

**Department of Culture, Media and Sport**

**Call for Evidence**

**“Review of Gaming Machines and Social Responsibility Measures”**

**24. October 2016**

**Response by Professor Julia Hörnle, Centre for Commercial Law Studies, Queen Mary University of London**

**Question 7: Is there any evidence on whether existing rules on gambling advertising are appropriate to protect children and vulnerable people from the possible harmful impact of gambling advertising?**

My research has focused on media and internet regulation, including the regulation of online gambling and online advertising for the last sixteen years. I have recently carried out an extensive review of the legal regulation of gambling advertising which resulted in a law review article<sup>1</sup>.

In this Response I would like to share my insights on whether the existing rules on gambling advertising are appropriate to protect children and vulnerable people.

While the scope of the self-regulatory measures under the CAP Codes is extensive in terms of gambling advertising, there are concerns about the clarity and complexity of regulation and its ineffectiveness. Some minor changes have been made in reaction to the 2014/15 Review, but much higher protection standards should be achieved.

The two main deficiencies of the regulatory system are: 1. that regulatory standards are not consistently applied to the internet and a fundamental rethink and redesign of regulation is required for advertising online and 2. that regulation currently focuses too much on the impact on the general population and does not take into account sufficiently the needs of children and vulnerable persons. Regulatory standards are based on the communicative intent of the advertiser and not on how the advertising message is received by and impacts vulnerable people.

Advertising regulation as it currently stands focuses mainly on traditional, offline media and therefore there is a lacuna in respect of most forms of online advertising. Therefore regulation should be updated to cover online advertising, taking into account functional equivalence, technology assisting regulation and enforcement, consumer behaviour, data protection and jurisdictional issues. Further research in this area is required.

Where advertising is directed or targeted, advertisers should always be under an obligation to age-verify before the ad is disseminated. So for example where minors register on social media or a gambling website stating a false age, an additional process should verify their real age through appropriate age-verification technology before an advertising campaign is

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<sup>1</sup> [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2858977](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2858977)

started. Minors on Twitter or Facebook who follow or like a football team's account should not be sent sign-up offers (eg "free bets"). Minors who register on an online gambling website and play demo games (without monetary stake) should not be included in a direct marketing campaign. Where gambling advertising is based on a person's profile (eg banner advertising), technologies should be developed to ensure that this profile contains an age-verification element. While sign up promotional offers have been removed from pre-watershed TV ads a similar move should be considered for social media accounts (unless appropriate age-verification takes place).

Moreover there should be a strict rule against celebrity (especially young sports persons) endorsements in gambling advertising given their influence on minors. Such a rule should include point of sale advertising. Furthermore, the sponsorship rules should ensure that no equipment or clothing (including merchandising) which minors wear contain betting references. The "no under 18 gambling" logo/message should be extended to all internet advertising, as should be the warning messages in respect of problem gambling.

There are few measures to implement the protection of vulnerable adults- self-exclusion is one important attempt, but much more work (including research as to what measures may be effective) needs to be done. It is suggested here that the provision that direct marketing must not be sent to self-excluded persons should be extended to persons who had self-excluded in the past (for example in the past ten years).

We argue that the evaluation of gambling advertising is detached from the overall goal of protecting the vulnerable and focuses too much on the general population not on those who are in need of protection.

A frank debate on the regulation of gambling advertising is required, taking into account the interests of all stakeholders and thinking creatively for solutions outside the traditional regulatory mechanisms (such as the watershed) as the media landscape and consumption habits are changing- in particular in respect of the online space.

As to the watershed, there is a question whether contemporary viewing patterns by minors mean that the watershed is no longer an effective zoning tool. Minors do watch TV after 9pm, having a TV or internet enabled device in their own bedroom and/or they access TV programmes streamed on demand through catch-up services, which, naturally, are not subject to the watershed. Another practical argument concerning the limited effectiveness of the watershed is that, if all gambling advertisements were restricted to late at night broadcasting, this would lead to a concentration of gambling advertisements at that time, which would have a negative impact on those children watching at this time (very intensive exposure).

According to a 2013 Ofcom Report, the largest segment of gambling advertising is broadcast during night time (23.00-05.59: 41.5%), but in second place is the daytime TV slot (09:30-16:59: 32%) when just under one-third of gambling spots (bingo, sports betting) are broadcast, in the third place are gambling spots broadcast immediately after the watershed (21:00-22.59: 13.1%), in the fourth place is the expensive prime-time broadcasting (17:00-20:59), only 8.7% of spots are broadcast then and finally the fewest number of gambling

spots appear in the early morning (06:00-09:29 4.8%). These figures show that, overall, most gambling ads are broadcast during daytime (06:00-20:59), when minors are likely to watch.

The same Report shows that a high proportion (just under one-fifth 19.8%) of all television viewing amongst children aged between 4 and 15 years old took place after the 9pm slot. This proportion rose to 26.6% when children aged between 10 and 15 years old were singled out, with 8% of them viewing television after 11pm at night . This indicates that a large proportion of minors watches TV after 9pm.

In summary, it is clear that minors are exposed to gambling advertising, as the watershed does not apply to advertising of certain forms of gambling and because of different viewing patterns, more minors watch content out of hours of the protection.

The current increase in gambling advertising is likely to impact negatively on minors and vulnerable gamblers. We believe there is currently insufficient evidence of consumer harm to return to blanket prohibitions in respect of advertising and sales promotions. But further research should be carried out to better understand the link between advertising, consumption, attitudes and problem gambling and any review of advertising should include a consideration of more restrictive forms of regulation founded on the pre-cautionary principle, including clarifying and strengthening the enforcement of the criminal provisions in the Act (for example section 46).