

A Children's Rights Perspective on Self-Regulation of New Advertising Formats

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New advertising formats such as behavioural advertising, for which children's personal data are processed, or advergames, which integrate editorial and commercial content, may have a significant impact on children's rights, including their fundamental right to privacy, access to (high-quality) information, freedom of expression, protection against information and material injurious to their well-being and protection from economic exploitation (United Nation Convention on the Rights of the Child, UNCRC). It has been emphasised in Unicef's Children's rights and Business Principles (2012) that companies must ensure that communications and marketing do not have an adverse impact on children's rights. In the advertising sector, self-regulation has traditionally played an important (complementary) role. The International Chamber of Commerce has drafted a Code Advertising and Marketing Communication Practice (Consolidated ICC Code), and in many countries self-regulatory bodies observe compliance with the principles of this Code. The added value of a self-regulatory framework lies in its flexibility and adaptability (to technological change), a higher degree of expertise and a relatively low cost. However, at the same time, self-regulatory mechanisms have been considered to suffer from low levels of transparency and accountability and the fact that private interests are put before the public interest. Moreover, the degree of legal certainty is sometimes low, resulting in a decrease in democratic quality of regulation. Considering these drawbacks of self-regulation, this article questions whether something as fundamental as children's rights should be safeguarded by self-regulation to such a significant extent. First, the paper will assess the applicability of the current self-regulatory framework to new, digital advertising formats. The ICC Code will be examined, as well as the national self-regulatory frameworks of the United Kingdom and Belgium. Second, this self-regulatory framework will be assessed from a children's rights perspective, evaluating the degree of protection and participation, and compliance with essential principles such as accountability and transparency. This analysis will take into account the UNCRC and general comments of the Children's Rights Committee, case-law, as well as scholarly literature, both with regard to children's rights and (characteristics of) self-regulation. Attention will also be paid to the fine line between persuasion and manipulation of new advertising formats, and the impact the effects thereof may have on children's rights.

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