5% in each state required the user to enter a birth date (Bierut et al., 2017). An article offering legal advice on cannabis advertising noted the illegality under federal law of any advertisement that attempts “to propose or facilitate an actual transaction”, but that the main hindrance to advertising was that “the companies with a duopoly over digital advertising... specifically prohibit cannabis advertising” (Estevez, 2019).

In Canada, the situation is clearer, with the levels of government united in their approach, and with marketing and promotion of cannabis products governed primarily by the national Cannabis Act. However, a study of promotion of cannabis products by 211 licensed firms which had an online presence found many violations of limitations on promotions in the Cannabis Act – particularly of requirements for age restrictions, for information on risk, and a ban on brand glamorization. Coding on nine such restrictions, the study found that 86% of the firms had one or more violations on their

platforms, and that violations were particularly common on social media. Acknowledging that there was some ambiguity in the Cannabis Act, the study concluded that “current compliance with cannabis promotion regulation is suboptimal” and that there was “no systematic monitoring or enforcement” of the regulations. The study also noted the cross-border implications of its findings: “enforcement of marketing regulations not only affects Canadian residents but also broader populations because of the global reach of online media” (Sheikhan et al., 2021).

7.5 WHO International Code of Marketing of Breast milk Substitutes

WHO and UNICEF have for many years emphasized the importance of maintaining the practice of breastfeeding, and of reviving the practice where it is in decline, as a way to improve the health and nutrition of infants and young children. In 1981, through resolution WHA34.22, the World Health Assembly adopted the International Code of Marketing of Breast milk Substitutes (Breast milk Substitutes Marketing Code) (WHO, 1985). The Code was adopted under Article 23 of the WHO Constitution. It is not binding on Member States (WHO, 1981; Richter, 2001:64). The Breast milk Substitutes Marketing Code responded to the substantial health problem created by the success of TNCs in marketing infant formula in LMICs as a substitute for mothers’ milk, thereby adversely affecting babies’ nutrition. The Code was negotiated with input from leading breast-feeding advocates and interested industries. Landon et al. (2017) comment that, in participating in negotiations leading to the Code, “the infant formula companies were engaged in a dual strategy; on the one hand participating in the Code negotiations, and on the other hand seeking to undermine it behind the scenes”.

The Breast milk Substitutes Marketing Code provides inter alia that there should be no advertising of products covered by the Code (Art. 5.1), including by way of “point-of-sale advertising, giving of samples, or any other promotion device to induce sales directly to the consumer at the retail level, such as special displays, discount coupons, premiums, special sales, loss-leaders and tie-in sales” (Art. 5.3). There is no specific mention of cross-border marketing. There is an expectation that “governments should take action to give effect to the principles and aims of this Code, as appropriate to their social and legislative framework, including the adoption of national legislation, regulations or other suitable measures” (Art. 11.1). There is also confirmation of governments’ reporting obligations to WHO (Art. 11.6). Responsibility for monitoring the operation of the Code is said to lie with governments individually and collectively (Art. 11.2), with collaboration by manufacturers and distributors of infant feeding products, appropriate NGOs, professional groups and consumer organizations (Art. 11.2).

A number of resolutions adopted by the World Health Assembly since 1981 refer to the marketing and distribution of breast milk substitutes and clarify or extend elements covered in the Code. For example:

- Resolution WHA 39.28 clarifies that maternity wards should purchase breast milk substitutes through normal distribution channels, and not receive free or subsidized supplies from companies.
- Resolution WHA 49.15 urges Member States to ensure that complementary foods are not marketed in ways that undermine exclusive and sustained breastfeeding.
- Resolution WHA 54.2 updated the recommendations on exclusive breastfeeding to 6 months instead of 4–6 months.
- Resolution WHA 58.32 urges Member States to ensure that nutrition and health claims are not permitted for breast milk substitutes.

The 2016 resolution on ending inappropriate promotion of foods for infants and young children (Resolution WHA 69.9) urges Member States, manufacturers and distributors, health-care professionals and the media to implement new WHO Guidance recommendations that contain a number of implications for the Code (WHO, 2017b).

In 2020, a status report by WHO, UNICEF and the International Baby Food Action Network (IBFAN) found that:

- 136 (70%) of 194 WHO Member States had enacted legal measures with provisions to implement the Code;
- of these, 25 countries had measures substantially aligned with the Code;
- a further 42 had measures which are moderately aligned;
- 69 had included only some provisions;
- 58 had no legal measures at all.

The status report found that “while progress has been made, far too few countries have legal measures in place to effectively stop marketing that undermines breastfeeding. Countries should analyse and address weaknesses or gaps in their existing legislation and act accordingly” (WHO, UNICEF, IBFAN, 2020). The status report recommended that countries should identify and address weaknesses in their legislation, should allocate proper budgets for implementation of laws, and “should establish robust and sustainable monitoring and enforcement mechanisms to implement national laws and regulations. Such mechanisms must involve all relevant government agencies, be adequately funded, and allow for public engagement and scrutiny, including through the periodic release of implementation reports” (WHO, UNICEF & IBFAN, 2020).

7.6 WHO Framework for implementing recommendations on the marketing of foods and non-alcoholic beverages to children

In 2010, WHO’s Member States endorsed a set of 12 recommendations on the marketing of foods and non-alcoholic beverages to children, including cross-border marketing (WHO, 2010b). The recommendations are directed to state action to “reduce the impact on children of marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt. ... Given that the effectiveness of marketing is a function of exposure and power, the overall policy objective should be to reduce both the exposure of children to, and power of, marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt” (WHO, 2010b). Options include a comprehensive ban on all unhealthy food marketing to children or a stepwise approach to implementation. The banning of such marketing, at least in places where children gather, is recommended.

A Framework for implementing the set of recommendations on the marketing of foods and non-alcoholic beverages to children has also been developed by WHO as a form of technical assistance to Member States (WHO, 2012). The Framework suggests that the impact of marketing to children results from the combination of “exposure” (i.e. the reach and frequency of the marketing message) and “power” (i.e. the creative content, design and execution of the marketing message). The Framework proposes a virtuous cycle approach of policy development, implementation, monitoring and review, and revision. As part of the policy development stage, it advises states to consider a situational analysis to determine where the problem lies in terms of unhealthy eating by children and the preponderance of marketing which is affecting children’s eating. The Framework poses options for the states implementing a comprehensive ban or stepwise approach to restricting

unhealthy food marketing to children. To this end, it provides a checklist for states to consider in designing policy measures, including which children should be protected, which communication methods and techniques should be regulated, which marketing is addressed to children, and which foods should be covered. The design of the policy should arise through a process that involves all relevant government actors as well as external parties. It is envisaged that the industry be included, but “it is important for governments to protect the public interest and avoid any conflict of interest” (WHO, 2012:32). The Framework envisages that the policy model developed by government may be implemented through statutory regulation, government guidelines or co-regulation – or most likely, a combination of these methods. It emphasizes the importance of effective implementation, including by appointing a specific agency to be responsible for monitoring the exposure of children to unhealthy food marketing, and for ensuring that public information and education campaigns bring the new regulation to the attention of the public. Effective enforcement is also vital. The Framework provides detailed guidance for states about how to monitor the operation and effectiveness of their regulatory interventions, their achievement of their policy objectives of reducing exposure of children to unhealthy food marketing and their ultimate aim of improving children’s health.

On the issue of cross-border marketing, it states that there can be difficulties regulating certain forms of inflowing marketing. It therefore proposes that the regulation of outflowing marketing might be feasible, with this being underpinned by agreements between two or more states to apply basic standards against marketing materials created in their jurisdiction. A state may have different standards applying to media created and received within its own jurisdiction, but it will ensure that the media exported to other countries fulfills the standards of those particular countries. An example is given of a network of European countries working together in this manner (WHO, 2012:38).

The Recommendations and the Framework have been criticized for “an overreliance on voluntary pledges, the exploitation of loopholes by food, beverage and restaurant industries and insufficient government regulation and enforcement” (Kraak et al., 2016, p. 541). In 2016, the WHO Commission on Ending Childhood Obesity found that WHO Member States had failed to give adequate attention to the Recommendations and the Framework, and that more needed to be done to implement the Recommendations and deal with cross-border marketing (WHO, 2016b). Industry actors had been found not to have implemented a global pledge to engage in responsible marketing to children. There was work to be done in establishing standardized monitoring and reporting frameworks (Kraak et al., 2016). As of 2018, there had been poor implementation of restrictions on marketing to children by WHO Member States (United Nations, 2018). WHO’s Regional Office for Europe found an over-use by states of self-regulatory approaches and too little action on cross-border marketing at the EU level (WHO Regional Office for Europe, 2018).

WHO is looking at increasingly used digital marketing technologies and potential ways to limit their impact (WHO Regional Office for Europe, 2016).

7.7 Conclusions

Sustained attention and work by national governments, the public health community and WHO to limit the availability and promotion of tobacco products, with specific attention to the cross-border aspects of tobacco production and marketing, has produced results – not only in the outcome of the ongoing global reductions in tobacco use and exposure, but also in the various indicators of success through the means by which this reduction has been pursued, including persuading numerous countries to ban cross-border marketing of the product. The lesson from the tobacco example is that, particularly for cross-border marketing, it is important to have binding and enforceable international commitments that serve as a limit and counterbalance to trade and investment treaties,

and that give states a basis to cooperate in regulating transnational corporations. Furthermore, the FCTC demonstrates the effectiveness of having clear treaty aims which are followed up by national effort and legislation, with bilateral and multilateral support. This combination of domestic regulation, underpinned by international cooperation, is the model needed and being pursued across other consumer commodities, including food and non-medical cannabis. In addition to strong national legal frameworks and multilateral mechanisms, governments may consider co-regulatory approaches, and industry may adopt self-regulatory measures. Actors with conflicts of interest should not be directly involved in the policy-making process, which should be guided and formulated by public health interests based on public health evidence.

Reducing the harm from alcohol by regulating cross-border alcohol marketing, advertising and promotion

Key messages

Controlling cross-border marketing of an attractive but problematic item of consumption requires substantial consensus and sustained attention, at both national and bilateral/multilateral levels.

There is an International Code of Marketing of Breast milk Substitutes but so far no international code on the marketing of alcohol.

An important part of the relative success of tobacco control has been the commitment of national governments to create an international instrument with binding commitments and to use statutory regulation to control marketing, including cross-border marketing.

Governments have been supported by public health-oriented NGOs. Governments have given considerable support to each other through WHO and the activities of the FCTC.



8. Options for regulating cross-border marketing of alcohol

8.1 Introduction

This Section sets out domestic and multilateral approaches to reduce cross-border marketing of alcohol. The options set out below rest on several premises:

- bans and comprehensive restrictions by domestic regulation on alcohol marketing (including cross-border marketing) are impactful and cost-effective to achieve the goals of reducing harmful use of alcohol and overall levels of consumption in accordance with the Global alcohol strategy, the NCD Action Plan and the Sustainable Development Goals;
- bans and comprehensive restrictions on alcohol marketing protect minors, dependant persons and other target groups from alcohol marketing, and prevent normalization of alcohol, a toxic, psychoactive substance with dependence-producing propensities;

- states have the authority to regulate alcohol marketing, including cross-border marketing, through domestic regulation of outbound and inbound marketing so long as they adhere to their international obligations;
- states are likely to address the issue of cross-border alcohol marketing in the context of a broader strategy of controlling alcohol marketing and reducing alcohol-related harm;
- for most states, addressing cross-border marketing in order to reduce alcohol-related harm will involve some increase in, and strengthening of, their current regulation;
- in some contexts, co-regulation by civil society and industry might be productive for government efforts to ban or restrict cross-border marketing;
- the alcohol industry, social media platforms and other economic operators in this area should adhere to bans and comprehensive restrictions on alcohol marketing where in place, and cease to engage in marketing practices, including in a cross-border context, particularly, but not only through the Internet and social media platforms, which reach minors and dependent drinkers, and normalize drinking or denormalize abstinence; and
- collaboration between states can enhance national regulatory interventions around alcohol marketing and cross-border marketing.

8.2 Domestic regulation of cross-border marketing

Bans or restrictions on cross-border marketing can be enforced effectively against different actors in the supply chains of alcoholic beverages and alcohol marketing. Typically, a variety of different domestic laws can be used for enforcement of bans or restrictions on marketing.³⁴ These typically include:

- Laws governing the alcohol supply chain, including
 - licensing laws governing manufacturers, distributors, retailers and licensed venues;
 - tax administration laws (governing customs clearance/release of excise goods into the marketplace).
- Laws governing media
 - broadcasting laws;
 - advertising and consumer protection laws;
 - laws governing digital services including content moderation and online safety laws;
 - data protection laws;
 - laws governing internet service providers (ISPs).

The approach to addressing cross-border marketing will differ from country to country based largely on pre-existing legal frameworks and traditions, including the extent to which existing laws or regulations can be utilized for purposes of implementation. In some jurisdictions, the issue might be addressed through stand-alone bans or restrictions on alcohol marketing that then need to be interpreted and applied by government agencies in the context of other laws and enforcement approaches. In other jurisdictions, the effects of bans or restrictions on marketing may be elaborated in laws governing those contexts.

Options for regulation at the domestic level are set out in detail below to facilitate consideration of which domestic measures could be put in place. The regulatory development process mapped out below in sub-sections 8.2.1–8.2.3 is intended to inform which of the options might be most suitable to different country contexts, including whether to adopt a complete ban on cross-border alcohol marketing or whether to take a stepwise approach with tranches of restrictions

³⁴ In some instances, imposing a legal limitation on alcohol marketing will be sufficient to trigger application of other laws used for enforcement. In other instances, reform of these more general laws may facilitate implementation of specific legal limitations on marketing.

progressively introduced to reach a position of comprehensive control over cross-border marketing. A comprehensive ban supported by compliance and enforcement measures would be the most effective and efficient way for states to curb cross-border marketing of alcohol.

8.2.1 Collaborative policy processes

As with all government health policy, the development of domestic regulation for cross-border marketing is most effective when it involves all relevant government departments and government actors (Kickbusch & Buckett, 2010). It is advisable to bring into the process all government entities who have responsibility and expertise in the matters raised by cross-border marketing. These include health, broadcasting, telecommunications and technology, finance, trade and foreign affairs, child and young persons' services, justice and others. Collaboration around the development of cross-border marketing regulation also extends to consultation with other states and discussion of ways in which multilateral support can be provided. However, a government entity with a primary focus on public health and welfare should oversee the policy process. A leading principle in the Global alcohol strategy is that public policies and interventions to prevent and reduce alcohol-related harm should be guided and formulated by public health interests and based on clear public health goals. There is a widespread opinion among public health experts that organizations or persons with a conflict of interest should not be involved in the development of these policies and regulations (Babor et al. 2013; WMA, 2015). Due to clear conflict of interest, the scope of involvement by economic operators in the alcohol beverages trade should be limited to due process requirements, notice and comment, and other transparency obligations.

8.2.2 Key features of effective regulation of cross-border marketing of alcohol

To be effective, regulation in the context of cross-border marketing must have certain essential features, as follows.

- A clear statement of the public health goals to be achieved through the regulation must be created by the government. The development of targets to test whether these goals have been achieved through regulation is also essential.
- Strong, workable statutory rules which are designed by government and public health interests to achieve the agreed regulatory goals must be written. Appropriate consequences must be prescribed for a breach of the rules, which include criminal, civil or administrative penalties.
- A rigorous statutory system for compliance and enforcement must be established – including mechanisms for monitoring compliance with the rules, investigation, adjudication on breaches and imposition of penalties – with the support of all relevant actors.
- A process must be established for ongoing monitoring of the operation of the regulation, review and revision of the regulatory system, with sharing of the information gained with other states (WHO, 2012; Grammatikaki et al., 2019).

8.2.3 Designing the rules: principles underpinning the national regulation of alcohol marketing, including cross-border marketing

Options for regulating cross-border alcohol marketing at the national level are set out in sub-section 8.2.4 below. These options are built on the following assumptions about the conditions which should be in place for creating a successful regime for regulating cross-border marketing of alcohol.

(a) Multiple regulatory levers to be used

It is likely that multiple regulatory interventions will be needed to achieve effective restrictions on cross-border marketing. Although a complete ban may be central to achieving such a comprehensive restriction, other regulatory interventions are likely to be needed to address the particular challenges of regulating a cross-border problem in the current highly globalized, technologically sophisticated and organizationally complex world. For instance, good enforcement machinery, such as a scheme for issuing take-down or blocking notices to online media sites, is critical.

Furthermore, the types of regulatory interventions which can be used extend beyond the traditional “command and control” rules in the form of prohibitions on certain marketing conduct and the creation of offences for the breach of the prohibitions. Other levers are also available (Gostin & Wiley, 2016) and are explored below. These include using the state’s power to license or register actors, thereby according them privileges to do certain acts which are off-limits to those who are unlicensed or unregistered. The taxation system may also be used to good effect – for instance by disallowing tax deductions from profits for alcohol marketing in general, or for cross-border alcohol marketing, or allowing tax deductions to civil society organizations which advocate in the public interest against alcohol marketing. A state’s powers to collect and analyse information about individuals and corporations within the society may also be used to good effect.

(b) Statutory regulation is most effective

The interventions discussed in sub-section 8.2.4 assume a model of statutory regulation – i.e. regulation designed, implemented and enforced through the usual processes for law-making and administration. Some of these interventions may be led by government but they may be administered or enforced by a tightly demarcated and supervised co-regulatory intervention and arrangement with other stakeholders. Actors with conflicts of interest should not have a role in the policy-making process, which should be guided and formulated in accordance with the Global alcohol strategy by public health interests based on public health evidence. A highly productive role for alcohol corporations is to act in ways that do not undermine the implementation of public policies and interventions to prevent and reduce harmful use of alcohol by: 1) adhering to current regulations and extending this to their cross-border marketing activities of alcohol; 2) activating all means within their control such as deactivating sharing, liking and other options for P2P engagement on their digital platforms; and 3) if necessary and in the absence of statutory regulations, by self-regulatory action.

(c) Constitutional and legal context matters

The constitutional and legal context in a Member State will determine whether a particular option is suitable or available for that country. In federal systems, the division of law-making powers between the centre and sub-units of government will be relevant to determining whether and how specific interventions can be implemented.

Options presented below are designed to take account of questions relating to the sovereign right of states to regulate the marketing material created or received in their territory, and the jurisdiction of such a state to legislate and enforce its laws. There are limits on a state enforcing its laws outside its territory and, consequently, cross-border regulation of alcohol marketing will be easiest if states focus on targeting entities (natural persons and corporations) within their territory (based on territoriality jurisdiction (see sub-section 5.2)) and if states provide assistance to each other in respect of cross-border alcohol marketing. For these reasons, most of the options discussed below are constructed in order to apply to cross-border marketing as follows:

- outbound cross-border marketing (marketing created in or distributed from country A and received in country B, etc.);
- inbound cross-border marketing (marketing created in or distributed from country B and received in country A).

(d) Choosing the marketing to be covered

Of the options discussed below for addressing cross-border marketing, some can be drafted to apply to all alcohol marketing, or they can be reworked to cover specific forms of cross-border marketing if only partial restrictions are intended at that point in time. There may also be some forms of marketing which need to be subject to a specific rule that applies only to that form of marketing. For instance, sponsorships are a form of marketing which may be best dealt with under a specific rule.

Where states seek to implement a comprehensive ban on cross-border marketing, the experience with tobacco marketing regulation suggests that such rules would work most effectively where a broad definition of alcohol marketing is used in order to attempt to encompass all forms of cross-border alcohol marketing (see the definition in Section 1). A non-exhaustive general definition, rather than a listing of specific forms of marketing, is advisable so that the regulation is not easily subverted. Subversion is not difficult to imagine given the huge range of ways in which alcohol is marketed and, more particularly, the multitude of advertising forms which rely on digital technology. An exhaustive listing approach could also be undermined by either the “tweaking” of existing forms of marketing in order to take them outside the statute’s definitions or the development of completely new forms of marketing. That said, part of the process of regular review of alcohol marketing regulations and their operations is to identify instances where marketing modalities have changed and the regulation is no longer adequate to the task of regulating.

A broad definition of alcohol marketing would cover cross-border marketing in most of its forms, including advertising in magazines and newspapers, advertising or embedded marketing on television or radio (whether broadcast or streamed), or advertising using any online technologies (Internet-based, electronic or mobile technologies), including websites, social media, direct messages or applications. A broad definition would also cover representations of products on e-commerce sites or applications, as well as manifestations of sponsorship, but not necessarily the making of the sponsorship arrangement. Restrictions on the making of a sponsorship arrangement would be likely to require separate regulation (see sub-section 8.2.4(c)). The definition of alcohol marketing should be drafted to encompass not only the marketing of specific products but also of brands, including for the corporations which own the brands. “Freebies”, gifts, clothing and tangible promotional items should also be covered. Given the rise of low-alcohol and no-alcohol products, it is important that restrictions extend to the marketing of these lines when they use the same branding, colours or design as alcoholic beverages.

(e) Targeting a range of actors

One challenge in regulating cross-border marketing is that the creators or “publishers” of the marketing may not be within the territory of the regulating state. Traditionally, marketing regulation has been directed to the content creator or content publisher. This is a particularly pertinent model for regulating domestic marketing, created and received in the same jurisdiction. However, as indicated, a state wishing to regulate cross-border marketing published outside its territory and received in its territory could extend its ban to publishers outside its territory. There may be issues of its ability to enforce the ban outside its jurisdiction but, to overcome these difficulties, regulation may be effectively directed to other actors in the chain of transmission, with a focus on those inside the territory of the regulating state. Brand extensions and other types of surrogate advertising must also be covered by the regulations.

Internet-based marketing, while creating regulatory challenges, may also present opportunities for regulation because of the string of actors involved from the point of “publication” to the point of “receipt”. Each of these actors represents a regulatory target, according to Kenyon & Bosland (2007), writing in the context of cross-border tobacco marketing. They suggest that there could be

regulation of: the content producer; the content publisher; the content host; the content navigator; the access host; and the end-user (Kenyon & Bosland, 2007). They explain that content producers and publishers include advertising companies, media buyers and planners, as well social media platforms and various associated services (Kenyon & Bosland, 2007). The regulatory options below show the potential for a state to find an actor that can be targeted within its territory in its controls of cross-border marketing of alcohol.

One of the concerns with digital marketing is the control of user-generated content. As the options below discuss, industry actors should be required to remove all means for users to utilize the company's platform to create and share material with other users. This responsibility would extend to removing the capacity for sharing or liking of content, not encouraging users to create hashtags, and not creating opportunities for interaction between the brand and users or between users (such as by calling for users to post photos of themselves at concerts sponsored by the brand). Alcohol companies have demonstrated their willingness to deploy intellectual property law to control third parties, including other alcohol companies, who use aspects of their brands (colours, shapes, names) in ways which are unacceptable to the brand (World IP Review, 2017). Intellectual property law could potentially be used by the same companies for stated public health goals in relation to shared media content.

8.2.4 Designing the rules: options for banning or restricting cross-border marketing of alcohol

Multiple interventions could be used to ban or restrict cross-border alcohol marketing. Some of these options would remove all cross-border alcohol marketing and some could be used in a stepwise manner to implement progressively more restrictions on alcohol marketing.

(a) Ban on distributing alcohol marketing

One option for states wishing to ban cross-border marketing of alcohol is to make it an offence for a person (natural or corporate) to distribute alcohol marketing. Such a law should cover outbound cross-border marketing (i.e. marketing created in the jurisdiction of country A and distributed in country B, etc.) and inbound cross-border marketing (i.e. marketing received in the jurisdiction of country A but disseminated from country B). A further extension of the offence could cover marketing distributed from country B to country C if the marketing is distributed *by nationals* of country A. The offence should be accompanied by potent fines (criminal, civil or administrative) which are considerable in size and therefore able to dissuade people from breaching the rule.

The ban covers the act of "distributing", which could extend to publishing, broadcasting or transmitting by electronic means or other acts relating to these modes of communication. The ban could also be drafted to cover a broad category of alcohol marketing. The offence could apply to individuals as well as corporations, such that social media influencers would also be covered.

The experience from Norway discussed in Section 6 suggests that comprehensive bans, if properly enforced, do have the potential to reduce sales of alcohol. The experience from Lithuania, Norway and the Russian Federation also shows the importance of the proper surveillance and enforcement of such regulation, as well as its extension to all marketing – including user-generated content if the user-generated content can be demonstrated to have been enabled, encouraged or supported by the alcohol companies (see discussion of enforcement at sub-section 8.2.6).

(b) Partial restrictions on distributing alcohol marketing

The option of creating an offence of distributing certain categories of alcohol marketing could also be used as a partial restriction on alcohol marketing. The offence, as with option (a), would

relate to distributing marketing in the prohibited forms and would cover inbound and outbound marketing. A further extension of the offence could cover marketing distributed from country B to country C, if the marketing is created or distributed *by nationals* of country A. This offence should also be accompanied by fines (criminal, civil or administrative) which are considerable in size and therefore able to dissuade people and corporations from breaching the rule.

These partial restrictions are usually directed to: 1) certain forms of alcohol marketing; 2) limiting the volume of alcohol marketing; or 3) banning certain content or subject matter. These partial restrictions are common and can make some contribution to achieving a regulatory goal of protecting the population from cross-border alcohol marketing. However, restrictions on certain forms of marketing, on the volume of marketing or on the content of the marketing will make less of a contribution than a ban on all alcohol marketing. Most current alcohol marketing regulation takes the form of partial restrictions, which have not demonstrated complete success in protecting subpopulations – in particular minors – from exposure to alcohol marketing. A patchwork approach ultimately makes the enforcement of domestic laws more difficult.

Restrictions on the forms of marketing which are permitted and which block alcohol marketing entirely in a specific media format are more effective than volume restrictions which seek to reduce the amount of alcohol marketing in a particular media format by use of time limits or audience composition limits. The evidence discussed in Section 6 demonstrated that these types of limits are not the strongest options as they often do not correlate to the actual engagement of consumers with the media format. For example, rules prohibiting alcohol marketing during certain hours on television are often set in order to push alcohol marketing to timeslots when many teenagers are watching television (Jernigan et al., 2017).

Content restrictions, which are similar to the French Loi Évin, as originally passed, and which use a “negative list” approach, prohibiting all content except that which is explicitly permitted, have the potential to make a greater contribution than the type of content restrictions found in many self-regulatory systems. In the self-regulatory systems, the content rules may not even address the problematic marketing (such as having a prohibition only on marketing “targeting” children when the issue is marketing that appeals to or is seen by children), and there is considerable room for disagreement about the interpretation of the boundary of the rules (such as whether an advertisement “associates” alcohol consumption with social success). Rules like those in the Loi Évin may not limit exposure, but audiences are protected from more suggestive, lifestyle-oriented alcohol marketing (Gallopel-Morvan et al., 2017; Reynaud et al., 2015). Such rules work best if they are clear and simple as to the content which is permitted or prohibited. Content restrictions could also be applied to the display of products and other marketing strategies used by e-commerce platforms.

(c) Partial restriction: ban on alcohol sponsorship

One option is for there to be a prohibition on sponsorship by any alcohol brand of any sporting, musical, cultural, community or other person, organization, event, cause or object. This would include, for example, any branding of sporting events or teams, or individual players or venues where sports are played, or private organizations associated with sports. The prohibition would apply where either the sponsor or the recipient of the sponsorship – or both – are within the territory of the regulating state. Again, penalties (whether criminal, civil or administrative) should be applied to those who provide sponsorship in breach of the ban.

Promotion of a sponsorship arrangement would be caught by bans (option (a) above) or restrictions (option (b) above) on alcohol marketing. This option (c) is directed to the making or existence of the sponsorship arrangement itself. If country A prohibits alcohol sponsorship of events, causes or organizations within its borders, the cross-border distribution of “information” about that sponsorship

(e.g. via the streaming of a sponsored concert) would also be free from alcohol marketing, thereby contributing to a reduction in the flow of outbound cross-border marketing.

Successful bans on sponsorship in relation to tobacco have been accompanied by a mechanism for substitute funding for the teams, organizations or events which lose the financial benefit of the tobacco sponsorship and enable them to keep operating until substitute funding can be identified. This approach was also taken with alcohol marketing in 13 Australian sports for three years but, with the ending of the government subsidy, multiple sports reverted to accepting alcohol sponsorship. Furthermore, the four major sports in Australia (cricket, rugby league, rugby union and Australian Rules football) did not participate (Schetzer, 2014; Davey, 2015).

8.2.5 Designing the rules: other regulatory options in addition to banning or restricting cross-border marketing of alcohol

Bans or restrictions on alcohol marketing could be enhanced by other regulatory interventions which also support the achievement of the regulatory goals. Several options are listed in this sub-section.

(a) Warnings and counter-advertising on alcohol marketing

In countries which continue to allow some cross-border alcohol marketing, but which are concerned about the effects of such marketing on their populations, one option would be to require alcohol marketing received in the country to carry information or warnings about the risks associated with alcohol consumption. Marketing not displaying the required warnings would not be allowed to be distributed to consumers in the territory. The warnings might be required to appear on the advertising or immediately before the advertising is shown, with an indication that alcohol marketing is about to appear and warning about the risks of consumption. The design of the warning or counter-advertising should be the responsibility of the government and not an industry actor with a conflict of interest. There have been poor public health results from industry-designed “Drink responsibly” messaging on products or marketing (Barry & Goodson, 2010; De Jong et al., 1992; Pantani et al., 2017; Pantani et al., 2012).

The cost of including the messages should be borne by the industry, with appropriate consequences for distributors who do not include the warnings on their alcohol marketing (Harper & Mooney, 2010), including criminal, civil or administrative penalties. For publishers or broadcasters who operate under a licence, the failure to display the warning message could be treated as a breach of their licence conditions, with their licence at risk if there are repeated breaches.

The experience from tobacco suggests that counter-warnings can be effective in reducing consumption. “Truth” campaigns targeted at young people in California and Florida about the tactics of the tobacco industry and the effects of smoking contributed to reductions in smoking in both states (Sly, 2001; Farrelly, 2005). There is also some evidence of the effectiveness of counter-advertising for alcohol, such as in Thailand during the three-month Buddhist Khao Phansa period³⁵ (Jirarattanasopha, Witvorapong & Hanvoravongchai, 2019). There is evidence that suggests that warnings on products can be effective, with the emerging body of evidence about alcohol warning labels providing some support for the effectiveness of including warnings on marketing (Zhou et al., 2020; Kokole, 2021). The success of any such measure will depend to a significant extent on the government designing a message of sufficient visibility and impact. This has been an area of intense concern regarding alcohol warning labelling, in which the dominance of industry labelling schemes has produced ineffective warnings (O’Brien, 2019).

³⁵ Khao Phansa is the day on which the three-month annual retreat for monks begins. The period is associated with abstinence from evil behaviour and also features a number of festivals.

(b) Notification to consumers of paid marketing

A good regulatory option is to require all marketing which is paid for or remunerated by the alcohol industry, directly or indirectly, to be identified in a manner which is likely to come to the attention of the consumer. The form and content of the notification should be set by the government. Failure to apply the notification could be subject to a penalty.

At a fundamental level, the disclosure of this information avoids consumers being misled about the nature of the relationship between the influencer and the alcohol industry, and the independence of the influencer's comments. This principle applies to any marketing, and not just that by social media influencers. It pre-dates the rise of social media and has been accepted in relation to marketing content on television, radio and in print media for many years. It is a general principle based on "truth" in advertising.

(c) Removal of tax concessions for alcohol marketing expenses

In many market economies, corporate expenditure on marketing is tax-deductible. This is a benefit for corporations as it reduces the amount of their income which is taxable by the state. This tax deduction could be seen as a state subsidy of these corporations, which includes alcohol producers, distributors and retailers – any company which is engaging in alcohol marketing, whether for a domestic or cross-border audience. A proposal which has frequently been raised in relation to alcohol and other unhealthy commodities would be to remove the tax-deductibility of their marketing expenditure (Taylor, 1994), on the assumption that this would incentivise companies to reduce expenditure on alcohol marketing.

Evidence of the effectiveness of this regulatory approach is not fully established as the measure has not been implemented in respect of alcohol. Modelling on such a measure in relation to fast-food advertising suggested that a 40% reduction in advertising exposure among children would be possible if the tax concession was removed (Chou, Rashad & Grossman, 2008). Assuming the modelling is correct, such a measure would be most successfully deployed in countries where the major alcohol producers, distributors and marketers pay large amounts of tax. As many multinational corporations structure their corporate and tax affairs to reduce tax liability, the effectiveness of the measure would be undercut if it applied where a corporation paid little taxation. There are multilateral attempts to address concerns about transnational corporations not paying adequate taxation in the jurisdictions in which they operate (OECD, 2019; Partington, 2021).

(d) Restrictions on the use of personal information or data for the purpose of targeted alcohol marketing

Personal data, harvested from interaction with individuals, including their online activities, is being used to target cross-border alcohol marketing at individuals, including minors and heavy drinkers. Therefore, one avenue for reducing the impact of digital alcohol marketing and the targeting of at-risk populations is to regulate the collection of personal data for the purposes of marketing.

Recent developments in data protection and privacy regulation may provide some guidance for states interested in limiting digital marketing exposure that targets specific subpopulations (see subsection 6.7). In particular, the EU's GDPR provides a model for states outside of the EU who want to provide greater personal data protection rights to individuals. However, for some states, providing individuals with the right to object to personal data collection for marketing purposes may be insufficient. Consequently, option (e) is provided below for states interested in limiting exposure to targeted alcohol marketing in a more expansive and substantive manner.

(e) A total ban on the collection and/or sale of personal data for the purpose of targeted alcohol marketing.

States could place a ban on the collection and use of personal data for the purposes of alcohol marketing. Such an approach may not prohibit the collection of data for other forms of targeted marketing. However, it would prohibit data custodians and data processors from collecting, using or sharing personal data for alcohol marketing purposes. In either approach – option (d) or option (e) – personal data should be defined broadly. In line with Article 4 of the GDPR, personal data should include “any information relating to an identified or identifiable natural person”.

Restricting the collection and use of personal data provides states with an opportunity to limit the more problematic forms of digital marketing – namely, those with the potential to target at-risk groups, including young people, as well as heavy and dependent drinkers. Option (d) provides protection only to persons capable and willing to assert their rights. In other words, it will protect only those individuals who either: 1) do not consent to the collection of personal data, or 2) object to the use of personal data for marketing purposes. Consequently, a broader approach, which effectively disables targeted marketing – by banning the collection and use of personal data for alcohol marketing purposes – may be preferable.

8.2.6 Compliance and enforcement

Rules on alcohol marketing are most effective when supported by: 1) strong mechanisms for garnering compliance with the rules; 2) monitoring and surveillance to ensure that compliance is occurring; and 3) stringent procedures for taking vigorous enforcement action against noncompliant actors with a view to deterring further noncompliant conduct (Grammatikaki et al., 2019). Compliance and enforcement processes must take into account changes in marketing practices, including the rise of automated marketing (also called “programmatic marketing”) whereby digital marketing distribution is performed by software. The options set out below for improving compliance and enforcement are responsive to the changing digital environment and include a licensing system to remove the right of noncompliant actors to trade in alcohol and a full disclosure obligation on alcohol companies about their marketing practices. Each of the compliance and enforcement requirements discussed in this sub-section are essential to the success of any regulation of cross-border marketing.

Furthermore, central to effective compliance and enforcement is the existence of an independent authority, with a full set of powers and resources, to be designated to administer, monitor and enforce cross-border marketing regulation (PAHO, 2017). The separation of this agency from the marketers whose conduct is to be regulated is important to the effective operation of any regulation. The regulator needs to be free from actual or perceived conflicts of interest and needs to have the resources available to monitor marketing activity, demand information and documents from alcohol marketing companies, and take strong action against noncompliant actors. If governments adopt co-regulatory approaches and interventions, they should enshrine oversight mechanisms to ensure compliance by non-state actors. Lapses in compliance and enforcement, whether on the part of governments or non-state actors, undermine the effectiveness of regulation.

Options for securing compliance include the establishment of a pre-clearance process for all alcohol marketing, including at least outbound cross-border marketing (whereby the marketing is assessed for compliance with the relevant rules before it is distributed to audiences or third parties who will, in turn, deliver it to audiences), as currently exists in some countries for broadcast advertisements (Grammatikaki et al., 2019). As part of a co-regulatory arrangement, an industry trade association or a civil society public interest group may have responsibility for operating a pre-clearance scheme in accordance with the marketing rules set out in government regulation.

There should also be a mechanism for complaints to be made to the regulator from members of the public or civil society groups about instances of alleged non-compliance that they have identified. Where instances of alleged non-compliance are reported, either through a public complaints procedure or monitoring, there must be a suitable process of adjudication involving independent experts – including from the field of public health. This adjudication process must be prompt in order to prevent the distribution of infringing marketing from continuing. Findings of non-compliance should result in substantial penalties. These could be criminal penalties, but they could also be civil or administrative in nature. Compliance with the penalties must be mandatory. The penalties could include advertising of breaches, apologies, fines and restrictions on future freedom to advertise or to operate under licence. There must also be complete public transparency about the enforcement process, with timely public reporting of information regarding complaints, investigations, and/or rulings on any breaches of the advertising regulations (Grammatikaki et al., 2019).

There are challenges with ensuring compliance and enforcement of marketing bans and restrictions on cross-border alcohol marketing because: 1) much marketing is fleeting (especially on social media platforms); 2) marketing may be communicated to individuals and not to a mass audience; and 3) the quantity of the marketing may make it challenging to monitor. Some further, more specific options for securing compliance and conducting enforcement are set out below.

(a) Conditions on licences of alcohol producers, importers and/or distributors relating to alcohol marketing

One option for states is to adopt a licensing system that applies to alcohol producers, importers or distributors, whereby a breach of the state's cross-border alcohol marketing laws by the licensee or by a related entity (such as a parent company to the licensee or a party contracted by the licensee) would constitute a licence breach by the licensed party. Consequences of the licence breach could include revocation or suspension of the licence (WHO, 2007:14). Other consequences could be the imposition of additional conditions on the licence. The licensee could be held responsible for any marketing of its product in the territory, whether the marketing is by the licensee itself or by any other actor company controlled by the licensee (onshore or offshore).

This proposed system is based on the one contemplated to support the implementation of the FCTC in relation to cross-border advertising, promotion and sponsorship (see sub-section 7.1). This type of licensing regime could make a good contribution to increasing compliance with cross-border alcohol marketing laws because it would apply to local actors and make them bear significant responsibility for marketing flowing into the jurisdiction, including from persons and entities outside the jurisdiction. Here, the regulatory target is the local actor, so problems of cross-border enforcement are averted.

One challenge that arises in this context is whether domestic operators in the alcohol supply chain have effective control over incoming marketing that violates bans or restrictions. In this respect, to ensure protection of rule of law and that liability is appropriately attributed, natural and legal persons are only held liable for acts that are within their control. For example, a distributor might not be held liable for marketing created and distributed from overseas that enters the state in which a distributor has rights to distribute a product.

(b) Artificial intelligence for monitoring alcohol marketing

There have also been suggestions that artificial intelligence could be deployed to assist with monitoring for compliance, recognizing the tremendous effort and possible ineffectiveness of random checking by a regulatory authority. Kuntsche et al. (2020) describe the development of a deep learning (artificial intelligence) algorithm that can passively and automatically detect the depiction of alcoholic beverages (e.g. beer, wine and/or spirits) in digital imagery. Norman et al. (2021) conducted preliminary testing of the accuracy of this algorithm on social media imagery

containing alcoholic beverages. Despite highlighting improvements that need to be made before it can be effectively implemented, the authors describe two key practical implications for the use of such technology – one reactive and one proactive. First, as a reactive strategy, the authors note that the automatic detection of alcoholic imagery (which would detect a substantial proportion of alcohol advertisements) could be used to monitor centrally advertisements on digital platforms (e.g. those heavily trafficked to persons under the legal alcohol purchasing age), thus improving capacity to enforce regulatory breaches. Second, as a proactive strategy, such technology could be used actively to screen and filter out alcohol-related content while browsing online (delivered through, for instance, a web browser plug-in). This could serve as an optional but additional layer of protection against advertising exposure to at-risk cohorts.

(c) Disclosure of alcohol marketing practices and expenditure

Countries could require alcohol producers, distributors, importers and retailers to disclose to the government their annual expenditure on alcohol marketing. The disclosure could also be made a condition of the licence (option (a)). The disclosure should cover, in total and by brand (for alcoholic beverages, non-alcoholic and low-alcohol beverages sold in connection with any of the alcoholic beverage brands), information about:

- the kind of advertising, promotion or sponsorship, including its content, form and type of media, used by the company;
- the placement and extent or frequency of the advertising, promotion or sponsorship used by the company;
- the identity of all entities involved in the advertising, promotion and sponsorship of the company's products, including subsidiary companies, advertising and production companies, social media influencers and other intermediaries;
- in the case of cross-border advertising, promotion or sponsorship originating from one territory, the other territory or territories in which it is intended to be, or may be, received;
- the use of online behavioural advertising or targeted marketing using data collected by the company or by others to which the company has access (what information was used, how it was used, what impact it was assessed as having); and
- the amount of financial or other resources used for the advertising, promotion or sponsorship (WHO, 2008a).

Once provided, the information is available to the government for analysis in order to monitor the marketing practices relating to alcohol and to determine the adequacy of the country's current marketing regulation, particularly in relation to cross-border marketing. Subject to protection of any confidential information, the information should be provided to the public.

This option is modelled on the similar obligation in the FCTC Art. 13.4(d) and the Article 13 Guidelines for Implementation (WHO, 2008a). The option proposed here extends to seeking information about the use of online behavioural advertising or targeted marketing using data acquired by the alcohol companies. Disclosure about these matters is vital in view of: 1) the fast-moving, transitory nature of advertising on digital platforms; 2) the concerning revelations about the targeted exposure of minors and others through these platforms; and 3) the unwillingness of some platforms to respond adequately to concerns about this advertising. This option also seeks information about the marketing of no-alcohol or low-alcohol beverage brands which are sold under the same branding as one or more alcoholic beverages. This is essential because of the problem of brand-stretching which is happening via no-alcohol or low-alcohol beverages. The purpose of these disclosure requirements is to bring some transparency to the marketing practices of alcohol companies in order to inform governments about the marketing that is occurring in and from their territory. The monitoring of product marketing is a difficult and labour-intensive exercise. The positive disclosure of information

facilitates the surveillance and collection of information by governments. There is continual innovation in marketing practices, and disclosure allows governments to understand these changes. Using this information, governments can better understand the level of exposure of persons within their territory to alcohol marketing and the adequacy of the country's regulation to meet its goals of protecting the population or subpopulations from alcohol marketing. In the context of the FCTC, it has been said that "disclosure requirements may have the added benefit of discouraging the tobacco industry from engaging in tobacco advertising, promotion or sponsorship in which it might otherwise engage" (WHO, 2008b:10).

Some examples of disclosure requirements regarding traditional alcohol marketing have occurred on an ad hoc basis and have enabled assessments to be made about industry conduct and the adequacy of regulation. In the USA, the Federal Trade Commission (FTC) has ordered alcohol industry actors to provide information about their marketing, leading the FTC to issue reports about the operation of industry self-regulation (FTC, 2012). In the United Kingdom, a parliamentary committee called for marketing information from alcohol companies, which led to the disclosure of very concerning industry marketing practices targeted at young people and minors (Hastings, 2009).

(d) Notice and take down, blocking and link deletion schemes

Another regulatory option for controlling cross-border marketing is to empower a regulator to require various actors operating in the online environment to remove or disable access to alcohol marketing that breaches the jurisdiction's laws. A notice and take-down scheme could operate so that the content provider or content host is given notice of contravening alcohol marketing that is being hosted on their platform and is required to take down that content expeditiously so that it is no longer accessible. A notice and blocking scheme could operate to apply to Internet service providers so that they must block access to specific content. A notice and link deletion scheme could be applied to content navigation services. These schemes could be applied to all prohibited marketing.

These schemes tend to work on the basis of a designated regulator having the power to receive complaints or notifications about illicit material and to order the removal or blocking of the material or deleting of the link. The failure to implement the request for take-down, blocking or link deletion can amount to an offence, with the option of a court also ordering an actor to cease providing a service, such as a social media service or an Internet carriage service, if they commit multiple offences.

These types of schemes, which turn on actors being notified about the content of concern and then being required to remove such content or block it in some way, are common across many regimes dealing with prohibited content. Such schemes are often used to regulate a range of online content, including offshore gambling services, child abuse material, violent and abhorrent imagery, and terrorism-related material (e.g. Australian Online Safety Act, 2021 (Cth)).

The schemes partly operate "after the event", only giving the regulator the power to deal with infringing content after it appears. However, the schemes can be highly responsive and can operate very rapidly to require the take-down of offensive material. There is a capacity in such schemes and in the actors to whom they apply to block or remove offensive content very promptly. This capacity is seen in the prompt responses of these actors to intellectual property violations.

There may be enforcement difficulties with these schemes in respect of actors outside the jurisdiction. However, the existence of the licensing scheme in option (a) above may mean that the local licensee will be motivated to ensure that related offshore actors comply with notices for take-down, blocking or link deletion, to ensure that the local licensee is not held responsible for the infringing marketing. Another difficulty has been that some sites or apps, if taken down or blocked, may launch mirror

sites with the same content as the taken-down or blocked site (as has happened, for instance, in gambling regulation) (Butler, 2021). It is possible that the experience with alcohol marketing might be better than that with gambling, given the involvement of established companies with credibility and strong public reputations to uphold. Furthermore, the inclusion of the option of imposing penalties (whether criminal, civil or administrative) on noncompliant actors, or a court ordering actors to cease offering their services, provides additional incentives for actors to be compliant (Australian Online Safety Act 2021 (Cth)).

8.3 Options for multilateral action to address cross-border marketing of alcohol

8.3.1 Principles for multilateral action on cross-border marketing of alcohol

WHO Member States have the authority to implement national regulation to ban or restrict cross-border alcohol marketing in respect of their international obligations. These national efforts can be supported by appropriate co-regulatory interventions. They can also be supported by other Member States on a bilateral or multilateral basis, with guidance and coordination provided by WHO. Multilateral commitment to regulating alcohol marketing could be expressed through the adoption of a new international instrument, such as in the form of a WHO code or a treaty, including a framework convention similar to the FCTC. Whether or not an international instrument is created, the aim of bilateral and multilateral action is to create the capacity for states to introduce, implement and enforce national measures to manage the cross-border marketing of alcohol. Effective multilateral action on cross-border marketing of alcohol could be supported by the following commitments:

- an affirmation by states to take measures to ban or restrict inflowing and outflowing cross-border marketing of alcohol;
- a commitment by states to cooperation and assistance in the regulation of cross-border marketing to achieve these goals and to overcome the challenges of regulating across state boundaries;
- a recognition by states that regulation of cross-border marketing by the state from which the marketing is originating is as essential to the regulation of cross-border marketing as regulation in the state of reception;
- a commitment by states to give assistance and to use regulatory measures against “outbound” cross-border marketing as a means to support other states to address cross-border marketing;
- a commitment by states to considering the establishment of a focal point in each state to enable the states to assist each other with the regulation of cross-border marketing, and especially marketing which is being created or distributed outside a state’s territorial borders; and
- a commitment by states to assistance with enforcement of another state’s regulation of cross-border marketing, including through access to data, collection of evidence, extradition of accused persons and enforcement of judgements.

8.3.2 A WHO mechanism and guidelines for multilateral collaboration

A possible option for state collaboration would be for WHO to provide a mechanism – a forum offering institutional support, processes and systems – for multilateral cooperation and action by states in relation to cross-border alcohol marketing. Another related option is for WHO to develop further technical guidance for global and domestic action on cross-border marketing. The mechanism and guidance could be developed in accordance with the principles listed in sub-section 8.3.1.

In terms of a mechanism, the aims would include WHO supporting the establishment of constructive processes for states to engage with each other on issues and concerns relating to cross-border marketing. Through these processes, states would be able to share knowledge about cross-border marketing technologies and practices, changes occurring in relation to this marketing, and the impacts on exposure of their populations to the marketing. Such a mechanism might also provide a forum for two or more states to identify ways to work together on cross-border marketing issues affecting their countries, and could contribute to the creation of binding bilateral/multilateral agreements to address this marketing.

Guidance could be a form of WHO technical assistance to provide Member States with advice on evidence-based regulatory measures which could be adopted in their national settings (including the options discussed in sub-section 8.2). Precedents for such guidelines include the recommendations on controlling the marketing of unhealthy food and non-alcoholic beverages to children, and the framework for implementation of the recommendations developed by WHO and UNICEF. These guidelines provide considerable detailed guidance to states about options for regulating marketing to children of foods high in saturated fats, trans-fatty acids, free sugars and salt (WHO, 2012). Similar support on the regulation of cross-border marketing may serve to assist states to take the national action needed to address this issue effectively.

8.3.3 WHO Secretariat and a Code on Alcohol Marketing

A further option for multilateral collaboration would be a non-binding WHO Code on Alcohol Marketing, drawn up under the auspices of WHO's authority provided in Article 23 of the WHO Constitution (Mitchell & Casben, 2017). WHO has already exercised this power to make two non-binding codes: the International Code of Marketing of Breast milk Substitutes (see sub-section 7.5) and the WHO Global Code of Practice on the International Recruitment of Health Personnel (WHO, 2010c). An option would be to use this same power to adopt a code on marketing of alcohol, including cross-border marketing.

The benefits of creating international codes, rather than treaties, have been argued to lie in the ability of codes to enable strong commitments and good institutional architecture while being more flexible and facilitative of cooperation between states (Taylor & Dhillon, 2011). While some suggest that the negotiation of a code would be cheaper and quicker to conclude than a treaty (Taylor & Dhillon, 2011), this may not be the case, as is evidenced by experience with creating other soft law instruments. There is also said to be the prospect that creating a non-binding code could "galvanize the information, public support and political will required for a comprehensive treaty" (Zeigler, 2013:458). The development of a code on alcohol marketing would fit within the general direction of global health governance which has been towards the development of a range of non-treaty instruments (Moon, 2018). Nevertheless, further consideration would need to be given to whether alcohol marketing is a suitable area for a non-binding international instrument (Tam, Edge & Hoffman, 2016). Such a code will work most effectively if it has clear incentives for compliance and disincentives for noncompliance, as well as institutional mechanisms to check for compliance and create accountability (Tam, Edge & Hoffman, 2016).

In terms of the content of any code on cross-border marketing of alcohol, the principles proposed above (sub-section 8.3.1) could form the starting point. The inclusion of a mechanism for reporting by states to WHO is important. Similarly, the options for national regulation (sub-section 8.2) could be included. Given that the code would not be binding at law, it would be advisable that a state is required to report on an agreed set of matters to WHO on a regular basis, with the reports to be made public. There could also be an independent audit report on the operation of the code, including adherence by WHO Member States, to be published and made available to the public on an annual or biennial basis.

8.3.4 Treaty/Framework Convention on Alcohol Control

(a) Options for auspices

In recent years there have been calls for an international public health treaty on alcohol (e.g. APHA, 2006; Room et al., 2008; Casswell & Thamarangsi, 2009; Yeung & Lam, 2019). Proposals for the treaty have generally assumed that it would be negotiated under the auspices of WHO, following the precedent of the FCTC. However, there are also relevant treaties which have been negotiated under other auspices. For instance, the 2006 Convention on the Rights of Persons with Disabilities was negotiated under the jurisdiction of the UN (DESA, 2020), dealing with disability rights from a social rather than a medical perspective. For another example, the 2005 Convention against Doping in Sport, which includes coverage of some psychoactive substances, was sponsored by the United Nations Education, Scientific and Cultural Organization (UNESCO) (Houlihan, 2014). The WHO-UNICEF-Lancet Commission on placing children's health and well-being at the centre of the Sustainable Development Goals has also proposed the creation of a new optional protocol to the Convention on the Rights of the Child to "regulate against commercial harm to children", including through alcohol marketing. The new protocol would be binding on its parties (Clark et al., 2020).

Another alternative is for the treaty to be negotiated under the auspices of a regional body but also opened to countries elsewhere for signature and ratification. For instance, the first international treaty on doping in sport was negotiated in 1989 under the auspices of a regional intergovernmental body, the Council of Europe (Sport Conventions Division, n.d.; Council of Europe, 2020), but was an "open" convention in that it could be and was also joined by countries outside Europe – Australia, Canada and Tunisia. Similarly, the Convention on Cybercrime was adopted under the auspices of the Council of Europe but is open to participation by states that are not members of the Council (Council of Europe, 2021). Thus, WHO is not the only option as the forum, and the FCTC is not the only precedent for an international treaty controlling legal non-medical use of psychoactive substances.

(b) A Framework Convention on Alcohol Control, adapting models from tobacco and drugs.

A concrete proposal for the wording of a Framework Convention on Alcohol Control has recently been put forward (Room & Cisneros Örnberg, 2020 – Supplementary materials). Much of the wording is based on the FCTC, but there are some changes and additions to reflect differences in the production and modes of use of alcohol, namely: alcohol is produced from many agricultural products and, for most of these, alcoholic beverages are not the only potential use; and given alcohol's potential to intoxicate and precipitate harm to others, regulation of the alcohol market has emphasized control at the point of sale or service. The proposal for a Framework Convention on Alcohol Control also adapts the international trade provisions for psychopharmaceutical drugs in the 1961 Single Convention on Narcotic Drugs.

In terms of alcohol marketing, the proposal's Article 13 mirrors the content of the FCTC's Article 13 on tobacco marketing and points towards "a comprehensive ban of all alcohol advertising, promotion and sponsorship", particularly committing each party to the treaty, "subject to the legal environment and technical means available to that Party", to "a comprehensive ban on cross-border advertising, promotion and sponsorship originating from its territory". As in the FCTC, partial restrictions are also envisaged, along with requirements for disclosure by the industry of information about their marketing activities. Cross-border marketing of alcohol is not emphasized in the proposal and an option would be to give it greater emphasis in the preamble, especially in the context of increased availability and use of digital technology, and the cross-border nature of contemporary marketing of alcohol.

Furthermore, the text of a treaty would be enhanced in its treatment of cross-border marketing, beyond what is in the proposal, with the inclusion of the principles for global governance of cross-border-marketing of alcohol (sub-section 8.3.1). These could, in appropriate instances, be included in the form of binding obligations.

It was envisaged at the time of drafting the FCTC that a protocol on cross-border advertising, promotion and sponsorship of tobacco would have been elaborated shortly after the FCTC came into force (see Article 13.8). That this has not yet occurred suggests there might be advantages in including additional detail about the regulation of marketing, and cross-border marketing in particular, in the text of the main treaty, or including an obligation to create a protocol or guidelines on cross-border marketing on alcohol within a specified period of time. Either in the text of the treaty or in a protocol, an elaboration of the regulatory frameworks and options for domestic measures (see sub-section 8.2) would be a means of supporting states to enact the national measures which are the most important interventions for addressing cross-border marketing of alcohol.

(c) A treaty on alcohol marketing

A treaty on alcohol could be specifically focused on controlling alcohol marketing in the interest of public health and welfare, without covering other aspects included in the tobacco and drug treaties. As this report illustrates, marketing is the aspect of alcohol availability and control in which international and cross-border issues are most strongly evident, and effective international collaboration to control marketing, in the broad sense used in this report, would substantially support and validate national efforts.

A primary purpose of such an international agreement would be to affirm the right at international law for states to regulate cross-border marketing through their national or subnational laws. It would specifically provide support for domestic regulation of incoming and outgoing cross-border marketing. As in the consideration of tobacco marketing restrictions in the Conferences of Parties to the FCTC, the negotiations for an international treaty on alcohol marketing should also consider other appropriate provisions to strengthen national abilities to prohibit or restrict alcohol marketing, starting from a consideration of parallel language to Article 13 of the tobacco treaty. It may be possible to negotiate the treaty to cover compliance and enforcement arrangements, including facilitating access to evidence held in a foreign jurisdiction – in the manner of the Convention on Cybercrime. While there will be a need to take account of the international discussions about more general regulation of digital commerce (Room & O’Brien, 2021), public health issues such as alcohol marketing are not usually a consideration in these discussions, so there are substantial reasons to proceed with negotiating a specific international agreement on control of alcohol marketing.

Reducing the harm from alcohol by regulating cross-border alcohol marketing, advertising and promotion

Key messages

The public health interest in protecting minors and heavy and dependent drinkers, and in denormalizing the consumption of alcohol, is served by strong national regulation of alcohol marketing. Countries should be encouraged to include the control of cross-border marketing in such regulation.

Domestic regulation of cross-border marketing is most effective when it is guided by public health interests but involves all relevant government departments.

Co-regulation by civil society – and, in prescribed circumstances, industry – may assist governments with national regulation of alcohol marketing.

The rules for cross-border marketing should be developed by government and public health interests, and should be informed by the best available public health evidence. Those actors with a conflict of interest should not be involved in the policy formulation, and engagement should be limited to due process requirements, notice and comment and other transparency obligations.

Rules on alcohol marketing are most effective when backed by mechanisms for ensuring compliance, including monitoring and procedures for enforcement.

Multilateral cooperation and support between states can augment national regulatory efforts. Such multilateral support would be strengthened by international agreements and mechanisms for coordination.



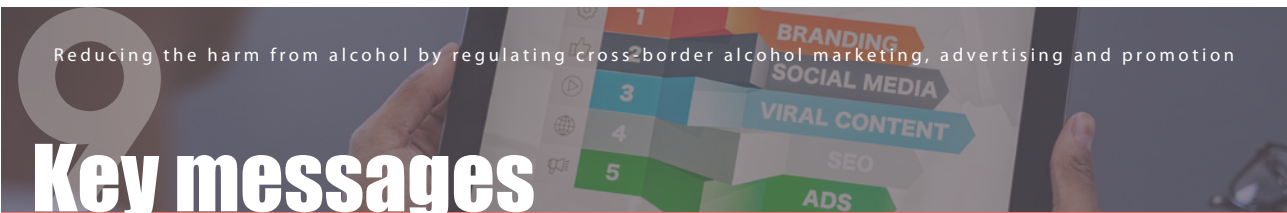
9. Conclusion

Cross-border marketing of alcohol is an increasingly significant part of the marketing of alcohol. In the past, cross-border marketing was found in the form of satellite television, radio, foreign magazines and newspapers. These forms of cross-border media continue, but the arrival of the Internet and the explosion in digital media platforms, in particular social media, have increased the prevalence of cross-border alcohol marketing in all countries. Other aspects increasing the cross-border character of alcohol marketing are the cross-border reach and modes of operation of the TNACs in terms of sponsorship of sports and cultural events with cross-border appeal and dissemination, and their development, direction and implementation of links across national borders for marketing campaigns and activities for their global and national alcohol brands.

Countries that are concerned about the exposure of populations to alcohol marketing and its deleterious effects on health and well-being may adopt comprehensive bans or restrictions on marketing, including inflowing and outflowing cross-border marketing. Statutory regulation is the most effective approach, although governments may also consider tightly demarcated and supervised

co-regulatory arrangements, with civil society groups and industry involved in policy implementation. Actors with conflicts of interest should not be involved in the policy-making process, which, as stated in the Global alcohol strategy, should be guided and formulated by government and public health interests based on public health evidence. Action cannot be left to self-regulation by the industry. Industry self-regulatory schemes lack evidence of effectiveness in reducing levels of drinking and rates of alcohol problems. The key role for the industry is to cease, or refrain from, marketing its products in breach of statutory regulations and public health goals, and especially marketing which reaches children, heavy drinkers and abstainers.

Because of the cross-border aspects of alcohol marketing, it is thus also critical that states commit to assisting each other in regulating marketing. There are challenges in securing regulatory enforcement across state borders, but these can be minimized through supportive multilateral cooperation. Regular consultation between states – for sharing of information about cross-border marketing and regulatory challenges and successes – is vital for effective cooperation. Such processes of regular consultation would be facilitated by the development of institutional arrangements, the creation of a secretariat and regular conferences of parties. This multilateral action can be supported by WHO or could be under other multilateral auspices pursued in other forums. The pursuit of common goals by states can form the foundation for the future development of formal arrangements to improve the governance of alcohol marketing, including cross-border marketing, in the form of an international code or framework convention.



Reducing the harm from alcohol by regulating cross-border alcohol marketing, advertising and promotion

Key messages

Much of today's alcohol marketing has a cross-border aspect to it, and control of cross-border marketing must be an integral part of a national effort to limit harms from alcohol.

At the national level, control or prohibition of alcohol marketing, including its cross-border aspects, should be an integral part of effective public health strategies to limit harms from alcohol.

At the international level, the cross-border aspects of alcohol marketing mean that its effective control requires collaboration between states.

Some degree of harmonization in the approaches to cross-border marketing in different countries or a consensus on the need for action will often be a necessary precursor to successful bi-lateral or multilateral international collaboration.

Such collaboration would be strengthened by regular international consultation, coordination by a secretariat, and by international agreements.

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Annex 1

Summary of the scoping review on the harmful use of alcohol related to cross-border alcohol marketing, advertising and promotional activities, including targeting young people and adolescents

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Background

At its 146th session, the WHO Executive Board of WHO had called for a technical report on the Harmful use of alcohol related to cross-border alcohol marketing, advertising and promotional activities, including targeting youth and adolescents. The objective of this scoping review was to inform the development of the technical report.

Four broad policy questions we addressed:

1. What is the size and nature of cross-border alcohol marketing?
2. What are the impacts of cross-border alcohol marketing?
3. How does cross-border alcohol marketing function in the global alcohol market?
4. How could cross-border alcohol marketing be regulated?

Method

An information specialist from the core research team initially conducted searches in Scopus. These were then repeated in Business Source Premier / CINAHL / Medline / Psych Info (via EBSCO) / Web of Science. After screening the search results and identifying relevant articles, several rounds of forward and backward citation searches were conducted. The time frame for the searches was 2010–2020.

Information on the industry sector was obtained from the Factiva database and Google searches, as well as from subscription services that provide market research on industry trends and activity (such as Statista and Just-Drinks.com). Information and literature from foreign language resources (including French, Russian and Spanish) and databases were provided by the external research team (international collaborators).

The main investigators collectively filtered the resulting literature and information with a focus on clarifying key concepts and trends and identifying gaps and areas to target in relation to cross-border alcohol marketing. Input from the project advisors and international collaborators was incorporated.

What is the size and nature of cross-border alcohol marketing?

Cross-border marketing traverses the borders of national jurisdictions and their frameworks of monitoring and control. Cross-border marketing comprises three dimensions: promotion and distribution channels, brands and campaigns, and global actors and institutions. These are relevant to understanding the nature and extent of cross-border marketing of alcohol to consumers and the corporate social responsibility (CSR) activities that have an impact on policy-makers.

Promotion and distribution channels include digital media, satellite television broadcasts, lifestyle, entertainment and experience services, use of celebrities including digital influencers, and cross-border supply including travel retail. Digital marketing has dramatically increased the intensity of cross-border marketing. Social media spending is a large component but search engines and other digital platforms provided new marketing opportunities. Data analytics allows individuals and similar groups to be targeted in ways not previously possible. Integrating data from every aspect of consumers' lives enables platforms to establish a relationship between the consumer, producer and retailer, and to promote the right product to the consumer at the right time to encourage digital purchase. Inherent in the model is continuous experimentation to optimize the facility to attract consumers' attention and sales. The participatory culture of the platforms has blurred the boundary between marketer and consumer and allowed for the rise of the social media influencer.

Alcohol brands are promoted in globally integrated campaigns adapted to regional and national contexts. Most integrated marketing campaigns now take advantage of digital media as one component. Marketing of alcohol brands in digital platforms uses social media influencers; branding via sponsorship of regional and global real-world and eSports teams and competitions with live streaming of events; activation of fans of branded sports or music events via social media; product placement in these branded events and in applications and music videos; ephemeral video stories; augmented reality filters; campaign products available on YouTube; and programmatic advertising exchanges. The development of new products and packaging designs (for instance to respond to health-conscious consumer trends for no-alcohol and low-alcohol beverages) creates global brands. Campaigns include cause- or purpose-based brand marketing to connect with consumers. Inclusivity is a theme linked to the targeting of minority groups.

Global actors include the transnational alcohol corporations (TNACs), which are highly consolidated – particularly the producers of spirits and beer products – and have the resources to engage in direct consumer marketing across borders as well as public relations activities (such as CSR) including public-private partnerships). Cross-border marketing campaigns are directed and controlled by corporate leadership and marketing departments located in global headquarters, often in high-income countries, even when carried out in collaboration with local actors. TNACs have become sophisticated users of rapidly developing digital technologies, increasing their capacity to carry out global campaigns and enabling greater value-chain integration and improved communication and collaboration across the supply chain, with online distribution and delivery being particularly valuable. Global and regional trade associations (focusing on social aspects and public relations) represent alcohol and advertising industry interests to the media, the public, national governments and intergovernmental organizations. Along with the CSR foundations set up by the TNACs, the trade associations manage issues that could be potentially detrimental to the industry and influence the policy environment, including to protect cross-border marketing.

Global CSR campaigns include responses to the COVID-19 pandemic and efforts to align themselves with the Sustainable Development Goals. Other forms of CSR respond to risks from alcohol harm and include responsible drinking, education, women's empowerment and drink-driving campaigns. The digital platforms and associated industries in programmatic trading have become major players in the cross-border marketing of alcohol. Computer processing power and widespread access to the Internet allow for easy collection and cross-referencing of large amounts of data. Online data companies now track the online activity of individual users, enabling targeting as opposed to homogenous mass media marketing. The best known digital platforms are social media platforms such as Facebook, Instagram and YouTube, but others include Google and Microsoft, new eSports platforms, as well as expansion to more "alternative" social platforms and the integration of personal media such as WhatsApp.

The increasing availability of Internet connectivity and active use of social media are facilitating cross-border marketing. In 2020, more than half the world's population were Internet users and use is fast expanding in low- and middle-income countries (LMICs). Smartphone ownership enables cross-border marketing and is more likely among the prime targets (i.e. younger people, the better educated and those with higher incomes).

Satellite television companies provide important opportunities for cross-border alcohol marketing, particularly in LMICs where Internet connectivity is lower. Satellite television appears to be a more salient aspect of cross-border alcohol marketing than radio or print media.

Global sporting organizations are major actors in cross-border alcohol marketing. The promotion of sporting events by alcohol brands involves close collaboration with digital platforms and other media.

What are the impacts of cross-border alcohol marketing?

The **impacts of cross-border marketing** depend on the extent of cross-border activity and who is being reached, the global dimensions of which are not known. Nor do we have good evaluations of restriction of cross-border marketing to help assess its impact. However, there is pervasive evidence that exposure to alcohol marketing in all its forms has a negative impact on adolescent alcohol use (i.e. early onset of drinking and binge drinking) and that user engagement with marketing, one of the key characteristics of the digital media, adversely impacts drinking behaviours.

There is growing evidence that marketing contributes to susceptibility to relapse of persons with alcohol dependence after a period of abstinence, and that it may also be a factor in the steady increase in alcohol consumption observed in countries where certain population segments (e.g. women) have traditionally been abstainers or infrequent drinkers.

Multiple studies exploring mechanisms of action at the level of social and psychological processes, neurobiological influences and adolescent development have identified plausible mechanisms to account for the consistent relationship found between alcohol marketing and harmful use of alcohol.

Analysis of **public relations activities** (e.g. CSR) supported by the alcohol industry reveals a lack of alignment with effective policies and a failure to prevent hazardous drinking, but a positive effect on brand and company image.

The global activities of the alcohol industry have been described as inducing alcohol-related problems, not only through targeting marketing at groups vulnerable to hazardous drinking, but also by using CSR activities to gain political influence conducive to a favourable business environment and enhanced company reputation.

How does cross-border alcohol marketing function in the global alcohol market?

Alcohol use is anticipated to increase globally, driven by market expansion in LMICs in association with economic growth and cross-border marketing activities. Increases in consumption will result, in part, from the recruitment of new sectors – abstainers, women and young people. Cross-border marketing normalizes the use of alcohol in these target groups, as well as promoting new drinking occasions in LMICs.

Heavy episodic drinking is highest among young adults, who are also strongly engaged in digital media and therefore exposed to cross-border alcohol marketing. Those who continue this pattern into later life are the “heavy drinking loyalists” who are important to the sales and profits of the alcohol industry. Reduced prevalence of heavy episodic drinking in young people has been observed in high-income countries but research documenting trends in young people’s drinking in LMICs is scarce.

How could cross-border alcohol marketing be regulated?

There are few examples of **regulatory frameworks and methods** adequate to the task of restricting alcohol marketing, including cross-border marketing. Studies of policy adoption to combat NCDs show that restrictions on alcohol advertising are one of the least well-enacted measures. Although laws to restrict alcohol marketing are in place at national level in many jurisdictions, these are largely partial in their reach, lack enforcement and often have loopholes that are exploited. No restrictions on Internet and social media platforms were reported by the majority of countries in 2016, suggesting that regulation lags behind technological innovation. There are very few national-level attempts to control cross-border alcohol marketing by satellite television.

Countries with some restrictions on digital alcohol marketing have typically extended existing frameworks relevant to established media to digital channels. Measures to control the content and placement of advertisements and age restrictions address neither the marketing capability of digital technology nor the architecture of the platforms (such as the “share” and “like” options of social media).

Both the **TNACS and the digital platforms** have responded to concern about digital alcohol marketing by introducing or expanding voluntary codes at national and global levels to cover digital media. These emphasize age-gating and content. Missing from industry voluntary codes is any reference to the use of data to target vulnerable consumers, which is the business model of the digital platforms. There is little transparency or independent monitoring of the impact of these voluntary codes.

Some aspects of cross-border marketing make regulation difficult. These are the nature of digital marketing (dark, ephemeral and participatory), the high pace of innovation and the transnational nature of the platforms and alcohol producers.

Digital marketing is increasingly driven by data and algorithms, allowing not only detailed targeting but also a dynamic process of creating and testing marketing material to generate the best engagement from the consumer. Co-authored by humans and machines, the algorithms are not easily subject to scrutiny. The extensive targeting means that marketing is dark and cannot be scrutinized by third parties. It is also often ephemeral. Attempts to control alcohol marketing using the frameworks derived from existing regulation and based on the principles of public scrutiny and complaint are therefore not feasible. Digital marketing is native in the sense that it is integrated into,

and indistinguishable from, other forms of content. It is participatory and uses new technology such as augmented reality filters. Controls on the content of display advertising do not address these forms of cross-border marketing.

Trade and investment agreements (TIAs) provide protection for both the digital platforms and the alcohol producers. A new focus on e-commerce or digital trade provisions in TIAs seeks to protect digital platforms from scrutiny and legal challenge within the recipient country. Multilateral TIAs remove barriers to global integration, protect the interests of corporations, and may put obstacles in the way of government regulation – such as that restricting cross-border alcohol marketing.

In parallel with discussions on e-commerce provisions in TIAs, some governments are investigating regulation of digital platforms. These policy reviews have primarily focused on: the market power of digital platforms and its effect on competition and democratic debate; the circulation of disinformation and other forms of dangerous or offensive speech; and individual privacy. There is expanding interest in programmatic advertising and potential harm to vulnerable consumers, including children.

UN agencies such as UNCTAD and the International Telecommunications Union have mandates that could include a focus on marketing of hazardous products such as alcohol in digital platforms, but this has not yet been adopted as a priority. The UN conventions on children's and human rights provide framing relevant to the protection of consumers against cross-border marketing, and both include principles of state protection from business interests.

Discussion on **options for regulation of digital marketing of alcohol** have focused on: age-gating; self-exclusion; transparency tools; controls on targeting; clearly distinguishable marketing; and proportion of audience. However, the architecture of digital platforms, the nature of digital marketing and the business model of the platforms, which relies on data-driven targeting of the most high-value targets, make it unlikely that these approaches will have a significant impact on cross-border alcohol marketing.

Where comprehensive bans on marketing a specific product such as tobacco exist, these appear to have been effectively translated to digital platforms. Both advertisers and platforms have been prevented from circulating advertising through digital channels in countries where legal restrictions exist.

The expansion of national-level bans on tobacco was supported by a global treaty – the World Health Organization's Framework Convention on Tobacco Control – which provided normative and technical support. Currently, alcohol marketing is not specifically addressed in any global treaty or international agreement.

Given the scarcity of comprehensive national-level regulation of alcohol marketing, the rapid expansion of alcohol marketing via digital platforms into the growing markets of LMICs, and the targeting of vulnerable consumers in high-income countries as well as in LMICs, the option of an international treaty supporting national-level implementation of a total ban on alcohol marketing deserves consideration.

Annex 2

Summary of a commissioned paper on the scope and size of global alcohol marketing

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Background

Contemporary alcoholic beverages are heavily marketed consumer goods. The marketing activities attached to them distinguish them from earlier and more traditional forms of alcohol. Alcohol in its contemporary form is a global branded product; typical of global brands, it relies on marketing expenditures and activities to establish and maintain the brand and its accompanying identities. These activities readily cross national borders, challenging both the monitoring and regulatory capacity of national governments.

This challenge to national government capacity matters because, unlike many other globally marketed consumer goods, consumption of alcohol can have significant health consequences. Because of alcohol's significant impact on global health, the global volume and organization of alcohol production and marketing are relevant from a health perspective. Thus, this background paper profiles global and regional alcohol markets by volume, value and marketing activities. It identifies the key private-sector players in global alcohol production, marketing and trade, with particular attention to how the activities of these key players cross national borders. The paper closes with a brief discussion of the impact of this marketing on vulnerable populations, and recommendations for further research.

Methods

We used data from Euromonitor, the Food and Agriculture Organization of the United Nations (FAO), and Ad Age to estimate the scope and size of global alcohol marketing from 2010 to 2030.

The Euromonitor data include statistics for market size, company shares and distribution for five segments: 1) beer; 2) cider/perry; 3) RTDs; 4) spirits; and 5) wine. Data were current as of late November 2021 and included historic data from 2010 to 2020 and projected data from 2021 to 2025. The authors applied a simple linear regression using 2010 to 2019 trends to project those trends 2026 to 2030. Import and export data from FAO statistics (FAOSTAT) were obtained in late March 2021. Items selected were 1) beer of barley; 2) beverages, distilled alcoholic; and 3) wine. Data for marketing spending came from the Ad Age databank, also in late March of 2021. Data for global marketers included rank, parent company, and total worldwide advertising spending. The data for US marketers included both measured media spending and total advertising spending, which were used to calculate unmeasured media spending.

Findings

Market size: Beer and cider comprise the largest sector of the global market by volume. Beer comprised 44% of all the absolute alcohol produced for beverage consumption in the world in 2019. The European Region leads the world in wine production; however, the regions of the Western Pacific and the Americas outstrip it in production of spirits and of beer and cider.

By value, the global alcohol trade in 2019 was worth approximately US\$ 1.6 trillion. The most valuable segment is beer and cider, with US\$ 661.4 billion in sales in 2019, followed by spirits at US\$ 558.3 billion, and wine at US\$ 334.3 billion. Value was highest in the Western Pacific Region, at US\$ 524 billion, followed by the European Region at US\$ 489.6 billion, and the Region of the Americas at US\$ 421.2 billion.

Trend projections: Trend data in volume and value indicate that, globally, both production and value trends will recover from an anticipated drop in volume in 2020 due to the COVID-19 pandemic; following on that year, all segments will rise slowly, with the increase smallest in the wine segment. Production and sales are declining in the European Region and are growing elsewhere in the world.

Distribution channel: As of 2019, the majority of volume lay in the store-based retailing sector. While non-store retailing is beginning to rise, it starts at a very low level. While the value of sales of cider, perry and RTDs is also projected to increase, off-trade sales dominate this sector globally and in every region, with the largest increases in the off-trade occurring in WHO's Region of the Americas and Western Pacific Region. Global value of spirits is also highest through the off-trade sector, and is projected to grow globally in both distribution channels after the pandemic years. By volume in wine, sales are greatest globally through store-based retailing, but this segment is declining at the same time that sales through non-store retailing are rising steadily and are projected to approach the volume sold through the on-trade channel by 2030.

Imports and exports

Alcohol exports and imports travel primarily between a relatively small number of high-income and upper middle-income countries. In terms of sheer volume, Mexico is the world's largest alcohol exporter, based primarily on its beer exports, although it is also the sixth largest spirits exporter. However, because beer tends to be the cheapest of the three segments, the picture in terms of dollars generated from exports looks quite different. The world's leading alcohol exporter in terms of value is France, largely based on the revenues from its wines and distilled spirits products. United Kingdom is the number two exporter in terms of value, with strength primarily in beer and distilled spirits.

Alcohol exports are heavily concentrated among a small number of countries. In terms of volume, four countries – Belgium, Germany, Mexico and Netherlands – account for slightly more than half (52.1%) of global beer exports by volume. Six countries together export half (50.7%) of the world's distilled spirits: France, Italy, Mexico, Spain, United Kingdom and USA. Just three countries – France, Italy and Spain, – produce more than half (53.6%) of the world's exported wine. Smaller numbers of countries account for the value of half or more of the world's exports, by segment and overall: three countries earn 52.7% of the dollars generated by beer exports, four countries accumulate 51.9% of distilled spirits export revenues, and just two countries – Spain and Italy – receive nearly half (49.8%) of value of wine exports. Overall, five countries – France, Italy, Mexico, United Kingdom and USA – together bring in more than half (51.8%) of revenues from alcoholic beverage exports worldwide.

The United States of America is the world's largest alcohol importer, in terms of both volume and value. Most alcohol importing countries fall into the World Bank's high-income country classification. The exceptions are all upper middle-income countries: China and the Russian Federation. Again, the bulk of trade occurs in small number of countries: five countries account for half (50.2%) of beer imports by volume, eight countries bring in half (50.7%) of the world's distilled spirits imports, and five countries are the destination just over half (53.5%) of the world's wine imports.

Looking at imports by value, again smaller numbers of countries account for half or more of the dollars spent on alcohol imports: three countries for beer and distilled spirits, and four countries for wine. Overall, while six countries bring in more than half the world's alcoholic beverages by volume, just four account for more than half (51.4%) of the value: China, Germany, United Kingdom and USA. These four countries are also the largest alcohol importers by volume.

Companies

Not surprisingly, given how concentrated alcohol exports and imports are in a relatively small number of countries, alcohol sales are highly concentrated in the hands of a few companies worldwide that are mostly headquartered in the leading exporting countries. This high level of concentration of ownership has been the case for beer and distilled spirits for decades, while responsibility for both volume and value in the global wine industry has consistently been more widely distributed. In the beer sector two companies, AB InBev and Heineken, together comprise nearly 40% of both the value and the volume of beer sales worldwide. The five leading beer companies account for nearly two thirds of both value and volume. The leading beer companies are all headquartered in high-income countries, with the exception of one upper middle-income country – China. A similar picture emerges for cider, perry and RTDs, with Bermuda and South Africa being the only non-high-income countries with a top 10 global producer within their borders.

Concentration in spirits ownership is lower than in the beer sector, but the leading companies still account for a third of the volume and more than a third of the value globally. Two companies, Diageo and Pernod Ricard, account for nearly 20% of the world's spirits in terms of value. Leading spirits companies are more widely spread across the world, with leading producers in terms of volume headquartered in the Bermuda, India, Republic of Korea, Philippines, Russian Federation and Thailand – in addition to France, Japan and the United Kingdom

Wine is the least concentrated of all the alcoholic beverage segments. Looking at both value and volume, the leading 10 companies comprise less than 20% of global sales. However, wine production is concentrated in a small number of countries, with Australia, France and the USA providing the base for the largest companies both by value and by volume.

Marketing spending

Six alcohol companies rank among the world's largest spenders on advertising. The leading alcohol advertisers worldwide spent an estimated US\$ 17.2 billion on alcohol advertising in 2019. In both high- and low-income countries, alcohol marketers occupy dominant positions, and in 24 of the countries tracked by AdAge, they are among the 10 largest advertising spenders.

Alcohol marketing in most lower-income countries is bifurcated: there are global brands that occupy the super-premium end of the market, with global reputations that were often built on decades of brand-building marketing by the major global alcohol companies; and then there are local brands

that rely less on advertising and more on price and availability as their marketing methods. Global marketing by definition crosses borders, and this is likely to increase over time. Using US data as a case study, the share of marketing expenditures on “unmeasured media” – which includes direct and experiential marketing, product placement, special events and promotions – as well as online advertising targeted through social media and to mobile users, rose from 60% to more than 70% of total marketing spending from 2010 to 2019. This is the segment that most easily transcends national borders.

Exposure of minors and other vulnerable populations

A substantial global literature has both documented the widespread exposure of young people to alcohol marketing, and has made a strong argument that this exposure has a causal relationship with young persons’ drinking behaviour. However, much of this research was done prior to the growing dominance of digital and social media among young people. This type of marketing is qualitatively different from marketing in traditional media. It encourages engagement and participation, and studies have found that these are associated with higher-risk drinking behaviour among young people.

Discussion

Alcohol production and sales are projected to increase in the years to come in nearly every WHO region except the European Region. Much of this growth will happen outside the regions where most of the alcohol producers are headquartered, attesting to the transnational nature of the alcohol industry. A considerable part of alcohol exports and imports volume travel between a relatively small number of countries. Global alcohol companies expand more through joint ventures, mergers and acquisitions, and then use their affiliated networks to build and spread highly profitable global alcohol brands. These brands ride on the back of billions of dollars of marketing spending, of which the bulk comes from the largest transnational companies. If the USA is an accurate harbinger of global trends, these companies are spending a growing percentage of their marketing budgets on “unmeasured media”, including the forms of marketing most likely to cross national borders – i.e. digital and social media.

Conclusion

A steadily growing, highly concentrated global alcohol industry spends billions of dollars each year in marketing its products. While there is a substantial literature demonstrating a causal relationship between alcohol marketing exposure, engagement and participation, and young people’s drinking behaviour, there is little or no research on the impact of this marketing on other populations. There is a strong need for further research into the impact of marketing on these populations, as well as on how to measure, monitor and limit the effects of global alcohol marketing that is travelling across borders and affecting young persons’ drinking behaviour.

Annex 3

Summary of a commissioned paper on the role of product placement and social media influencers in cross-border alcohol marketing, advertising and promotional activities, including targeting young people and adolescents

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Introduction

Alcohol marketing represents a sophisticated network of promotional activities which interact with and complement each other to increase the visibility of alcohol products or brands and, ultimately, drive their consumption. This network is colloquially referred as the “marketing mix” and includes mass media advertising, sponsorship or endorsement, point-of-sale promotion, and packaging. Increased use of digital media and the amount of time spent online – something likely to have increased during the COVID-19 pandemic – has further driven the emergence of a digital marketing mix that provides new and innovative ways for alcohol companies to reach, engage and influence consumers. This includes paid-for Internet advertisements (e.g. banners and pop-ups), owned media (e.g. social media pages and smartphone applications), native advertising (e.g. social influencers and sponsored content), user-generated content that contributes to marketing strategy (e.g. product reviews and fan photos) and online opportunities to purchase (including home delivery). There is increasing concern not only as to the impact of such advertising within the originating country but also the impact of the marketing across national borders – an impact which has been perpetuated by the rapidly changing digital environment.

This continued innovation means that current alcohol marketing practice is arguably more powerful and more difficult to control than was previously the case. This background paper seeks to inform WHO’s development of effective controls for such marketing, focusing specifically on evidence synthesis for social media influencer marketing and product placement and the development of policy recommendations to address cross-border marketing.

Methods

The research team employed the following methods to synthesize the evidence and develop its recommendations:

1. A pragmatic literature search for published and grey literature on social media influencers and product placement.
2. Development of a conceptual map depicting the various levels and aspects of cross-border social media influencer and product placement marketing.

Each of the above methods informed the overview of findings and resulting recommendations.

Findings

Conceptual map

The conceptual map that was developed includes five domains: infrastructure, techniques, influences, mechanisms and outcomes. These domains reflect the infrastructure or environments in which cross-border marketing occurs, the techniques employed, the types of influence these techniques have on those exposed to them, and the mechanisms by which those influences can then contribute to alcohol consumption and related outcomes.

Social media influencers

Marketing by social media influencers is a new and rapidly developing marketing technique, employed by unhealthy commodity brands and advertisers to promote their products. This form of advertising is present across a wide range of social media platforms. Although definitions vary, social media influencers can be defined as a new type of “celebrity” who can influence others and who build their audiences through social media. Social media influencers can be categorized on the basis of their audience size or following on social media – i.e. micro-influencers, macro-influencers and mega-influencers.

Techniques employed across social media influencers to market alcohol brands and products are not well documented. However the following became evident through the development of the conceptual map: 1) presence across multiple platforms; 2) brands employing micro-influencers; 3) P2P marketing; and 4) ephemeral marketing. Each of these were shown to contribute to the normalization of alcohol consumption (particularly among young people) and the fostering of P2P endorsement of alcohol products and brands. This was associated with increased exposure to alcohol-related social media content, increased awareness of and interaction with alcohol marketing, and an increase in alcohol consumption.

Product placement

Product placement is the practice by which firms pay to place branded products (brand name/logo, package, signage or other trademark) or references to branded products in the content of mass media programming. Alcoholic product placement is used to communicate products to consumers and continues to this day across a wide variety of media. Modern patterns of access to entertainment content (e.g. video-on-demand) provide significantly increased opportunities for cross-border marketing and influence via product placement.

Product placement techniques vary and have developed over time as new technologies emerged. Examples of such techniques include the use of artificial intelligence (AI)-embedded advertising in video-on-demand programmes, dynamic digital insertion, and the more traditional product

placement techniques seen in film and television. These are all evidenced to contribute to widespread population exposure and increased and more strategic targeting of young people. Furthermore, product placement is now employed within social media influencer content, further contributing to the normalization of the presence of alcohol products in social media. As seen within social media influencer marketing, product placement of alcohol products and brands is associated with increased exposure to alcohol products or brands, increased awareness of alcohol products and brands, and increased alcohol initiation and subsequent use by adolescents.

Discussion

The findings presented suggest: 1) that social media influencer marketing and product placement of alcohol products and brands are positively associated with increased alcohol consumption; and 2) that the current regulatory environment is inefficient at reducing the harms associated with the marketing of these products, both within a particular country and across national borders. While individual countries around the world have attempted to regulate such marketing to protect their populations from being exposed to alcohol marketing, extensive gaps and loopholes remain. Meanwhile, marketing of alcohol products and brands via product placement and social media influencers continues. In addition, regulations struggle to keep pace with rapid technological developments, allowing the alcohol and advertising industries to continue to advertise their products and brands in increasingly diverse ways. Current regulatory options cannot easily address or limit cross-border marketing.

Conclusion

The findings demonstrate that alcohol marketing through product placement and social media influencers is pervasive. It contributes to the ubiquitous presence of alcohol products in both offline and online media, leading to increased consumption of, and therefore increased harms arising from, alcohol in children, young people and adults. Governments and parents should be empowered to ensure that children can play and learn online without being bombarded with harmful alcohol advertising – no matter where that content is produced. The current regulatory environment is insufficient to protect children, young people and adults from the harms associated with such marketing. It should be statutory, as evidence suggests that self-regulatory measures are insufficient. In order to remedy these regulatory issues, an international standard or code to regulate alcohol marketing – including product placement and social media influencer advertising – is needed.

Annex 4

The alcohol industry and corporate social responsibility: marketing functions and cross-border dimensions

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Introduction

Corporate social responsibility (CSR) has acquired growing significance for global health, but its central claim of generating win-win solutions advancing both corporate and societal goals is problematic in relation to unhealthy commodity industries. This study examines the relationship between alcohol industry CSR and marketing, exploring the strategic significance of CSR and philanthropic activities with respect to marketing. Incorporating a focus on cross-border dimensions, it adapts a typology of marketing and corporate social activities “undertaken by a corporation to support social causes, strengthen its business, and fulfil commitments to CSR.”

Methods

The study was based on scoping reviews of:

- (i) scientific literature, via Web of Science and PubMed databases in February 2021 (81 articles, focused on the alcohol industry and CSR, exploring the intersection with marketing);
- (ii) grey literature, focused particularly on examining the marketing functions of CSR actions depicted as responding to the COVID-19 pandemic.

Incorporating a specific focus on cross-border dimensions, results were analysed and organized using a typology of six categories of marketing and corporate social activities.

Findings

The expanding public health literature on alcohol industry CSR has focused on examining whether such activities advance corporate objectives at the expense of health goals. Analysis of an industry database of over 1000 actions found negligible evidence of effectiveness in reducing harmful drinking, with 96.8% ineffective actions or actions of unknown effectiveness. A systematic review found “no robust evidence that alcohol industry CSR initiatives reduces harmful drinking”.

Marketing and corporate social activities

Cause promotion: Alcohol companies have extensively used promotions to make donations linked to social causes that enhance their reputation and build support among key constituencies. Producers have used CSR to link brands with causes that include environmental protection, minority rights and empowerment of women, and to reframe issues of reputational vulnerability (e.g. gender-based violence). These were evident in corporate responses to COVID-19, alongside promotion of hand sanitizers and other personal protective equipment.

Cause-related marketing directly links sales to a social cause through marketing of a limited-edition product or time-limited promotion, typified by marketing a specified purchase as triggering a donation to a named cause. Alcohol companies have used such promotions to link with public and global health campaigns, including using special editions to raise money for breast cancer. During the COVID-19 pandemic this included editions promoted as raising money for front-line health workers, supporting the hospitality sector amid lockdowns, and linking alcohol products with vaccination campaigns.

Corporate social marketing is characterized by activities with an explicit focus on promoting behaviour change. For alcohol companies, such promotions have centred on “responsible” drinking and drink-driving campaigns that depict producers as socially responsible actors and shift responsibility for alcohol-related harm to individuals via a focus on lifestyle choice. Campaigns have often been implemented in collaboration with NGOs, local authorities or government agencies. Responsibility campaigns were reframed around social distancing amid the pandemic.

Corporate philanthropy refers to corporations making direct financial contributions to a charity or cause. Corporate philanthropy is increasingly seen as strategically aligning with a company’s political and economic priorities, and can operate as a mechanism for collaboration with external organizations such as NGOs, international agencies and charitable foundations. The alcohol industry has been active in establishing organizations that function as vehicles for corporate philanthropy, including social aspects, and that serve as public relations organizations and corporate foundations. COVID-19 donations align with longstanding objectives and link producers with leading international NGOs.

Workforce mobilization describes how corporations can support employees to volunteer at charitable organizations, and here encompasses broader CSR activities to build support among employees and retail and supply-chain partners. During the COVID-19 pandemic, alcohol companies used motivational framing to depict their employees and distribution chain staff as frontline workers, and aimed to reframe hospitality sector workers as a category of people “in need” of assistance via wage support schemes, including via public donation campaigns and additional training programmes.

Socially-responsible business practices designate strategic coordination or integration of CSR activities with corporate political commitments to tackle health, environmental and social issues. Alcohol companies have used such practices to present themselves as partners in global health governance and to align CSR activities with the UN Sustainable Development Goals. In response to the COVID-19 pandemic, this has included framing corporate activities as working to “build back better”.

Discussion

This review of alcohol industry CSR highlights the consistency with which such activities advance strategic objectives, particularly in marketing. The application of the framework across the six categories by Kotler et al. demonstrates the significance of each category to alcohol industry objectives. The clear evidence of strategic integration of marketing and CSR functions poses fundamental questions about the industry's capacity to create shared value or win-win situations. The review highlights the extent to which the significance and impact of the alcohol industry's CSR transcends domestic boundaries. Cross-border marketing significance is demonstrated across multiple dimensions, including international promotional campaigns structured to function across multiple jurisdictions; transnational branding, particularly of premium-brand drinks by leading global producers; global frames, central to industry CSR strategy and objectives in depicting positive contributions to international challenges; global industry actions promoting sectoral objectives across countries and regions; and engaging with global governance and the Sustainable Development Goals.

Conclusion

The alcohol industry's CSR actions demonstrably perform significant marketing functions and are structured to advance cross-border strategic interests. This implies that the regulation of CSR and corporate philanthropy must be central to the development of an effective international approach to regulating alcohol advertising, promotion and sponsorship.



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