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## Advertising regulation and childhood obesity

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## Advertising regulation and childhood obesity

### INTRODUCTION

Children's media – both the media produced specifically for children and the much wider category of media they engage with in practice – periodically occasion a particularly fraught struggle between the market-oriented policies of competition and deregulation on the one hand, and the cultural or citizen-oriented policies designed to meet children's needs and interests and to protect them from harm, on the other. In this struggle, policies for competition and deregulation are positioned as generic – they apply, ideally, to all media markets and within this, children tend to figure as a special case, grounds for making an exception, if they figure at all. Policies for cultural and citizen needs, however, are specific to the constituency at issue – children, in this case, but in other contexts older people, minority ethnic groups, rural populations, and so forth. Although guided by general principles (of universal service, fairness of redress, right to privacy, value for money, etc.), these policies cannot themselves be applied in a manner that is uniform across the population. Managing the balance, struggle even, between the generic principles of the market and the specific needs of particular constituencies of citizens is difficult, and for a largely economic regulator such as Ofcom, it can seem easiest to prioritise the former, so that meeting the needs of the market becomes 'the rule' over the latter, where meeting the needs of children becomes 'the exception'.

Children, despite being a sizable segment of the population, risk being treated as a rather difficult minority, seemingly more trouble (given the often-contested public, moral and regulatory agendas that surround them) than they are worth (in terms of advertising or other revenues, even in terms of political capital), notwithstanding the populist rhetoric that celebrates children as 'the future'. Contrast, for instance, the abundance of political statements and journalist column inches along with the vast volume of expert academic journal articles devoted to this 'special audience' (Dorr, 1986) with the fact that Ofcom, like other regulators before it and like those in many other countries, devotes no special department or unit to regulating children's media or media use. Thus children are easily sidelined: for example, policies for fairness or objectivity or privacy struggle to accommodate the particular concerns that arise for child audiences or users. Indeed, the general invisibility of the child audience supports policy makers' complacency in referring, over and again in their pronouncements, to 'the population' when what is meant is 'adults only'.

However, in some areas of media and communications policy, children implicitly dominate, despite lacking a formal department or champion. For example, media literacy policies in many countries are often, in practice, policies for children's media literacy or media education, to the neglect of adult media literacy requirements (including those of 'vulnerable' or 'excluded' adults). In this respect, Ofcom's approach to media literacy – as

discussed in Chapter 6 – was ground-breaking in its even-handed focus on adults as well as children. In the case of broadcast content, children occupy a special place – in Ofcom’s *Broadcasting Code* (2005c), most notably, and also in the strong UK legacy of the ‘watershed’, a broadly accepted time-based restriction on programmes that can be scheduled according to the needs of children in the audience (before 9 pm on terrestrial channels, 8 pm on digital/satellite channels). But in some cases, regulating in the interests of children may be seen to clash directly with the interests of adults – whether and how pornographic content should be broadcast is a case in point (Helsper, 2005).

In what follows, we explore the unfolding events in one particular case in which the interests of the market and the needs of children clashed, with Ofcom as referee charged with the task of an evidence-based and fair adjudication. This case concerned the question of restricting television’s advertising to children of ‘unhealthy’ or ‘junk’ food (formally referred to in the health debates over obesity as food ‘high in fat, sugar or salt’ or HFSS). In relation to advertising, it has long been accepted that special rules apply regarding the child audience. Going beyond the concerns already addressed by the *Broadcasting Code*, namely, that children are held to be particularly vulnerable to media images and messages about violence, sex and sexuality, gender or other stereotyping (Millwood Hargrave and Livingstone, 2009), the argument in relation to advertising is also that children are distinctively susceptible to planned persuasion – not only are they likely to absorb the gender stereotypes embedded in a toy advertisement, but they are easily persuaded to want the toy too (Kunkel, 2001).

Our concerns in this chapter are threefold. First, Ofcom’s approach to food advertising on television illustrates the difficulties faced by a dual regulator required to balance market and citizen imperatives. While the former demands a lighter touch approach to regulation, the latter reveals how such an approach may produce adverse, long-term effects on citizens that are external to the market. Thus from the first day of its operation in 2003, Ofcom found itself as ‘pig in the middle’. Second, in operational terms, this case also shows how Ofcom, as a public-facing regulator, desirous of promoting dispersed rather than centralised governance, necessarily became engaged in a consultative process with other agencies, government and the public, this in practice revealing some of the real difficulties of multi-stakeholder deliberation, especially that (at least partially) conducted in public. Third, the case illustrates the particular difficulties of ensuring that regulation is evidence-based, for although evidence-based policy has become an important principle in contemporary regulatory regimes, achieving this is far from straightforward. As we show, evidence is produced within external fields of expertise that have their own agendas, which are internally contested, and which may produce evidence ill-suited to the requirements of regulatory decision-making.

## **REGULATING ADVERTISING TO CHILDREN**

Using a mix of state and self-regulation, countries have long intervened in the advertising market, both in general and in relation to children in particular. In relation to the children’s market, food advertising, along with toy advertising, has always figured large (Kunkel, 1990), as has the wider question of the ‘Commercialisation of Childhood’ (Buckingham, 2009a; Nairn and Fine, 2008). But it was only with the recent ‘discovery’ of rising obesity levels across the developed world that, as Hawkes (2007) observes in her review of international changes in regulation for the World Health Organisation (WHO), the issue of food marketing to children attracted widespread attention at national, regional (especially European) and international levels. The past decade has seen a chequered history of regulatory intervention, formal challenge and, often, subsequent relaxation of initially tough restrictions, followed in due course by more debate and renewed calls for further regulation

on the part of the state or, increasingly, by self-regulatory bodies. For an overview of the present ‘tangled web’ of state, co- and self-regulatory bodies regulating marketing to children in the UK, see Pitt (2010), and for an international perspective, see Hawkes (2005, 2007).

Before the establishment of Ofcom in 2003, the UK advertising market was regulated by the Advertising Standards Authority (ASA) for non-broadcast advertising and by the Independent Television Commission (ITC) for broadcast advertising. Both were conducted in accordance with the European framework – the Television without Frontiers Directive (1989) and, since 2007, the Audiovisual Media Services Directive, a directive that explicitly encourages opportunities for co-regulation (European Parliament and the Council, 2007). Once formed in 2003, Ofcom’s *Broadcasting Code* (Ofcom, 2005c) took over advertising regulation in the UK in terms of amount, placement, political advertising, the distinction between advertising and programming, and so forth. However, Ofcom made an early decision – in tune with its avowed principles of lighter-touch regulation and the promotion of co-regulation – to pass the regulation of advertising content to the thereby-expanded ASA (as from November 2004). The ASA thus regulates television advertising under contract from Ofcom, funded by a levy on advertising airtime costs. It addresses public complaints and enforces the Broadcast Committee of Advertising Practice (BCAP) code that, along with the CAP code (for non-broadcast advertising, now including some online content), draws heavily on the codes of practice of the International Chamber of Commerce.

Consequently, as regards the advertising of junk food to children on television, while matters of timing, placement and amount remained the responsibility of Ofcom, the content of such advertising became a matter for the BCAP code. Today, paragraph 7.2.1 of the code states that, ‘Advertisements must avoid anything likely to encourage poor nutritional habits or an unhealthy lifestyle in children’, and paragraph 7.2.4 states that, ‘Licensed characters and celebrities popular with children must be used with a due sense of responsibility. They may not be used in HFSS product advertisements targeted directly at pre-school or primary school children’. But these rules represent a recent strengthening of the regulations in this area, following the activities of Ofcom, the Department of Health, the Food Standards Agency (FSA) and other organisations lobbying for change in the nature and amount of advertising promoting HFSS foods to children. They are, indeed, a consequence of the events outlined below.

The initial stimulus for change came just as Ofcom was first established in December 2003, triggered by a request from the then Secretary of State for Culture, Media and Sport that Ofcom consider strengthening the rules on HFSS advertising to children on television. This request was, in its turn, a response to the growing concern in the Department of Health and elsewhere regarding the growth in obesity among the general population, including among children. The Foresight report, ‘Tackling Obesities: Future Choices’ (Government Office for Science, 2007: 2), warned that:

By 2050, Foresight modelling indicates that 60% of adult men, 50% of adult women and about 25% of all children under 16 could be obese. ... The NHS costs attributable to overweight and obesity are projected to double to £10 billion by 2050. The wider costs to society and business are estimated to reach £49.9 billion per year (at today’s prices).

Although such projections have been criticised as excessive (see the Technical Appendix to Buckingham, 2009a), WHO was already calling for ‘urgent action’ in 2000 (WHO, 2000), and by 2002 WHO called the rise in obesity ‘the major public health problem of our time’

(WHO, 2002). As Ofcom noted in its first report, *Childhood Obesity – Food Advertising in Context* (2004d), 10 per cent of England’s five- to nine-year-olds were obese and a further 20 per cent were overweight, these figures having steadily increased over the previous decade. By 2006, 16 per cent of two- to 15-year-olds in England were classed as obese (NHS, 2008).

In the UK, whether one reads government concern as focused on the public’s well-being or on the present and future costs to the NHS of an unhealthy population, or both, the government’s White Paper, *Choosing Health* (DH, 2004), identified ‘a strong case’ for advertising restrictions, thereby setting in train the debate that constitutes the case study for this chapter. As Ashley et al. commented in *The Guardian* (2003: para. 10), although wary of ‘charges of running a nanny state ... there is a growing mood in Downing Street that better preventive measures are vital to cutting health inequalities, curbing an escalating NHS budget and producing a healthier society’. In relation to food advertising, Ofcom found itself under ministerial instructions as soon as it opened for business, exactly when it sought to establish itself as a supporter of lighter-touch self-regulation at arm’s length from government.

## **THE CHALLENGES OF EVIDENCE-BASED POLICY**

Two lines of evidence have long underpinned the regulation of television advertising to children. One concerns children’s vulnerability to persuasion, part of the wider literature on media’s effects on the attitudes, desires or behaviour of its audience. This has long shown that children’s preferences, and sometimes also their behavioural choices, are influenced – to a statistically significant though generally rather small degree – by exposure to particular persuasive messages. The other, part of a wider literature on children’s socio-cognitive development, asks more specifically about children’s understanding of techniques of persuasion in order to judge the fairness or deceptiveness of advertising to children. This research suggests that children follow a developmental path from early ability to distinguish advertising from programming (around two or three years old) to the recognition that advertising is trying to sell something (around eight years old), even using techniques that may exaggerate, mislead or even deceive, to, by around 12 years old, a mature ability to weigh and possibly reject such messages so that behaviours are not affected (Kunkel, 2001).<sup>1</sup>

More recently, the convenient assumption that these lines of evidence are complementary has been critically examined, questioning whether it is really the case that children who are sufficiently cognitively mature to recognise advertising techniques will be able to defend themselves against the persuasive messages that they convey. To put the challenge more simply, the notion that advertising literacy undermines the effects of advertising turns out to be remarkably little supported by empirical evidence. Indeed, since there is plenty of evidence that older teenagers and, indeed, adults, are also influenced by advertising (at least, to a similarly modest degree that young children are), it can hardly be that achieving advertising literacy prevents advertising effects (Livingstone and Helsper, 2006).<sup>2</sup> It may still

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<sup>1</sup> For example, Roedder (1981) designed and tested a developmental model proposing three stages of advertising literacy: (i) Limited: children have no knowledge or sophistication in judging the intentions of advertisers. This applies to children roughly under six to eight years of age. (ii) Cued: children have the knowledge to counter-argue advertising claims, but do not use this knowledge spontaneously. This stage is commonly found in children between eight and 12 years old. (iii) Strategic: children have both the knowledge and the ability to use this knowledge without being cued. Most children over 12 years old are able to use this strategic advertising literacy.

<sup>2</sup> We would not wish this to be taken as an argument against the value of media literacy. Kunkel (2010) seeks to rescue the case for media literacy by arguing that adolescents as well as younger children lack media literacy, hence they do not show lesser effects of advertising. Buckingham (2009c) takes a different tack, arguing that the

be argued that advertising directed at those too young to understand its intentions is unfair, even deceptive (Kunkel, 2001), but this is a different argument, one focused on the right to recognise when one is being persuaded rather than a distinctive vulnerability to persuasive messages.

As the foregoing illustrates, it may be far from straightforward to ground regulatory decisions in the evidence base. In the case of Ofcom's regulation of food advertising on television to children, the regulator was faced with taking into account – indeed, taking its lead from – the agenda, arguments and evidence from not one but two fields of expertise quite outside the normal scope of the regulator's own specialist knowledge of media and communications. The first, as already noted above, concerned expertise on child development. Content regulation for children has often relied on children's socio-cognitive development as the basis for age regulation implemented via restrictions on marketing or scheduling, and/or via parental rules. But if it is unclear that children's vulnerability to persuasion is reduced when advertising (or media) literacy is increased, Ofcom could hardly point to younger children's distinctive vulnerability to influence in support of restrictions on advertising to children below a certain age or for the promotion of media literacy intervention as a regulatory solution.

The second field of expertise important to its remit but beyond Ofcom's scope concerned the dramatic rise in obesity rates in the world's wealthy countries, most notably in the USA and, following close behind, the UK. The evidence base that informed the White Paper, *Choosing Health* (DH, 2004), stemmed from the work of health epidemiologists internationally, and had been established by the WHO in 2000 (WHO, 2000), among other organisations. The argument that obesity is rising among all age groups but especially among children in developed countries has been broadly accepted, although the recency and scale of the problem remains somewhat contested (Buckingham, 2009a). The question, then, was how to explain such a rise, for it could hardly be ignored, and what could be done to redress the problem, this being the more contentious issue. This is, undoubtedly, a difficult problem, and one that goes beyond the immediate expertise of a communications regulator. As Livingstone and Helsper (2004) reported to Ofcom, there is evidence for multiple causes, working at four distinct levels (cf. Story et al., 2002: 3):

- (1) Individual (intrapersonal) – psychosocial, biological and behavioural factors.
- (2) Social environmental (interpersonal) – family, friends and peer networks.
- (3) Physical environment (community) – accessibility, school food policy and local facilities.
- (4) Macrosystem (societal) – mass media and advertising, social and cultural norms, production and distribution systems and pricing policies.

However, notwithstanding continued emphasis in health circles on the many causes of this complex problem (Harrison et al., 2011), in public perception, advertising is a popular target. It was hard to discount the fact that in 2003, UK annual spending on advertising for food, soft drinks and chain restaurants was £743 million, with £522 million spent on television advertising, including £32 million spent on children's airtime. Most of this expenditure was on breakfast cereals, confectionery, savoury snacks, soft drinks and fast-food restaurants (Ofcom, 2004d). Unsurprisingly, then, advertising was widely positioned discursively as a key factor in the rise of obesity among children, threatening to obscure the many other putative causes of obesity. From a health perspective, media messages appear a tractable

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purpose of media literacy is not to prevent media effects, and hence its value must be evaluated in different terms entirely. Both arguments have their merits.

target of policy intervention, arguably more so than several of the other causes of obesity. From a communication perspective, however, the evidence base is at times problematic, since the many, often rigorously conducted population surveys of obesity levels too rarely include precise measures of advertising exposure. In the main, health epidemiological surveys identify a small to moderate correlation between obesity and a general measure of television viewing.<sup>3</sup> But as critics have observed, this correlation might reflect the fact that television viewing is a sedentary activity that reduces metabolic rates and displaces physical exercise. Or it might be because television viewing is associated with frequent snacking, pre-prepared meals and/or fast-food consumption. Or indeed, the correlation might occur because television viewing includes exposure to advertisements for HFSS food products.

Such uncertainties in interpreting the evidence rarely find their way into popular – and political – discourses regarding obesity. This is not least because the counterfactual claim – that watching hours of advertising has no effect – seems implausible as well as contra some of the recent evidence (Institute of Medicine of the National Academies, 2005). Thus for Ofcom, the ‘problem’ of childhood obesity arrived in its in-tray already packaged as a problem of food advertising when Ofcom began operations in late 2003. Policy responses to childhood obesity were focused on advertising at an early stage by a highly publicised report by the FSA published in September 2003 (Hastings et al., 2003) that linked food marketing to childhood obesity. This argued that ‘Food promotion is having an effect, particularly on children’s preferences, purchase behaviour and consumption. This effect is independent of other factors and operates at both a brand and category level’ (Hastings et al., 2003: 3). Although the report was scrupulous in noting the limits as well as the strengths of the evidence and, appropriately given the methodological limitations of the research, cautious in its claims regarding cause and effect, the government made a stronger reading. The then Secretary of State for Culture, Media and Sport, Tessa Jowell, called on Ofcom in December to tighten up the ‘inadequate code’ on advertising ‘in the light of the emerging evidence about the impact of advertising’ and given the media’s reporting of a ‘growing crisis of obesity in children’ (quoted in Ashley et al., 2003: paras 2–3). Behind this request lay the threat of tougher regulatory action and the FSA’s call for a ban was regarded with some sympathy by government, the public and, certainly, the health lobby. In public discourse, there appeared to be a compelling case that junk food advertising was making children fat.

The industry was faster in its response than the regulator, and before Ofcom could respond, in December 2003 the Food Advertising Unit (the trade body of the industry’s Advertising Association) published an apparently devastating refutation of Hastings et al.’s claims (Paliwoda and Crawford, 2003). In January 2004, Ofcom then commissioned this volume’s second author (Sonia Livingstone) to write an independent commentary on the disagreement between the FSA report and that of the Food Advertising Unit (Livingstone, 2004). This was part of an attempt by the regulator to adjudicate fairly on a highly contested clash between market and citizen interests where the terms of the debate were fought out in the language of evidence (research design, statistical effect sizes, validity and reliability, etc.) more than in the language of regulatory principles.

The disputed points could be summarised as follows (Livingstone, 2004; see also Buckingham, 2009a, 2009b, 2009c; Millwood Hargrave and Livingstone, 2009). First, the

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<sup>3</sup> For example, a 34-nation study of 10- to 16-year-olds in 2001–02 found that, in 22 of the 34 countries (including the UK where obesity figures are relatively high), there is a significant positive relationship between BMI (body mass index) classification and television viewing time (Janssen et al., 2005). See Livingstone (2006) for related studies.

problem of methodology. Is there enough evidence regarding the effect of advertising on children's diet, and is that evidence of sufficiently high quality, conducted recently and in the UK or relevant to the UK? Also, have the confounding factors been controlled for? Has television advertising been distinguished from other forms of advertising? Does it matter if the dependent measure is only children's food preferences rather than actual diet or weight? And, tapping into a long history of contention, can the results of experiments be generalised to real-life situations? Second, the problem of explanation. How can the multiple putative causes be disentangled, identified and weighed? Are there other causal factors with greater effects that could or should be tackled instead? Third, a question of scale. Does the evidence point to an effect whose size is large enough to merit policy intervention (a point on which evidence reviews are oddly silent<sup>4</sup>)? Relatedly, is there evidence that a ban on advertising would significantly improve children's health (this being surprisingly difficult to establish)? Last, the question of consequences. Does the responsibility for any effects of advertising lie with the advertisers or with the consumers who choose to watch advertising and who arguably could reject its messages? If consumers became more advertising literate, could they then bear more responsibility, reducing the regulatory burden on marketers?

As is often the case with a complex body of evidence, produced for diverse reasons in several countries over a period of decades, there are few clear-cut answers to these questions. But this is not to say there was no case to answer, and Ofcom's task was to reach a proportionate decision, even if this included recourse to the precautionary principle in the absence of a consensual conclusion (Klinke and Renn, 2001). Hastings et al. (2003) reviewed evidence that advertising was likely to affect children's food choices and, therefore, obesity. Reporting to Ofcom, Livingstone (2004) argued that there exists 'a modest body of fairly consistent evidence demonstrating the direct effect of food promotion (in the main, television advertising) on children's food preferences, knowledge and behaviour' (Livingstone, 2004: 28) and, further, that indirect effects (e.g. advertising influencing parents or peers who then influence a child) are likely to exist, although these have been little investigated.

In the USA, similar or even higher figures for rising childhood obesity were emerging, and a parallel investigation into the potential role of advertising in worsening the problem was undertaken first by the American Psychological Association (Kunkel et al., 2004) and then by the Institute of Medicine of the National Academies (2005). The latter observed that US\$11 billion was spent on advertising in 2004, including US\$5 billion on television advertising, and it reviewed 123 of the strongest relevant articles on the influence of food advertising on young people. Its key conclusion was that:

... among many other factors, food and beverage marketing influences the preferences and purchase requests of children, influences consumption at least in the short term, is a likely contributor to less healthful diets, and may contribute to negative diet-related health outcomes and risks among children and youth. (Institute of Medicine of the National Academies, 2005: ES-9)

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<sup>4</sup> This may be because they are difficult to estimate from already published research, and because they are difficult for policy makers to interpret. For example, although effect sizes are estimated in this domain to account for 2–5 per cent of the variation across the population in terms of BMI, such small effects may add up to a substantial effect on the population. In one estimate, for every additional hour of daily television viewing, in the USA, an additional 1.5 million young people would fall into the 'obese' category (McGinnis et al., 2005).



In short, although the evidence did not show a large effect, and although the methodologies used were not without problems, there was sufficient evidence nationally and internationally that television advertising plays a significant role for Ofcom to take action.

## **REGULATORY ACTION AND REACTION**

Following the initial argument between Hastings et al.'s (2003) report for the FSA and the Advertising Association's highly critical response, and given the pressure from government, Ofcom set in train a series of responses that included further reviews of the literature (Livingstone, 2004, 2006; Livingstone and Helsper, 2004), conducting its own primary research, both qualitative and quantitative (Ofcom, 2004c), and working with the FSA in support of its nutrient profiling scheme, a scheme that aimed to label food according to a traffic light scheme of green (i.e. can eat plenty of this as part of a healthy diet), amber (eat only some of this) and red (eat only a restricted amount of this). Although ultimately this latter scheme failed, the promise was that the same colour coding could provide the basis for advertising restrictions (more for 'red' products and less for 'amber' ones, while positively promoting 'green' ones).

On the basis of such work, and following a public consultation (Ofcom, 2006d) on the regulatory options, Ofcom sought to build consensus by conducting negotiations with all parties. In this way, and in the face of several authoritative literature reviews of the evidence, the advertising industry came to acknowledge that advertising had some 'modest' and possibly adverse effects on children's food choices (not least because it wished to acknowledge that, by the same token, the promotion of healthy food options could be equally, if modestly, influential, thereby benefiting children). Meanwhile, the health lobby recognised that, since the evidence for advertising effects varied only in so far as it showed them to be small or absent, but never large, other causes of childhood obesity should also be considered and, possibly, regulated (Story et al., 2002). Examples included calls for regulating the promotion of unhealthy foods in schools and supermarkets, addressing the insufficient provision of health facilities or intervening in the considerable influence on children of 'unhealthy' parental habits in relation to shopping, cooking and eating.

In November 2006 Ofcom reached its decision, announcing a ban on HFSS advertising not for all programming, or all programming before the 9pm watershed (as health campaigners wanted), but a ban specifically during children's programming (i.e. when programmes made for children or of particular appeal to children were scheduled, including all programming on dedicated children's channels). Children, as for most if not all of Ofcom's regulations regarding the child audience, were defined as 4–15 years-old. Ofcom's 'final statement' in February 2007 explained the restrictions, to be phased in partially from April 2007 and with the full restrictions applying from January 2009. In parallel, as noted above, the ASA also revised its BCAP code, restricting the techniques (e.g. use of celebrities) by which food and drink could be advertised to children.

While possibly a response to government demand to take action, this decision was nonetheless evidence based. Ofcom recognised, on the basis of several literature reviews and its own empirical research, that advertising plays a noticeable if modest role in influencing children's food preferences, choices and diet. However, regulators have long faced the difficulty that self-regulatory codes can restrict unfair or offensive advertising but not 'the *cumulative* effects of perfectly legal, truthful marketing campaigns' (Hawkes, 2005: 380, original emphasis). In reaching their decision, it may therefore be considered that Ofcom

made much of the handful of longitudinal studies which support such a cumulative effect<sup>5</sup> to take a step beyond the usual actions associated with self-regulation (Pitt, 2010).

Further, Ofcom appears to have accepted the view that younger children cannot be singled out for special treatment since, first, the evidence for advertising effects applies as much for adolescents (and, indeed, for adults) as it does for young children and, second, there is little evidence that increased media literacy (as applies to older teenagers and adults) reduces advertising effects (Livingstone and Helsper, 2006). Another way of putting this dilemma would be to say that the public policy goals at stake are often confused. If the public policy goal is that advertising should be fair, then indeed it should be more regulated for younger children (whose literacy is less) than older ones. But if the public policy goal is that advertising should not exacerbate levels of obesity, then it should be recognised as one influence among many and, since all ages are affected by both advertising obesity, it should be restricted across the age range. In the USA, it is often the former argument that holds sway (Kunkel, 2010).<sup>6</sup> On this occasion, in the UK, the latter seems to have won out. Indeed, following the conduct of a series of retrospective interviews with stakeholders on all sides, Buckingham (2009b) observes that, although initially Ofcom seemed minded to restrict junk food advertising for children under nine years old only, these arguments were much cited as having tipped the argument in favour of extending the restrictions on advertising across the age range.<sup>7</sup> Certainly, Ofcom's decision to extend the restrictions up to children aged 16 was received with surprise.<sup>8</sup>

Any other ingredients contributing to Ofcom's decision – political pressure, industry pressure, internal judgements – are less clear. But it might be surmised that, contrary to the general shift towards softer governance strategies, this decision was significantly influenced by old-fashioned, top-down, behind-the-scenes state intervention, pushed by the powerful health lobby for whom this was a triumph, notwithstanding their calls for yet further restrictions.

## **REGULATORY EFFECTIVENESS?**

How should Ofcom's intervention in the regulation of food advertising to children be evaluated? In its 'final review' of HFSS advertising restrictions in July 2010 (Ofcom, 2010b), Ofcom presents its own account of developments, evaluating the effectiveness of its regulatory strategy in terms of, first, changes in the advertising seen by children and, second, the impact on broadcasting revenues. Significantly, Ofcom did not seek to evaluate its

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<sup>5</sup> For an overview of these studies, see Livingstone (2006). Few such studies exist because of the considerable expense and planning involved in setting up an experiment that follows up the effects on children through to when they are adults.

<sup>6</sup> On the other hand, if the fairness argument is reframed not as a question of evidence (do children understand the persuasive intent of advertising?) to one of the fairness of advertising to those with the legal status of 'children', then the United Nation's Convention on the Rights of the Child would also legitimate advertising restrictions to teenagers, indeed to all those up to the age of 18.

<sup>7</sup> As Buckingham (2009c: 225) concludes from his stakeholder interviews, 'the arguments in Livingstone's 2006 report ... seem to have played a crucial role in swaying the regulatory balance'.

<sup>8</sup> Although for Buckingham, this is far from an evidence-based decision since no researcher has ever found either literacy or effects to change markedly at age 16; rather, 16 is the age at which broadcasters and regulators have traditionally defined the start of the 'adult' or 'general' audience, defining children as 4–15 years old. Meanwhile, Pitt (2010) observes that the age bar in regulating marketing to children varies considerably among the many regulatory bodies, with cut-off ages ranging, without apparent justification, from 12 to 18 years old.

policies in terms of any measurable benefit on children's diets or health, although this was, after all, the driving purpose behind the government's injunction for policy action.

Did restricting the advertising of junk food to children on television result in children's reduced exposure to such advertising? Ofcom's answer is an unequivocal yes. Comparing 2005 and 2009 viewing data, children watched the same amount of television (including the same amount of commercial television) before and after the ban. This finding holds, even taking into account the other changes between 2005 and 2009 – notably, a shift in children's viewing from the main public service to digital channels, and a rise in advertising, including a rise in the number of advertisements for HFSS products. Consequently, in 2009 compared with 2005, 'children saw around 37% less HFSS advertising (i.e. a reduction of 4.4bn impacts); younger children (4–9 years old) saw 52% less' (Ofcom, 2010b: 3).

So, even though children watch programmes designed for general audiences (in which advertising in general and HFSS advertising in particular rose over the period), the absence of HFSS advertising during children's airtime and on children's digital channels resulted in a substantial reduction in exposure to HFSS television advertising. Not only did Ofcom (and the ASA) restrict the scheduling (and nature) of advertising to children but, it appears, the industry also complied, with few, if any, reported breaches of the new rules. Consequently, in so far as exposure to junk food advertising contributes to children's poor food choices and, therefore, their likelihood of becoming obese, Ofcom's interventions may be judged effective.

However, a reduction in exposure to advertising on television may not mean a reduction in exposure to advertising overall. Ofcom's (2010b: 24) review also shows that, as regards food and drink advertising, 'advertising spend on television declined to a low of £527m in 2009, while spend on press, outdoor and cinema advertising increased between 2005 and 2009'. Moreover, 'advertising spend on food and drink products across the internet increased from £1.9m in 2005 to £8.7m in 2009' (Ofcom, 2010b: 26). Since Ofcom did not assess children's exposure to these other media, the balance of exposure to HFSS advertising across media cannot easily be determined. But it seems likely that, as is often the case, restrictions on television advertising have had the unintended consequence of stimulating advertising in other media.<sup>9</sup>

The unintended consequences of the Ofcom ban go yet further. Advertising not only serves the interests of marketers and the food industry, but it also brings in revenues to the commercial channels. In announcing the ban on junk food advertising to children, Ofcom estimated the loss in advertising revenue to commercial broadcasters at some £30 million per year (Ofcom, 2006d). Ofcom's announcement was soon followed by an announcement from the main commercial public service broadcaster, ITV, that it had ceased to commission new children's content and would no longer meet its quota of eight hours per week dedicated children's programming. Although before and, arguably, since, revenues from advertising in children's airtime have not been explicitly hypothecated to the production of children's programming, the timing of a reduction in the former and the announcement of major cuts to the latter seems more than coincidental.<sup>10</sup> There followed a year-long flurry of public and

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<sup>9</sup> Measures to restrict online advertising to children have since been incorporated into ASA's self-regulatory CAP/BCAP (Committee of Advertising Practice, n.d.), and concerns regarding advertising to children have been flagged by Fielder et al. (2007). See also Montgomery and Chester (2009).

<sup>10</sup> In the US context, Kunkel (1990: 110) assumes just such a policy of hypothecation underpinning the Federal Trade Commission's recognition that, 'because stations were obligated to offer at least some children's

political concern at the apparent demise of most or all indigenous children's television production other than that of the BBC. In December 2007, Janet Anderson, MP proposed an Early Day Motion in the House of Commons that recognised the crisis by stating that:

... this House ... believes that public service television for children plays a hugely important role in contributing to the educational and cultural development of children; and therefore calls on the Government to ensure that UK children of all ages, races and faiths have a genuine choice of high quality, UK-made children's programmes that reflect the diversity of UK culture and children's lives ... on a choice of channels. (Anderson, 2007)

Civil society groups argued that Ofcom should have held ITV to its quota, a requirement of its broadcasting franchise, while Ofcom argued that little could be done when revenues were so undermined. Some observers added that, since children were switching their attention to the internet, the days of children's television are numbered. But, Ofcom's *Future of Children's Television Programming* report (Ofcom, 2007b) instead predicted a slight rise in children's viewing of programmes specifically made for them – from 30.5 per cent of their viewing in 2007 to 31.5 per cent in 2012 (see Ofcom, 2007b: 182). Interestingly too, when in 2010 Ofcom sought to assess the impact of the advertising restrictions on broadcasting revenues, it proved unclear that the advertising restrictions were responsible for the loss of new commissioning. Ofcom's conclusion is worth quoting:

For the final review, Ofcom sought views from broadcasters on whether they were able to provide advertising revenue data for 2008–9 that would shed light on the impact of the advertising restrictions. All of the broadcasters that responded indicated that it would not be feasible to disentangle the impact of the restrictions from other factors, such as the economic downturn. (Ofcom, 2010b: 5)

In addition to the consequences for children's exposure to advertising, and the unintended consequences of, first, advertising moving to other media and, second, the costs to children's broadcasting production, two further consequences of these events are relevant to our present inquiry – what can be learned for the practice of evidence-based policy and the viability of self-regulation? We turn to these questions now, before concluding this case study. It should be noted, however, that the real purpose of these regulatory efforts – the potential health benefits for children – have not, it seems, been examined, although a positive sign may be discerned – health statistics show that the three-year moving average for childhood obesity was 'flattening out' by 2008 (NHS, 2010: 20), suggesting that the long-term upward trend may have been halted.

## **REFLECTIONS ON EVIDENCE-BASED POLICY**

Policymakers may be sceptical about recommendations from researchers who fail to grasp the political necessity of forging consensus among rival constituencies, whereas researchers may see policymakers as too quick to compromise on issues where such tactics are not supported by empirical findings. (Kunkel, 1990: 116)

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programs, they would be allowed to present advertising to generate revenues associated with the costs of providing such content'. While acknowledging the key difference – that in the UK, children's content has been part of a public service obligation even for ITV, it does appear that the reduction in revenues from children's advertising legitimated the consequent reduction in production of children's content.

A rational regulator must identify and weigh the available evidence, contextualising it in relation to other factors (economic, political, practical) in reaching a proportionate judgement. A public-facing regulator must, additionally, make its rationale for regulation both transparent and accountable. The case of television advertising of junk food to children opened up wider public anxieties about childhood – and anxieties about the family, authority, technology, tradition, morality and the future, thereby throwing a very public spotlight on to Ofcom's actions. In this contested domain of multidisciplinary expertise, Ofcom found itself debating the evidence with a diverse array of experts from the medical and health professions – psychologists, consumer researchers and cultural analysts – as well as with parent and community groups, child welfare organisations, religious organisations, journalists and more. Notwithstanding Ofcom's early decision to delegate the regulation of advertising content to the ASA, it could not delegate the entire responsibility for such regulation (as accorded to Ofcom by the Communication Act 2003). Thus it was to Ofcom that the government turned for action, and it was Ofcom that the health lobby criticised when public and expert opinion concluded that significant blame for rising childhood obesity lay with television advertising.

Ofcom's response, closely watched by regulators worldwide, exemplified the actions of the new regime, as this chapter has reviewed. Ofcom conducted a sizable body of new research. It held deliberative meetings with diverse stakeholders, including attempts to bring the antagonists together. It sought to assess the proportionality of policy options and held public consultations on these options. With considerable, often adverse, publicity and threatened litigation attacking the regulator both for being too lenient and too tough on the advertisers and commercial broadcasters, Ofcom perhaps could not win. What, then, may be learned regarding the potential of evidence-based policy?

Six models of evidence-based policy making are in common use, as summarised by Nutley et al. (2007). Two are long-established, one 'push' and one 'pull' model, from an academic point of view: (1) in the *knowledge-driven model*, research is disseminated to policy makers to inform decisions or actions, while (2) in the *problem-solving model*, policy makers seek out research findings to address a specific question or problem. Both of these, Kunkel (1990) claims, have long shaped the US regulatory environment as implemented by the Federal Communications Commission in the 1970s and a parallel case could be made for the UK at that time. However, two models make academics very cautious about engaging with policy making: (3) the *political model* uses research findings as ammunition when decision-making is adversarial, and (4) the *tactical model* treats research findings as a resource for applying or deflecting pressure, supporting or rejecting a decision, as desired. The last two models represent minimal and maximal versions of, surely, an optimal approach: (5) the *interactive model* is less linear, centring on a sustained interaction between research and policy, and (6) the *enlightenment model* seeks to transcend any instrumental use of research in order to gain a more thorough insight and understanding of a given situation, recognising that research is not a pre-given but is partly developed and certainly interpreted through a process of constructive engagement with the policy landscape.

As Nutley et al. (2007) go on to argue, given the range of relevant expertise and the diversity of stakeholders concerned with a particular policy issue, 'there is real scope here for the creation and reinvigoration of a variety of partnerships aimed at fostering a growth in research-informed dialogue' (2007: 266). Perhaps this represents an ideal for regulators and academic researchers alike, but such partnerships, if they do occur, tend to be instrumental, lasting the duration of a project, and are far from developmental in renegotiating the potential of research. They are also further than one might wish from challenging 'preconceptions of

research findings as fixed and immutable’ or of ‘favouring instead the idea that the value of research is revealed through dialogue, contextualisation and assimilation with other forms of knowledge’ (2007: 268). For all stakeholders except those in academia, the flexibility of research ‘findings’ is regarded as either a failing of the research process or as an opportunity for tactical negotiation. Yet, ‘as anyone working in the field of research use knows, a central irony is the only limited extent to which evidence advocates can themselves draw on a robust evidence base to support their convictions that greater evidence use will ultimately be beneficial to public services’ (Nutley et al., 2007: 271).

What clarity does this throw on Ofcom’s claim to be evidence-based in its decision-making? Academics, undoubtedly, favour the first and last of these models: they wish the work they conduct autonomously to be noticed and attended to by potential research users, but they also would hope to improve understanding and even enlightenment. Since neither often happens, this encourages a degree of cynicism about ‘evidence-based’ policy. The first model lends itself to the regulator-commissioned literature review: academic research, it is assumed, proceeds for its own reasons, published in academic journals as it is completed, and may subsequently be mined for insights relevant to regulatory decisions. The problem is that the academic research may not fit the regulatory objectives.

In the field of children’s advertising, for instance, most research does not distinguish product category from brand advertising, yet this is a key distinction for the industry which holds that although brand advertising works (i.e. consumers can be persuaded to prefer brand X over brand Y), category advertising does not (i.e. consumers cannot be persuaded to prefer an unhealthy product over a healthy one) (see, for example, Eagle and Ambler, 2002). The advantage of such an argument (which is not accepted by the FSA and others) would be that the industry could contemplate some restrictions on brand advertising but that there is no need to limit the free market for the latter. Faced with evidence that advertising persuades children to select unhealthy snacks over healthy fruit options, the industry tends to declare that, first, it does not produce advertisements with such an intention (i.e. the experiments lack ecological validity), and second, the researchers have confounded categories and brands in their research design, rendering their findings irrelevant or misguided.

In another example of a mismatch between research and policy, the regulator tends to divide children according to established age groupings on the assumption that the child audience is aged between four and 15 (the parent is presumed to be present and responsible for those under age four, scheduling is presumed to manage the programme exposure of those under 15). But again, academic research might divide children in other ways, producing findings for ‘teenagers’ (including those both younger and older than 15) or it might produce findings that argue for a developmental shift in cognitive understanding of advertising intent around seven or eight years old, thereby foregrounding an age that regulators have no policy tools to address.

Since Ofcom has been generally instrumental in its use of research, it would doubtless claim to follow the second, problem-solving model, certainly in the case of advertising foods to children, though in some areas, such as media literacy, it has also sought a more sustained interaction with academic researchers as its media literacy policy has developed.<sup>11</sup> Critics fear, however, that the political and/or tactical models are more often employed, in which case researchers are co-opted as a *post hoc* justification for a policy decision taken elsewhere

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<sup>11</sup> As evidenced by its Media Literacy Research Forum, the monthly Media Literacy Newsletter and the International Media Literacy Conferences held in 2008 and 2010.

(Buckingham, 2009b). Although in order to ensure maximal applicability and benefit from research, Nutley et al. (2007) favour the interactive model, this risks the independence of researchers who must, as a community if not as individuals, both engage with research use but also critique this process from a disinterested vantage point. It might be anticipated, then, that the more engaged some researchers become, the more conflict will arise within the research community itself. Ironically, the more academic researchers take different positions here (as they rightly should), the more the credibility of the evidence is undermined in the eyes of the policy makers. Arguably, it is reasoning such as this that led Ofcom to invest so heavily in building up its own, supposedly authoritative, certainly expensive, research expertise, an enterprise since cut by the comprehensive spending review of the Coalition government in 2010–11.

## CONCLUSION

Looking ahead is an uncertain business. In relation to generalised public concern that childhood is becoming commercialised, parenting groups and other civil society actors representing children's interests have long lacked the power of advertisers, marketers and broadcasters in representing their case, and it works against them more than against industry that researchers have struggled to document, through sufficiently consistent and rigorous evidence, the conditions under which regulation would be justified. Still, in the case of junk food advertising, unlike that of 'commercialisation', the evidence that kick-started Ofcom's actions pointed to a substantial problem, that of childhood obesity. Thus it is not just parenting groups and consumer organisations that are complaining to government about excessive or inappropriate advertising to children – it is the very powerful health lobby, including government ministers responsible for health budgets.

In consequence, and unexpectedly for a regulator concerned to reduce not increase restrictive regulation, Ofcom instituted a junk food ban on television programmes aimed at children, drawing on an independent evidence base to guide it, having conducted substantial multi-stakeholder and public consultations, and in the face of considerable industry protest. Although judging the value of Ofcom's interventions is not straightforward in terms of either process or outcome, its very considerable resources have undoubtedly been game changing, and it is hard to imagine that the process would be either sufficiently evidence-based or focused on the public interest without such efforts. This is not to say that the process was easy or that the outcome was satisfactory to the public or health experts – indeed, the latter continue to complain that Ofcom has been weak in its actions and thus ineffective in its consequences.<sup>12</sup>

The changing media and communications landscape continues to pose new regulatory challenges. One such is the regulation of product placement. In 2009, the then Secretary of State for Culture, Media and Sport, Andy Burnham, argued against the use of branded alcohol, junk food or gambling in programme making, in the interests of children, but his replacement, Ben Bradshaw, subsequently ruled to allow such product placement, in the interests of broadcasting revenues. In February 2010, Andy Burnham overturned this policy, now in his role as Health Secretary acting in the interests of children's health.<sup>13</sup> Another challenge is the regulation of advertising and marketing to children on the internet, a

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<sup>12</sup> Notably, in 2006, the British Heart Foundation threatened legal action against Ofcom after it omitted the option of a total ban on advertising junk food to children after the 9pm watershed from its consultation options (Hardy, 2008).

<sup>13</sup> 'Climb down over TV product placement', Denis Campbell, health correspondent, *The Guardian*, 4/2/10.

challenge compounded by the twin difficulties that global players produce content for, but not necessarily within the jurisdiction of, the UK, and that neither content providers nor regulators can know whether a ‘user’ is an adult or a child (Fielder et al., 2007; Montgomery and Chester, 2009; Pitt, 2010). In relation to neither of these challenges, as yet is there much reference to the evidence base, although this gives cause of concern regarding the liberalisation of both product placement and online marketing. One can only hope that the incoming regulatory regime will accord some weight to the empirical evidence, although, to be sure, this cannot determine the value judgements that, ultimately, direct policy decisions.

At the time of writing in 2011, Ofcom is reviewing its budget and commitments in the context of a new Coalition government, and a new Communications Act is proposed. Provision for indigenous television programming for children seems no longer a high priority on the public agenda, although concerns about obesity continue to hit the headlines on occasion. The media and communications landscape continues to change, with online and converged platforms becoming ever more central to children’s daily experiences, raising new challenges for advertising, sponsorship, product placement and other forms of marketing. Pressures for change continue – both from the health lobby and from the public. One among many headlines reads, ‘Top doctors call for “fat tax” and warnings on junk food’ (*The Observer*, 11/7/10). As parents walk into MPs’ constituency offices, worried about commercialisation, sexualisation, online risks and more, government wishes to take action. Following on from the previous Labour government’s review of the Commercialisation of Childhood (Buckingham, 2009a) and the Sexualisation of Youth (Papadopoulos, 2010), the 2010 Coalition government announced a Task Force on Childhood (Cabinet Office, 2010) as one of its very first acts in June 2010. This resulted in the Bailey Review (2011), which called for a range of self-regulatory restrictions to curb the perceived commercialisation and sexualisation of childhood, thus revealing for the present a conservative swing of the pendulum towards citizen protections.

For references, see the published volume.