

Child health and digital marketing: for a rights based approach

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ENOC Conference

Prof. Amandine Garde

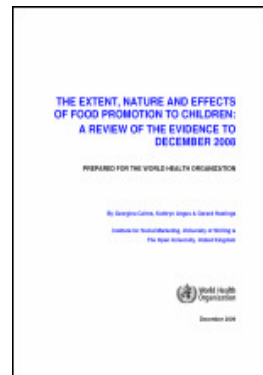
Law & Non-Communicable Diseases Research Unit

agarde@liverpool.ac.uk



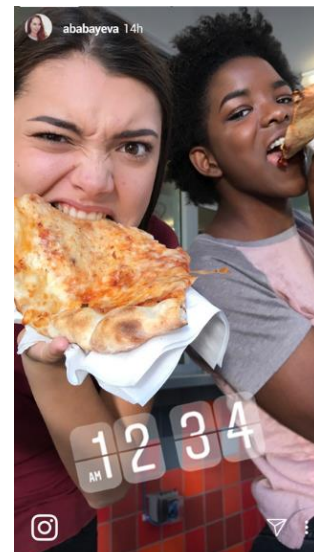
Evidence associating food marketing and child obesity

- 'There is **unequivocal evidence** that **unhealthy food marketing is related to childhood obesity**'
- Independent evidence has confirmed that **food marketing directly influences food preferences, purchase requests and consumption patterns**
- Food marketing **disproportionately** promotes unhealthy food
- Influence on food as well as **food category/brand preferences**
- Variety of evidence



Immersive marketing

- Immersive techniques such as:
 - extensive themed game applications (or “apps”)
 - social media content created by users themselves
 - word-of-mouth social media communication, such as “liking”, sharing and commenting on marketing
 - paid partnerships with vloggers popular with children



Personalised marketing

- Collection of a “tsunami” of personal data:
 - users’ browsing activity, devices and networks used, geo-locations, “likes” and other activities in digital social networks
- Collection, processing/profiling, targeting
- Digital analytics
 - ability to fine-tune the power of marketing messages
 - Identification of detailed consumer responses (e.g. in-device cameras and software)
 - Ability to match advertising delivery to consumers’ moment-by-moment moods, or to known weather- or mood-linked food consumption patterns

Children and digital media

- Increasing amount of time spent online
- The Internet platforms children visit most are not child-directed but are those providing **content for mixed ages**
- Proprietary data are not published, and other currently available methods do not readily allow access to these data
 - ➔ **MAJOR CHALLENGE TO ASSESS CHILDREN'S EXPOSURE TO UNHEALTHY FOOD MARKETING**

CLICK

C

Comprehend
the digital ecosystem

L

Landscape of
campaigns

I

Investigate exposure

C

Capture on-screen

K

Knowledge sharing

A tool for monitoring
children's exposure to
marketing of unhealthy
products online



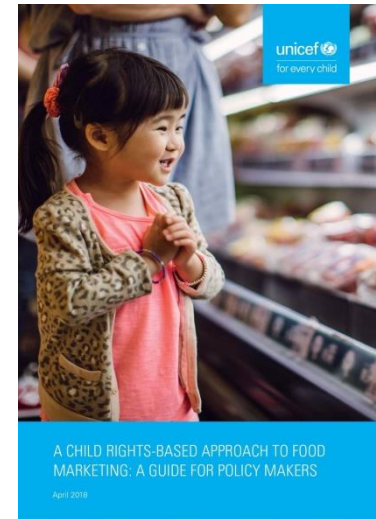
The rights of the child negatively affected by unhealthy food marketing

- **UNICEF report (2018)**

- A. Garde, S. Byrne, N. Gokani and B. Murphy
(Law & NCD Unit)

- **Focuses on:**

- **The right to the highest attainable standard of health**
 - The right to adequate food
 - The right to life, survival and development
 - The right to education
 - The right to information
 - The right to rest, leisure, recreation and cultural activities
 - **The right to privacy**
 - The right to non-discrimination



Accountability

A children's rights approach guarantees a degree of state accountability, making effective remedies more likely where rights are violated. This, in turn, facilitates the translation of the commitments and obligations established in the human rights treaties into operable, durable and realisable entitlements.

Anand Grover, UN Special Rapporteur on the Right to Health, June 2014

‘Owing to the **inherent problems associated with self-regulation and public-private partnerships**, there is a need for States to adopt laws that prevent companies from using insidious marketing strategies. The responsibility to protect the enjoyment of the right to health warrants State intervention in situations when third parties, such as food companies, use their position to influence dietary habits by directly or indirectly encouraging unhealthy diets, which negatively affect people’s health. Therefore, **States have a positive duty to regulate unhealthy food advertising and the promotion strategies of food companies**. Under the right to health, States are **especially** required to protect **vulnerable groups such as children** from violations of their right to health.’

Marketing, Parents and the UN CRC

- **Article 18 UN CRC:**
 - States should provide “appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities”
- **UN Special Rapporteur on the Right to Health:**
 - States should develop policies and services that support families and strengthen their parenting competencies so that all children can grow in healthy family environments.”
(A/HRC/32/33, 4 April 2016, paras. 46 & 47)
- **THIS SHOULD INCLUDE THE DIGITAL ENVIRONMENT**
 - ongoing consultation of the CRC Committee (15 May)

Article 24 CRC

1. States Parties recognize **the right of the child to the enjoyment of the highest attainable standard of health** and to facilities for the treatment of illness and rehabilitation of health [...].
2. States Parties shall pursue full implementation of this right and, **in particular**, shall take appropriate measures: [...]
 - (c) **To combat disease and malnutrition**, including within the framework of primary health care [...] through the **provision of adequate nutritious foods and clean drinking-water** [...];
 - (e) To ensure that all segments of society, in particular parents and children, are **informed**, have access to **education** and are **supported in the use of basic knowledge of child health and nutrition**, the advantages of breastfeeding [...]
4. States Parties undertake to promote and encourage **international co-operation** [...]

Fleshing out the right to health

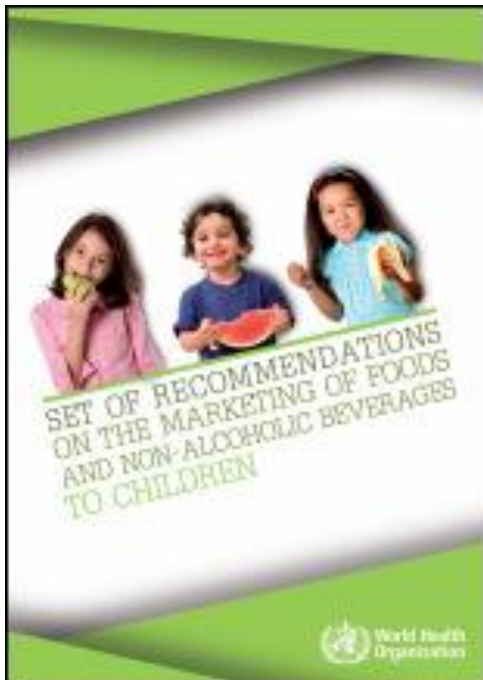
General Comment 15 (2013)

Children's right to health interpreted as “**an inclusive right**, extending not only to timely and appropriate **prevention**, health **promotion**, curative, rehabilitative and palliative services, but also to a **right to grow and develop to their full potential and live in conditions that enable them to attain the highest standard of health through the implementation of programmes that address the underlying determinant of health.**”

WHO Recommendations 2010

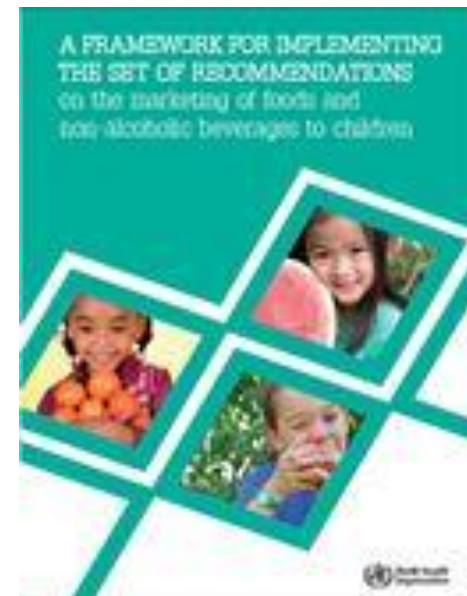
Unanimously endorsed by Resolution WHA 63.14

Overall objective: to reduce the impact of marketing on children and therefore contribute to effective obesity prevention strategies



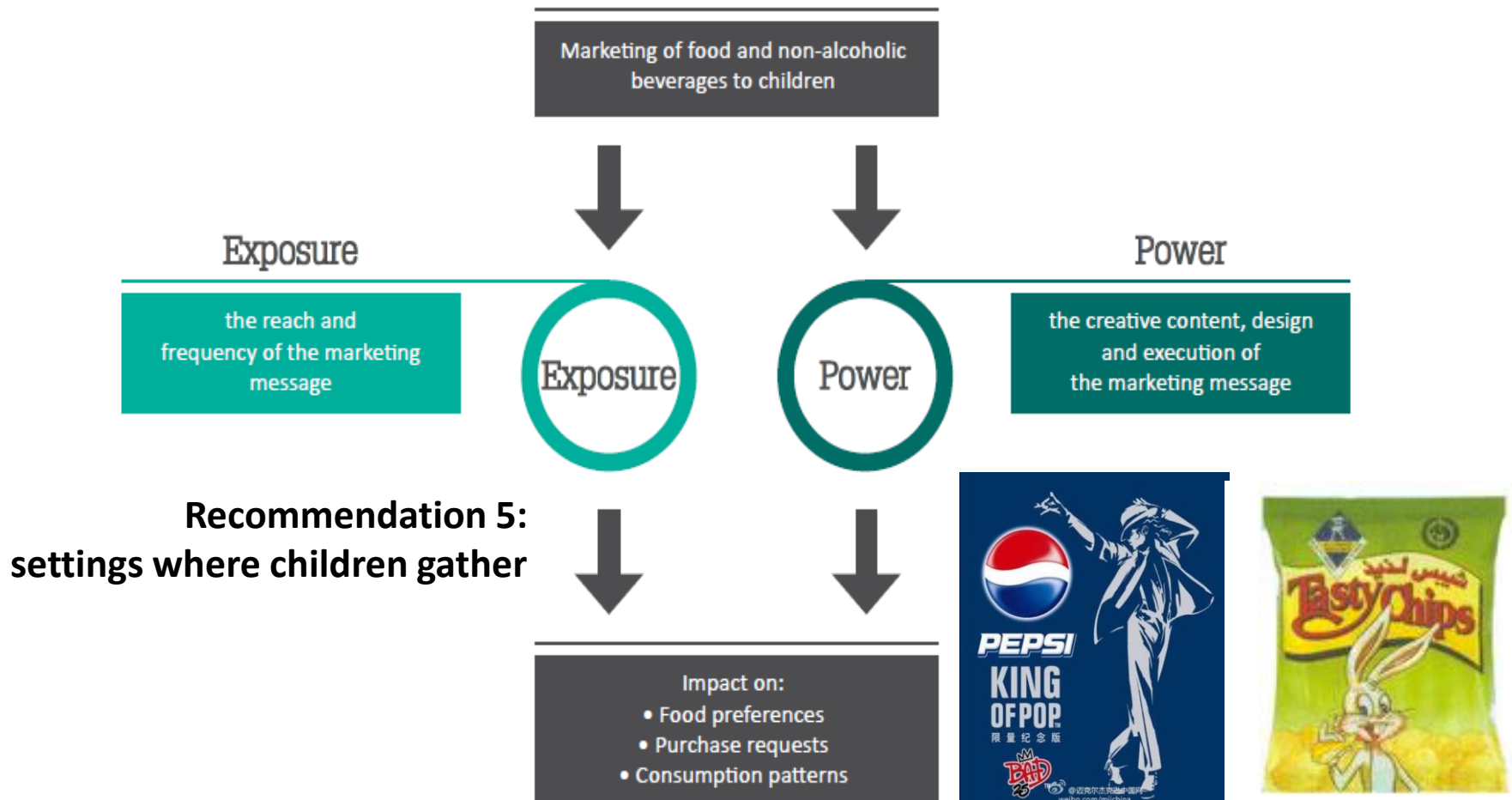
Framework Implementation Report (2012)

Puts some flesh on the bones of the Recommendations and identifies key considerations for States to take into account



WHO Recommendation 2

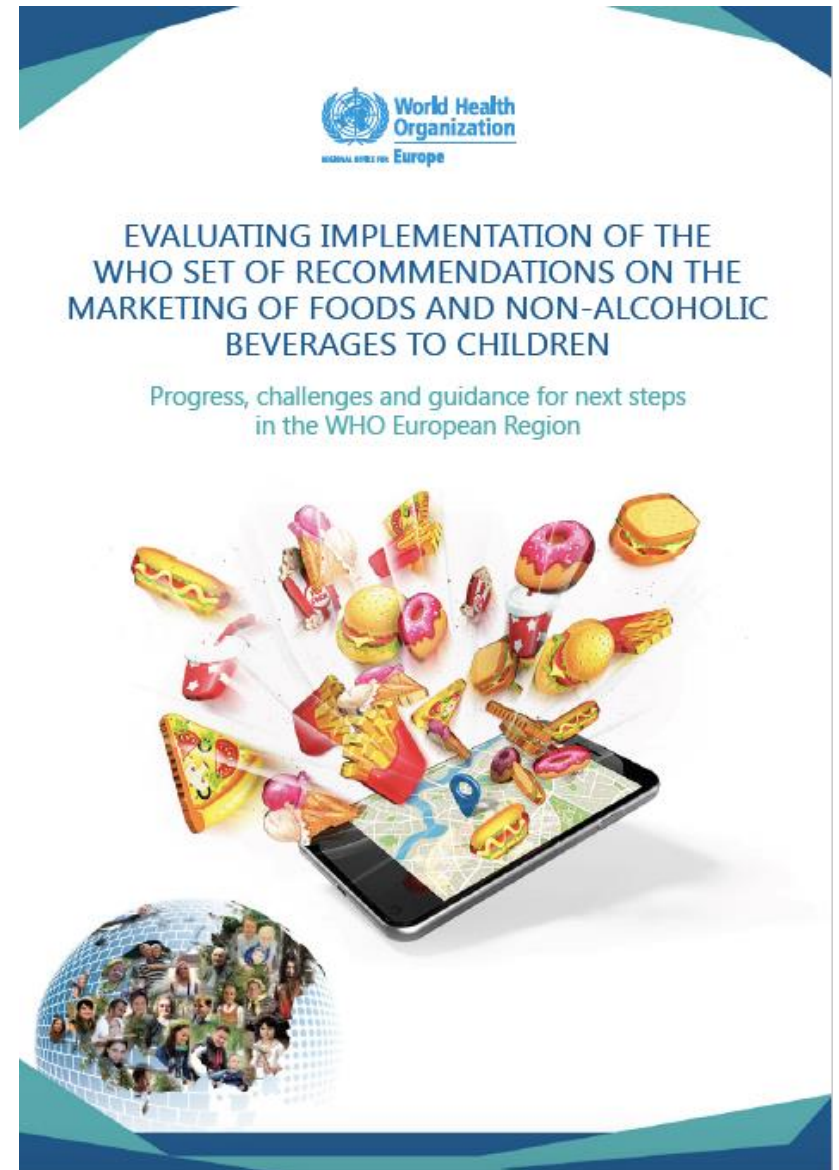
‘Given that the effectiveness of marketing is a function of **exposure** and **power**, the overall policy objective should be to reduce both the exposure of children to, and power of, marketing of [unhealthy food].’



WHO Recommendation 3

The greater potential of a comprehensive approach

which also addresses cross-border marketing



Shifting investment

- From regulated to unregulated content



A 5:30am – 9pm watershed



The Limited Contribution of the AVMSD

- 9(4). **Member States shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct... regarding inappropriate audiovisual commercial communications, accompanying or included in children's programmes, for [unhealthy] foods and beverages. Those codes shall aim to **effectively reduce the exposure of children** to audiovisual commercial communications for such foods and beverages [...]**
- 9(5). **Member States and the Commission may foster self-regulation, for the purposes of this Article, through **Union codes of conduct** ...**

What potential for the GDPR?

Article 6(1) GDPR:

“Processing shall be lawful only if and to the extent that at least one of the following applies:

(e) processing is **necessary** for the purposes of the **legitimate interests** pursued by the controller or by a third party, except where such interests are **overridden** by the **interests or fundamental rights and freedoms of the data subject** which require protection of personal data, **in particular** where the data subject is a **child**.”

**THANK
YOU FOR
YOUR
ATTENTION**

