

# International Consumer Protection and Enforcement Network

## BEST PRACTICE PRINCIPLES

### MARKETING PRACTICES DIRECTED TOWARDS CHILDREN ONLINE



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## WHAT IS ICPEN?

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The International Consumer Protection and Enforcement Network (ICPEN) is an organisation comprised of consumer protection authorities from over 65 countries. ICPEN's aim is to protect consumers' economic interests around the world, share information about cross-border commercial activities that may affect consumer welfare, and encourage global cooperation among law enforcement agencies.

For further information, please visit the ICPEN website at [www.icpen.org](http://www.icpen.org)



**Protecting consumers worldwide**



## ONLINE MARKETING PRACTICES DIRECTED TOWARDS CHILDREN ONLINE

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### Introduction

1. The aim of the principles is to encourage best practices in order to discourage harmful marketing practices directed to children in the online world, and to support businesses in attempting to protect young consumers from harm. The principles have been developed and agreed by members of the International Consumer Protection Enforcement Network (ICPEN), who are united in their view that adherence to the principles will help to address the negative consequences of harmful marketing practices children encounter online.

2. Children's lives have become increasingly digitized. Children and adolescents under the age of 18 account for 1 in 3 internet users in some countries, and children under 15 are as likely to use the internet as adults over 25.<sup>1</sup> Activities they once did offline, children can now do online such as watching videos, playing games and searching for information. Children's activity online varies depending on their age; younger children spend more time watching cartoons and videos via platforms whilst older children use social media and play online games.

3. Parallel to this trend, many countries have seen an increase in the amount companies and brands spend on online marketing compared to traditional means of marketing; global spend on digital ads increased by 17.6% between 2018 and 2019.<sup>2</sup> Advertisers are using this investment to improve their understanding of consumer's online activity so they can better reach their audiences through smarter marketing and personalised messages.<sup>3</sup>

4. Taking these factors into consideration, children are increasingly likely to be targeted by online marketing, an area generally less regulated than TV broadcasting or other traditional marketing channels. ICPEN members adhering to these principles are concerned that children may therefore be increasingly exposed to harmful marketing practices when businesses fail to apply best practice.

### Background to the principles

5. The principles are based on the results of a survey ICPEN members were invited to complete in 2018. Responding ICPEN members provided information on their experiences dealing with consumer protection issues concerning marketing practices directed towards children in the digital world.

6. The survey revealed that respondents were specifically concerned about four key issues; 1) the lack of transparency when commercial and non-commercial content

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<sup>1</sup> UNICEF (2018) [Children in a Digital World](#)

<sup>2</sup> eMarketer (2019) [Global Digital Ad Spending 2019](#)

<sup>3</sup> eMarketer (2019) [Global Digital Ad Spending 2019](#)



are mixed; 2) marketing practices that exploit children’s lack of commercial knowledge, naivety and credulity; 3) the lack of transparency concerning the processing of children’s data and using children’s data in personalized ads; and 4) marketing inappropriate products to children.

## Is your content directed at children?

7. In applying these principles, the question arises as to whether content can be understood or is identifiable as advertising directed towards children. Views on when marketing practices are ‘directed towards children’ vary among ICPEN members. Indeed, competing conceptions may exist within the same jurisdiction. For the purposes of addressing harmful marketing practices, ICPEN believes traders should consider the following factors in determining whether their content is directed towards children:

- a. **The nature of the marketing content.** Does the content appeal to children? For example, does the marketing use characters or cartoons likely to appeal to children, or are the language, theme, and colours likely to appeal to children?
- b. **The placement and audience.** Does the placement of the marketing mean children are likely to constitute a significant proportion of the overall audience? Are age filters used to reduce the likelihood of children seeing the content?
- c. **The product or service.** Is the product or service for use by children, or likely to appeal to children?

## Who is a child?

8. Legal definitions of ‘child’ vary between countries, and even within countries. Some countries have a single definition whereby a person of a certain age or within an age range is considered a child. Other countries operate with multiple categories, for example one for “children” – persons under the age of 12-14 and one for “young people” – persons who do not meet the definition of ‘child, but also are not considered ‘adults’.

9. Despite these variations, non-adults are generally considered more at risk from harmful marketing practices due to their lack of experience, credulity and relative lack of understanding of commercial practices. For the purposes of these principles, a child is a person under the age of 18.<sup>4</sup> However, we must also be aware that a child’s vulnerability may vary depending on age and various other demographic factors, and traders should abide by the relevant law in the jurisdiction where they are directing their content.<sup>5</sup>

## Purpose, scope, and legal status

10. The aim of the principles is to encourage best practice to prevent harms posed by direct marketing to children online. The principles are not intended to act as a

<sup>4</sup> This is the age established by [Article 1](#) of the UN Convention on the Rights of the Child (1989). However, the authors note that not all ICPEN members are parties to the convention.

<sup>5</sup> OECD (2012) [The Protection of Children Online](#), p33.



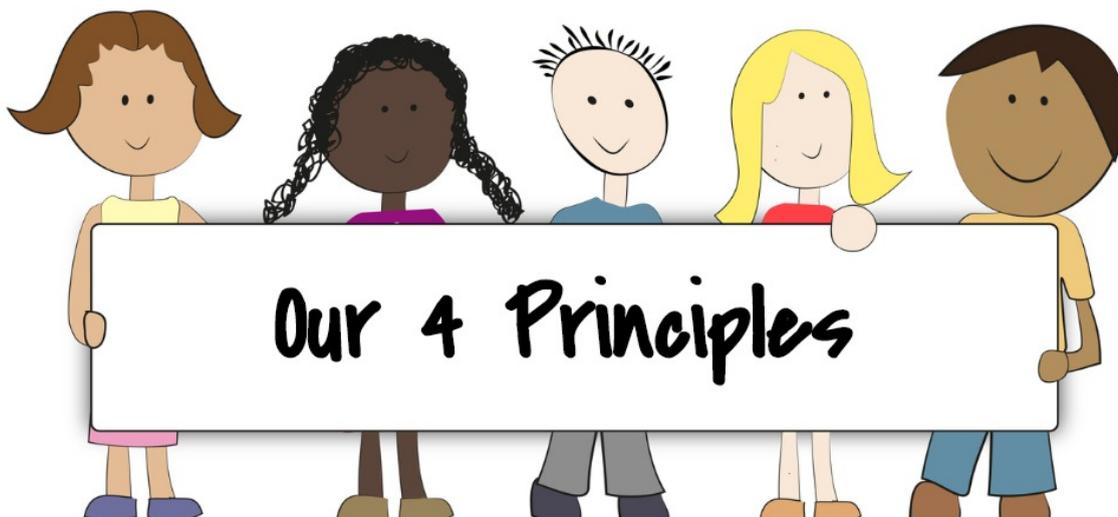
guide on how to comply with consumer law as it relates to online marketing directed towards children; readers should have regard to the legal requirements in the relevant jurisdictions when considering online marketing and its effects on children.

11. The principles are focused on harms that are particularly relevant to children (rather than the general population). For example, the principles do not discuss the general requirement that marketing does not include false or misleading statements, despite this being required by consumer law around the world. Traders should have regard to aspects of consumer law in the relevant jurisdiction regardless of whether those aspects are inside the scope of these principles.

12. The principles are also focused on harms that may arise from marketing practices, rather than the many other harms children may be exposed to online, such as through exposure to anti-social and/or offensive content.

13. However, while these principles are not a guide to compliance or in themselves binding, businesses are encouraged to give them careful consideration. Many ICPEN members have already taken action to address harms related to some or all of the four principles, and businesses that do not consider their compliance with the principles may be at increased risk of non-compliance with consumer law in the jurisdiction where they are directing their content.

14. The principles are high-level and therefore give each member scope to create more detailed guidance based on these principles. When the law, or any relevant guidance published in a member state's jurisdiction contradicts the following principles, the law or relevant guidance will prevail.





15. The following pages of this document explore each principle in more depth, explaining why the principle matters, the harm that relevant business practices might cause and providing examples of practices that are of concern to ICPEN members.

## The principles

- **Principle 1: Traders should make clear what is and what is not marketing**
- **Principle 2: Traders should not use marketing techniques that exploit children's naivety, credulity, or lack of commercial knowledge**
- **Principle 3: Traders should not engage in the deceptive or harmful collection and use of children's data**
- **Principle 4: Traders should not market inappropriate products or services online to children**



## Principle 1: Traders should make clear what is and what is not marketing.

16. Ensuring transparency in online marketing is central to creating a safe online world for children. This means traders should not conceal an advert's commercial intention, preventing children from distinguishing between what is and is not advertising. Principle 1 identifies the harms caused when an ad's commercial nature is concealed in order to increase engagement for traders; specifically, through techniques like **native marketing**, **'like and share'** and **prize-winning activities**, and **in-game advertising**.

17. Children's lack of experience and commercial experience make it more difficult for them to differentiate between what is an ad and what is not. If a child cannot differentiate between the two, they will be more susceptible to commercial messaging and could end up buying products they otherwise would not. However, we acknowledge the difficulty in making sure all children are aware of commercial messaging, especially for very young children as this may be beyond their cognitive ability. Despite this, traders should ensure they are transparent about the use of marketing and do not obscure it.

18. **Native marketing** is a type of advertising commonly used on social media platforms, where adverts are designed to match the form and function of the platform on which they appear. While these ads may carry a tag identifying them as paid endorsements or sponsored content, they appear alongside and share the look and feel of search results, tweets, status updates, photos, videos and other content. Moreover, some disclosures are not conspicuous or placed where they are relevant. Often, it may therefore not be obvious what is an ad and what is not.

19. Native marketing has come to dominate digital advertising because it has proven to yield results for brands. Facebook ads on the News Feed (ads that appear amongst posts from a user's friends or followers) achieved 49-times higher click-through rates and a 54% lower cost-per-click than traditional ad placement in the right sidebar (ads separated from friends' posts and which appear on banners towards the edge of the screen).<sup>6</sup>

20. Integral to native marketing's success is its ambiguity. A native ad is less obviously trying to persuade the consumer, and therefore may affect the consumer's decision to interact with the promotional content as well as the weight and credibility the consumer gives it. A native ad that does not appear to be commercial can enhance the impact of the advertisement.<sup>7</sup> Children, in particular, may not realise that the content they are viewing is an ad and therefore may be more easily persuaded by the message or less likely to alter their behavior if they are unhappy with it.

21. Many traders also pay **"influencers"**<sup>8</sup> to advertise on their behalf, giving them free products, services or discounts in return. Because influencers also post personal content, it can be difficult for children to distinguish between the two. Children are likely to trust the opinions of influencers they follow on social media and therefore may perceive influencer marketing as a personal recommendation and act on it.

<sup>6</sup> Business Insider (2013), *The Rise of Native: Why Social Media Advertising is Going In-Stream*

<sup>7</sup> Harms, B, (2019). 'You don't fool me' Consumer perceptions of digital native advertising and banner advertising' in Journal of Media Business Studies. Available at: <https://www.tandfonline.com/doi/full/10.1080/16522354.2019.1640517>

<sup>8</sup> A person with a substantial and engaged following on social media who likely promotes brand's products or services to their followers and in turn receives benefits (money, discounts, products) from the promoted brands.



Influencers can also attract users to their posts by offering discount or promotional codes for products and services. For every sale made using the discount code the influencer will receive commission. It may affect children's willingness or desire to buy a certain product if they knew the recommendation was a paid endorsement and not personal opinion.

22. The decisions traders make about who markets their products might also contribute to the blurring or non-disclosure of marketing. For example, children might find it particularly difficult to identify commercial intent where products are being advertised by other children.

23. **Like and share and prize-winning activities** involve practices designed to encourage a user liking a post and then sharing it with their followers or tagging a friend's name so that they can view it. It can also involve following a trader on social media or participating in an online quiz. The expectation is that there is a chance of winning a prize if they share the content. These commercial practices typically focus on the prize instead of the commercial message and will easily attract children's attention and engagement.

24. By sharing a trader's commercial content, children are made part of the trader's marketing strategy. The commercial nature of 'like and share' and tagged posts is also obscured for those who receive the posts as they receive it from a friend and not a trader. An illustrative example is a case from Norway where a trader organised a competition on Snapchat in which consumers could win a "fidget spinner" toy. Due to the nature of the product, channel and competition, the Norwegian Consumer Authority considered the marketing to be directed at children. To participate, the children had to forward the trader's competition video to all their friends on Snapchat. The Norwegian Consumer Authority determined that using children to distribute marketing via their friends on a platform where they normally share pictures from their day-to-day life was intrusive and made the marketing difficult to disclose.

25. In each of the above-mentioned practices, the blurring or non-disclosure of marketing allows the content to more easily spread via the child's networks of friends and followers on social media. As many children are trusting, they may find it difficult to say no if friends try to persuade them to participate in a competition, buy a product or sign up for a service.

26. Like native marketing, some **in-game advertising** blurs the lines between commercial and non-commercial content. In-game advertising can use product placement where items within the game such as cars, clothes, weapons and drinks are branded. It can also form part of the game's scenery, such as on billboards or banners during sports games. Children may also be rewarded with virtual money if they accept and watch commercials. Some games are filled with pop up adverts that interrupt play and make the cancel button difficult to find and press. This can be difficult for some younger children whose motor skills may be less well developed than adults. The gamification of advertising means a child's ability to identify it as advertising will be lowered and they will therefore be less likely to reflect critically on the ad or avoid it if they do not like it.

27. Marketing on social media and within children's games gives traders the opportunity to address children individually and directly, and can lower the physical and psychological barriers to buying a product compared to a physical store. This can make it easier for children to unknowingly buy unnecessary products and spend large



amounts of money without the knowledge or consent of their parent or guardian. It is therefore important that children are able to differentiate between what is an ad and what is not.





## Principle 2: Traders should not use marketing techniques that exploit children’s naivety, credulity, or lack of commercial knowledge.

28. Understanding consumer behaviour is central to all marketing strategies. However, marketing techniques that go further and **exploit children’s naivety, credulity, and lack of commercial knowledge** can cause harm to children. Principle 2 considers examples of these marketing practices and the potential harms caused; it focuses on in-game purchases, loot boxes and direct appeals to children to make purchases.

29. The barriers between the child and the purchasing process are significantly reduced when marketing is directed at children online. It is therefore much easier for children to make purchases online without the knowledge or consent of their parent or guardian. Furthermore, as children spend more time online, the potential for manipulation is magnified. Exploitative marketing practices of any kind are concerning, but those directed towards children – and especially young children – are particularly harmful. This is because children by nature will find it more difficult to identify when they are being targeted and what they can do to stop it.

30. **In-game purchases** (or microtransactions) are common to online games and provide a large part of their revenue. Revenues for games companies are shifting away from initial purchase price towards in-game purchases and season passes and this is true of both free-to-play games and premium games. Whilst in-game purchases are a key feature of today’s games, there are concerns that companies are designing and structuring them in ways that make them indistinguishable from game play, appear obligatory, and conceal their true final cost.

31. Opportunities to enhance gameplay with in-game purchases presents a similar pricing structure to ‘drip pricing’; a way of presenting prices where additional fees are not presented to the consumer at the time of the initial price but are ‘dripped’ through the buying process. Research shows that drip pricing leads consumers to spend more than they might have otherwise as dripped prices are harder to evaluate and compare.<sup>9</sup> Once players are committed to a game, having already spent time and potentially money, they may be more likely to continue making purchases. Players will feel pressured to purchase items and upgrades if it is likely to help them complete the game.

32. **‘Loot boxes’** are a form of in-game purchase prevalent in online games that children play. Loot boxes are virtual containers that hold randomised mystery items of in-game value, such as in-game currency, upgrades, maps, game modes, characters, or customisable costumes for avatars. These items can either help players progress in the game, or they can be purely cosmetic rewards. Players can purchase loot boxes with in-game currency or real money through in-game stores or they might be earned through in-game play. Sounds, movements and colors are often used to amplify the feeling of reward when a loot box is opened.

33. Loot boxes have faced criticism in recent years with Belgium and the Netherlands both taking steps to increase protections in games where loot boxes are

<sup>9</sup> UK’s Office of Fair Trading (2009) [Advertising of Prices market study page](#).



present.<sup>10</sup> There are concerns with **the transparency around the probabilities of winning** loot boxes and whether their form and content mean they **should be considered gambling** (and should be regulated as such). Separate from gambling concerns, it may be difficult for children to keep track of how much money they've spent when real-world money is converted into in-game currency, like gems or coins. This raises core consumer protection concerns.

34. The use of **direct exhortations**<sup>11</sup>; language asking children to act in certain ways, can also be considered exploitative in some jurisdictions. For example, when clicking on items key to an online game, pop-ups may appear asking the child to pay for the item in order to proceed with game play.<sup>12</sup> Children's credulity means they are particularly responsive to direct commands and messages of positive reinforcement.

35. There is no universal approach to direct appeals in marketing; in the European Union, direct exhortations to children to make purchases or ask adults to make purchases on their behalf are explicitly banned. In other jurisdictions direct exhortations may not be banned (but may, in some circumstances, otherwise breach consumer law). The Swedish Consumer Agency took action against an online game aimed at children for using expressions like "buy" and "upgrade". The acceptable level at which traders can target children via direct exhortations varies between jurisdictions, this therefore reinforces the need for traders to ensure they are aware of the legal limitations of these practices, including prohibitions.

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<sup>10</sup> Loot boxes are banned in the Netherlands under current gambling laws and regulations if the items from the loot box are transferable. See, Dutch Games Association (2018) [Loot boxes & Netherlands Gaming Authority's findings](#)

<sup>11</sup> EU Unfair Commercial Practice Directive (2005/29/EG) [No.28, Annex I](#).

<sup>12</sup> Vox (2018) [Apps for pre-schoolers are flooded with manipulative ads, according to a new study](#)



## Principle 3: Traders should not engage in the deceptive or harmful collection and use of children's data.

36. Data drives our online experiences. When using the internet, we all generate data which can be collected, stored and used for marketing purposes. As children engage regularly with online platforms, games and websites there is also potential for **children's data to be processed and used for marketing purposes**. Principle 3 identifies the harms associated when there is a lack of transparency around the collection and use of children's data and the harms that can arise when children are targeted with personalized ads.

37. It is important to be aware, approaches to privacy and data protection differ between ICPEN members; not all consumer protection authorities have powers or duties related to privacy or data protection. In some jurisdictions, protection of children's data may be the responsibility of a specific privacy or data protection authority. However, overarching consumer protection principles generally prohibit deceptive and unfair practices related to the collection and use of consumer data, and most ICPEN members agree that action should be taken when traders collect and use data in ways that cause harm to consumers.<sup>13</sup>

38. Traders should protect consumer's personal data through a combination of appropriate control, security, transparency and consent mechanisms. Traders should ensure that all personal data is processed lawfully, be it for marketing or other purposes, including - where necessary - obtaining consent from the child's guardian and making clear the reasons for data collection as well as data use. However, disclosure and clarity around this practice is often lacking. For example, a case in the US brought against a mobile advertising company showed the company deceptively tracked the location of hundreds of millions of consumers, including children, without their knowledge or consent to serve them geo-targeted advertising.<sup>14</sup>

39. It is important that disclosure around when and why data is being collected and used is made clear. It is especially important when children are the primary audience as they are by nature less aware of commercial activities and the risks and implications of their personal data becoming publicly available. Compounding this issue, research has shown that games and apps marketed towards children are gathering data in particularly opaque ways. One study shows that apps targeted at children are amongst the worst in terms of the number of third-party trackers associated with them.<sup>15</sup>

40. While businesses should avoid unfair and deceptive data collection practices, they should also be mindful of how data they have collected is used. **Targeted and personalised ads** magnify the persuasive effect on the viewer as they are intentionally more appealing and relevant to the target group. Unlike un-targeted advertising, targeted ads rely on information about the viewer's preferences, which may be based on search and browsing history, purchase history, or social media

<sup>13</sup> OECD (2016), OECD Recommendation of the Council on Consumer Protection in E-Commerce. Available at: <https://doi.org/10.1787/9789264255258-en>

<sup>14</sup> FTC (2016) [Mobile Advertising Network InMobi Settles FTC Charges It Tracked Hundred of Millions of Consumers' Locations Without Permission](#)

<sup>15</sup> Binns, R et. al (2018) ['Third Party Tracking in the Mobile Ecosystem'](#), Department of Computer Science, University of Oxford.



activity.<sup>16</sup>

41. Whilst jurisdictions will have different understandings of when children are the targets of content and at what age companies can lawfully collect consumer data, showing children personalised and targeted ads has been highlighted by a number of ICPEN members as a concerning issue. There is no global approach to regulating the targeting of advertising. In the European Union, for example, traders should not engage in the 'profiling' of children, but this is not the case everywhere.<sup>17</sup>

42. In general, there is a lack of consumer understanding around targeted ads and the monetisation of data,<sup>18</sup> which suggests children's understanding of the process will be particularly low. Research has shown that children are unaware of the existence of personalized ads and how the companies using them make money.<sup>19</sup> Therefore despite their ubiquity there is an information asymmetry concerning how targeted ads work, making it especially difficult for children to grasp.

43. It is important when and what data is being collected, and how it is being used is clear (and in simple language) and readily available to consumers. It is also important that traders and platforms comply with the data protection and privacy laws in the relevant jurisdiction.

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<sup>16</sup> Disruptive Advertising (2018) [How to use Targeted Advertising in a Data Paranoid World](#)

<sup>17</sup> General Data Protection Regulation (GDPR). [Recital 71](#). We note that the definition of 'profiling' and 'child' are contained within the GDPR.

<sup>18</sup> Pew Research Centre (2019) [Facebook Algorithms and Personal Data](#)

<sup>19</sup> OFCOM (2019) [Children's Media Lives](#)



#### **Principle 4: Traders should not market inappropriate products or services online to children.**

44. Whilst using social media platforms, children have direct and easy access to a wide variety of products, services and images. Not all of these will be suitable for children. Whilst social media platforms generally ban the posting of inappropriate content, the content deemed appropriate for adults may still be inappropriate for children but may be accessible to them.

45. For many years, marketing products to children such as alcohol, cigarettes and fast food has, in some countries, been highly regulated on traditional media channels. However, on social media children can be directly exposed to unsuitable products or services or can easily access them. Traders should ensure that they do not market such unsuitable products or services to children on social media, and that they are not easily accessible to them.

46. Some ICPEN members highlighted they were concerned with the marketing of inappropriate products such as invasive cosmetic treatments and dietary supplements. Regularly viewing marketing of these products and services could expose children to graphic images and videos and may contribute to a negative body image.

47. Traders should also consider the selection of media, style of presentation, content and where the ad will appear when assessing the audience. If a trader wants to use influencers as a part of the marketing strategy, consideration should be given to the age of the influencer's followers (which influencers should communicate to advertisers) and whether the product or service is suitable for their target audience. The Norwegian Consumer Authority launched a case against a beauty salon for using influencers popular with young followers to advertise lip injections ("fillers"). The Authority deemed it inappropriate to expose children to marketing for these types of treatments. The use of influencers that children consider to be role models can increase the persuasiveness of the message, magnifying the potential harms.

48. Product appropriateness is context specific and will vary among jurisdictions. Therefore, in order to follow best practice a trader's assessments of whether products and services are suitable for young audiences should be made in each jurisdiction.