

THE ADLIT WHITE PAPER



RECOMMENDATIONS FOR A FUTURE-PROOF
REGULATORY FRAMEWORK FOR COMMERCIAL
COMMUNICATION AIMED AT CHILDREN

THE ADLIT WHITE PAPER: RECOMMENDATIONS FOR A FUTURE-PROOF REGULATORY FRAMEWORK
FOR COMMERCIAL COMMUNICATION AIMED AT CHILDREN



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C H A P T E R O N E

**EXECUTIVE
SUMMARY**



1. About the AdLit Project

The AdLit Project investigated ways to empower children and youth to cope with advertising in today's new media environment, so that they can grow up to be critical, informed consumers making their own conscious choices. It aimed to give an overview of the current level of advertising literacy in children and teenagers, as well as to map methods to increase their level of advertising literacy for new forms of advertising. Many different stakeholders and researchers from a variety of fields were involved in the AdLit project. The stakeholders ranged from policy makers, educational partners and social actors to members of the advertising- and media industry. The interdisciplinary team of researchers was composed of members from the universities of Ghent, Antwerp, Brussels and Leuven, with expertise in psychology, marketing, pedagogy, communication science and law. The coordination of the project was led by the CEPEC research group of Ghent University.

The **legal research** conducted within the frame of the project consisted of a mapping and evaluation of the current regulatory framework (including legislation and alternative regulatory instruments) on commercial communication aimed at children. This whitepaper summarises key gaps in existing regulation and formulates concrete **recommendations for a future-proof regulatory framework on commercial communication aimed at children**. While it is primarily aimed at regulators and policy-makers, it may also provide insights for other parties who are looking to expand their understanding of advertising regulation as well as for the broader debate on the use of alternative regulatory instruments for the protection and empowerment of children in the digital environment. For more specific information about the AdLit valorisation goals and our recommendations for children, parents, researchers and educational staff, visit www.reclamewijs.be

2. Children's rights and new forms of commercial communication

Children are confronted with sophisticated and entertaining advertising formats on a daily basis. Commercial messages are being distributed through a variety of digital platforms and on numerous devices, such as tablets, game consoles, smartphones and connected televisions. The recent developments in the media landscape (e.g. convergence, digitisation) combined with significant technological progress have contributed to the rise of these new forms of commercial communication. Their specific features – i.e. their (1) integrated, (2) interactive, (3) personalised and (4) emotions-evoking nature – make it **difficult for children to apply their advertising literacy skills** (Zarouali et al., 2015; Buijzen, Van Reijmersdal, & Owen, 2010; Nairn & Fine, 2008). These skills entail both recognising commercial messages as such and being able to process them in a critical manner, in order to make well-balanced commercial decisions and decisions related to their privacy.

This raises significant questions from a children's rights perspective (Verdoodt, 2018). More specifically, **children's rights to development and education** entail that from an early age they should be taught how to cope with advertising, also in the digital environment. By fostering resilience, skills and knowledge, children are better equipped to take advantage of all the benefits that the online world has to offer (European Commission, 2018). In this regard, it is crucial to ensure that the next generation of internet users is better educated and prepared to deal with (new) advertising techniques. However, due to the effectiveness and sophistication of certain techniques, children also need to be protected against those forms of commercial communication that are harmful, manipulative and misleading, in order to be in line with *inter alia* **children's rights to protection against economic exploitation, to privacy and to freedom of thought**.

In other words, a balance is needed between on the one hand empowering children to cope with the commercial pressures online and on the other hand protecting children against those advertising practices for which advertising literacy alone is insufficient.

All stakeholders, such as the government, the advertising industry (i.e. all parties involved in the advertising chain), schools and parents should take up their share of responsibility to attain such a balance, which will enable children to grow up to be critical, informed consumers who make their own conscious choices in today's media environment.

3. Towards future-proof regulation for commercial communication

3.1 Fragmentation leads to confusion amongst various stakeholders

A myriad of provisions regulating commercial communication aimed at children exists at both national and European level. The number of **legislative and self-regulatory rules**, however, is not necessarily indicative of a high level of protection and empowerment of children, in particular regarding new advertising formats. The principles are often formulated in a **general or abstract manner**, lacking guidelines for practical implementation. Further, certain definitions are formulated in a manner that **leads to uncertainty as to their scope of application** for digital advertising formats. In addition, a uniform definition on what constitutes a 'child' is currently missing. Finally, the fragmented nature **may result in overlaps or leave gaps**, making it even more difficult to comprehend how all these provisions interrelate in practice. As part of our talks with the advertising sector, the lack of detail and the need for interpretation guidelines emerged as some of the biggest obstacles to compliance.

Within the AdLit Project, we created a legal chatbot to guide advertisers and other stakeholders through the regulatory maze. The chatbot is equipped with AI technology and answers advertising-related legal questions.

3.2 Shifting away responsibility from children and parents

Our research has focused on examining whether the current regulatory framework on commercial communication is able to attain the balance between protection and empowerment of children. Today, the framework puts too much emphasis on empowerment with much of the responsibility resting on the shoulders of children and their parents, thereby tipping the empowerment-protection scales out of balance. Based on the impact and effectiveness of digital advertising techniques, it is argued that a deresponsabilisation of the child and parent is required in the regulatory framework.



3.2.1 Limits to the identification principle in the context of digital advertising

During the mapping of the regulatory landscape, we repeatedly crossed paths with the identification principle. This principle requires that a commercial communication needs to be recognisable as such. However, the principle is mostly of an abstract nature and lacks guidelines on implementation. On a national level, self-regulatory codes sometimes provide such guidelines, but they often target specific formats, e.g. vlogging advertising. Furthermore, the advertising industry created several different labels to signpost the commercial nature of messages. The diversity of these labels potentially leads to confusion with consumers. Based on the foregoing, it can be concluded that a coordinated approach is missing.

Specific evidence-based guidelines on the form, monitoring and implementation of advertising disclosures are needed.

Additionally, while the industry's practices may be legally compliant, the identification principle in itself raises important questions from a children's rights perspective and the balance that is needed between empowerment and protection. The high level of integration in digital advertising formats can make it difficult to identify commercial content. AdLit research (Zarouali et al., forthcoming) has shown that – even in the presence of advertising cues – certain advertising techniques (e.g. personalised advertising or emotional targeting) still prevent children from fully understanding the commercial nature of the messages.

For certain advertising techniques aimed at children (i.e. personalised advertising, emotional targeting), promoting advertising literacy of parents and children and disclosing the commercial nature of the messages simply is not enough. In other words, we would like to highlight the limitations of the identification principle and the need for additional safeguards in the regulatory framework.



3.2.2 Towards a children's rights-inspired interpretation of the data protection framework

Data processing and personalised advertising are complex and invisible processes, very difficult for adults to understand, let alone for children. The General Data Protection Regulation ("GDPR") pays particular attention to children and acknowledges that they merit 'specific protection' regarding their personal data. However, as the actual implementation of the GDPR in practice is not entirely clear, the practical meaning of this specific protection remains to be seen.

As part of the deresponsibilisation of the child and parent in the context of digital advertising, it is recommended that the focus should shift to actual limitations to the processing of children's personal data for marketing and advertising purposes, rather than solely or primarily focusing on information provision, transparency and the requirement of (verifiable) parental consent.

3.2.3 Need for a better distribution of responsibilities in the advertising chain

In addition, it is argued that **increased platform responsibilities may be a practical means of ensuring more effective compliance** (Clifford & Verdoodt, 2017). Such a conclusion is also in line with the emergence of new regulation shifting the role of the State from traditional command and control to 'coordinating, steering, and balancing interactions between actors' (Verdoodt & Lievens, 2018) and focusing on accountability.

All parties involved in the advertising chain should be encouraged to carry out children's rights impact assessments prior to the launch of advertising campaigns targeted towards children. This includes not only advertisers but also platform providers offering advertising space or collecting personal data of users for personalised advertising purposes and the industry at large when drafting self-regulation.

3.3 Need for better and more efficient oversight and enforcement

The effectiveness of new advertising formats does not only call into question the substantive provisions of the regulatory framework, it also raises important enforcement concerns. The distribution of competence over various regulatory bodies – together with the dispersed nature of the regulatory framework – requires not only advertisers but also consumers to navigate through this maze of regulatory provisions and competent authorities, in order to understand their respective responsibilities and rights.

In relation to this, there is a need for more collaboration and coordination between the different regulatory bodies involved (for instance by issuing collaborative guidelines).

For instance, in Flanders, both governmental bodies and self-regulatory bodies are in charge of enforcing the regulatory framework. **In practice however, few decisions relating to minors and new advertising formats have been issued.** Possible reasons for this finding include legal uncertainty about how new advertising formats fit within the scope of the existing regulatory framework, a shortage of resources for regulators to instigate own investigations, or a lack of awareness of citizens.

In this regard, consumers should be provided with clear and accessible information on how to file complaints against unlawful digital advertising formats.

Hence, the AdLit project emphasised the importance of raising awareness with all stakeholders. Various tools were developed for teachers (educational materials), children, parents (click-and-prints, quizzes, stories) and industry professionals (chatbot). These tools provided information on the complaint mechanisms in an understandable way for each stakeholder. The AdLit tools could serve as blueprints for further initiatives to promote the existing enforcement mechanisms.



C H A P T E R T W O

**CHILDREN'S
ADVERTISING
LITERACY AND
THE CONVERGING
MEDIA LANDSCAPE
ANNO 2018**





1. Growing up in a changing media environment

Technological developments and convergence of media services have significantly changed the media landscape, causing the lines between commercial and non-commercial communications to blur. Consumers, and particularly children as their advertising literacy skills are still developing, experience difficulties recognising and critically reflecting on new forms of commercial communication (Hudders et al., 2015). Against this backdrop, children's media consumption has shifted from traditional print media and radio to new digital forms of media. Television forms an exception, as it still remains the primary form of media consumption among children. However, important evolutions are taking place there: differing devices are used to view television content and there is an increasing utilisation of video-on-demand services (Zarouali et al., 2015).

Furthermore, a considerable **increase in smartphone and internet usage** by children can be witnessed (Zarouali et al., 2015). Children have access to the internet from a very young age and the duration of time spent online per child only increases when they grow older. While younger children focus primarily on videogames, this focus tends to shift to social media when they become teenagers, with up to 90% of Flemish teens having social network accounts. Smartphones start to form a major part of children's media consumption around the age of 12.

Besides individual changes to media consumption a **trend of media multi-tasking** can also be identified with children (Daems & De Pelsmacker, 2015). Nowadays, children consume traditional and new media interchangeably and often simultaneously. This means that advertisers face stronger competition across different media and the attention of children has become a scarce resource.

2. Emerging trends in the area of commercial communication and their impact on children's advertising literacy

To grasp children's attention, **commercial messages are designed to appeal to them** (Daems & De Pelsmacker, 2015; Pires & Agante, 2011). Increased technological capability has allowed for new means to deliver advertisements, which in turn have led to new strategies to target and interact with consumers. Many of these strategies disrupt the activation of children's advertising literacy as children do not actively look out for commercial communication, which in turn is problematic for their development into informed and responsible consumers. Based on the specific tactics of new forms of commercial communication, the emerging trends can be grouped into four categories: (1) integrated advertising, (2) interactive advertising, (3) personalised advertising and (4) emotive advertising (Verdoodt & Lievens, 2018).

A first widespread persuasive tactic is **the integration of commercial messages into non-commercial content**. This convergence reached new heights within the digital environment (Grimes, 2008; Verdoodt & Lievens, 2018). The idea behind integration is that by exposing children to branded environments for an extended period of time, the lines between advertising and editorial content are blurred and potential irritation or resistance on the child's behalf may be bypassed (Daems en De Pelsmacker 2015; Verdoodt en Lievens 2018). For instance, both children and teenagers experience difficulties in recognising integrated forms of commercial communication, compared to traditional television commercials (Verdoodt and Lievens 2018; Zarouali e.a. 2017).

Another important trend is **actively involving the child-consumer in the advertising process**. Advertisers utilize the constant connectivity of young people and play into their group dynamics by means of peer influence. For example, children are encouraged to 'like' brand pages on Facebook or 're-tweet' them on Twitter, for access to information, promotions and exclusive content. Peer influence is extremely important to children and teenagers and commercial messages spread in this manner are considered to be credible (Daems & De Pelsmacker 2015; Verdoodt & Lievens 2018).

We discovered that social media peer communication generally leads to lower advertising literacy amongst teenagers towards advertisements on their newsfeeds (Zarouali, Ponnet, & Walrave 2016).

LIKE



The next identified advertising trend is **personalised advertising**, driven by data generated by consumers when accessing the digital environment (Daems & De Pelsmacker, 2015; Wilking et al., 2013). Children's lives are increasingly 'data-fied', making advertisers ever more interested in **tailoring and targeting marketing messages** to children (Lupton & Williamson, 2017; Van Der Hof, 2016). It has been argued that personalised advertising allows a more effective transmission of the commercial message as advertisers are able to respond explicitly to a specific user's developmental level and knowledge base (Calvert, 2008; Cauberghe, De Pelsmacker, Hudders, Panic, & Destoop, 2012). Furthermore, studies have shown that commercial messages adapted to the interests and behaviour of consumers will lead to a more positive brand attitude (Bright & Daugherty, 2012; Ghose & Yang, 2009). However, the tracking of consumers' online information and activities often happens covertly and research on the effects of personalisation techniques on children's advertising literacy remains scarce (Zarouali et al., 2017).

A recent AdLit study shows that although the level of advertising literacy of children regarding personalised commercial communication gradually increases with age, almost half of 17-year-olds have a really low understanding of persuasion tactics and do not understand data processing practices behind advertisements (Zarouali e.a., forthcoming).

A final advertising technique is built on **evoking an emotional response** to create awareness and positive brand association. In turn, this will lead to an emotional desire for the advertised product or service. Technological advancements and increased computational capabilities have made emotions detectable online, which has raised the interest of commercial players (Clifford, 2017), e.g. neuroscience techniques to shape advertising so advertisers can connect at an even deeper level with consumers (Ariely & Berns, 2010). Emotional appeals can be used for both the content and the delivery of the commercial message.

The use of these techniques for advertising and marketing purposes undermines a person's rationality and individual autonomy (Clifford, 2017). Children need all their cognitive capacities to process and understand the media content and, as such, they are not able to critically evaluate the commercial message (An & Stern, 2011). The affect-based nature of new advertising formats not only limits children's motivation and ability to process an advertising message elaborately, but also to apply their advertising literacy skills as a defence against the persuasive message (Rozendaal, Lapierre, Van Reijmersdal, & Buijzen, 2011)

3. Socio-economic interests and the regulatory framework

Age is considered an important factor in evaluating the effect of advertising on children. Research has shown that children's advertising literacy gradually develops over the years (Livingstone et al., 2017), together with their cognitive capacities (Cauberghe et al., 2012). Children will be better equipped to understand the impact of marketing and advertising from a certain age and will be better equipped to exercise their rights. In this sense, persuasive tactics that may be found inappropriate for a specific age group might be deemed appropriate for another age group.

Considering children's right to development and their evolving capacities as consumers, different protection measures might be needed for children of different age groups, regarding certain advertising techniques.

One of the first AdLit reports, a qualitative study on the importance of Socio-Economic Status (SES), showed the importance of not exclusively relying on the age criterion when discussing children's media usage. Solely relying on the age criterion could create the false impression that a number of homogeneous subcategories exist amongst minors, with little differentiation in their consumption of media (Lissens & Bauwens, 2015). Both during research and policy making, a key point to keep track of is "**(social) vulnerability**" (Lissens & Bauwens, 2015).

AdLit research suggests that minors from disadvantaged households are more vulnerable than the "average" child when it comes to advertising. They are more likely to try to mask their background through brands and are more at risk when it comes to celebrity branding, social influencers etc. Furthermore, account should be taken of the particular vulnerabilities of disadvantaged minors who come from migration backgrounds. They receive their information and editorial content from a multitude of international sources (Lissens & Bauwens, 2015).

Even though studies have shown interaction between advertising and the socio-economic status of consumers, the socio-economic background of children is rarely considered. Attention should be paid to those that are most vulnerable and experience the most problematised participation opportunities.

Policy makers and the advertising industry should take socio-economic elements into account in order to align their respective policy making and advertising practices with children's rights and principles.





C H A P T E R T H R E E

**TOWARDS A FUTURE
PROOF REGULATORY
FRAMEWORK FOR
COMMERCIAL
COMMUNICATION
AIMED AT CHILDREN**

1. The policy agenda

Children's protection and advertising literacy in the digital media environment has been a significant topic on both the European and national policy agenda for several years. For instance, the European Parliament stresses that **children and adolescents are particularly vulnerable** due to their great receptiveness and curiosity, lack of maturity, limited free will and high potential to be influenced, especially through new means of communication and technologies (European Parliament, 2012). In the context of personalised advertising, the Council of Europe already expressed particular concerns relating to profiling practices and the retention of children's personal data for commercial purposes in 2008 (Council of Europe, 2008). Relatedly, the OECD underlines that children are not aware of how the internet is produced and financed (OECD, 2012). The European Commission has also emphasised the importance of **empowering children and youngsters as critical consumers** (European Commission, 2012).

In Flanders, continuous investments have been made within the broader context of media literacy, to enable Flemish citizens to responsibly participate in the evolving media environment (see for instance www.mediawijjs.be). Specifically relevant in the context of new advertising formats, the Flemish minister for media (Sven Gatz) has emphasised the **need to clearly distinguish advertising from content across all formats** (Vlaamse Overheid, 2014).

2. Results of the mapping exercise

Within the AdLit Project, we mapped the **legislative** and **self-regulatory** framework applicable to digital advertising aimed at children (Verdoodt et al., 2015; Verdoodt et al., 2016). The exercise revealed that the regulatory framework is **fragmented** into a **myriad of obligations** with differing scopes of application. This results in overlaps or gaps, making it difficult to comprehend how all these provisions interrelate in practice. Some of the codes that advertisers aspiring to target children in Belgium will have to take into account are the Flemish or French Community Media Decrees, the Belgian Code of Economic Law and the General Data Protection Regulation. In addition, the advertising industry has been very active in developing self-regulatory codes on advertising.

Furthermore, there are issues concerning **legal uncertainty**. First, the applicability of the framework to certain advertising formats (e.g. advergames) is not entirely clear. Second, different governmental and self-regulatory bodies are competent to enforce the advertising rules. The **dispersed nature** of competences can lead to **enforcement gaps** and confusion amongst consumers, advertisers and even the regulatory bodies themselves.

Fragmentation of regulation and competence might also be a reason why **only few decisions relating to minors and new advertising formats have been issued in practice**. Other reasons could include a lack of **awareness** of citizens and a **shortage of resources for regulators** to instigate their own investigations. The lack of case law implies that advertisers are left with little guidance on the implementation of the general and often abstract provisions, contributing to legal uncertainty (Verdoodt, Lambrecht, & Lievens, 2016). In Flanders, the following regulatory bodies are competent to issue decisions on advertising formats.

The JEP

The **Jury for Ethical Practices in Advertising** ("JEP", Jury voor Ethische Praktijken inzake Reclame) is the Belgian **self-regulatory organisation** for and funded by the advertising industry. Upon receipt of complaints, the JEP examines whether commercial messages spread via mass media (including the internet), emailing or direct mail comply with legislation and self-regulation. Non-compliance – depending on the circumstances – can lead to a decision to adapt or to stop dissemination of the advertisement. In addition, advertisers can submit their campaigns to the JEP for preliminary advice.

The VRM

In Flanders, the **Flemish Regulator for the Media** ("VRM", Vlaamse Regulator voor de Media) independently supervises compliance with the provisions of the Flemish Media Decree. It is competent to enforce the rules on audiovisual commercial communication (i.e. appearing in television broadcasting and on-demand audiovisual programmes).

The FOD Economy

The Federal Public Service for Economy ("FPS Economy", FOD Economie) offers an online complaint mechanism for unfair and misleading commercial practices. Via a set of scenarios on "**meldpunt.belgie.be**", complaints are sent to the Economic Inspection. They provide consumers or professionals with a preliminary answer on potential infringements of the Belgian Code of Economic Law. If competent, they can instigate an investigation, if not, a notification can be issued to the competent authority.

The GBA

The Belgian **Data Protection Authority** ("GBA", Gegevensbeschermingsautoriteit), previously known as the Privacy Commission, is the governmental authority overseeing and enforcing data protection law. It is competent to investigate and prosecute violations of data protection law. The GBA is able to impose coercive measures and ultimately even an administrative fine. Moreover, it bears a general responsibility to raise awareness concerning data protection rights and obligations.



3. Enhancing the regulatory framework or commercial communication in light of children's rights

The mapping of the existing regulatory framework has shed light on a number of gaps that require improvement. The framework contains many provisions placing responsibility with parents and children themselves. Principles such as identification and separation of the commercial message (from the non-commercial message), information requirements and (parental) consent as a main ground for legitimising processing of personal data, all focus on children's autonomy and commercial decision-making. However, children are not necessarily 'empowered': AdLit research shows that certain advertising techniques still significantly impact children's advertising literacy, regardless of the legal protections currently in place.

This leads to the general recommendation that everyone involved in the regulatory process should focus on striking a **balance between empowering children as consumers and protecting them against harmful commercial practices**. Today, there is a need to restore the balance by a deresponsabilisation of children and parents.

In the following subsection, the main gaps identified throughout our research will be discussed and recommendations for a future-proof regulatory framework for commercial communication aimed at children will be provided.

3.1 The limits to identification and transparency requirements in the regulatory framework

Identification and transparency are the key principles throughout both the legislative and self-regulatory framework for commercial communication. The identification principle advocates the need for commercial communication to be 'recognisable as such', meanwhile the transparency requirement aims to tackle surreptitious advertising practices.

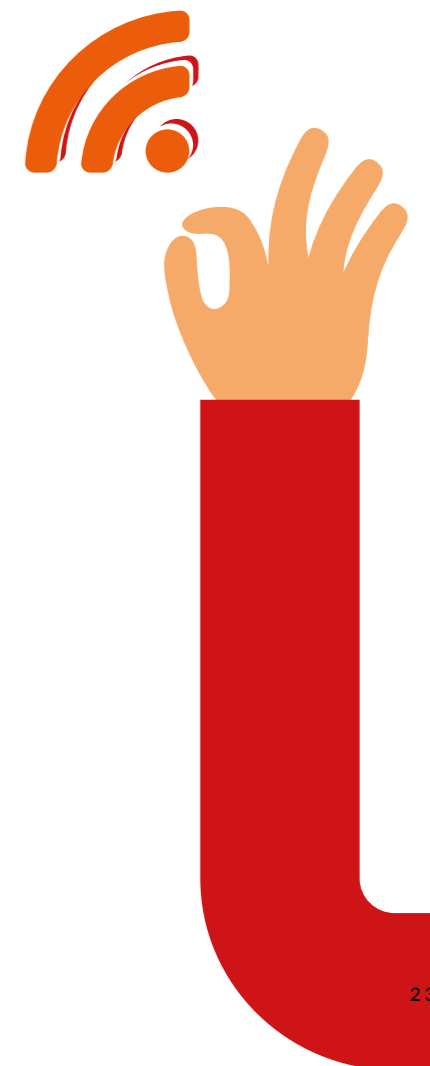
To implement these principles in practice, advertisers have developed 'advertising disclosures', such as the product placement logo ('PP'). The cues are designed to help consumers differentiate between non-commercial content and advertising (Cai & Zhao, 2010). The absence of legal protections in the regulatory framework itself has led to the development of a wide variety of cues. However, research has shown **that the effectiveness of advertising cues is highly dependent on the cue's characteristics**. Within the AdLit project, ways to improve existing disclosures were looked at and guidelines were formulated (Zarouali et al., 2017; De Jans et al., 2018).

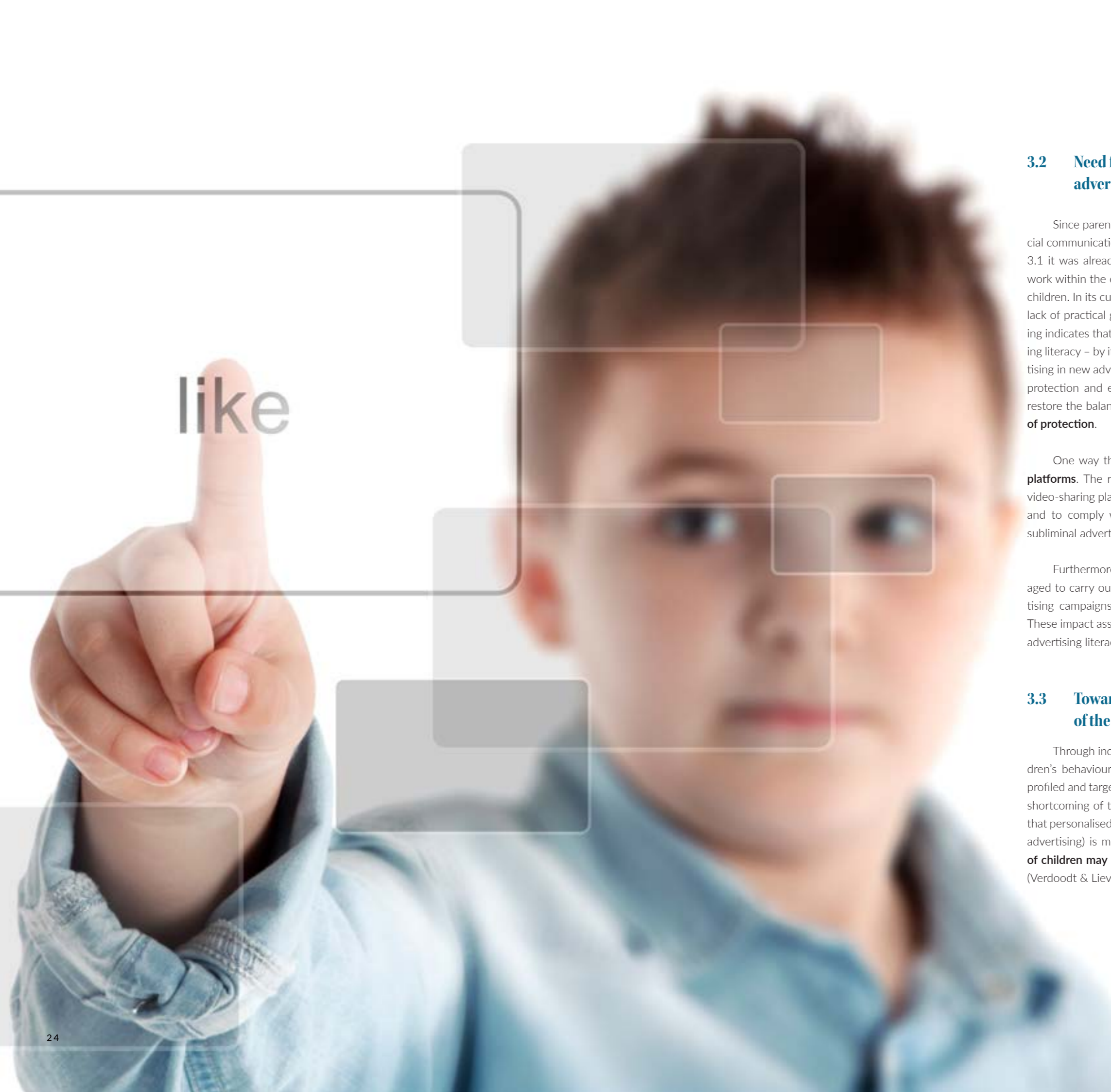
For instance, our research has indicated that the current practice by several social media platforms of labelling targeted ads with "sponsored", is not effective for adolescents. Even though adolescents did recognise that the label is an indication of something (at best they realise it concerns an advertisement), they are not able to identify the exact meaning of the notion in a clear and unambiguous way (Zarouali e. a., forthcoming).

Key points for consideration when developing advertising cues are:

- ✳ opt for a visual advertising cue;
- ✳ a forewarning is preferred: present the cue before the commercial content, not during;
- ✳ use a local translation for cues, instead of terms which are derived from English, such as "advertising" or "sponsored";
- ✳ fully write out words instead of abbreviating them, to avoid any misinterpretations;
- ✳ present the advertising cues in a central location on the medium used, instead of the most-used "right corner" (AdLit eye-tracking results);
- ✳ colour(s), font and shape should stand out, instead of the commonly used grey and black tones;
- ✳ adding a peer norm disclosure (e.g. "Your friends know that this is sponsored"), was found to be the most effective way to trigger persuasion knowledge in adolescents.

Even if all these elements are taken into account, cues might not be effective for all types of advertising. This uncovers the next gap in the existing legal framework: the need for deresponsabilisation of parent and child.





like

3.2 Need for better distribution of responsibilities in the advertising chain

Since parents and children are incapable of dismantling all types of commercial communication by themselves, there is need for **deresponsabilisation**. Under 3.1 it was already established that the identification principle does not always work within the context of modern advertising formats and techniques targeting children. In its current shape, advertisers can easily hide behind the principle. The lack of practical guidelines leaves too much room for interpretation. The foregoing indicates that the tactic of empowerment of children and promoting advertising literacy – by itself – will not sufficiently tackle the issue of surreptitious advertising in new advertising formats. Thus, regarding the necessary balance between protection and empowerment, the latter is overemphasised today. In order to restore the balance, it is strongly recommended to **put more weight in the scale of protection**.

One way this could be done is by imposing **increased responsibilities on platforms**. The reviewed AVMS Directive already takes this route by requiring video-sharing platforms to take measures to protect minors from harmful content and to comply with the rules to protect consumers against inappropriate or subliminal advertising.

Furthermore, all parties involved in the advertising chain should be encouraged to carry out **children's rights impact assessments** when developing advertising campaigns for children or when developing self-regulatory instruments. These impact assessments should take into account socio-economic interests and advertising literacy studies.

3.3 Towards a children's rights-inspired implementation of the data protection framework

Through increased computing capabilities commercial entities can track children's behaviour and preferences online, on the basis of which they are then profiled and targeted with tailored marketing campaigns. That brings us to another shortcoming of the regulatory framework. While the advertising industry argues that personalised advertising (e.g. online behavioural advertising or location-based advertising) is more relevant and efficient, the tracking, **profiling and targeting of children may raise significant questions from a children's rights perspective** (Verdoodt & Lievens, 2018).

Age requirement

The existing regulatory framework does not provide a **uniform definition of what constitutes a 'child'**. This leads to uncertainty with regard to the scope of application of certain legal or self-regulatory provisions (Verdoodt, Lievens, & Hellemans, 2015). Defining what constitutes 'a child' seems particularly necessary within the context of the GDPR and more specifically in defining which age groups would benefit from the specific protection. It would provide clarity and could be done by the data protection authorities or the Art. 29 WP/ the European Data Protection Board.

The notion of 'child' in the context of the data protection framework should be defined. More specifically, it is recommended that all children under eighteen should benefit from the requirement of specific protection under the GDPR.

Additionally, collecting children's personal data for the development and application of user profiles raises significant questions from a children's rights perspective. Default limitations on these practices are desirable.

An issue that remains unresolved however, is the ease with which age requirements can be circumvented. Therefore, further research into sophisticated and privacy-friendly age verification mechanisms should be conducted.

Behavioural advertising

Children are increasingly targeted directly by services tailored to a young audience. Research has shown that children have little understanding of the tracking technologies used and the extent and sensitivity of the data collected for personalised advertising.

Information society services providers (e.g. social media platforms) could distinguish between users based on age information given upon registration. It could offer an alternative, child-friendly service incorporating the same features minus the tracking for personalisation and advertising practices.



The EU legislators – or the Art. 29 WP/EDPB by way of interpretation – should further align the proposed ePrivacy Regulation with the GDPR by recognising that children require specific protection when their communications data is being processed.

- ✳ E.g. specific limitations on the collection and use of children's communications data and special protection for terminal equipment or software developed for children.
- ✳ E.g. a prohibition for services specifically targeted towards children to use profiling and behavioural marketing techniques.

Such an alignment would provide a clear standard for the protection of children's personal data and privacy in the EU. Unfortunately, this specific protection is not included in the proposal of the EC, nor in the EP amendments or the Council texts.

Also, collecting and using children's personal data is no precondition for advertising to be innovative and fun for children. Even though limitations on processing children's personal data might go against commercial interests of advertisers, the best interests of children might justify this.

The EU legislator could consider adding behavioural advertising practices aimed towards children to the blacklist of the UCP Directive (unfair under all circumstances).

Such a shift of focus would positively affect consumer trust, especially considering the growing distrust of consumers in data processing activities by large online companies such as Facebook and Google.

Regulatory initiatives should focus more on actual limitations on the processing of children's personal data for marketing and advertising purposes, instead of focusing on information provision, transparency and the requirement of (verifiable) parental consent.

The GDPR already takes a step in this direction by imposing the obligation to carry out a data protection impact assessment (DPIA). In this regard, the advertising industry should take up responsibility when setting up digital marketing campaigns by carrying out an in-depth DPIA, with attention to the best interests and rights of children. The age and level of maturity of the child will also play an important role in such an assessment.



3.4 Need for better and more efficient oversight and enforcement

Coordinated approach

National boundaries are blurring in the online world. When the same requirements are applied in the same way throughout all EU Member States, complying with advertising regulations will become considerably easier for the industry. It will also provide more clarity, which is beneficial to both the industry and consumers.

EU institutions should respond to the need for a coordinated approach. Self-regulation and co-regulation entail plenty of qualitative requirements but there is no coordinated approach across EU Member States.

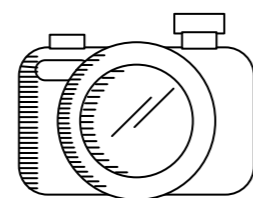
This would bring about more harmonisation in the EU. However, concerns regarding enforcement and who will lead this cooperation will need to be addressed.

Raising awareness of the existing enforcement tools

Lack of citizen awareness regarding enforcement has been indicated as a potential underlying reason for the absence of cases. Since enforcement tools are complaint-based, awareness of their existence is crucial. **Promotion of the different enforcement platforms** amongst citizens – especially children and their parents – is necessary.

Within the context of digital advertising formats, all stakeholders should continue their efforts in raising awareness among citizens regarding the existing complaint mechanisms.

The AdLit Project already tries to follow up this recommendation by its educational packages for primary and secondary school students (infra). Educating children from a young age will lead to a more informed and empowered generation of citizen-consumers in the long-term.



Sufficient resources

Furthermore, for effective monitoring and rule enforcement, extra resources might be required. Especially if the workload for regulatory authorities would increase due to greater awareness amongst consumers and a potential expansion of their tasks (e.g. new tasks for media regulators regarding video-sharing platforms).

Legislators, policymakers and the industry should ensure that regulatory authorities have access to sufficient resources for monitoring and complaint-handling.



C H A P T E R F O U R

**RAISING
AWARENESS OF
THE REGULATORY
FRAMEWORK:
TOOLS DEVELOPED
BY ADLIT**



Valorisation has taken up a central role within the AdLit project. Since our research deals with empowerment of citizens – and specifically of minors – in a commercialised world, we have sought to provide practical solutions.

We have developed a range of tools to raise awareness on and clarify the regulatory framework for commercial communication aimed at minors.

In addition, the AdLit Project developed various tools for increasing children's advertising literacy. For more information see www.reclamewijs.be.

1. Developing a legal chatbot for advertisers

From our mapping exercise, we know that the regulatory framework is fragmented into a myriad of obligations, resulting in difficulties to comprehend the interaction of all these provisions in practice. In order to discuss practical solutions to this regulatory fragmentation, AdLit organised a workshop for the advertising industry. From this workshop, it followed that the **sector desired a technology-driven solution**, such as a chatbot, that they could easily consult when confronted with questions regarding advertising regulation. Accordingly, we developed a proto-type of a legal chatbot for the advertising industry.

Chatbots can act as a central consultation point for relatively straightforward answers. The bot uses algorithms to find the most likely answer to a question posed by the user, filtering through all the scenarios that have been uploaded into it. The chatbot **brings together the multitude of regulatory instruments** for users to consult, without overwhelming them with information.

2. A toolbox for parents and children

The AdLit project has also provided parents with a range of both digital and offline valorisation tools, in order to raise awareness regarding the risks of online advertising to their children. The tools were developed together with 'Mediawijs' and were integrated on the 'MediaNest' platform. First part of the toolbox are the 'Reclameverhalen' are part of the toolbox. These are fictional, yet realistic stories about daily situations in which children and their parents encounter commercial communications. For each story a number of legal problems are highlighted together with legal and self-/co-regulatory provisions and expert information. Second, a 'Click & Print' on smart toys was developed. This one pager contains information and practical tips for parents who have brought smart toys within their home. Third, we have worked out a 'popquiz' on 'the Internet of Toys'. It consists of accessible multiple-choice questions for parents to test their knowledge concerning the Internet of toys. Finally, several accessible **articles** on consumer rights were written ([Alles over centen](#), [MediaNest](#), [Mediawegwijzer](#)).

3. Creating educational packages for teachers

Within the framework of the AdLit project, Britt Adams developed a 100-minute long learning path – entitled: Ad? Wise! – in the web-based learning environment 'WISE', to familiarise 9th and 10th grade students with the current regulatory landscape on advertising. As part of Ad? Wise!, non-traditional advertising formats are examined closely and the use of advertising cues (e.g., the label 'sponsored' on an online newspaper article) is discussed. Recognition of these advertising disclosures is an important step in actualising the identification principle found in the current regulatory framework (Vanwesenbeeck, De Jans, Zarouali, & De Pauw, 2017; Verdoodt et al., 2016).

Flemish (self-)regulatory advertising initiatives are central to the second part of the learning path. To introduce the students to certain advertising rules, they are asked to indicate whether or not six statements about advertising law are correct (e.g., 'Advertising for cigarettes and other tobacco products may be conducted on television and/or radio'). Second, the students get acquainted with a self-regulatory body for advertising, i.e. the JEP. They are challenged to decide on ethically (ir)responsible advertising. Examples of alcohol advertising on Facebook, naked/stereotyped models in advertisements and discriminatory advertising are integrated in the learning paths. It is up to the students to decide whether these advertisements are acceptable or should be adapted or forbidden. Afterwards, the students are instructed to look for a controversial advertisement on the Internet, in order to file a fictitious complaint with the JEP.

The project can be found at: <http://wise.berkeley.edu/project/21800#/ve/node1>.
More information: <https://doi.org/10.3916/C52-2017-09>.





CONCLUSION

The digital advertising industry plays an important part in the creation and maintenance of content, services and digital spaces for children. However, continuous technological developments go hand in hand with the emergence of new advertising formats and techniques. Some of these techniques hamper children in taking critical commercial decisions, thereby challenging their rights to development, privacy, protection against economic exploitation and freedom of thought. The current regulatory framework does not succeed in achieving a balance between empowering children to deal with new forms of commercial communication on the one hand and protecting them against harmful or misleading advertising formats on the other.

Our research has shown that the regulatory framework on commercial communication constitutes a puzzle, made up of multiple regulatory instruments. Hence, when dealing with modern advertising techniques aimed at children, a holistic interpretation of the existing framework is needed. The complexity causes confusion amongst different stakeholders resulting in a lack of compliance and guidance. In addition, competences for enforcing advertising regulation are also dispersed. A coordinated and collaborative approach between the various regulatory organisations is desired to tackle current and future advertising practices.

The regulatory framework currently places too much responsibility on the child and parent in the context of commercial communication, with its primary focus on the principle of identification, information requirements and the reliance on consent as one of the main grounds for processing personal data. In this regard, a deresponsibilisation of children and their parents is urgently needed. This deresponsibilisation could consist of a number of measures: recognising the limitations of the identification principle and advertising literacy; focusing on limitations to the collection of children's personal data for advertising purposes; increased platform responsibilities in the context of commercial communication (e.g. through children's rights impact assessments); more coordination between regulatory authorities and more efficient enforcement.



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