

The Promotion of Alcohol Products:

A Challenge for Self-Regulation

Alcohol Promotion: An Issue of National Concern

The promotion of alcohol products has been the subject of a sometimes contentious debate among governmental agencies, the alcohol industry, public health advocates, policymakers and the public at large. At the center of the controversy is the adverse effect alcohol promotion may have on youth, for whom the consumption of alcohol is both illegal and unhealthy.

This is a critical issue for young people as well as the Nation. Underage drinking costs the Nation an estimated \$53 billion annually in deaths, injuries, property damage and related economic and productivity losses. In 2001, there were 3,212 deaths due to underage drinking, plus another 2.4 million other harmful events. And alcohol consumption by youth is linked to increased risk of other behaviors, including crime and violence.

The alcohol industry invests \$4 to \$5 billion each year to promote its products. As a result, young people live in an environment filled with alcohol promotions, including media advertising, event sponsorships, Internet sites, giveaways and other non-traditional forms of marketing. Many critics contend that the industry overexposes young people to advertising messages using youth-oriented themes, images and music. The alcohol industry rejects these charges and contends that advertising does not influence a young person's decision to drink. Concerned about the potential adverse impact on youth, Congress asked the Federal Trade Commission (FTC) and the National Research Council, Institute of Medicine (IOM) to study and report on the issue.



Policy Brief

Volume 1, Issue 3

International Institute for
Alcohol Awareness



DISCUS CODE REVIEW BOARD REPORT

DISCUS has taken a significant step toward implementing the FTC and IOM recommendation regarding transparent process for reviewing code complaints. In March 2005, it issued the first public report of its Code Review Board, which is charged with reviewing complaints related to the code. The board has eight members drawn from the staff of member companies and has been active for decades, although, until this report, its deliberations had not been made public. The public release is designed to make the board's actions "more visible, transparent and understandable." There is also an advisory board made up of three experts not associated with the industry,

who make the final determination regarding violations if the board reaches a tie vote.

The report lists the 14 complaints filed in 2004 and includes descriptions of the complaint and advertisement in question, the board's conclusions and the responses of the advertisers. In all but two cases, the board found a violation and contacted the advertiser to request that the advertisement be discontinued or modified; in seven cases the advertiser agreed; in one case, it agreed in part but disagreed in part; and in four cases the advertisers did not respond. Twelve of the complaints were filed by industry members.

Advertising's Impact on Youth Drinking

In September 2003, the IOM issued a report to Congress (*Reducing Underage Drinking: A Collective Responsibility*), including a comprehensive review of the research literature addressing alcohol advertising's impact on youth behavior. It found that (1) "the widespread exposure of youth to alcohol marketing and the attractiveness of alcohol-related messages to them are well documented"; (2) numerous studies have established a correlation between exposure to alcohol advertising and youth beliefs, behaviors and alcohol problems; and (3) these studies do not establish a definitive causal link between alcohol advertising and youth behavior, due in part to weaknesses in their design and methodology. Demonstrating a direct causal connection is difficult or impossible because of the multiple factors that influence youth drinking and the inability to create the pure control and experimental groups needed to establish a scientifically accepted causal relationship.

The National Institute on Alcohol Abuse and Alcoholism (NIAAA), recognizing the need for more definitive research on the topic, funded four major longitudinal studies that have recently completed their data collection. Preliminary results in all four cases suggest additional, more convincing evidence of the impact of alcohol advertising on youth behavior. While probably not definitive, these studies offer additional weight to the hypothesis that a significant link exists between alcohol promotion and youth behavior.

Both the FTC, in its 1999 Report to Congress (Self Regulation in the Alcohol Industry), and the IOM concluded that, despite the lack of definitive research, action is needed to protect young people from the potential harmful effects of alcohol advertising. The IOM gave two reasons for this conclusion. First, the "persistent exposure of young people to messages *encouraging* drinking by young people ... contradicts and interferes with the implementation of the Nation's goal of *discouraging* underage drinking." Second, the focus on causation overlooks the importance of self-regulation by the alcohol industry. As stated in the report (on page 135):

"The industry has the prerogative—indeed, the social obligation—to regulate its own practices and to refrain from marketing products or engaging in promotional activities that have a particular appeal to youngsters, irrespective of whether such practices can be *proven* to 'cause' underage drinking."

Self-Regulation and Government Authority

The IOM's suggestion that industry self-regulation may be the key strategy to address alcohol advertising and youth is reinforced by the challenges of government-regulated alcohol advertising. Recent U.S. Supreme Court decisions have expanded the scope of First Amendment protection of truthful, non-misleading commercial speech, limiting the ability of governments to restrict advertising. Nevertheless, local, state and

federal governments do have some authority to regulate advertising, particularly as to the "time, place and manner" of display (in contrast to content restrictions, which face more daunting Constitutional barriers). The IOM report concludes that the most important task is to strengthen industry self-regulation and promote corporate responsibility. Governmental intervention should occur only "if the industry fails to respond satisfactorily to this challenge."

The alcohol industry agrees that self-regulation should be the primary strategy for addressing the issue. The Beer Institute, the Distilled Spirits Council of the United States (DISCUS) and the Wine Institute have separate voluntary advertising codes for their members, who are responsible for 90 percent of the beer, 75 percent of the wine and 85 percent of distilled spirits sold in the United States. The provisions in these advertising codes, and the manner in which the industries and their members monitor, enforce and comply with the codes, provide the basis for evaluating the current self-regulatory system.

Congressional Review and Industry Response

On three occasions Congress has requested studies of the impact of alcohol advertising on underage drinking and the effectiveness of the industry's voluntary codes. In 1998 and again in 2003, Congress included language in an Appropriations Committee report asking the FTC to investigate industry self-regulation, alcohol advertising and youth. In 2002, Congress asked the IOM

to conduct a comprehensive review of the underage drinking issue and develop a national strategy for preventing youth alcohol problems. The IOM report includes a chapter devoted specifically to alcohol advertising and the role of industry self-regulation.

The 1999 FTC report included a detailed analysis of industry advertising practices and the voluntary codes. It found that, although most industry members adhere to the codes' provisions, the codes themselves had numerous weaknesses that the industry should address. It made six major recommendations, based on "best practices" of some industry members:

- Reduce the youth composition of an audience in media where alcohol advertising is permitted from 50 percent (the report commended favorably companies that maintain a 25 percent standard) and conduct regular internal audits to insure compliance.
- Prohibit ads with substantial underage appeal, even if they also appeal to adults, or target ads to persons 25 and older.
- Restrict the placement of alcohol products for which some form of payment is made to "R" and "NC-17" rated films.
- Use available mechanisms to block underage access to Internet sites and avoid Internet content that would attract underage consumers.
- Curb on-campus and spring break sponsorships and advertising.
- Create independent external review boards with responsibility and authority to address complaints from the public or other industry members.

The 2003 IOM report conducted an independent review of industry practices and self-regulatory codes and concluded that the industry the FTC recommendations were "too weak in some respects," but urged the industry to adopt them "... forthwith, as an expression of good faith and as a signal of their willingness to become active partners in the Nation's campaign to reduce underage drinking." The IOM recommended two significant additional actions:

- The industry should immediately reduce the advertising placement standard to a 25 percent standard, with an eventual goal of 15 percent.

- The federal government should appropriate necessary funding to monitor underage exposure to alcohol advertising.

The 2003 FTC report (released the same month as the IOM report) found that the industry had made modest but significant steps to implement the 1999 recommendations, most notably regarding advertising placement and external review boards. All three industry codes now maintain a 30 percent youth audience standard, and DISCUS and some individual companies had established external review boards. The FTC encouraged the alcohol industry to continue to improve its practices, in particular regarding monitoring and encouraging compliance among its members.

Although improvements in industry self-regulation have occurred since 1999, there is clearly a need for additional action. As discussed in the sidebar, significant steps still are needed from the industry to implement the recommendations made by the FTC in 1999 and the IOM in 2003. Available data suggest that there still are problems in compliance with existing code provisions. And although some portions of the industry have taken significant steps to establish independent review boards, there has been only limited attention to monitoring and enforcement activities.

Establishing Successful Self-Regulation

To meet its goal of protecting youth from the adverse effects of alcohol advertising, industry self-regulation requires at least three key components: *transparency and accountability, independent monitoring and code review.*

Transparency and accountability involve the industry's role in establishing an open, independent process to monitor and promote compliance among its members. This can help to demonstrate the industry's commitment to enforce and promote

compliance with its voluntary codes. The 1999 FTC report criticized the alcohol industry for the lack of independent enforcement mechanisms in its complaint review. It also commended the standards and procedures of the National Advertising Division of the Council of Better Business Bureaus, Inc. (CBBB), which uses independent panels to mediate claims, mostly between competitors.

By the time of the 2003 FTC report, Coors Brewing Company had collaborated with the CBBB to establish an "Advertising Pledge Program," which provides both transparent and independent review of the company's advertising code. Two other companies were establishing similar independent review processes. DISCUS released its first public report of the findings and recommendations of its Code Review Board, a significant step in developing a transparent review process. However, since the board is composed of industry representatives, it is not fully independent (see sidebar for discussion). Nevertheless, the DISCUS code review program contrasts favorably with the procedures used by the Beer and Wine Institutes, which provide no independent review process, choosing instead to simply refer complaints to the company involved.

Independent monitoring provides verification that compliance is occurring, building public confidence in the self-regulatory system and promoting accountability among industry members not adhering to code provisions. It complements and enhances industry self-monitoring efforts. Internal industry review is passive in nature, responding to complaints, while independent monitoring is proactive, assessing compliance across the industry. The IOM report recommends that the federal government provide funding to monitor advertising placement standards.

The Center on Marketing and Youth (CAMY) is the most notable independent monitor of alcohol industry advertising practices, focused primarily on advertising

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– Jim Mosher, Director of PIRE's
Center for the Study of Law and Enforcement Policy

placement standards. Its series of reports have provided important benchmarks for assessing code compliance and the effectiveness of the codes in reducing youth advertising exposure. However, because CAMY represents a short-term demonstration project funded by private foundations, it will not fulfill the monitoring function in the long term. A government-funded program is needed to increase the credibility, consistency and stability of the independent monitoring process.

Code review involves periodic assessment of the effectiveness of industry codes in protecting young people from advertising content and exposure. Code review is closely tied to the monitoring function, supplementing the data regarding compliance with analysis of the effectiveness of compliance on desired outcomes. The reviews can be used to improve the codes, including deleting, modifying or refining provisions that are ineffective, and adding new provisions.

Allied Domecq's marketing code governs all of its advertising and marketing communications to consumers. Additionally, its marketing review board, which is comprised of six independent members, meets four times every year to provide an assessment of its advertising, marketing and sponsorship materials. Allied Domecq is the only company identified in the research for this report that submits its marketing and advertising for review by a third party panel before it is placed. Its advertising and marketing review practices provide a potential model for other members of the alcohol industry.

Together, these three functions can ensure that industry self-regulation effectively reaches its primary goal—ensuring that industry advertising practices minimize harmful youth exposure and youth-oriented content.

Resources

The National Academy of Sciences 2004 Report: Reducing Underage Drinking: A Collective Responsibility, www.beaware-now.org/pdf/NASreport_exec_sum2003.pdf

Self-Regulation In The Alcohol Industry: A Review Of Industry Efforts To Avoid Promoting Alcohol To Underage Consumers, Federal Trade Commission, September 1999, www.ftc.gov/reports/alco-hol/alcoholreport.htm

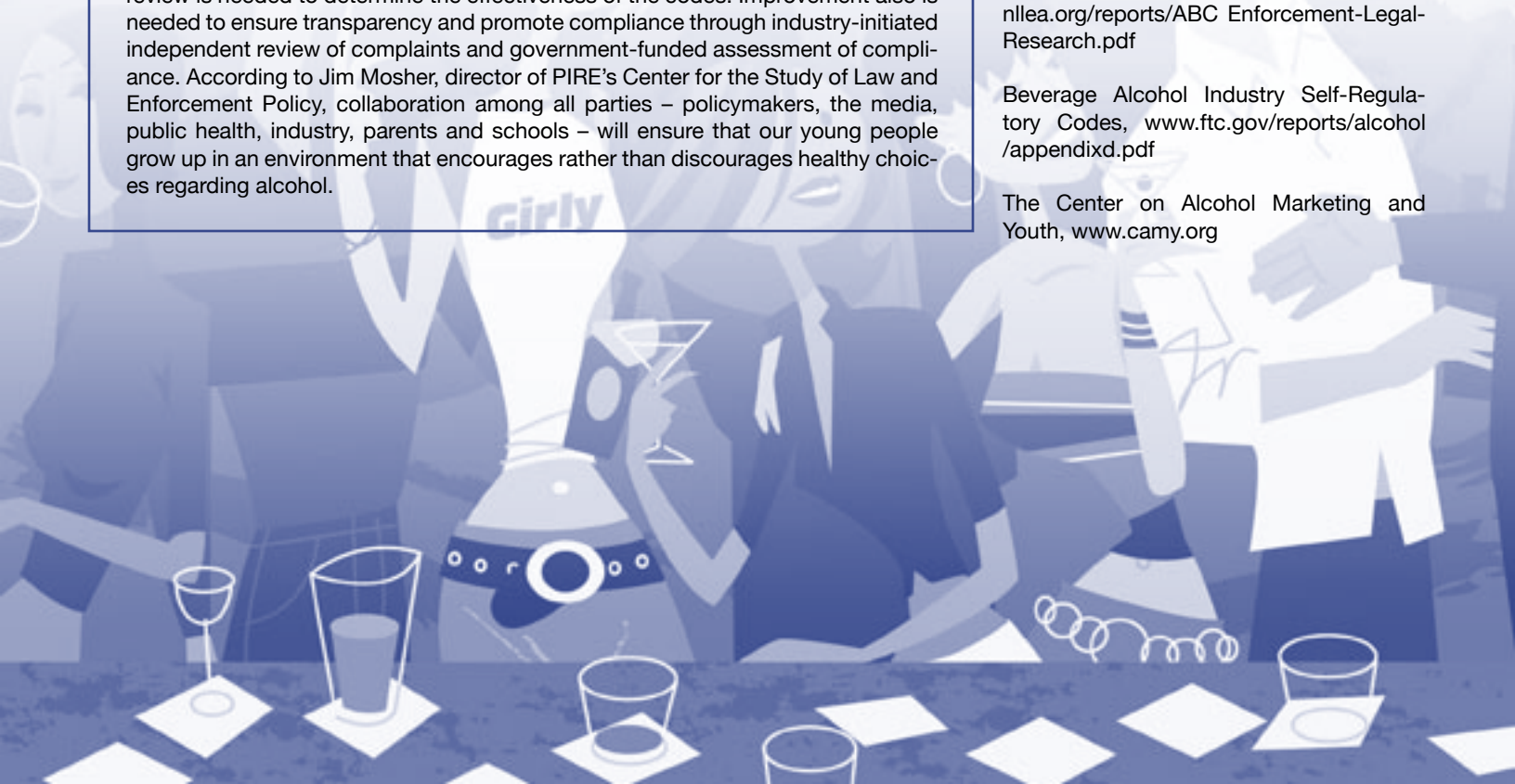
Alcohol Beverage Control Enforcement: Legal Research Report, the Pacific Institute for Research and Evaluation, completed under contract with the National Highway Traffic Safety Administration, IDC DTNH22-98-D-35079, April 2003. [www.nllea.org/reports/ABC Enforcement-Legal-Research.pdf](http://www.nllea.org/reports/ABC%20Enforcement-Legal-Research.pdf)

Beverage Alcohol Industry Self-Regulatory Codes, www.ftc.gov/reports/alcohol/appendixd.pdf

The Center on Alcohol Marketing and Youth, www.camyo.org

Conclusion

The alcohol industry and the federal government recognize industry self-regulation of marketing practices as the primary vehicle for protecting young people from the harmful affects of alcohol advertising. To be successful, industry, government, the media, the public health community and the public need to establish a partnership. Although the industry has taken significant steps to improve its self-regulatory process, additional reforms are needed for self-regulation to be effective. First, the code provisions need to be reviewed. The FTC and the IOM have made specific recommendations, most of which have yet to be implemented. Continuing review is needed to determine the effectiveness of the codes. Improvement also is needed to ensure transparency and promote compliance through industry-initiated independent review of complaints and government-funded assessment of compliance. According to Jim Mosher, director of PIRE's Center for the Study of Law and Enforcement Policy, collaboration among all parties – policymakers, the media, public health, industry, parents and schools – will ensure that our young people grow up in an environment that encourages rather than discourages healthy choices regarding alcohol.



Alcohol Industry Codes and FTC/IOM Recommendations

The FTC and the IOM reports made specific recommendations for modifying the DISCUS and Beer and Wine Institutes' codes. To what extent do the current codes adhere to these recommendations? There is a surprising variance between the three industry codes. Following is a brief summary.

Advertising Placement: All three industry codes adhere to the same standard for advertising placement, i.e., no more than 30 percent of a television, radio or print media audience can be under 21 years of age. As noted by the FTC, this is a marked improvement from the 50 percent standard used previously. However, it remains higher than the IOM's recommendation that the standard be dropped to 25 percent immediately, with an eventual goal of 15 percent.

The IOM recommendation recognizes that a 30 or 50 percent standard results in high youth exposure to advertising. This conclusion is based in part on data provided by the Center on Alcohol Marketing and Youth (CAMY), a project of Georgetown University. CAMY found that, on a per capita basis, youth are significantly overexposed to beer and distilled spirits advertising in all media when compared to adults, and young people are not overexposed to wine advertising, demonstrating the feasibility of avoiding overexposure. CAMY found that a 25 percent youth audience standard would have a modest effect on youth exposure regarding television advertising, and it recommends a 15 percent standard.

The government reports also recommend after-the-fact audits of ad placement to ensure compliance. The three codes substantially comply with this recommendation. The DISCUS code includes detailed auditing guidelines.

Advertising Content: The IOM report notes that adhering to a low youth audience standard lessens the importance of advertising content rules. Since the industry maintains a 30 percent standard, allowing for significantly more youth exposure, it becomes critical that there be strict rules on advertising content that appeals to youth.

Both the FTC and the IOM recommend that the industry refrain from using advertising content that has substantial underage appeal without regard to the content's appeal to

adults. The Wine Institute code complies with this recommendation. The DISCUS code prohibits advertising with "special attractiveness" to youth beyond the "general attractiveness" it has for adults and permits models who appear 21 years or older (although they must be at least 25 years of age). The Beer Industry code is similar to the DISCUS code with one significant exception—it only prohibits advertising that is *intended* to appeal to youth. Since an advertiser's intention is entirely subjective, the provision is virtually unenforceable.

Product Placement: Product placement refers to the marketing practice of having products prominently displayed as part of a television or movie dramatic presentation, a potentially potent marketing strategy. Both the FTC and the IOM reports recommend that the industry allow product placement only in movies with "R" or "NC-17" ratings and apply the advertising placement standards to product placement in television programming. The IOM report also recommends that product placements be explicitly disclosed. None of the three industry codes adhere to these recommended standards.

Internet Advertising: The IOM report recommends that the alcohol industry "... use its best efforts, based on evolving technology, to restrict underage access to their Web sites and avoid using games and cartoons that are unusually attractive to children and teenagers." The FTC reports make similar recommendations. The Beer Industry and DISCUS codes address this recommendation to a limited degree by applying their advertising content rules to Internet sites, requiring that visitors to the sites enter their date of birth at various places on the Web sites (and denying access to those who enter dates indicating they are under 21 year of age), and providing parents and parent control software companies Web site addresses upon request. The Wine Institute code has no special Internet provisions, applying its content rules to member Web sites.

College Marketing: The FTC recommends that the industry refrain from marketing activities on college campuses, except in licensed premises, and end spring break promotional activities. The Wine Industry and DISCUS codes prohibit marketing on college campuses, but do not address spring break activities. The Beer Industry code permits college marketing.



America's Partners to Prevent Underage Drinking

Partners

American Association of Motor Vehicle Administrators
www.aamva.org

The BARS Program
www.barsprogram.com

E-Seek, Inc.
www.e-seekinc.com

First Data Merchant Services
www.firstdatacorp.com

Intelli-Check, Inc.
www.intellicheck.com

International Institute for Alcohol Awareness

Leiweke Distribution Companies
www.idverificationsystem.com

National Liquor Law Enforcement Association
www.nllea.org

Pacific Institute for Research and Evaluation
www.pire.org

Precision Dynamics Corporation
www.pdcorp.com

Scholastic, Inc.
www.scholastic.com

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www.BeAwareNow.org