

# Introducing further advertising restrictions on TV and online for products high in fat, salt or sugar: consultation on secondary legislation

## IAB UK response

March 2023

### About IAB UK

The Internet Advertising Bureau (IAB UK) is the industry body for digital advertising, committed to building a sustainable future for digital advertising. We represent and bring together all elements of the digital advertising supply chain through our 1,200 members, including media owners, agencies and advertising technology companies, and through our Board, which comprises 25 leading businesses in the sector.

### Our response

Our response addresses only the content and questions in 'Section 4: Audio only' of the consultation since these are particularly relevant to our members.

#### Section 4: Audio only

1. *Do you agree or disagree that regulation 6 clearly describes and fully captures what audio-only content is?*

Yes.

2. *Do you agree or disagree that regulation 6 makes it clear what is considered a visual advertisement included with an audio item?*

This question is not entirely clear, since a 'visual' ad could not, by definition, be included within an item that consists wholly of sound (an 'audio item'), and the regulation does not refer to an advertisement included 'with' an audio item. It refers to an ad 'included in a service distributing an audio item' (emphasis added).

In our view, the definition of a 'visual advertisement' in regulation 2 is sufficient to make clear the type of ad format that is exempted from the general prohibition. That is, ads in a service defined by regulation 6(a) are exempt if they contain neither images nor text.

A visual ad could be included in a service that distributes audio items that has

an audio-visual element to it, such as interface (website, app, etc.). We see no logic in prohibiting or exempting an ad based on its format, since the rationale for the exemption is based on the likely audience of the service and its content, not the ad format. There are no considerations of ad formats elsewhere in the policy consultations or the legislation. Therefore, services that provide audio-only content should also be permitted to carry ads for 'less healthy' HFSS products in any format.

3. *Do you agree or disagree that the relevant parts of the regulations provide sufficient overall clarity on the services in scope of the advertising restrictions?*

We understand that the audio exemption is intended to apply to as follows: where a service provides audio-only content online it may provide/host audio ads for 'less healthy' HFSS food and drink online that are otherwise prohibited by Section 368Z14 of the Communications Act 2003.

On that basis, we believe that regulation 6 provides sufficient clarity on the exemption. In terms of services in scope (as per the question wording), we therefore understand that online services that do not provide any audio-only content may not provide/host online ads in any format for 'less healthy' food and drink that are prohibited by Section 368Z14 of the Communications Act 2003.

If that interpretation is correct, then the regulations are sufficiently clear. If we have misunderstood the intended scope of the restrictions, then further clarity is needed.

## Section 5: Further feedback

### *Do you have any additional comments on the draft regulations?*

The draft regulations create a new exemption under the powers in the primary legislation for an exemption to apply to audio ads in audio content.

The consultation states

*With the exception of the proposal for a new audio-only exemption in draft regulation 6, this consultation is not seeking to revisit policy decisions that were made and detailed in our [response to the consultations in 2019 and 2020](#).*

And:

*We are also seeking views on whether the secondary legislation should provide for an exemption for audio-only media to cover other non-broadcast radio services that are carried online including UK-based internet radio services.*

There are no questions in the consultation that address the exemption itself, so we are including our views on that here.

We support an exemption being applied to ads in and around audio content since there is no evidence to suggest that children are hearing or being impacted by these ads, and they do not make up a significant proportion of the audience for audio content online. Existing rules set out in the CAP Code apply to all HFSS advertising in online audio environments and will continue to provide effective protections for children.

The Government set out its rationale for this exemption in its 2020 consultation response:

*as the impact and levels of child exposure to HFSS advertising on audio only media (for example, podcasts, online only radio) remains unclear, these restrictions will not apply to these forms of media*

On this basis, ads for less healthy food and drink in or around audio content should be permitted irrespective of the manner in which that content is accessed, including via an app or website that has visual or audio-visual elements. The audience for the audio content is likely to be same however it is accessed. Since there is no evidence provided or analysed about the impact or levels of child exposure in these particular environments there is no basis on which to apply the ban. It does not make sense that an HFSS ad could play in an audio stream, for example, but an ad for the same product could not be shown in the app that is facilitating that streaming.

Similarly, we see no logic in prohibiting or exempting an ad based on its format, since the rationale for the exemption is based on the likely audience of the service and its content, not the ad format. There are no considerations of ad formats elsewhere in the policy consultations or the legislation and no evidence has been provided to suggest audio-visual or visual ads directly linked to the provision of audio content online pose a greater risk of harm to children than audio ads. Therefore, services that provide audio-only content should also be permitted to carry ads for 'less healthy' HFSS products in any format and these ads should continue to be subject to the existing CAP Code restrictions.