2023

STRATEGIC PUBLIC INTEREST LITIGATION FOR TRANSPARENCY AND ACCOUNTABILITY OF HARMFUL DIGITAL MARKETING: A RESEARCHER-REGULATOR-COMMUNITY DIALOGUE

WORKSHOP REPORT

ABOUT THE WORKSHOP

TITLE
Strategic Public Interest Litigation for Transparency and Accountability of Harmful Digital Marketing: A Researcher-Regulator-Community Dialogue

CONVENORS
Prof Christine Parker FASSA | Melbourne Law School & ADM+S
Prof Paula O'Brien | Melbourne Law School & Health Ethics and Law Network
Prof Jeannie Paterson | Melbourne Law School, CAIDE
Prof Kimberlee Weatherall | The University of Sydney Law School & ADM+S

DATE AND PLACE
25-26 September 2023
Melbourne Law School, Wurundjeri Land, Naarm (Melbourne).

WORKSHOP SUMMARY

Online advertising by digital platforms can be used by harmful industries such as alcohol, unhealthy food, and gambling to manipulate consumers, misrepresent their products, and engage in predatory conduct targeting people generally, and, in particular, groups experiencing vulnerability. These practices are difficult to investigate. Scholars, activists and regulators focusing on specific industries rarely have a chance to discuss their common challenges.

This workshop brought together key social science and socio-legal researchers working on issues around digital marketing issues across a range of harmful industries, to reflect on the regulatory and policy implications of harmful digital marketing and engage in dialogue with community groups and lawyers about the potential benefits, challenges, and pitfalls of strategic public interest litigation to address these harms.

At the workshop, the participants explored the potential of public interest litigation to make digital marketing transparent and accountable, and to prompt further regulatory and policy action.

Discussion focused on:
- The place of litigation in pursuing public interest goals, its efficacy in responding to concerns about digital marketing and the influence of digital platforms, and its strengths and weaknesses as a regulatory tool.

- What the research shows reveals about harmful digital marketing practices relating to alcohol, gambling, and unhealthy food, and the impacts of such practices: participants heard from, and discussed, the latest social science research and results, and how the evidence could be used.
- The potential for test case complaints to, and litigation by, the Australian Competition and Consumer Commission (ACCC) regarding harmful digital marketing
- The potential for class actions by consumers/users of social media targeted by harmful digital marketing relating to alcohol, gambling, and unhealthy food.
- Lessons learned from current public interest litigation against harmful digital marketing promulgating crypto currency investment scams.
- The evidentiary, procedural, and technical hurdles to framing and proving cases of these kinds.

- Identifying gaps in the research about harmful digital marketing that would need to be addressed for the purposes of public interest litigation.
- The need for, and shape of, further regulatory reforms relating to harmful digital marketing that are indicated by the workshop's analysis of the potentials and pitfalls of litigation.

Ultimately, the aim of the workshop was to magnify the use of research to inform community and regulatory action. It was also intended to assist researchers to identify the limits of the current research and where further scholarly inquiry is needed to serve the goals of transparency and accountability. The workshop discussions were directed towards informing and shaping practical strategies by regulators and community groups in advocating for greater transparency about harmful digital marketing, holding entities involved, such as platforms or advertisers, accountable and thereby reducing harm. We hope that a longer-term impact of our workshop is inform impactful community and regulatory action that changes the digital marketing landscape.

A key learning from the workshop was the need for compelling evidence-based stories about harmful online marketing, and its impacts on people and society, in order to prompt political action to address legal and regulatory gaps, and as a basis for any public interest litigation whether by way of regulatory enforcement or private (individual or class action) litigation.

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