Thoughts for Developing a General Comment on Children’s Rights in the Digital Environment

UN Committee on the Rights of the Child.

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My report as former Special Rapporteur that is most relevant in terms of this proposed General Comment on children’s right in the digital environment is the one on advertising (A/69/286). The Report recognises that the human rights approach supports the free sharing of ideas and world visions, but stresses the importance of measuring and addressing the impact of commercial advertising and marketing practices on cultural rights as a whole. Although the report does not focus on the digitial environment, it stresses that commercial advertising and marketing practices have continued to evolve over time in order to more effectively sell and promote services and products. The developed emerging practices have had (and continue to have) an increasing impact on the societal landscape. Some of the major concerns and recommendations that should be borne in mind for the general comment under discussion are as follows:

* The increasingly sophisticated techniques developed by advertisers and strategies that result in a progressive blurring of lines between advertising and other content, especially in the areas of culture and education. While surreptitious communications (misleading the public about their advertising nature) and subliminal techniques (enabling messages to be received below the level of conscious awareness), are prohibited in some countries as well as in some international and regional instruments, not all countries have taken that step.
* The power of advertising to influence individual choices demands a careful assessment of the means advertisers use, taking into consideration in particular the rights of people to privacy and to freedom of thought, opinion and expression, as well as their rights to education and to participate in cultural life. Neuromarketing, that is the use of advances in neurosciences to develop commercial advertising and marketing strategies as well as myriad of other techniques, such as embedded advertising, and the development of advergames, must be examined.
  + Advergames and embedded messagingg in the digital world is of particular importance for children
* The dominance of specific narratives and worldviews promoted through commercial advertising as well as marketing in both the public and private spheres raises particular concerns in terms of freedom of thought and opinion, especially in relation to children whose ideas and visions are in formative stages.
* The concern is not that change occurs in cultural practices and worldviews (which is always a given and not necessarily negative), but rather concerns the disproportionate and omnipresent nature of commercial advertising and marketing in our societies, which contribute to shifting practices towards consumption and uniformity. This depletes the cultural diversity, which is crucial for the wellbeing of humanity as a whole and should be preserved.
* The digital world and commercial advertising seem to be pushing us into uniformity…It is time to acknowledge this phenomenon and to investigate thoroughly the impact on cultural diversity and the right of people to choose their own ways of life.
* In parallel, there is an increasing focus on using the internet for education/research. In this regard it is important to watch out for the reduced information pool that children access over the internet which is selective and does not have many archives as it depends on who is populating the digital world. Many diverse perspective and historical aspects are left out if poor and certain language users, societies that have under-/less developed infrastructure and wherewithall to contribute to the digital knowledge pool that the younger generations increasingly see as the only valid source of information.
* While the Human Rights Committee stressed in General Comment 34[[1]](#footnote-1), that the right to freedom of expression “may also include commercial advertising”, it may be granted less protection than other forms of speech.
* **Commercial advertising and marketing remains mostly self-regulated. This is especially true of the digital world.** (See below re children)
  + One of the difficulties in this respect is the lack of state control over digital conglomerates such as Facebook. It is interesting that even a former founder of the company today is speaking out about the need for intervention by anti-trust laws to break the monopolistic control of FB in the hands of a single person.
* A special focus of attention is required in emerging sectors that might escape advertising regulations that is precisely the area that the proposed General Comment is concerned about, i.e. advertising on mobile devices, in video games, as well as in between educational content on various video-sharing platforms on the internet.
* Mass media performs an important function and States should be committed to ensuring that children have access to information and material from diverse sources. States are also encouraging the development of appropriate guidelines for the protection of children from information and materials injurious to their wellbeing.
* States have a particular responsibility in ensuring that public space remains a sphere for deliberation, cultural exchange, social cohesiveness and diversity. In this digital public spaces must be included.
* States should prohibit all forms of advertising to children under 12 years of age, regardless of the medium, support or means used, with the possible extension of such prohibitions to children under 16 years of age.
* Schools are a distinct cultural space and deserve special protection from commercial infringement. School children offer a captive and impressionable audience for companies who see this as an opportunity for inculcating their particular brands early into the child’s consciousness.
  + Advertising in schools remains unregulated in many countries. Sponsorship is used to meet budget deficits, to maintain or construct necessary infrastructure etc. While conceding that private sponsorship can help in the effective running of the educational institution, it should not result in advertising materials and activities infiltrating school premises and targeting children directly.
  + There should be a complete ban on the practice of appointing children as ‘brand ambassadors’ in educational institutions.
    - I am unsure whether (and the extent to which) this last relates to digital aspects of life but since digital life is so crucial to everything children engage in today, it is bound to have repercussions.
* States have an obligation to identify spaces that, in addition to private and public schools, should be completely or especially protected from commercial advertising.
  + Given children’s increasing attachment/engagement with the digital world and technologies/inputs and ways of self-expression, I believe that this is especially important but also that it will be especially difficult.
* Food advertising in particular, has and continues to contribute to changing dietary patterns by promoting mainly manufactured products with high content of fat, sugar or salt. The World Health Organisation’s (WHO) framework[[2]](#footnote-2) provides a set of 12 recommendations calling on states to formulate a clear policy and definitions for a standard implementation process. The policy should aim to reduce the impact on children of marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt.

**Other aspects/concerns not covered in the A/69/286 Report**

**Public spaces** deserve special attention

Both physical and virtual spaces are inundated with commercial messaging, including in public spaces as pointed out in the report.

The rules governing self-expression (artistic e.g.) vs. advertising are disparate and seem to punish self-expression far more than advertising over which people have no control. These need to be examined more closely with regard to children in the digital environment.

The question of whether all appliances intruding into the private space of people (other modalities, but especially telephones computers) are to be considered a public or private space is important. Previously people have registered cases against advertisements on TV which are run at an increased volume than the programs; but how can such a principle be applied to the apps which do not run at higher volume but intrude into whatever is being watched/work being done on computers or other appliances?

The fact is that most young people with access to the necessary technology, do not distinguish between their lives in the virtual and physical world – especially with regard to self-expression and socialising. And therefore the feedback they receive on Self as well as the world. It influences self-esteem, sef-confidence and patterns of behaviour – many of which can be self-destructive. (How many friends do you have? You have been unfriended!) Gangs/cliques the ‘in’ group etc. have always existed in schools. However the digitally driven competition/ assessment/valuation is even more difficult for adults to intervene in than when these mediums did not exist.

There is therefore a need to consider how to regulate social media from a human rights perspective, in particualr from the point of view of children who are steeped in the digital environment.

Of relevance in considering regulations is that those working on digital rights matters stress the emerging trend that the control/influencing is increasingly being done via the *architecture* of the technologies that will allow a side-stepping of existing laws and policies.

1. ICCPR, “General Comment No. 34”, 2011 [↑](#footnote-ref-1)
2. WHO, “Set of Recommendations on the marketing of foods and non-alcoholic beverages to children”, 2010. [↑](#footnote-ref-2)