

ADVERTISING TOWARDS CHILDREN

Five key principles of fairness

Conclusions from the group of volunteers among representatives from national consumer and data protection authorities, facilitated by the European Commission with the support of the European Data Protection Board (EDPB) Secretariat and endorsed by the Consumer Protection Cooperation (CPC) Network.

Studies show that children¹ are able to understand the meaning of advertising as a commercial practice from an early age (around 5 years old). They are also able to recognise traditional advertising, for example on TV or in printed media as from the same age. They are, however, not able to recognise other forms of advertising, notably when advertisements are digital and to a high degree blended with non-commercial content, in other words deeply embedded in the context of digital media or online games. Research suggests that such an understanding normally comes later, i.e. in their “Teens”, when they reach adolescence. Children are therefore particularly vulnerable to problematic marketing practices. Given that children spend more time online, they are exposed to an increasing volume of native advertising that they have very limited capacity to understand.

As part of reflections around the 2022 European Year of Youth, representatives from consumer and data protection authorities have found it particularly important to focus on and discuss how business can best respect EU consumer and data protection legislation in relation to advertising towards adolescents and children.

The EU legal requirements are not to be considered as an end in themselves, but instead constitute the minimum that consumers as data subjects can expect from their contractual counterparts. This document is based on relevant requirements in EU data and consumer protection laws² relating to advertising towards children. It identifies five, non-exhaustive key principles that can be applied by businesses (i.e. traders, data controllers and data processors) in order to: i) avoid certain practices which can be harmful for children ii) better inform consumers and data subjects about when and how they use consumers’ data for advertising purposes³.

¹ According to Article 1 of the UN Convention on the Rights of the Child, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

² See in particular recitals 38, 58, 65 and 71, as well as Articles 5, 6, 8, 12, 13, 14, 15-22 and 25 of the [General Data Protection Regulation \(EU\) 2016/679](#). Article 5, Article 5(5) and N°28 Annex I, Article 6, Article 7, Article 8, Article 9 of the [Unfair Commercial Practices Directive 2005/29/EC](#).

³ This document and the recommendations contained in it are without prejudice to the applicable EU data and consumer protection legislation, including, where applicable, the national rules implementing or executing those rules. Implementing the recommendations contained in this document is therefore no guarantee for compliance with the legal requirements. Likewise, not respecting the recommendations contained in this document cannot be automatically considered unlawful. The present document does therefore by no means bind the national authorities or the Commission. Solely the competent authorities and courts can finally decide on the legality of commercial practices, processing operations etc. under the applicable legislation.

Advertisements undeniably impact children's behaviour. When designing advertisements or developing marketing techniques that are likely to be seen or interact with children, businesses should bear in mind that children cannot always detect and understand the advertising purpose of specific messages or visuals in the same way as adults.

Children are particularly susceptible to subliminal commercial practices and marketing based on behavioural insights, and therefore particularly vulnerable, for example, in the following situations:

- *As children are curious and competitive by nature, they might click on advertisement messages, visuals or banners, in particular when linked to sounds or animations, without understanding their commercial purpose. This might especially be the case where advertisement messages, visuals or banners etc. are embedded into or 'hidden' in online games, websites or mobile applications and services, such as quizzes, digital painting, social media or video-sharing services that are particularly attractive for children.*
- *Due to their age and credulity, children often cannot understand that operators and providers of websites, applications, online games, or other digital content and services, that do not require monetary payment for their services, derive revenues from the use of their personal data.*
- *Children can find it difficult to understand that a given feature or content, for example avatars or artifacts, that the app- or game-developer uses in their advertisement for the game or app is, in fact, only available after additional (in-app or in-game) purchases (e.g. by purchasing digital currencies, so-called 'loot-boxes'⁴ etc.).*
- *Children can often find it difficult to resist (social) pressure to purchase additional coins, token and other in-game or in-app content, for example avatars or artifacts, that are particularly attractive for children or even necessary to progress with a game.*
- *Children might find it more difficult to resist the purchase of additional in-game or in-app content where there exists uncertainty about their supply or availability, in particular, where those items are randomised or appear to be available only for a limited period of time (e.g. use of shop-refresh-timers).*
- *Due to their age and credulity, children might not be able to understand that the occurrence of the most desirable content among upgrades, maps, avatars etc. might be*

⁴ Please note that under the national law in some Member States so-called 'loot-boxes' are considered gambling and can therefore not be offered on the market without a permit from the competent national authorities.

less frequent in randomised in-app or in-game purchases such as 'loot-boxes' than less desirable content.

Therefore, traders and controllers should, consider the following, non-exhaustive key principles:

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- 👍 **Specific vulnerabilities of children should be taken into account when designing advertisement or marketing techniques that are likely to be seen by children.**

(Online) Service providers must not design or operate their interface in a manner that deceives children unduly influences them to take a particular action.

Certain marketing techniques, e.g., personalised marketing, could be inappropriate to use due to the specific vulnerabilities of children.

- 👍 **Children's particular vulnerability because of their age or credulity is not to be exploited.**
- 👍 **When general marketing content is addressed to children or is likely to be seen by them, the marketing purpose should be indicated in a manner that is appropriate and clear for children.**
- 👍 **Children are not to be targeted, urged or otherwise prompted to purchase in-app or in-game content, and games marketed for free⁵ should not require in-app or in-game purchases to play them in a satisfactory manner.**
- 👍 **Children should not be profiled for advertisement purposes.**

⁵ Please note that under EU consumer law, namely the Unfair Commercial Practices Directive (UCPD), traders must not mislead consumers about the main characteristics of their services or their business model. This means that terms and conditions', websites' and applications' ('apps') contents should not contain statements or information which, including by the way they are presented, are unclear or untruthful and are therefore likely to deceive consumers on the commercial policy of a company relating to the use of consumers' personal data. This includes, for instance, information about whether a trader derives revenues from the use of consumers' personal data, or whether it provides services in return for consumers' agreement to share their data (e.g. with other companies) and to be exposed to commercial advertisements (see in this context also the CPC Network's coordinated action against social media platforms: https://ec.europa.eu/commission/presscorner/detail/en/IP_19_2048).