CHAPTER OVERVIEW

This chapter takes a look at the impact of social media on privacy, ethical considerations, and self-regulation and statutorily regulation of social media marketing, critically evaluating how far current codes of practice and regulations are applicable or indeed transferable to social media. Using examples from the alcohol industry and advertising to children, the chapter highlights areas of ethical concern and potential regulatory consequences of ethically questionable behaviour.

LEARNING OUTCOMES

On completing this chapter, you should be able to:

- Critically discuss the difference between ethical and legal marketing
- Reflect on privacy and the data protection implications of social media marketing
- Elaborate on the implications of using social media, especially in relation to marketing of potentially harmful products or to vulnerable groups.
PRIVACY, DATA PROTECTION, ETHICAL AND LEGAL ISSUES

The rise of digital media, and particularly social media, has resulted in a variety of ethical, legal and privacy problems; for example, much of the current marketing communication regulation has no effective means of dealing with social media-based marketing campaigns, and until very recently digital and social media were outside the remit of advertising regulators. Similarly, the vast amount of sharing of personal data, often with the intention of sharing content amongst trusted friends, gives rise to the potential for manifold privacy concerns. This is especially true in cases where such data is accessible, particularly unintentionally, by third parties, such as employers or organisations using the data to target marketing communication campaigns. This chapter focuses on these novel aspects of widespread social media use, firstly by exploring privacy concerns before moving on and discussing the concerns and challenges about new media marketing in relation to existing regulatory frameworks.

Privacy and Data Protection

Privacy and the protection and use of personal data are major issues for both social and digital marketing, especially as few rules exist about how personal data, once legally stored, is analysed and used (Jacobson et al., 2020).

For social media networks and their users, a major issue remains the complexity of managing privacy settings (Lee, 2014), avoiding sharing data unintentionally. Although many users express concerns for privacy, they actually fail to adjust settings to protect their privacy (Gross and Acquisti, 2005). Social Capital Theory has been used to explain privacy concerns, and privacy enhancing actions in relation to social media behaviour, and has been highlighted in the research literature (Chakraborty et al., 2013). It is therefore useful to review Social Capital Theory briefly before examining its applicability to social media.

Social Capital Theory

There are many theoretical discussions surrounding the notion of social capital. The main argument of Social Capital Theory is the concept that access to social networks and social credibility within these networks have an appreciable value, and that this value can be measured similar to the value of goods or services. Consequently, investment in social relationships, for example, in the form of building and maintaining relationships both online and offline, has an expected return, in the form of enhanced outcomes of actions (Lin, 1999). The explanations for the more favourable outcomes of actions within an established social network can be said to be fourfold:

- Established social relationships enable the flow of information.
- Established social relationships open up the possibility to exert influence.
- Social relationships bring with them social credentials, in the form of trust and access to parts of the social network not readily accessible by others.
- The social capital and an extensive or effective social network reinforces an individual’s identity and recognition, which in turn is essential for maintenance of mental health and a feeling of entitlement to resources. (Lin, 1999)
Consequently, social capital adds to the ‘value’ of individuals beyond the traditional notion of human capital, for example the knowledge and skills a person has.

In a similar way to traditional relationships, social capital can be gained, or indeed lost, through the use of social media interactions. Many individuals mix different networks of people on social media, for instance, colleagues and friends, and actions may be shared across different networks unintentionally, and have the potential to destroy social capital in those networks. For instance, there have been several cases where sharing of spare-time activities intended to be accessible only to friends has led to the termination of employment for some individuals. However, even adjusting privacy settings may not in all cases suffice to protect the individual’s privacy. In a case in New Zealand, a woman was asked by her employer and subsequently ordered by an employment tribunal to hand over Facebook data to prove she was actually sick on the days she claimed sick leave.

Similar to the unintentional sharing of private information amongst different networks is the unintended sharing, or making available, of data to third parties, specifically advertisers. Behaviourally targeted advertising (see also Chapter 11), i.e. advertising that relies on a longitudinal profiling of users, has been the subject of intense debate. The debate has led to a largely negative rhetoric in the popular media, and regulators as well as academics expressing concerns about the privacy aspects of this technology. In response, the advertising industry has emphasised consumer relevancy, rather than focusing on privacy issues; for example, the UK-based Internet Advertising Bureau defines this form of advertising as ‘a growing way of making the advertising you see on websites more relevant to your interests and preferences. It is based on your previous unidentifiable web-browsing activity, such as pages viewed, searches made and ads clicked on’ (Internet Advertising Bureau, n.d.). The World Privacy Forum (World Privacy Forum, n.d.) is more explicit about the technical aspects of behavioural targeting, and highlights the incumbent privacy issues. It emphasises that a user is tracked over time to gain a profile of the consumer’s online activities, their interests and preferences, and/or communications, which is then used as a basis to serve advertising or market goods.

The main concerns regarding this type of advertising are conflicting claims about how aware consumers are of this tactic, what levels of understanding consumers have and the perceived difficulty of opting out. Pressure groups, such as American Consumer Affairs, claim that consumers are largely unaware of the practice (Bosworth, 2006), while academic research asserts that consumers are more aware than popular media assumes (Alreck and Settle, 2007). However, although consumers are aware of the tactic, consumers are also reported to be highly critical. Alreck and Settle, for instance, report that over half of the consumers think behavioural tracking and targeting should be illegal.

Regulators have responded to these concerns by requiring identification of behaviourally targeted advertising (e.g. by a stylised i being displayed on behaviourally targeted advertisements in the European Union). However, despite awareness campaigns, there are concerns that a sizable part of the population does not realise, or at least fully appreciate, the meaning of the symbol.

Behaviourally targeted advertising does raise an interesting issue at the crossroads of this chapter. Because of the potential for data collection, social media and new technology
present both privacy and ethical concerns, even for an activity that is clearly legal. However, as many individuals object to being tracked online, but lack the skills, knowledge or motivation to opt out of the tracking, such practices raise concerns as to what effect such actions may have in the long run. For instance, if people object to companies using such technology, will they eventually refuse to purchase products from such companies?

Similar issues in relation to privacy and details becoming available to marketers have been raised in relation to other social network activity, although largely depending on the network used and the type of campaigns being run. Facebook applications, for example, often make much of the profile information of users available to the developers – a feature frequently overlooked by users. Consequently, by installing an application, a user may make contact lists, emails and relationship status and other personal details available without fully realising that these details are being passed on. Moreover, the majority of applications request the ability to post to users' profiles, i.e. for example, sharing high scores for online games on a user's Facebook wall. This in turn may alienate consumers, particularly in cases where the users have not realised, or are overwhelmed, by the privacy settings and their control. Thus such tactics may result in the users removing the application rather than adjusting the security and privacy settings. Considering carefully the extent to which individuals would like to engage publicly with apps is therefore important, particularly considering if there are potential implications for the social capital of users.

Other social media tools, for example Facebook pages, following on Twitter or subscribing on YouTube are less likely to generate privacy concerns to the same extent as apps and other functions which allow posting on behalf of users. Nevertheless, most interactions in social networks are public and thus can have a direct influence (both positive and negative) on the individual's social capital. For instance, liking a brand page or following a brand on Twitter is publicly visible. Consequently, iconic brands or brands with strong symbolic character for certain tribes will benefit based on Social Capital Theory, whilst users following or liking the brands not only because they may (or may not) be actual customers but as a form of self-expression. Brands that are likely to erode social capital for their users, for example because they are either not iconic or unfashionable, may struggle.

**THINKBOX SOCIAL CAPITAL**

Think of the brands you follow on social networks. Make a list of them, and compare how they enhance (or erode) your social capital.

Think of brands or organisations you would not follow. Are there organisations or brands that you may engage with (i.e. buy products from or visit) but you do not wish to follow on social networks? Compare the list with others.
Privacy, the right to privacy, the voluntary disclosure of usually private information and the changing nature of privacy have been the subject of intense debate – and considerable concern by some, often citing confusion about data being shared amongst other users or with organisations. Yet others have responded to these concerns by pointing towards personal and individual responsibility about which data is being shared, and pointing to benefits, such as better targeted information, as a result of shared information. Frost and Massagli (2008), for example, examining the online community PatientsLikeMe.com, show that sharing of personal health information can, on the one side, lead to valuable benefits such as better disease management. And while such benefits are clearly valuable, the public availability of health-related data, as an extreme example, or even added automatic matching of patients in an online community based on conditions and treatments, has led to some serious concerns regarding privacy of such information.

While many users may arguably think more carefully before disclosing highly sensitive data, such as health information, and may choose to take protective measures such as choosing a user name that is not easily identifiable, more conventional social media activity has given rise to equal concern regarding privacy. For instance, by examining conventional ‘liking’ of movies and pages on Facebook, an activity relatively few people restrict or are aware is being shared, Kosinski and colleagues (2013) showed that researchers could predict sexual orientation, ethnic background and political affiliations of Facebook users. Similarly, Quercia and colleagues (2011) showed that Twitter profiles could be used to predict with high accuracy personality scores of users based on a five-factor model of personality.

These problematic situations regarding privacy are the often naïve assumptions of users that the data they share is being used exclusively by people they are consenting to, or users not being aware of the potential issues arising from data collected. For instance, Kosinski’s study was based on relatively few movies and pages. Similarly, others have demonstrated that personally sensitive data is available to advertisers for targeting purposes; for example, in a seminal blog post, Gawker columnist Chen (Chen, 2012) showed how behaviorally targeted advertising settings on Facebook could be used to find out sexual preferences of employees in different companies.

Particularly the protection of personal data is increasingly subject to tight legal regulations, for instance the European Union’s General Data Protection Regulation (GDPR) framework, which came into effect in 2018, or the California Consumer Privacy Act (CCPA), effective from 2020 onwards. A full legal discussion is beyond the scope of this book, but a brief look at these two frameworks applied to social media marketing is useful.

One important point to consider is where the legal frameworks apply, for example, the CCPA applies only to California-based businesses above a large revenue threshold. The GDPR on the other hand, applies to any business worldwide that is processing data of EU citizens. There is no threshold for size of the company or revenue. In short, a company in Singapore storing data of a French citizen is, at least as far as the data of that citizen is concerned, subject to GDPR rules. The potential financial penalties for non-compliance are 4% of the global turnover – and a minimum of 20 million Euros (European Union, 2016).
Organic social media marketing activity, e.g. activity that is strictly within the public space of social media networks, such as sharing of company-generated posts, interacting with followers in the public sphere, etc. is likely to be largely unaffected by the provisions of the GDPR (Lua, 2018). However, as soon as personal data is collected, for example subscription to a newsletter, or a person is contacted via a direct message on social media, GDPR rules can apply (Kročil and Pospíšil, 2020). For instance, the GDPR prohibits direct marketing activity without the explicit consent of the receiver, requires organisations which store any data about a user to make this data available upon request of the user and many more provisions regarding the data and privacy of the users. In short, as soon as any direct, personal contact is made or details about contacts or clients are stored by an organisation, the GDPR rules apply, and it is best for organisations to seek appropriate legal advice.

Apart from the legal issues surrounding privacy and data protection, it is worth noting that compliance with GDPR and other legal data protection rules and regulations is often being portrayed as something positive by online marketing companies. Faced with increasing distrust from consumers, especially against the backdrop of big data concerns (Xie and Karan, 2019), being transparent about how personal data is collected and used can restore lost trust. It also helps to create better engagement rates, for example by people choosing to opt in to email lists, thus creating potentially smaller, but better engaged communication channels. Together with clearer regulation (and explanation), consumers will have a better and more trusted experience of their online environment (Lua, 2018).

Legal and Ethical

The question of ethical and legal marketing activity is by no means restricted to marketing communication, digital marketing or even more specifically to social media marketing. With full or partial bans on marketing communication activities in place in many industries, such as gambling, tobacco, drugs and alcohol – or towards certain target groups, for instance, children – many marketing communications are highly regulated. However, legal restrictions are not necessarily ethical, and unrestricted marketing communications are not always ethically appropriate (see Table 13.1).

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Legal Frameworks/Self-regulation

At first glance it would be understandable to assume that legal issues in relation to marketing communication (online or offline) would be relatively straightforward, and simply
require the knowledge of the applicable laws or regulations. However, unfortunately, this is often not the case, and the regulations can be confusing, lacking specifics – or can have unintended consequences. For instance, the UK introduced a ban on advertising food high in fat, sugar, and salt ('junk food') to children in 2007. However, despite this ban, children are actually exposed to more junk food advertising on television than before the ban (BBC News, 2012), not accounting for any marketing activity through advergames or other digital and social media.

Moreover, even where clear regulations exist for traditional media, such regulation may not be applicable, or may be applicable in other ways in social or digital media, and there again it may depend on which types of websites product or brand information appears. In the US, for example, the Food and Drug Administration regulates advertising of pharmaceuticals in traditional media. However, no such regulation exists in relation to Internet-based information (Bartel-Shehann, 2012); rather the FDA issues guidance to companies using social media channels (Food and Drug Administration, 2020). Similarly, the British Advertising Standards Authority rules governing traditional media started to apply to websites only from 2011; however, many digital media formats, such as advergames, were not mentioned in the current regulation. The ASA later ruled that advergames may be regarded as paid for advertising, but to date has extended rulings in only a handful of cases. However, even while the ASA has now an extended remit, other organisations maintain a more focused approach on broadcasting. For instance, Clearcast, an organisation providing pre-broadcasting clearance of advertisements for organisations wishing to broadcast these ads on television in the UK, does not screen other forms of media, including social media.

Further than simply applying current rules, such as the ASA codes or similar regulation, the fundamental basis of conventional advertising regulation contributes to the ethical and legal dilemmas created by emerging media forms. For traditional media, the regulations are based on two important principles: firstly, that advertising should be clearly recognizable as such, for example by identifying a sponsored tweet; and, secondly, the regulation of advertising content, i.e. regulations concerning what can and what cannot be said.

In new and social media, much of the communication is, however, blurring the lines between social and commercial communication – and commercial communication is frequently indistinguishable from social-like communication (see also Chapter 3 on branding and anthropomorphic marketing).

In particular influencer marketing, and other promotional tactics involving product placement are problematic. On the one hand because regulation is often inconsistent, narrowly defined or limited in scope (c.f. Pierce et al., 2018). On the other hand users themselves are often unable to identify promotional content. Various studies have looked at awareness in a social media content, with awareness rates among adult users ranging between 7 and 18% (Wojdynski et al., 2017).

Concerning the identification of commercial communication or product placements, there are contradictory regulations of disclosure depending on which country is concerned; for example, the US guidelines suggest adding ‘Ad:’ at the beginning of a space-constrained communication, for example, in the case of a sponsored or commercial
Twitter update. However, adding ‘Ad:’ is only recommended in cases where the update might be confused with a personal communication, so in cases where a celebrity posts a sponsored update, adding ‘Ad:’ is recommended. There are, however, no guidelines as to communication which is originating from the brand, based on the argument that a follower of the brand will recognise that this is a commercial message. Moreover, the US guidelines make it clear that consumers might not understand alternative forms of identification, such as the hashtag #spon, suggesting that the message was sponsored by an advertiser. Consequently, the US guidelines suggest that if a significant proportion of ‘reasonable’ viewers of such communication would not understand the commercial nature of the communication, then such communication would be deemed to be deceptive under the US guidelines. Moreover, the US guidelines make it clear that consumers might not understand alternative forms of identification, such as the hashtag #spon, suggesting that the message was sponsored by an advertiser. Consequently, the US guidelines suggest that if a significant proportion of ‘reasonable’ viewers of such communication would not understand the commercial nature of the communication, then such communication would be deemed to be deceptive under the US guidelines. Likewise, simply putting an abbreviated link, as in the form of ‘bit.ly/disclosure’, which contains the disclosure of the commercial nature of the message, would be regarded as deceptive (see Federal Trade Commission, 2013 for further examples).

Yet, these rules are by no means universal. In contradiction to the US guidelines, the UK Advertising Standards Authority considers #spon a suitable identifier – and cleared a controversial campaign by Snickers as not being in breach of the advertising code based on the fact that the tweets contained #spon and @snickersUK. In New Zealand, the Advertising Standards Authority recommends using the #ad (Advertising Standards Authority, 2012), while in Australia the sponsored update or tweet should include the wording ‘sponsored’, ‘client’ or ‘paid’ (Interactive Advertising Bureau Australia, 2013).

Many other countries, for example India (Krishnamurthy, 2012), have no specific regulations regarding social media, although some generally agree that the same principles that govern traditional media advertising should be applied. However, in the absence of any specific regulation, how such regulation would work in practice is not clear.

With regard to the content, the applicability of the regulations is even more problematic as current regulations are based on controlling what is being said; for example, the Advertising Standards Authority regulates that claims in advertising must universally be truthful. Furthermore, particular product groups have more specific regulations restricting what can and what cannot be said. For example, current regulations do not permit for products that are considered high in fat, such as cheese, to make health claims, such as claims relating to the high content of calcium. Similarly, alcohol products are not allowed to claim that they enhance social success or sexual attractiveness.

While such rules are relatively easy to monitor in traditional advertising, where often comparatively overt product claims are being made, in a context where the majority of the communication is subtle and human-like, monitoring potential breaches of content guidelines is significantly harder. For example, Dahl and Desrochers (2013) show that many alcohol brands regularly post pictures of parties. These pictures show the product in use, but usually do not contain any direct marketing claims. A potential interpretation of such pictures would be that alcohol contributes to social success, which would be a breach of the current guidelines. However, as the message is implied and reliant on interpretative rather than explicit decoding of the messages, enforcing such content restrictions would be difficult if not impossible.
Moreover, content restrictions, for example related to postings containing alcoholic drinks, smoking or products directed at children, are not enforceable for user-generated content. As this content is not originating from brands, there are no regulations, unless they are paid product placements. However, such content is often indistinguishable from brand-originating communication; for example, there are many ‘spoof’ commercials on YouTube or other video-sharing websites. One of the most prominent examples, and with several thousand spoof commercials on YouTube, is the commercials for MasterCard based on their well-known slogan ‘for everything else there is MasterCard’. ‘Indecent Proposal’, one of the most infamous spoof commercials, with millions of views and shared widely across social media networks, contains for example references to sexual intercourse, references to alcohol as a means to obtain courage and lacks any disclosure information normally required to be included when advertising financial products.

**THINKBOX REGULATION**

Download the product-specific regulations for advertising from one of the regulators (e.g. the ASA in the UK). Make a list of ten brands in the product category. Look up the companies’ social media presence, such as Facebook pages, Twitter feeds or Instagram profiles. See if the companies obey the regulations. How easy is it to assess if the companies are in compliance or breaching the regulations?

**Ethical Frameworks**

In addition to legal and regulatory issues, social media marketing also faces a number of ethical dilemmas, which can often be substantially more complex than regulatory problems. Many issues encountered by companies using social media can be complex or even questionable from an ethical perspective, yet may not be subject to existing regulation. This situation is further exacerbated because of the novel technical possibilities, which are often complex and have not been explored enough in terms of their impact in existing regulation. For instance, marketing to children, or other vulnerable groups, is subject to stringent regulation in traditional media in many countries. However, even in countries where regulation of online and social media exists, the regulations often get enforced less stringently. Moreover, while companies may target specific social media activities, such as Facebook pages, at a country or region, and in compliance with local regulations, there is frequently the technical possibility of accessing information from other countries or areas freely. For instance, Goldfarb and Tucker (2011) show that in US states where there is a ban on traditional advertising of alcohol products, online advertising substitutes for traditional advertising. Similarly, while prescription drug advertising is only allowed...
in the US and New Zealand, and banned in the rest of the world, websites related to prescription drugs are freely available in other countries; for example, the website of Nexium (www.purplepill.com/), a top prescription-only drug to treat heartburn and acid reflux, is freely available to Internet users outside of the US. The site includes a small warning that the information is intended for US customers only. Limiting the site to users from the US only would be technically extremely easy, yet customers beyond the US can freely access all the information.

As with all ethical decisions, having a clear answer is often difficult, and decisions therefore depend on a variety of different factors that need to be balanced. Ethical decisions can be made using one of four ethical frameworks as decision criteria. These are Teleology, Deontology, Relativism and Social Contract Theory. Depending on which framework is chosen, there are likely to be different ethical outcomes.

- **Teleology/Consequentialism** is a framework that evaluates actions based on the outcomes or effects of actions. Usually teleological decision making is further divided into either: a) utilitarianism, where actions are striving for the greatest good for the greatest number; or b) egoism, where individual benefit is stressed, thus de-emphasising any communal benefit.

- **Deontology** focuses on the intentions behind an action rather than outcomes. Deontology is often associated with the work of eighteenth-century philosopher Immanuel Kant, contending that ethical ‘absolutes’ are identifiable and universally valid.

- **Relativism** contests such moral and ethical absolutes. Relativists stress that there is no universal set of ethical principles, and that individual cultures, societies or social groups may have their own ethical structures. Consequently, no set of ethical principles is superior to others and each group should refrain from judging other groups’ ethical standards.

- **Social Contract Theory** builds on the assumption that a usually implicit contract exists between the state and/or organisations and individuals or groups concerning rights and responsibilities towards each other and regulating a symbiotic co-existence.

Given the multitude of potential ethical problems, the chapter now focuses on two areas where there is both extensive regulation, but also widespread new and social media usage, as examples of potential ethical and regulatory problems: advertising to children and alcohol promotion.

### Children and Games

Advertising to children, particularly advertising of junk food (i.e. food that is high in sugar, salt or fat), is amongst the most vigorously regulated marketing activities in many countries, not least because food marketers have often been criticised for their potential contribution to rising obesity rates amongst children (Boyland and Halford, 2013) and encouraging the use of pester power in children causing domestic conflict (Marshall et al., 2007). Yet, social media regulations regarding promotion on social media are often regarded as insufficient (Vergeer et al., 2019).

The industry has responded to widespread concerns about their products by imposing voluntary and relatively strict self-regulatory programmes. In the US, for example, the Children’s Food and Beverage Advertising Initiative (CFBAI) includes some of the largest
food advertisers, amongst them Mars, PepsiCo, Kraft, Kellogg's and Nestlé. Similar, though less stringent, programmes exist in Australia, in the form of the Responsible Children's Marketing Initiative, and in the UK the Food and Drink Federation (FDF). Despite the laudable rhetoric, however, there have been concerns regarding the reality of the promotions by companies signing up to these schemes. Quilliam and colleagues (2011), for example, found that companies who signed up to the CFBAI initiative were more likely to include unhealthy food items in their Internet-based advertising than those companies not part of the scheme. Yet, the explicit CFBAI programme aim is to reduce the exposure to unhealthy food items. Similarly, while many food companies publicly defended strong regulatory measures and responsible marketing, Dahl and colleagues (2009) found that advergame content mostly ignored these guidelines.

The rise of advergames and other immersive advertising techniques has resulted in substantial concerns particularly, yet little regulatory activity. Extended brand exposure, through repeatedly playing a game, is one of the appeals for advertisers using advergames. In some cases, children have been reported playing advergames more than 100 times, resulting in more extended brand exposure than would be possible through traditional advertising, for example, on TV.

Moreover, while advergames were originally largely placed only on food manufacturers' websites, or websites specifically dedicated to advergaming, social media has added a wider network capability to these games. In other words, games are designed to be promoted across social media websites, to be placed on social media websites and to encourage players to use social media websites to spread the word about the games. In addition, advergames have further ventured from being essentially web-based activities to mobile activities, especially popular on platforms such as the iPhone, iPad and other tablet computers. The connectivity between these mobile devices and social media further allows that the games become a ubiquitous activity in a similar way to mobile social media itself – they can be played at home, on the bus, at school.

In a review of mobile advergames, Dahl and colleagues (2013) show that, similar to the traditional advergames, there are serious concerns about how food marketers put into practice their apparent ethical advertising practices, and how they are breaching the spirit and substance of advertising codes. For instance, some games required purchase of food items for full access. Other games had contradictory age settings – with a low setting they would not be blocked by parental controls being activated on the iPad or Android tablets, yet these games required a one-time activation by clicking or entering a much higher age when launched for the first time.

Although marketing practices as observed in the games are for the most part not illegal, largely because the regulations do not extend to advergames, such inconsistent behaviours by some, and in the case of advergames many, players in the industry is particularly problematic as it fosters a perception that the industry is actively circumventing advertising codes and actively engaging in unethical marketing practices.

**Alcohol Promotion**

Similar to unhealthy food items, alcohol is a controversial product with highly regulated marketing communications, including promotions from alcohol brands on social media
(Katainen et al., 2020). For traditional advertising, alcohol messages in the UK and other countries are restricted in what they can say or imply; for example, alcohol advertising is not allowed to suggest that alcohol consumption raises the chances of social success, for instance, by saying that a party can only be successful if alcohol is present. Alcohol cannot be linked to increased sexual attractiveness; advertising is not allowed to show people appearing to be under 25 and so forth. In the UK the regulation of marketing communications is overseen by the self-regulatory Advertising Standards Authority, and the industry body The Portman Group, which develops voluntary standards for marketing from the alcohol industry.

Again, similar to unhealthy food items, many alcohol companies engage in social media marketing and most of the top advertisers have a large social media presence, especially on social networks such as Facebook, Twitter and increasingly on Instagram and other social networks (Noel et al., 2020).

Investigating how alcohol brands use Facebook pages, Dahl and Desrochers (2013) found that a majority of alcohol brands engage in continuous behaviour that can be characterised as subtle brand reminders; for example, when updating their status, fewer than half of the brands name their brand name in the status update. Of these, nearly 80% of updates are unrelated to the product; rather, alcohol brands engage their followers through discussion based on other topics, from sports to current affairs, arts, parties and nature. Consequently, the majority of updates are wholly unrelated to the product and make no reference to the product they are allegedly advertising.

While there are isolated instances of updates which may be against the regulations (e.g. pictures of very young consumers or pictures which may condone irresponsible drinking), most updates do not contravene regulations. Talking about something unrelated, posting daily pictures of parties where people are drinking the advertised brand or liking of comments and sharing of pictures taken by followers is clearly not against the regulation. However, it represents a ubiquitous contact between brand and consumer, where the brand is increasingly seeking to be anthropomorphic and displays much human-like behaviour (e.g. talking about being relieved that a strike on the London underground is called off, and a football game can go ahead).

Concerns about such behaviour focus on the possibility that, because of the subtlety of the communication, persuasion knowledge (see Chapter 8) may not be activated, similar to non-activation during advergames. Consequently, recipients cannot activate coping behaviours. Similarly in the long term, ubiquitous, peripherally processed communication, while less effective in the short term than centrally processed communication, can have a powerful effect on emotions linked to a brand and brand purchasing intentions (see also Chapter 3 for an explanation of the Elaboration Likelihood Model).

In a similar way to the food industry, there is widespread suspicion of the alcohol industry as exploiting marketing communication, especially to younger adults. For instance, Mart and colleagues allege that the alcohol industry is ‘exploiting youth and young adults’ (Mart et al., 2009) in social networks. Likewise, Bond and colleagues (2010) draw similarities between the alcohol industry and the tobacco industry, and accuse the alcohol industry of circumventing traditional advertising regulations, including, for example, the placement of products and brand names in the text of pop music
(Primack et al., 2008), while Huhmann and Limbu (2016) show that prescription drug companies are active users of social media, while advertising of their products is forbidden outside of the US and New Zealand. In addition, while advertising of alcohol in traditional media has to carry warnings in some countries (e.g. minimum drinking age, etc.) these are rarely included on social media (Lou and Alhabash, 2020).

These examples show the potential ethical and regulatory issues that can arise when engaging in social media marketing. On the one side, regulation may be slow to catch up with new technology, and in many cases, even prior to social media, regulation has been accused of being slow in terms of providing a coherent framework for new promotion vehicles (Hoek, 2004). Equally, the fundamental notion of regulation based largely on defining which product attributes can be explicitly referred to, and which ones not, is largely superfluous in an environment of ubiquitous brand connectivity, where promotional emphasis is on the creation of emotional connections, rather than sales arguments. Nevertheless, while there are often possible avenues for circumventing regulation, doing so can have significant negative consequences in the long run. For instance, having been found to be circumventing the regulations for advertising content to children, foods high in sugar, fat and salt have been banned from advertising during programmes aimed primarily at children. However, even after such a radical step, the industry has continued to exploit regulatory loopholes, through greater emphasis on online- and advergame-based marketing communications and by focusing advertising on programmes with large underage audiences, such as soaps, which are nevertheless not primarily directed at children and teens – and therefore not covered by current regulation. The result of these activities is that increasingly there are calls to ban all promotions for these types of goods, largely based on the assumption that the industry is inherently unethical and cannot be trusted.

**THINKBOX**

**ETHICAL VS. LEGAL**

Go back to the sites you have investigated in the previous ThinkBox exercise. Discuss the ethical implications of what you see. Do you think the advertisers are behaving ethically? How can you evaluate if they are? What do you think could be causes for concern? What might be the long-term consequences of unethical behaviour?

**SUMMARY**

This chapter has briefly reviewed the ethical and regulatory/legal implications of social media marketing. Privacy and data protection are increasingly subject to
government regulation, including some far-reaching legal instruments like the European GDPR.

By using the examples of online alcohol marketing and marketing towards children, the chapter has highlighted that the regulatory frameworks are often ineffective, as present regulation is based on product-centric marketing, i.e. what can and cannot be said about a product, while social media marketing is about establishing an emotional connection beyond product attributes through ubiquitous brand presence. Consequently, regulatory frameworks have been criticised as unfit for purpose in relation to social and new media activities.

Many legal and regulatory frameworks are struggling to cope with social media activity, making ethical principles an important aspect when engaging in social media marketing. Moreover, unethical activities, including raising the suspicion that companies may be avoiding regulation, can have long-term significant impact on future marketing activities, and marketers should very carefully consider how their actions may be perceived if they are to avoid tougher regulation.

RESEARCH HIGHLIGHT
ADVERGAMES

In ‘Analyzing advergames: Active diversions or actually deception. An exploratory study of online advergames content’, Dahl and colleagues (2009) evaluate advergames aimed at children and promoting snack foods by using existing regulatory codes for broadcast advertising. In the article, the authors give a brief overview of the advergames, including who uses them and the theories that explain advergame effectiveness (see also Chapter 6 of this book for some of the theories discussed in this article).

Based on visits to websites of 15 well-known international food companies, the authors present data on the amount of advergames and the content of these. They further analyse each website and game to see how far these games are obeying the spirit of the regulation. For instance, the regulations require that advertising is clearly distinguished from entertainment content; however, only a handful of the websites actually reminded visitors that the content they were engaging with was commercial in nature. Similarly, the regulations ask for nutrition information to be made available, yet most of the websites made no such information available. Similarly, regulations require advertisers not to require or condone purchasing of unhealthy products. Yet some games were found to require entering of codes to continue playing. Similarly, the regulations state that peer pressure and pester power should not be encouraged. Despite this, most websites allowed invitations to be sent to friends in the form of eCards or emails.

Although the sample for the study is relatively small (only 15 companies), the evidence from the visits is concerning. Many advertisers appear to engage in practices
that would be in breach of the regulations if advergames were regular advertisements. It is particularly concerning that such behaviours, legal as they may be, occur at a time when there are increased calls for much tougher regulation on these advertisers. The full article is available on the companion website of the book.

CASE STUDY
THIS AD IS JUST FOR YOU!

Mining social media and other online data to research consumer patterns and target advertising is very frequent, from Amazon’s ‘People who bought this, also bought’ feature to sentiment analysis used to research brand image and attractiveness of promotions. Moreover, many users online are used to seeing advertising based on their personal browsing history, for example Google ads and other behaviourally targeted advertising networks. What may be more surprising to most consumers is that outdoor advertising can also be targeted according to the topics they are interested in.

Conventionally, outdoor/out-of-home advertising is static, for example a poster. More dynamic advertising displays are replacing paper-based display adverts; however, little is known about which adverts are best displayed at which times of the day and what kind of topics passersby are interested in. Lai et al. (2017) report how advertising on London Underground can be targeted using Twitter conversations in the vicinity of stations.

The authors develop an unsupervised topic modelling system, which ‘reads’ tweets of users nearby specific underground stations, and determines which topics are of interest to users of this station. Modelling follows a three-step process. Firstly, geotagged posts are collected and analysed. The tweets are assigned to specific station catchment areas (e.g. tweets around Covent Garden station, Canada Water station, etc.). The tweets are then divided into different time periods, for example tweets posted between 8 and 9 am, 9 and 10 am, etc. Based on this data, topics can be extracted from the data according to where and at what time which topics are discussed. Thus, the space–time distribution of different topics can be analysed. The system does this by looking for key words and allocating tweets into one of 12 topic areas, ranging from business to music, fashion and sports. This way, it becomes clear that users are, for example, more likely to be interested in entertainment topics after 6 pm, while work and home, and travel and transportation topics are discussed more during the morning rush hour. These topics can then be further broken down to topics which are related to

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each station, thus creating a list of the topics that users are interested in at a specific time. This means, for each station, the optimum topic and time can be identified; while for each topic the optimum place and time can be identified. As the system is unmonitored, it could also run unsupervised, and thus select appropriate advertisements independently, including potentially reacting to short-term shifts in topics.

**Questions to Consider**

1. How do you feel about messages exchanged for another purpose (e.g. talking on Twitter) being used to target advertising without the knowledge of the people having the conversations?
2. Discuss this case (and the outcomes) using the different ethical frameworks.
3. Find out which data protection/privacy regulations are in force in your country. How does this regulation cover this case? Is the regulation appropriate?

**FURTHER READING**


**REFERENCES**


**PRIVACY, ETHICAL AND LEGAL ISSUES**


