

IAB UK: Response to Consultation on Further Advertising Restrictions for Products High in Fat, Salt and Sugar

10 June 2018

Background

IAB UK is the trade association for digital advertising, representing over 1,200 of the UK's leading brands, agencies, media owners and technology providers. We have a Board¹ comprised of 23 leading businesses in the sector. Our purpose is to build a sustainable future for digital advertising, a market that was worth £13.44bn in the UK in 2018.

The IAB is actively engaged in working towards the optimal policy and regulatory environment to support a sustainable future for digital advertising. We also develop and promote good practice to ensure a responsible medium.

Introduction

1. The IAB has chosen not to respond to the specific questions set out in the consultation document because its format does not allow for full consideration of the policy proposals, or enable us to address the most pertinent issues that we have identified and wish to raise in our response.
2. Our response addresses the evidence and proposals as they relate to online advertising. While the Government has, in places, sought to create a relationship or equivalence between TV and online advertising for the purposes of its consultation, there is no sound rationale for doing so. While the Government would not want to consider each medium in isolation, they should each be considered separately in terms of the evidence base, the case for change and – if needed – the design of policy options.

Summary

3. *The existing CAP Code restrictions are effective and sufficient. Compliance is high and all available evidence indicates that, as a result, child exposure to HFSS advertising online is low.*

¹ https://www.iabuk.com/member-directory?title=&company_type=All&company_badges%5Bboard_member%5D=board_member&sort_bef_combine=title+ASC

4. New restrictions on advertising in non-broadcast media of food and soft drink products that are high in fat, salt or sugar (HFSS) came into effect on 1 July 2017 when they were introduced into the CAP Code.² These restrictions were proactively added to the self-regulatory framework following an extensive review of the evidence and wide consultation with the industry and other stakeholders.
5. The new CAP Code rules introduced strict requirements for brands advertising HFSS products online to prohibit them from targeting children either directly, through their advertising placement, or indirectly, through their advertising content. The introduction of the restrictions was a conscious decision by the advertising industry to recognise that HFSS advertising was one factor that played a small but contributory role in child obesity and to act responsibly to remove that factor from the equation. This action which was prompted, in part, by concerns raised by the Government in Chapter 1 of its Childhood Obesity Plan, published in August 2016, that advertising may have been contributing, in part, to an ‘obesogenic environment’.
6. The available evidence of the effectiveness of the HFSS rules in the CAP Code indicates that compliance with them is high. This is borne out not just by the low levels of complaints made to the ASA about HFSS advertising since the introduction of the 2017 restrictions, and the even lower number that have been upheld, but by the ASA’s recently published monitoring report on online HFSS ads and the Government’s own estimates drawn from Kantar analysis referenced in its Impact Assessment. A 2019 report by the Advertising Association calculated the amount of time children aged under 16 spent viewing HFSS adverts online at less than 0.5 seconds per day per child.³
7. Kantar’s estimates of likely HFSS impressions and exposure is fundamentally problematic as it is based on data from 2017 and therefore, as the Impact Assessment acknowledges,⁴ does not account for or evaluate the effect of the increased CAP restrictions that were introduced in mid-2017. However, even without measuring this, the Impact Assessment notes that Kantar’s findings and wider sources including Nielsen data indicate that the level of food advertising online is lower than on broadcast TV⁵ and that the 730 million yearly child impressions the Kantar analysis indicates ‘could’ exist online – around 1.5 per child per week⁶ – ‘likely represents an upper bound of what HFSS advertising children see online.’⁷ Additionally, it is important that each individual instance of ‘exposure’ (i.e. the presence of an ad on a screen) is not equated with consumption – this is not a relationship that is supported

² <https://www.asa.org.uk/advice-online/food-hfss-overview.html>

³ The challenge of childhood obesity: The advertising industry’s perspective: <https://www.adassoc.org.uk/wp-content/uploads/2019/03/Advertising-Association-report-The-challenge-of-childhood-obesity-1.pdf>

⁴ Impact Assessment, paragraph 84

⁵ Impact Assessment, paragraph 86

⁶ Kantar estimates 0.73bn HFSS child impressions online in 2017. This is 81.11 impressions per child per year, according to the Consultation document’s estimation of there being 9 million 4-15 year olds in UK. This is 1.5 impressions per child per week.

⁷ Impact Assessment, paragraphs 146-147

by the available evidence cited in the consultation, which is limited in nature and scope, and is largely experimental.

8. Additionally, the recently published *ASA Monitoring Report on Online HFSS Ads*⁸, found that 2.3% of all ads served to child avatars used in its research were for HFSS products. The report used avatars which simulated child profiles, and its results are not representative of children's browsing activity, but it does provide indicative information on levels of compliance with the CAP Code rules. Whilst industry is already taking action to reduce this 2.3% figure, the report's finding that over two-thirds of those HFSS ads recorded were for products likely to be of little interest to children (e.g. ads for supermarkets, cheese and condiments) demonstrates that compliance with the rules set out in the CAP Codes is high; children are not being exposed to high volumes of HFSS advertising online, and the evidence suggests that even where children do see HFSS adverts, the content of the ads is not targeted at them. This is precisely the intention of the dual nature of the CAP Code HFSS rules, which address both advertising content and placement.
9. In summary, where evidence exists it suggests that children's exposure to HFSS advertising online is currently low, as would be expected, primarily due to industry's voluntary introduction of and compliance with the CAP Code restrictions.
10. The Advertising Association's own official submission to this consultation reflects these points, as does the submission from the ASA, CAP and BCAP, and we support the arguments made in both of these responses.

The case for further restrictions

11. The Government's consultation and Impact Assessment have not demonstrated that there is currently a need for further advertising restrictions online or that such restrictions would make any meaningful contribution to the stated policy aim of reducing child obesity. The link between a reduction in ads shown leading to a reduction in calories consumed, and therefore a reduction in child obesity, is tenuous at best.

Negligible calorie reduction outcomes

12. The Government's Impact Assessment calculates that a 9pm watershed on both TV and online would result in a mere 2.28 calorie reduction per day per child (whilst also assuming that HFSS 'calories' would not be replaced by other food or drink). Setting aside any issues with the calculation itself, this is a saving so small as to be essentially negligible, equating to less than half a Smartie being theoretically removed from children's diets per day. The Impact Assessment estimates that an online-only

⁸ <https://www.asa.org.uk/uploads/assets/uploaded/14be798d-bd30-49d6-bcfbc9ed7e66e565.pdf>

watershed would mean a calorie reduction of 0.3 calories per child per day, a figure so low as to be essentially inconsequential.

13. Even the estimated calorie reduction figure for a watershed on both TV and online represents a disproportionately small outcome, in the context of the Government's policy objectives for such a wide-ranging policy proposal that would, if implemented, have a disproportionately large business impact across the media and advertising industries, and would also impact adults (not just children). The likely outcome does not justify the proposed restrictions for online advertising, particularly where such little evidence exists as to the current 'harm'. Further analysis of this can be found in SLG Economics' *Review of the Government's Impact Assessment on proposals for introducing a 21.00-05.30 watershed on TV advertising of HFSS products and similar protection for children viewing adverts online*.

Differences between online and TV as mediums

14. TV and online are fundamentally different mediums, and should not be treated the same way in the consultation or the Impact Assessment. The Impact Assessment states that many of the hypotheses that apply to TV 'are also likely to apply to online advertising, which aims to act on the same mechanisms as television advertisements – just through a different medium.'⁹ This assertion does not appear to be based on evidence and misunderstands how different the two mediums, and users' consumption of them, are. Some of these differences are set out in Ofcom's *Communications Market Report 2018*¹⁰. TV is linear in nature, with scheduled programming containing ad 'breaks', essentially 'requiring' the audience to watch advertising in order to watch the content. This is not the case for the majority of advertising online. Adverts appear in various forms and formats online and next to, within and around content. There is less of a direct relationship between the content and the advertising – although some formats are more closely linked than others – and multiple ads will often be in view at the same time, unlike on TV. The behaviour and impact of ads shown on TV cannot be assumed to be the same as ads shown online.
15. TV is – self-evidently – a broadcast medium that 'pushes' content (and advertising) to viewers. Online is the opposite: an 'on demand' medium. The approach to managing and controlling how advertising is placed in order to avoid harm to children must necessarily be different for each medium. This is reflected in the existing advertising regulatory framework which seeks consistency of standards and protections between media but does not necessarily apply exactly the same rules and/or guidance to achieve consistency of outcome, because it recognises that different media warrant different approaches and have different ways of delivering compliance. The Government should also follow this approach in considering its policy toward further HFSS advertising restrictions.

⁹ Impact Assessment, paragraph 39

¹⁰ *Communications Market Report* https://www.ofcom.org.uk/__data/assets/pdf_file/0022/117256/CMR-2018-narrative-report.pdf

Displacement of advertising spend

16. Increased restrictions to online advertising are not justified on the basis of them being a corollary to the proposed TV watershed (should one be introduced). The premise set out in the Impact Assessment that there is a need to introduce increased online restrictions in order to mitigate against TV advertising spend – and therefore children’s exposure to HFSS ads – being displaced is flawed.
17. The Government’s own evidence in its Impact Assessment’s suggests displacement has not happened to date. The Institute for Fiscal Studies’ analysis of HFSS advertising¹¹ estimated 5.7bn child impacts occurred on TV in 2015. This was down from Ofcom’s estimate of 7.7bn child impacts in 2009, following the introduction of new restrictions which had reduced child impacts from an estimated 12.1bn in 2005.¹² These estimates suggest a reduction of some 6.4bn child impacts of HFSS advertising on TV over ten years. However, the Kantar research estimates child exposure to HFSS advertising online to be around 730million impressions in 2017¹³, far below the 6.4bn impacts that, if the Impact Assessment’s assumptions about direct displacement are correct, would have moved online. This is despite the overall year-on-year growth of advertising spend in the UK and the above-average growth in digital advertising spend. The Impact Assessment’s own evidence shows that, in practice, there has not been a displacement of advertising from TV to online.
18. If increased restrictions on TV did result in advertising budgets moving online, any additional online advertising purchased would be subject to the existing requirements in the CAP Code that restrict HFSS advertising to children. Therefore, if displacement from TV to online did occur, it would not automatically result in additional child exposure to HFSS advertising online. Higher spend on HFSS advertising would mean higher volumes of ads online directed at adults, not children. To propose that an online watershed must follow as a consequence of the introduction of a TV watershed is neither reasonable nor proportionate to the likely risk of harm arising from displacement of spend to an already highly-restricted medium.
19. One of the Government’s stated policy objectives is to encourage reformulation of products. We question whether its proposed approach is likely to achieve this if a key risk that it has identified is the displacement of advertising spend to other media (cinema, print, radio, etc.).

Management and control of advertising placement online

20. The consultation document proposes a watershed online and states ‘this approach is premised on the view that online targeting is inaccurate and does not limit children’s

¹¹ <https://www.ifs.org.uk/uploads/BN238.pdf>

¹² Impact Assessment, paragraph 81

¹³ Impact Assessment, paragraph 85

exposure to HFSS advertising effectively'¹⁴. This 'view' has not been substantiated in the consultation document or the impact assessment.

21. There are some underlying assumptions in the consultation document that decisions about where online ads are placed, and the delivery and 'targeting' of online advertising, is an entirely automated process, determined by technology. This demonstrates a fundamental misunderstanding of how advertising campaigns are planned, bought and managed by people, using technology to help them. It is essential that Government understands this process fully in order to be better able to evaluate how the risks of HFSS exposure are currently managed.

22. Individuals are responsible for decisions about where an advertising campaign should run (i.e. where ads should appear). Put simply, for each campaign, advertisers set their campaign objectives and determine who they wish their advertising to reach. They are also responsible for specifying any restrictions that should be applied, such as appropriate or inappropriate environments for their ads. This includes, for example, identifying their products as HFSS and applying the relevant CAP Code restrictions to ads for these products. The majority of brands appoint a media agency whose responsibility is to plan and buy media to deliver against the advertiser's objectives in accordance with the parameters they have set. The agency will agree a campaign plan with their advertiser clients before those campaigns are subsequently run. As part of this, the agency team will make decisions about what media to buy based both on what is appropriate, and what is permitted under any relevant legislation and the advertising Codes, as well as what will best meet the objectives of the campaign in terms of reaching the right audiences online. A basic overview of how the ad buying process operates can be found in Plum's *Online advertising in the UK* report, commissioned by DCMS and published January 2019.¹⁵

23. What this means in practice is that humans are making conscious decisions about when and where adverts are shown online – which is particularly relevant for ads that are restricted in terms of where they can appear or to whom they can be targeted. Humans also control the buying process itself, executing the media buys and providing instructions to the technology that they use. This includes specifying how ads should be targeted and selecting or deselecting different criteria in the advertising tools they are using to meet the campaign requirements. Once a campaign is running, the person responsible for the campaign will review where the ads are appearing to check that they are meeting the intended aims and are within the specified parameters, and if necessary can make adjustments in real time. The agency will also receive post-campaign reports of where and when the ads actually ran. There are, therefore, numerous checkpoints in the process where regulatory compliance is managed and checked before, during and after a campaign running.

¹⁴ Consultation document, p.21

¹⁵ *Online advertising in the UK*, p.40, Figure 4.1

24. It is also important that the different ways in which advertising media or inventory are sold/can be bought are fully understood. The table below describes these.¹⁶

TECHNIQUE

		TRADITIONAL		PROGRAMMATIC	
CHANNEL	DIRECT	Direct sales Inventory bought at fixed prices directly from media owners through in-house or external sales teams, using insertion orders and manual processes to book and turn the campaign	18% (-8pp)	Programmatic direct (e.g. direct deals, private marketplaces) Inventory bought from a particular media owner using automated processes, where a direct relationship exists between the buyer and media owner in the form of pre-existing deal terms (e.g. exclusive access and price floors)	63% (+10pp)
	INDIRECT	Networks Inventory bought at fixed prices from a third party offering packages which aggregate supply across multiple media owners	2% (=)	Programmatic indirect (e.g. open RTB exchanges) Inventory bought on an impression-by-impression basis in real-time through an open, unreserved auction.	17% (-2pp)

25. This illustrates that, in many cases, buyers know in advance which media their ads will appear in (i.e. all 'direct' buys). The majority of digital advertising is bought in this way, and as part of the planning process, agencies will look at audience make-up of the media in question to see whether it is appropriate and/or compliant to place their ads in these environments. Where ads are bought indirectly, whether through networks or exchanges (including DSPs) then other measures will also be used to manage the placement of the ads, such as the measures outlined in CAP's guidance¹⁷ and commercial tools (content verification, whitelists and blacklists, keyword blocking, etc.).

26. The consultation document states that '*recent Australian research found an average targeting accuracy of only 59% in consumer profiles. If targeting online is, while directionally accurate, of limited specific reliability, it is likely that children are seeing HFSS adverts where this is not the intent of the regulatory system*'¹⁸. Evidence from one study of the Australian market cannot be assumed to indicate the facts of the UK market – they are not the same. This study evaluates the data provided by 'data brokers' that 'sell' online profiles, looking specifically at the age and gender accuracy of those profiles, and is therefore in itself limited and of unclear application to the UK ecosystem.

¹⁶ <https://www.iabuk.com/adspend/full-year-2017-digital-adspend-results> (please contact policy@iabuk.com for access to the full report)

¹⁷ <https://www.asa.org.uk/advice-online/food-hfss-media-placement.html>

¹⁸ Consultation document, p.11

27. The UK is one of the most advanced and sophisticated digital advertising markets in the world. There is currently every financial incentive for companies engaged in selling and delivering digital advertising to ensure the targeting is as accurate as it can be. The more accurately a brand is able to target people or exclude them from seeing its advertising, the more efficient and effective their advertising campaigns are likely to be. Together with the regulatory requirement to ensure children are not targeted with HFSS (and other types of) advertising, this means that the whole ecosystem is geared toward achieving accuracy.
28. While there are challenges with identifying with surety individuals who are children online, for advertising purposes, there is no evidence provided in the Impact Assessment to support the suggestion that a combination of decisions about media buying made by advertisers and agencies, and the use of online targeting tools, when managed properly, are not reliable in terms of achieving compliance with the CAP Code.
29. As previously stated in this response, the evidence shows that compliance with the CAP Code is high. That aside, neither the law nor the CAP Code prohibits any instance of any child potentially seeing an HFSS ad and that is not the intent of the regulatory system. The purpose of the CAP Code restrictions is to ensure that children are not being targeted, deliberately or inadvertently, with HFSS ads due to the places they are shown or – if they are seen by children – through the content of the ads. This minimises children’s exposure to such ads and the appeal that those ads have to children. The CAP Code does not and cannot prevent exposure absolutely (and nor is that necessary) – and the same is true ads for products which are themselves age-restricted by law at the point of sale, such as gambling and alcohol.

Proposed

scope

30. The consultation document defines online advertising as ‘*any content published online commissioned by an advertiser which has the effect of advertising a product or service. This might include - but not be limited to - display advertising, influencer marketing, advergames, apps, advertising on a marketer’s own website or in other non-paid-for space online under their control, promoted and sponsored social media content and search results, and advertising on audio streaming services.*’¹⁹
31. The proposed scope is problematic for two reasons. First, it does not align with the scope and definitions of advertising contained in the existing advertising rules, i.e. the CAP Code. Second, it includes a wide range of types of advertising that option 1, a watershed, cannot be sensibly applied to (if at all). This creates a subsequent risk of fragmented and confusing regulation that is a consequence of the poor design of the proposed intervention, rather than being determined by what would best achieve the policy goal. It also does not provide clarity or certainty either for advertisers and their ad delivery partners, or for their audiences. The design of the existing CAP Code rules

¹⁹ Consultation document, p.13

demonstrates a more appropriate and suitable approach to advertising restrictions that are media-neutral, are based on consideration of the likely audience for content and/or advertising, and make use of the most appropriate tools for controlling exposure according to the type of advertising and media in question.

32. The consultation document implies that CAP Code restrictions on advertising HFSS products where more than 25% of the audience is aged under 16 only apply when contextual targeting is in use,²⁰ and suggests a lack of consistency exists around audience measurement resources. CAP's guidance²¹ in fact makes clear to HFSS advertisers that they must ensure they can demonstrate that they have complied with the requirement that no more than 25% of the audience for a media title or content around which the ad is placed is under 16 (this requirement may not apply in every scenario, for example, where ads are shown in a personalised 'in feed' or similar environment, based on targeting individuals who fall into predetermined audience categories. In these cases, the overall composition of the audience for that media is not a relevant factor). CAP's guidance also sets out the available resources that can help advertisers to comply with the evidence requirements in practice and recognises that different information will be available depending on the media in question.

Case for change

33. Overall, an adequate case has not been made that further regulatory interventions to introduce additional restrictions for HFSS advertising to children online are warranted. The data on which Kantar's analysis draws relates to 2017 when significant CAP HFSS restrictions were being introduced. This means the impact of those hugely relevant CAP Code restrictions has been ignored in the calculations, which cannot therefore be considered to be an accurate representation of the status quo.²² Even if this point is set aside, and if we accept the Kantar findings, they do not demonstrate that children are being exposed to unacceptable or harmful levels of HFSS advertising online. The Impact Assessment itself acknowledges this, stating that 'the evidence base on online advertising of HFSS products is weaker than for broadcast.'
34. While a lack of evidence does not necessarily indicate a lack of a problem, it equally does not in itself demonstrate that a problem exists, nor does it provide a basis for the Government's 'view' that existing methods of controlling advertising placement are not sufficiently effective.
35. The Government has stated that its policy will be led by the evidence. Based on the available evidence of estimated exposure, which does not take into account the effectiveness of CAP's 2017 restrictions, and set against the negligible potential claimed calorie reduction that the proposed watershed may achieve, there is at this point in time no justifiable case for increased restrictions. Therefore, if the Government

²⁰ Consultation document, p.10

²¹ <https://www.asa.org.uk/resource/Guidance-on-media-placement-restrictions.html>

²² As acknowledged in the Impact Assessment, paragraph 84

wants to continue to pursue exploring whether further online advertising restrictions are part of the solution to child obesity, and are justified, then it should:

- Gather or commission relevant and representative evidence about children’s exposure to HFSS advertising online and whether this is linked to obesity. That evidence should take into account the effect of the 2017 restrictions.
- Conduct a full evaluation of that evidence.
- Decide whether that evidence supports proposing further regulatory intervention (including action by the self-regulatory body).

Online consultation options

36. The IAB does not agree that any of the Government’s proposed options are justified or necessary other than, to a limited extent, its option 4 (‘no government intervention’). The comments that follow are aimed at assessing the appropriateness, feasibility of implementation, proportionality and unintended consequences of each of the Government’s proposed options.

37. We note that the proposals are intended to apply to particular categories of HFSS products only. We make no comment on the scope of the proposals in that respect but for the purpose of this section we refer to ‘HFSS advertising’ or ‘HFSS products’ meaning those that would fall within the intended scope of the proposals.

Option 1 - Introduce a 9pm-5:30am watershed online

38. Implementing a 9pm watershed for HFSS product advertising online would not, in theory, be technically difficult. Delivery of some types of display advertising (by no means all types of advertising) can currently be managed according to time of day – for example, to advertise breakfast products in the morning but not the afternoon. Companies may have to make changes to their systems and processes if they must adhere to time restrictions as a regulatory requirement (and be able to demonstrate this adherence, if required, to the regulator) rather than due to the advertiser’s choice. However, this would probably be the easiest option from a technical implementation perspective.

39. More fundamentally, although it would be technically possible to implement a watershed for certain types of advertising online, it makes little sense to do so. A watershed is a tool used for TV to control when certain types of programmes (and adverts) can be broadcast, based on the times of day that children are considered to be likely to be watching TV. This is a concept that was developed for a linear, broadcast, ‘one to many’ medium where the content (and accompanying advertising) a user views is, in part, determined by time of day, and is controlled by the broadcaster. This is not the case online, where time of day is not a determining factor for what content a user is able to consume nor a proxy for who is likely to be consuming it –

almost all content online is consumed ‘on demand’, when the user wants to consume it.

40. A watershed is, therefore, not a relevant concept for consumption of online media, or online advertising. There are better and much more appropriate ways to manage and control ad placement online. What is relevant is where children are online.

41. Digital advertising and digital technology offer sophisticated methods for advertisers to target or exclude people using a combination of first party, third party and inferred data. These techniques are used for both commercial purposes, to deliver relevant advertising to the right people in the most effective and efficient way, and to meet the requirements of the CAP Code (and other relevant regulatory/legislative requirements). The use of demographic and interest-based data online offers a far more sophisticated and accurate way of excluding children from being targeted with advertising than the somewhat blunter tool of assuming everyone accessing digital media before 9pm is likely to be a child, and those doing the same after 9pm are adults – irrespective of the nature of the media. And as set out earlier in our response, we have not seen evidence to suggest that targeting techniques, when properly applied, are not effective at achieving regulatory compliance.

42. A watershed is also an extremely ‘blunt’ tool and as such, would overreach the policy objectives of reducing children’s exposure to HFSS advertising by also preventing legitimate advertising of HFSS products to adults during the majority of day. The consultation notes that there may be adult ‘benefits’ from a policy that is intended to address obesity in children but we question whether such undetermined benefits can be used as justification for interventions relating to children, particularly when the costs of the intervention outweigh the possible benefits.

43. A watershed online is not a targeted intervention. It would prevent advertisers from legitimately advertising HFSS products to adults between 5.30am and 9pm in addition to the already limiting restrictions on where and to whom HFSS ads can be shown online. This would leave very few waking hours for them to reach their desired audiences and risking the perverse outcome that all ads for (certain kinds of) HFSS advertising would be concentrated into a very short window of time, with advertisers potentially being significantly restricted from reaching their target audiences as a result. This presents a particular problem to advertisers, who are already conscious of the need to avoid advertising being seen too often, or being perceived as repetitive.²³

Business impacts of a watershed

44. If, following this consultation process, the Government were to continue to explore the idea of a watershed online, which we strongly recommend against, then it should set

²³ *Arresting the Decline of Public Trust in UK Advertising*, Action 2, reducing excessive advertising frequency and re-targeting, p.14

out its rationale for this option for online media – which the consultation documents fail to do – and demonstrate why and how it expects that it will be effective in reducing child obesity. Specifically, it should design any proposed watershed based on how online media is accessed, rather than relying on insights from TV viewing, which is an entirely different experience and managed in an entirely different way. It should also adopt a risk-based approach to a watershed that does not exclude advertising being shown to people who are highly likely to be adults, or on sites/services where the vast majority of users are likely to be adults.

45. Due to an absence of evidence on the subject, the Government’s Impact Assessment assumes there would be zero transition cost for advertising companies implementing an online watershed.²⁴ In reality there would likely be ongoing costs due to the need for businesses to introduce additional settings in order to apply a 9pm-5.30am watershed and the associated quality assurance within the advertising campaign set-up process. It is likely that agencies would look to create technological tools to allow them to run automated checks of compliance with the watershed. One IAB member estimated that this additional quality assurance and compliance checking would increase the total estimated staff time needed for these processes by approximately 5%.
46. The Government’s Impact Assessment also makes no analysis of the impact of a 9pm watershed on advertising businesses losing the ability to reach adult audiences for the bulk of the day. Total advertising of food, drink and grocers represents almost 10% of advertising booked for some publishers, and whilst this would include non-HFSS products, limiting such a large portion of advertising until after 9pm could have a significant impact both on brands advertising their products (potentially resulting in an influx of HFSS advertising after 9pm) and on media owners and publishers that rely on advertising as a key funding stream.
47. A bigger concern, however, is the impact on delivery, performance and pricing that the introduction of a 9pm-5.30am watershed would have, as audience access and engagement differs significantly during different times in the day. One IAB member, a large advertising agency group, estimates that it delivers 60% of ad impressions in the UK between 9am-6pm, with roughly 15% delivered before 9am and 25% after 9pm daily. Removing HFSS advertising opportunities from a period of the day that represents 60% of all daily ad impressions could lead to lower investment in digital advertising by HFSS product advertisers and significantly constrain their ability to reach their audiences.
48. If the Government continues to develop proposals for a watershed online, these impacts should be fully explored and quantified as part of the next stage of modelling, and the Impact Assessment should be revised accordingly.

²⁴ Impact Assessment, paragraph 350, Table 21

Different advertising formats

49. Whilst it is technically possible to implement a 9pm watershed for some online advertising formats, there are numerous formats which it would not be realistic or practical to apply a watershed to. While the consultation document acknowledges this, it does not provide a satisfactory solution to the issue (serving to highlight why a watershed is not a suitable tool for controlling advertising placement online) and proposes to limit the watershed to those formats where it could be applied in practice, without a clear policy rationale for doing so.

50. The table below describes the main digital advertising formats.

Formats	Categories (not exhaustive)
Display (these can appear in any online environment: websites, apps, social media)	<ul style="list-style-type: none"> • Banner ads (e.g. at the top or side of a webpage) • Video (e.g. pre/mid/post-roll; outstream; social in-feed) • Content-based advertising e.g. (paid-for sponsorship, advertisement features including paid-for influencer marketing) • Native (in-feed & native distribution units, e.g. 'recommendation engines')
Search	Sponsored or promoted listings in search engine results
Classifieds	Listings for jobs, property, cars, tradespeople, etc.
Other	e.g. audio, lead generation, SMS/MMS, in-game advertising

51. Content-based advertising, such as an advertiser-funded article on a news site, would be required to routinely be unpublished and then republished on a daily basis to avoid it being viewable before the watershed. Any type of advertising where the time that it is seen is determined by the time that the person engages with the content (e.g. a paid-for post or story on social media; content that is loaded after the watershed but not viewed until the following day) cannot be controlled by a watershed, because a watershed can only determine when an ad is 'delivered' and not when it is viewed.

52. A watershed also creates a perverse scenario whereby, if an adult is deliberately searching for a particular HFSS food or drink between 5.30am-9pm on a retail or marketplace site, for example, it would be prohibited to show that person promoted listings for that same type of product. This goes significantly beyond what could be considered proportionate and targeted regulation and infringes on the freedom to advertise.

53. In summary, whilst it would be technically possible to implement a 9pm watershed online for a limited number of advertising formats, it would not be a suitable or proportional approach to deliver the desired policy objectives, and risks being

unworkable in practice. There are far more sophisticated and effective methods for limiting children's exposure to HFSS ads online, which are reflected in the CAP Code and its accompanying guidance and are currently in use to good effect.

Incomplete modelling

54. The Government's Impact Assessment provides modelling for Option 1 only. If Option 2 remains in consideration then, as part of its policy development, the Government should undertake modelling this option to determine both its ability to achieve the intended policy objective, and its likely impact on advertisers and media owners. Without such modelling we are not able to fully evaluate this option.

55. The Impact Assessment 'Summary' page states that the Government is 'seeking further views and evidence on all options, with the intention to model all options fully at final stage'²⁵.

56. We ask the Government to set out, as part of its response to this consultation exercise:

- what the next steps are for producing any further modelling (if it decides to proceed to the 'final stage')
- when and how it will publish the further views and evidence it obtains
- what consultation and industry engagement will be carried out based on that information, and on any further modelling of the options

Option 2 - Strengthen current targeting restrictions

57. The current prohibition on advertising HFSS products in media of general appeal where children make up more than 25% of the audience is in line with other age-restricted product advertising and is an approach that has been used successfully for a number of years to achieve proportionate regulation, balancing the likely risk of harm to children with avoiding unnecessary and disproportionate intrusion into adult engagement with online content and the freedoms of advertisers to engage with their adult audiences. The same threshold of 25% is considered a proportionate level for products that are themselves age-restricted at point of access/sale, as well as for HFSS products, that are not age-restricted.

58. We believe that reducing this threshold level to 10% would be unnecessarily restrictive. Many online publishers and platforms feature such a wide breadth of content that they would likely reach a threshold of 10% extremely quickly. An online news publisher, for instance, may aim its content firmly at adults but have enough young teenagers viewing its sports content that 10% of its overall audience would be aged under 16, rendering it unable to accept any HFSS product advertising aimed at the adult 90% of its audience. Brands may choose not to take the risk of advertising HFSS products via

²⁵ Impact Assessment, paragraph 6

those media owners at all, with the 10% level therefore risking becoming a de facto ban of HFSS product advertising online.

59. There is no evidence that the data that advertisers, agencies and media owners currently make use of to support the careful targeting of HFSS ad campaigns is not suitable or not effective. The ASA has been able to rule on complaints made to it of non-compliance with the HFSS rules using the existing rules and guidance, and has not identified that the existing approach is not sufficiently robust. The recently published *ASA Monitoring Report on Online HFSS Ads* demonstrates that the current restrictions are largely effective²⁶.
60. For the Government to propose creating a 'prescriptive' list of 'evidence' that an advertiser must hold or refer to in order to justify advertising to adults in adult media represents a policy approach that is neither risk-based nor proportionate. Such an inflexible approach would likely be unworkable, as it presumes that the same data sets would always be available for every media-owner, which is not the case.
61. Modelling of the consultation options for TV include the possibility of a 'de minimis' audience exemption. There appears to be no policy rationale for this principle not being applied to digital media (the Impact Assessment simply states that 'it is not possible to assess the efficacy of such an exemption'²⁷). We would welcome clarification from the Government on its policy rationale here.

Option 3 - Mixed option

62. It is important not to view online VOD services as the same as TV. There are significant differences in the consuming habits of audiences watching TV live and those watching video content online where, as mentioned before, time of day ceases to be a determining factor for what users are watching and what accompanying advertising they are seeing. For example, if a logged-in user has chosen to watch an 18-rated film via a VOD service, but is doing so before 9pm, it seems counterintuitive to prevent them from seeing any HFSS advertising. The consultation document states that there 'may be' a greater risk of displacement of spend from TV to VOD, and that 'there is therefore an argument to treat it like broadcast'²⁸. The Government should set out both this risk and argument in more detail before pursuing this option further.

Option 4 - No government intervention

63. As we have set out earlier in our response, we do not accept the premise of the Government's consultation that further regulatory intervention is required for online advertising of HFSS products, because the case for change has not been made.

²⁶ <https://www.asa.org.uk/uploads/assets/uploaded/14be798d-bd30-49d6-bcfbc9ed7e66e565.pdf>

²⁷ Impact Assessment, paragraph 127

²⁸ Consultation document, p.22

64. Evidence-based policy should be founded on clear and robust data and evidence, that identifies whether or not a problem exists and, if it does, the nature and scale the existence of that problem and the harms that may arise from it. Policy solutions should be developed in an evidence-based manner to identify those that can demonstrably and proportionately address the problem. We do not believe that the Government's consultation and Impact Assessment have met these standards. There is no clear evidence that children are being exposed to HFSS advertising online in unacceptable volumes that are harmful to them, and we are satisfied that, based on the available evidence, the risk of exposure is being effectively managed through the CAP/ASA system.
65. The Government should recognise that 'no government intervention' does not equate to 'no restrictions'. We continue to believe that the CAP Code, enforced by the ASA, is the most appropriate mechanism to mitigate and minimise the risk of harm to children from advertising. The Government should recognise the importance and effectiveness of the action that industry has already taken, through its self-regulatory framework, to reduce children's exposure to HFSS advertising. If further, robust evidence emerges that demonstrates that changes are needed, this should be referred to CAP to take the necessary action.
66. If the Government decides to take forward this policy for online advertising despite the lack of evidence to support either the need for its proposals, or the likely efficacy of its proposed actions, then any subsequent measures that are implemented should be subject to clear targets and success measures. The Government should monitor its progress in terms of the direct impact on child obesity of any measures that it introduces, and should as a minimum ensure that they are subject to a sunset clause.