

# TACD

TRANS ATLANTIC DIALOGUE TRANSATLANTIQUE  
CONSUMER DIALOGUE DES CONSOMMATEURS

DOC No: INFOSOC 38-09

DATE ISSUED: MARCH 2009

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## Resolution on Marketing to Children Online

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Consumers benefit greatly from free online services such as search, news, information sharing and social networking sites. The business model underlying these free services is advertising. Such advertising is increasingly targeted, based on detailed, user-specific information collected as consumers browse, communicate and transact on the Internet. It is explicitly designed to influence consumers in highly subtle and covert ways by, for example, embedding product endorsements in other, non-commercial communications; harnessing the interactive powers of the Internet; blurring distinctions between advertising and editorial content; and exploiting loopholes in existing fair marketing guidelines. Advertisers and marketers in both the US and the EU are collaborating to perfect what they have termed a “media and marketing ecosystem”.

Children and adolescents are at the epicenter of this new digital marketplace, a highly lucrative target market of “digital natives”. Both these young people, and their parents, are not aware of being subject to “digital spying” for commercial gain. And, equally important, there is increasing evidence that such online advertising techniques may have a negative impact on:

- youths’ self-image and well being
- the development of their abilities to exercise critical judgment
- critical health trends, such as childhood obesity.

Existing policies and regulation on data collection and unfair commercial practices do not cover online marketing to children adequately.

### Recommendations

#### TACD resolves that EU and US governments should:

1. Revise privacy policies to address digital data collection from children and youth – including collection via behavioural targeting. In particular, the practice of making children agree to the use of their data for marketing purposes before they can access and use a social network should be forbidden.
2. Start pro-active co-operation between relevant EU and US agencies, to achieve better co-operation and harmonization of regulatory practices and codes, both on privacy and marketing practices. Rules are currently different on each side of the Atlantic, and this

creates confusion among children and parents as well as renders policies ineffective in a global environment.

3. Ensure better enforcement of existing rules and regulation – for example current EU privacy policies are not worth the cyber paper they're written on, while the US Children's Online Privacy Protection Act (COPPA) is easily circumvented in practice. Similarly, the recent European safer social networking principles for children and young people do not address the issue of marketing.

4. Consider bringing whole websites, and particularly own-brand websites (many of which are popular with children) under unfair commercial practices regulations and marketing codes, so that they are subject to the same rules as other mediums, for example broadcasting.

5. Encourage development of global guidelines for online advertising, sales promotions and direct marketing to children, starting within the Organisation for Economic Co-operation and Development (OECD).

6. Revise regulatory regimes to raise the age of children for the purposes of online marketing protection from age 12 or 13 to at least 16 years of age. Recent neuroscience research conducted both in the EU and the US suggests that, contrary to previous beliefs, children over 12 do not have adult-like understanding and critical judgment of marketing.

7. Commission research and inquiries into today's online youth marketing system, identifying and assessing the strategies being used, in particular on social networks, video channels, online games and virtual worlds.

8. Explicitly prohibit, through regulation, online marketing practices that have been proven, through such research, to have a negative impact on children's cognitive and emotional development. For example, there should be no digital marketing of food and beverage products that have been identified as contributing to the childhood obesity epidemic. Equally, certain digital advertising techniques, such as intensely interactive video-games or 'subliminal' advertising should be seriously questioned.

9. Update legislation covering unfair and misleading commercial practices to ensure that all marketing activity online is clearly labeled as advertising, whether it is in paid-for space or using other techniques, such as social networking profiles, product placement or video-gaming.

#### **The online marketing industry should:**

1. Develop common ethical codes and recommendations for behavioural tracking and advertising online to children and youth, in co-operation with consumer organisations and organisations representing children. These should include prominent, clear statements that data is being collected for commercial purposes as well as give children and their parents tools to choose whether they want their information collected for such purposes. All codes should ensure that the rules have 'teeth', i.e. that they are properly implemented and enforced.

2. Include in industry codes detailed provisions for standardized disclosures, guidelines for easy-to-understand privacy policies, and rules on free offers and other marketing strategies as needed to protect children from abusive practices.
3. Provide advertisement and tracking-free versions of children's websites. This may be offered in return for modest subscription fees.

## **Background**

### **Introduction**

A powerful digital marketing system designed to deliver personalized interactive commercial messages wherever we go is emerging as one of the principal features of the Internet era. Advertisers and marketers in both the U.S. and the EU are collaborating to perfect what they have termed a "media and marketing ecosystem."

Children and adolescents are positioned at the epicenter of the new digital marketplace, a highly lucrative target market of "digital natives." As they harness the interactive capabilities of social networks, broadband video channels, mobile services, video games, and virtual worlds, young people increasingly face a dizzying array of sophisticated interactive pitches delivered to their personal computers, mobile devices, and soon even via digital TVs.

A far-reaching system of market researchers, advertisers, advertising agencies, technology and media companies are working together to further perfect the impact of online marketing on young people. For example, in the US a special "Youth Council" of the Advertising Research Foundation, co-chaired by officials from Disney and WPP, the communication services company, and working with a broad range of marketers from major brands, closely analyses "youth's media consumption patterns." In the last year they have addressed how to use more effectively mobile devices, online games, and other Internet marketing technologies<sup>1</sup>.

Microsoft and Viacom's MTV/Nickelodeon jointly conducted what they called "the largest-ever global study" which examined "Kids, Youth & Digital Technology." In order to better harness the power of interactive advertising to market to young people, the *Circuits of Cool/Digital Playground* study examined thousands of children from 18 countries and how they used new technologies<sup>2</sup>.

From junk food, to toys and clothes, to ads designed to have children urge their parents to buy brands of cars or take special vacations, young people are being interactively targeted by new and emerging marketing practices. The increasing blurring of boundaries between commercial and non-commercial content, with data collection and advertising at its core, raises significant challenges for children, parents, educators and other caregivers.

### **TACD concerns**

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<sup>1</sup> <http://www.thearf.org/assets/youth-council#chair>

<sup>2</sup> <http://sev.pnewswire.com/multimedia-online-internet/20070724/NYTU10924072007-1.html>

While recognizing that online advertising enables the financing of many websites of tremendous educational and entertainment value for children, consumer organisations have the following strong concerns:

- Children are in effect stalked online – neither the process nor the tracking or profiling techniques are understood or known by children or their parents, therefore they do not exercise any form of informed consent or control over their personal data and privacy.
- Companies often state in their defense that the data they collect, for e.g. IP addresses and browsing habits, are not personally identifiable; however such details are part of an identity, and companies no longer need to know a name or an address to know, for example, that a child has a learning disorder, or how much a youth spends in a shopping cart.
- Marketing methods may be obscure, unfair and deceptive, and flaunt existing rules and codes.
- Marketing of certain brands and products – of foods high in salt, sugar and fat in particular – can have an adverse effect on children’s health.
- Highly interactive techniques and use of neurological science to influence purchase behaviour may have an adverse effect on children’s development, self-image and well being.

### **Consumer research evidence**

Consumer organisations in the US and the EU have investigated commercial practices on children’s most popular websites through mystery shopping techniques, discussion groups with children and “ethnographic” research techniques<sup>3</sup>. This research reveals not only that both children and their parents have no idea of online advertising and stalking techniques, but also that sites often flaunt existing data protection and fair marketing rules, for example:

- A majority of children’s sites collect some sort of personal information, including many that collect highly personally identifiable information – and children have to give this information in order to participate in the site’s activities. Sites tempt with free offers in exchange for personal information. Third-party advertisers’ privacy policies in particular on children’s sites offer little protection to children’s privacy.
- The mixture of self-regulation and national and international legislation confuses both parents and children. For example the COPPA legislation in the US, which stresses that information from children under 13, should not be collected without consent of parents, is regularly flaunted by children and parents alike in the UK, who widely use US-based websites. Sites absolve themselves of any responsibility by stating they’re for children over 13.
- Websites frequently tantalize children, presenting enticing options and even threats that their online creations will become inaccessible unless a purchase is made.

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<sup>3</sup> See *Fair game? Assessing commercial activity on children’s favourite websites and online environments*, Anna Fielder, Will Gardner, Agnes Nairn, Jillian Pitt, National Consumer Council, December 2007; *Like Taking Candy From a Baby: How Young Children Interact with Online Environments*, An Ethnographic Study for Consumer Reports WebWatch by Warren Buckleitner, Ph.D., May 2008; *Interactive Food & Beverage Marketing: Targeting Children and Youth in the Digital Age*. Kathryn Montgomery, Ph.D. and Jeff Chester. Berkeley Media Studies Group. 2007. Available [with follow-up reports] at [www.digitalads.org](http://www.digitalads.org)

Some sites show attractive options that invite a click but lead to a registration form instead. Some sites even sell a child's prior experience back to them.

- Subtle branding techniques are frequently used, for example through interactive games or shapes of avatars.

### **Other independent research evidence**

There is also a body of independent research that increasingly suggests that the online ad industry's use of psychological, behavioural and social techniques may have a still unknown negative impact on children's future self-image and well being. For example recent neuroscience research conducted both in the EU and US suggests that long-standing theories on the ability of children and adolescents to comprehend the nature of marketing is now in question.

A number of scholars in the U.S. and Europe have begun to question the cognitive framework that underlies much of traditional children's advertising regulation. Though teens may have better cognitive capacities than young children, research within the fields of neuroscience, psychology, and marketing has identified several biological and psychosocial attributes of the adolescent experience that may make members of this age group more susceptible to certain kinds of marketing.<sup>4</sup>

### **Differing rules and regulations**

Advertising on the Internet in the EU is mostly governed by the implementation in various member states of the Unfair Commercial Practices Directive. This covers misleading advertising and codifies the principle that paid-for ads should be identifiable, as well as discourages "pester power" through use of "undue influence". In an effort to achieve consistency between codes in Europe, the European Association of Communication Agencies (EACA) has guidelines for advertising to children. Data protection and privacy regulations in the EU are enshrined in the Data Protection Directive, which has been transposed into legislation in the member states. However, this does not specifically refer to children.

In the US, the Children's Advertising Review Unit (CARU) provides a self-regulatory programme for advertising to children (in any medium), while the Children's Online Privacy Protection Act (COPPA) prohibits the commercial collection of "personally identifiable" information of children younger than 13 years of age.

All this makes for quite a hotchpotch of voluntary codes and regulations, most of which do not address the new behavioural techniques, or company own-brand sites, as well as covering a mixture of ages.

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<sup>4</sup> Cornelia Pechman, Linda Levine, Sandra Loughlin, and Francis Leslie. *"Impulsive and Self-Conscious: Adolescents' Vulnerability to Advertising and Promotion"*. Journal of Public Policy and marketing. Vol. 24 (2). Fall 2005. 202-221; Agnes Nairn and Cordelia Fine. *"Who's Messing with my mind?"* International Journal of Advertising. Vol 27 (3). 208. 447-470.