

Research report

Manipulative digital marketing practices targeted at children and youth online



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Executive summary

The rapid growth of **digital technologies** and the increased significance of **online platforms** has led to amplified **concerns** regarding child and youth consumer protection in the digital environment. The BIK+ strategy, adopted by the European Commission in 2022, recognises the importance of safeguarding children from **consumer and contract risks** when they engage online. The current BIK Phase 5 project, therefore, includes a new action line focused on this issue. It seeks to analyse current and emerging marketing practices targeting children and youth, and develop targeted **awareness-raising** campaigns based on evidence-based approaches.

This report outlines the research findings of a literature review and doctrinal research focused on important developments in, and the (potential) impact of, marketing practices targeting children within the digital environment. Its aim is to:

- identify **specific marketing practices** that warrant specific attention in future awareness-raising activities.
- clarify **children's rights** in this specific context.
- delineate **obligations for commercial actors** that target or facilitate the targeting of marketing practices to young audiences in the digital environment at the EU level.

Mapping of existing and emerging marketing practices targeting children in the digital environment

First, overall, there is consensus that **children's advertising literacy improves with age, with children under 12 being particularly vulnerable**. As they grow into adolescence and (young) adulthood, children continue to develop their capacity to engage critically with persuasive marketing tactics. Importantly however, **when it comes to digital marketing practices**, the available research points to **certain vulnerabilities across all age groups**.

Second, the review identified four major persuasive tactics employed by digital marketers, namely **integration**, **interaction**, **personalisation**, and **emotion**. It found that these are often used in combination and can pose significant challenges to children's advertising literacy.

Third, in terms of specific marketing practices, **influencer marketing** and **in-game marketing** have become prominent and impactful forms of digital marketing targeting children. Significantly, a cross-cutting issue in the field of digital marketing entails harnessing **emotions** for marketing purposes, for instance, by relying on **neuromarketing** research or emotional analytics and targeting. With advancements in **artificial intelligence** (AI), marketing practices drawing on emotional responses are likely become even more effective and widespread.

Fourth, it identified several gaps in existing scholarship. These include, but are not limited to: a focus on particular practices for a certain and often narrow age group making it **difficult to generalise findings**; **lack of research on some of the newer platforms** (such as Snapchat and TikTok); **lack of research on certain age groups**, especially relating to younger children; and **lack of diversity in the products investigated** (with a strong focus on unhealthy foods, beverages and toys, rather than a fuller range of products and services which might appeal to children and young people online).

Children's rights in relation to digital marketing practices

The second part of this report finds that the complexity, sophistication, immersiveness and opaqueness of certain digital marketing practices pose substantial challenges to children's rights. Children's rights policy documents also acknowledge these challenges associated with certain practices that can impact children's fundamental rights, including:

- the right to freedom of expression and freedom of thought.
- the right to privacy.
- access to diverse information and protection against harmful content.

- the right to play.
- the right to protection against economic exploitation.

Yet, in parallel, the **digital environment also provides positive opportunities** including children's rights to participation, education, and play, with the marketing industry playing a pivotal role in creating and maintaining high-quality content and online services for children.

The EU legal framework for digital marketing practices targeted at children

The final section of this report focuses on the **EU legal framework** for protecting children and young people from digital marketing practices, which has been **strengthened** in recent years, notably through:

- the Unfair Commercial Practices Directive (UCPD).
- the Audiovisual Media Services Directive (AVMSD).
- the Digital Services Act (DSA).
- the General Data Protection Regulation (GDPR).
- and (potentially) the upcoming Artificial Intelligence Act (AIA).

It also recognises and explores the role of **self-regulation**, noting that the marketing sector has traditionally been very active in developing guidance for its members. It examines a range of possible **harmful practices** – such as aggressive marketing practices, harmful promotional messages, direct exhortations to buy, profiling and unfair AI practices – and outlines the **regulatory mechanisms for countering** them.

Conclusion

In summary, the research reviewed shows that **marketing practices permeate nearly all aspects of children's online lives**, including their social media pages, the environments in which they play games, and the influencer videos they watch. The **increased commercialisation** of these environments and the collection of

children's personal data for commercial profiling and personalisation challenges **several of their rights including the right to development, freedom of thought, the right to play, privacy, and protection from economic exploitation.**

As such, **a balanced approach is needed** which seeks to both **shield children** from the potential risks of misleading or manipulative marketing practices, **while also empowering and educating them**, allowing them to develop and practice their media literacy and commercial decision-making skills. **This balanced approach should be addressed in any awareness-raising activities.**

Terminology and methodology

This report offers insights into **current and emerging marketing practices targeting children and youth in the digital environment**. It covers recent developments originating from technological innovations, shifts in the marketing industry, and regulatory perspectives. While the report does not intend to provide an exhaustive account, it does **present a snapshot of the prevailing and evolving digital marketing practices targeting children in the digital environment**. Furthermore, it aims to shed light on how these practices affect children's rights and delineates the corresponding obligations for commercial actors involved in the marketing process.

Terminology

This report employs specific terminology which is listed and defined in this section.

Children

For the purposes of this report, '**children**' are defined in accordance with Article 1 of the UN Convention on the Rights of the Child, encompassing **individuals under the age of 18**. Where possible, references to specific age groups in the studies reviewed are included in the report to reflect the nuances that exist in the literature.

Marketing practices

There is no comprehensive, universal definition for what precisely constitutes a '**marketing practice**', and various sources often employ different terms and definitions to describe similar activities. In EU legislative and policy documents, the term '**commercial communication**' is frequently used to refer to marketing practices. For example, the European Commission has defined commercial communications as "***all forms of communication seeking to promote either products, services or the image of a company or organisation to final***

consumers and/or distributors".¹ Legislative instruments governing marketing practices may employ different terminology (e.g., advertising,² audiovisual commercial communication³ or commercial communication⁴) which have evolved over time.⁵ It is also important to **differentiate** between '**marketing practices**' and '**commercial practices**' within the Unfair Commercial Practices Directive.⁶ Marketing practices, although encompassed within the category of commercial practices, represent a narrower subset.⁷

From an industry perspective, the International Chamber of Commerce (ICC) employs the term '**commercial communication**', meaning "**any publicity activity intended as part of a marketing process for goods or services**".⁸ This definition encompasses a range of activities, including advertising, public relations, sales promotion, direct marketing, and more. Additionally, the ICC specifically defines **advertising as a form of commercial communication entailing commercial messages carried by a variety of media (e.g., television, press, telephone, radio)**.

With the above definition of marketing practices in mind, this report focusses specifically on **any form of communication aimed at promoting products,**

¹ European Commission, 'Green Paper on Commercial Communications in the Internal Market' https://europa.eu/documents/comm/green_papers/pdf/com96_192_1_en.pdf.

² Directive 2005/29/EC of the European Parliament and the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') 2005.

³ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) 2010.

⁴ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) 2000.

⁵ For instance, with regard to regulation of audiovisual media, Castendyk clarifies that the introduction of the general concept of "audiovisual commercial communication" was necessary in order to cover advertising in a larger context of audiovisual media services, including advertising, sponsorship, teleshopping, split screens, interactive advertising and product placement. R. Chavannes and O. Castendyk, 'Directive 2007/65/EC "Audiovisual Media Services Directive"' in O. Castendyk, E. Dommering and A. Scheuer (eds), European Media Law (Kluwer Law International 2008).

⁶ Article 2 (d) UCPD defines 'commercial practices' (meaning 'business-to-consumer commercial practices') as 'any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers'.

⁷ For instance, the interface design of digital platforms and services may also have a significant impact on children's consumer rights. While the nature thereof could be considered to be commercial (e.g., aiming to convince users to disclose more personal data which can be monetised or keep users on the platform for a longer period of time), it does not qualify as promoting a product or service, which is essential to be considered as a marketing practice. For more specific information on interface design see, for example, European Parliament resolution of 12 December 2023 on addictive design of online services and consumer protection in the EU single market (2023/2043(INI)).

⁸ International Chamber of Commerce, 'Policy Statement on Freedom of Commercial Communication, 240/474 Rev'.

services, or the reputation of a company or organisation in the digital environment. Furthermore, the report zooms in on such digital marketing practices in as far as they address or are encountered by child consumers (under the age of 18; see above).

Persuasive tactics

In essence, advertising always aims to persuade consumers to purchase certain goods or services. Marketers employ **persuasive tactics**, which are strategies or ways of encouraging consumers to interact with products/services, ultimately aiming to persuade them to make a purchase. While the focus traditionally used to be more on the persuasive *message* in advertising, in the digital environment there is a noticeable shift towards concentrating on persuasive *tactics*. These tactics operate mainly at a preconscious level, subtly shaping children's preferences for brands or products.⁹

Manipulative marketing practices

In this report, characteristics of certain marketing practices which might be considered 'manipulative' are discussed.

Across the documents that were studied, there is **no equivocal definition** of 'manipulation', but **the notion is often linked to unfairness, unjustness or undue influence**.¹⁰ At the UN level, manipulation is considered a form of (commercial) exploitation.¹¹ Scholars have described manipulation as 'unawareness

⁹ P. De Pauw and others, 'From persuasive messages to tactics: Exploring children's knowledge and judgement of new advertising formats' (2018) 20 New Media & Society 7.

¹⁰ For instance, in the context of the Unfair Commercial Practices Directive (infra). See European Commission, 'Commission Notice - Guidance on the Interpretation and Application of Directive 2005/29/EC of the European Parliament and of the Council Concerning Unfair Business-to-Consumer Commercial Practices in the Internal Market. Official Journal of the European Union C 526/1'. See for instance: "*The use of information about the vulnerabilities of specific consumers or a group of consumers for commercial purposes is likely to have an effect on the consumers' transactional decision. Depending on the circumstances of the case, such practices could amount to a form of manipulation in which the trader exercises 'undue influence' over the consumer, resulting in an aggressive commercial practice prohibited under Articles 8 and 9 of the UCPD.*"

¹¹ A. Atabey, K. Pothong and S. Livingstone, 'When Are Commercial Practices Exploitative? Ensuring Child Rights Prevail in a Digital World' (5Rights | Digital Futures Commission, 2023) <https://digitalfuturescommission.org.uk/blog/when-are-commercial-practices-exploitative-ensuring-child-rights-prevail-in-a-digital-world/>; S. van der Hof and others, 'The Child's Right to Protection against Economic Exploitation in the Digital World' (2020) 28 The International Journal of Children's Rights 833; UN Committee on the Rights of the Child, 'Report adopted by the Committee at its 104th Meeting, on 8 October 1993.' (UN, 1993) <https://digitallibrary.un.org/record/194072>.

of influence', and/or 'the impossibility of rational choice', both of which impinge on an individual's autonomy.¹²

Determining the **precise threshold** at which a practice can be classified as manipulative (and not merely persuasive) may **not always be straightforward**. **Factors that may be taken into account include the characteristics of the practice, the circumstances in which it is used, the (vulnerabilities of the) target group, and the power imbalance between traders and consumers.** Some scholars caution against employing the term 'manipulation' in relation to digital marketplaces, asserting that it inherently implies intent. Their perspective emphasises the significance of the platform's architecture and actual design over the strategies pursued by the designer.¹³

Advertising literacy

'Advertising literacy' encompasses **children's body of knowledge, attitudes, and skills related to advertising. It includes their ability to recognise commercial messages, decipher the persuasive intentions behind such messages, and critically evaluate them.**¹⁴ As children grow older, they acquire the ability to navigate their way through the overload of commercial information and gradually hone their critical decision-making skills.¹⁵

¹² P. Hacker, 'Manipulation by Algorithms. Exploring the Triangle of Unfair Commercial Practice, Data Protection, and Privacy Law' (2021) European Law Journal; K. Grisse, 'Recommender Systems, Manipulation and Private Autonomy: How European Civil Law Regulates and Should Regulate Recommender Systems for the Benefit of Private Autonomy' in S. Genovesi, K. Kaesling and S. Robbins (eds), Recommender Systems: Legal and Ethical Issues (Springer International Publishing 2023) https://doi.org/10.1007/978-3-031-34804-4_6.

¹³ For more information see N Helberger and others, 'Choice Architectures in the Digital Economy: Towards a New Understanding of Digital Vulnerability' (2022) 45 Journal of Consumer Policy 175.

¹⁴ V. Cauberghe and others, 'Reclamewijsheid Bij Kinderen En Jongeren: Onderzoeksrapport in Opdracht van Vlaams Ministerie van Cultuur, Jeugd, Sport En Media' [Advertising Literacy of Children and Young People: Research report commissioned by the Ministry of Culture, Youth, Sports and Media] (2012) <https://biblio.ugent.be/publication/4130480/file/4130494>; E. Rozendaal and others, 'Reconsidering Advertising Literacy as a Defense Against Advertising Effects' (2011) 14 Media Psychology 333; S. Livingstone and E. J. Helsper, 'Does Advertising Literacy Mediate the Effects of Advertising on Children? A Critical Examination of Two Linked Research Literatures in Relation to Obesity and Food Choice' (2006) 56 Journal of Communication 560; D. M. Boush, M. Friestad and G. M. Rose, 'Adolescent Skepticism toward TV Advertising and Knowledge of Advertiser Tactics' (1994) 21 Journal of Consumer Research 165.

¹⁵ Cauberghe and others (n 14); Rozendaal and others (n 14).

Influencer marketing

While there is no universally accepted definition of ‘**influencer marketing**’, this report refers to De Veirman et al. who describe **influencers** as “*people who built a large network of followers and are regarded as trusted tastemakers in one or several niches*”.¹⁶ Additionally, terms like content creators and brand ambassadors are commonly used to refer to influencers.

In-game advertising

There is no uniform academic definition of this practice that comes in many formats. However, the European Advertising Standards Alliance (EASA) defines in-game advertising as “*the use of computer and video games as a medium in which to deliver advertising*”.¹⁷

Methodology

The present report consists of an analysis that was conducted between 11 September and 31 October 2023. The analysis was conducted through **(1) a literature review** and **(2) doctrinal research**.

For the **literature review**, a research assistant at the Ghent University Law and Technology research group first constructed an inventory of potentially relevant research. This inventory mainly focused on sources such as market and marketing research, communication studies, policy reports and legal studies. The principal investigator then reviewed the most relevant documents in light of the existing body of research on digital marketing and children. The analysis focused on several critical aspects, including identifying emerging marketing practices, understanding the target audience and impact on different age groups (where possible), and a thorough examination of the persuasive tactics used in these practices. The

¹⁶ M. De Veirman, V. Cauberghe and L. Hudders, ‘Marketing through Instagram Influencers: The Impact of Number of Followers and Product Divergence on Brand Attitude’ (2017) 36 International Journal of Advertising 798.

¹⁷ EASA, ‘Digital Marketing Communications Best Practice Recommendation, 2015’ https://www.easa-alliance.org/wp-content/uploads/2022/03/2015_-_EASA_Digital_Marketing_Communications_Best_Practice_Recommendation_0.pdf.

doctrinal research consisted of a desk-based review and analysis of relevant EU legislation and policy documents, self-regulatory instruments, and legal doctrine.

Section 1: Mapping of existing and emerging marketing practices targeting children in the digital environment

This section of the report attempts to provide a (non-exhaustive) situational picture of existing and emerging marketing practices targeting children and young people as they engage with the digital environment. The first subsection (1.1) explores the **persuasive tactics** employed by digital marketing practices (without being specific to any format) and the **subsequent impact on children's advertising literacy**. While (some of) these tactics have been used in marketing for a long time, they have gained prominence with the digitisation and convergence of media. Moreover, although the specific marketing practices or formats may evolve over time, the persuasive tactics they depend on have remained relatively consistent.¹⁸

Shifting to the second subsection (1.2), the focus turns to the **transformation in children's media consumption habits** and the accompanying **shifts in marketing strategies**. This section zooms in on **influencer marketing, in-game (data-driven) marketing** and, as a cross-cutting issue, the **advancements in the use of emotions for marketing purposes**. Finally, the third subsection (1.3) consolidates a number of **overarching findings** derived from the literature review.

1.1 Persuasive tactics employed by digital marketing practices

The literature review confirms that, **similar to the offline world, children remain an attractive target group for advertisers online**, not only as primary consumers who can make purchases with their pocket money, but also as

¹⁸ These tactics were also defined in the Phd research of Dr. Valerie Verdoodt (PI) and remain relevant in today's marketing landscape. Much of the research on more recent marketing practices or formats continues to build upon this existing body of research. V. Verdoodt, Children's Rights and Commercial Communication in the Digital Era (Intersentia 2020).

secondary consumers who can influence their parents' buying decisions.¹⁹ They also embody the future market, transitioning into adults with full commercial decision-making capabilities over time. Remarkably, **children already show signs of brand awareness at an exceptionally young age**, with brand recognition already manifesting itself at the tender age of two.²⁰ Therefore, advertisers and marketers engage strategically with children from the very beginning of their lives and effectively mould them into 'child consumers'.

The literature review revealed that children's advertising literacy gradually increases with age,²¹ with **children under 12 generally considered a particularly vulnerable group to persuasive marketing tactics**.²² This vulnerability is mainly attributed to their limited advertising literacy skills, including their limited knowledge of advertising and their ability to critically analyse advertising.²³

However, **when it comes to digital marketing practices**, the literature review suggests that **children aged 12 and above may also be considered vulnerable** (at least to certain practices).²⁴ Digital marketing practices employ tactics that are notably subtler than traditional formats (like television advertising),²⁵ often operating at a preconscious level. Rather than primarily conveying information about products and services, these practices aspire to **cultivate enduring brand recall and foster positive attitudes towards a brand**.²⁶ This objective is

¹⁹ F. Loose and others, 'Preschoolers and Advertising: A Systematic Literature Review and Future Research Agenda on the Effects of Advertising on Preschool Children' (2023) 52 Journal of Advertising 439.

²⁰ B. Gunter, Kids and Branding in a Digital World (Manchester University Press 2016).

²¹ For example, certain social science studies have used specific categories linked to stages of advertising literacy, such as 0 to 5 years, 8 to 12 years, 12 to 15 years and 16 to 18 years of age. Cauberghe and others (n 14).

²² E. Rozendaal and M. Buijzen, 'Children's Vulnerability to Advertising: An Overview of Four Decades of Research (1980s–2020s)' (2022) 42 International Journal of Advertising 78; L. Hudders and others, 'Shedding New Light on How Advertising Literacy Can Affect Children's Processing of Embedded Advertising Formats: A Future Research Agenda' (2017) 46 Journal of Advertising 333.

²³ M. De Veirman, L. Hudders and M. R. Nelson, 'What Is Influencer Marketing and How Does It Target Children? A Review and Direction for Future Research' (2019) 10 Frontiers in Psychology.

²⁴ For instance, one study has shown that advertising literacy regarding targeted advertising on social media gradually increases between the ages of 12 and 16; yet, awareness about the collection and use of personal data to personalise targeted ads only matures by the age of 20. B. Zarouali and others, 'Adolescents' Advertising Literacy and Privacy Protection Strategies in the Context of Targeted Advertising on Social Networking Sites: Implications for Regulation' (2020) 21 Young Consumers 351.

²⁵ Traditional formats like TV commercials primarily spread factual or propositional messages, for instance by focusing on the product quality and characteristics. E. S. Moore and V. J. Rideout, 'The Online Marketing of Food to Children: Is It Just Fun and Games?' (2007) 26 Journal of Public Policy & Marketing 202.

²⁶ P. De Pauw and others, 'From Persuasive Messages to Tactics: Exploring Children's Knowledge and Judgement of New Advertising Formats' (2018) 20 New Media & Society 2604.

achieved through sustained exposure to the brand or product and serves as a form of implicit persuasion.²⁷ This concept is also described by Nairn and Fine as 'positive affect transfer' from engaging and captivating media content to the brand or product integrated into it.²⁸

Important to underline is that the literature review also showed a **variability in the age ranges employed across different studies**, which calls for caution regarding generalisation. Children of the same age can also exhibit widely varying capacities and skills, influenced by factors such as personal interests,²⁹ individuals' media use and experiences with the persuasive attempts they face in daily life,³⁰ the values and norms that reside in the culture in which they live,³¹ and external social influences (like parents or peers).³²

1.1.1 Integration of commercial messages into non-commercial content

One prevalent persuasive tactic in this domain involves **seamlessly blending commercial messages into non-commercial content**, such as videos or photos.³³ The underlying idea behind integration lies in the notion that marketing practices are most effective when they remain inconspicuous to the consumer.³⁴

According to Buijzen et al., there are **three primary forms of integration**: (1) **format**, (2) **thematic**, and (3) **narrative integration**.³⁵

- **Format integration** entails embedding a commercial message within a specific editorial context, such as presenting an advertisement in a style

²⁷ H. Hang, 'Online Game Advertising and Children: A Literature Review', Advances in Advertising Research (University of Bath 2015) <http://opus.bath.ac.uk/45052/>; S. Auty and C. Lewis, 'Exploring Children's Choice: The Reminder Effect of Product Placement' (2004) 21 Psychology and Marketing 697.

²⁸ A. Nairn and C. Fine, 'Who's Messing with My Mind?: The Implications of Dual-Process Models for the Ethics of Advertising to Children' (2008) 27 International Journal of Advertising 447.

²⁹ Rozendaal and Buijzen (n 22) 3.

³⁰ P. De Pauw, 'Children's Advertising Literacy: Empowering Children to Cope with Advertising - A Multi-Perspective Inquiry in Children's Abilities to Critically Process Contemporary Advertising' (Ghent University 2018); Hudders and others (n 22) 5; M. Friestad and P. Wright, 'The Persuasion Knowledge Model: How People Cope with Persuasion Attempts' (1994) 21 Journal of Consumer Research 1.

³¹ Hudders and others (n 22) 5.

³² Anubhav Mishra and Moutusy Maity, 'Influence of Parents, Peers, and Media on Adolescents' Consumer Knowledge, Attitudes, and Purchase Behavior: A Meta-Analysis' (2021) 20 Journal of Consumer Behaviour 1675.

³³ Various other terms are used when talking about this marketing trend, such as "sponsored", "promoted", "native", etc.

³⁴ S. L. Calvert, 'Children as Consumers: Advertising and Marketing' (2008) 18 The Future of Children 205.

³⁵ M. Buijzen, E. A. Van Reijmersdal and L. H. Owen, 'Introducing the PCMC Model: An Investigative Framework for Young People's Processing of Commercialized Media Content' (2010) 20 Communication Theory 427.

similar to a news article or featuring a sponsored story within an individual's social media newsfeed.

- **Thematic integration** involves seamlessly incorporating commercial messages into thematically relevant content, such as sports brand logos at sporting events.³⁶
- **Narrative integration** entails integrating the commercial message directly into the storyline of certain media content, as seen in product placement within online videos. Beyond these integration types, promotional messages may also span across various media or platforms simultaneously.

In contemporary marketing, it is common for marketers to adopt a **holistic marketing strategy**, targeting children with the same promotional message through diverse media channels.³⁷ By harnessing the combined effects of these diverse platforms, such campaigns may achieve a viral impact.³⁸

Research shows that the **prolonged exposure** of children to branded environments **leads to a blurring of the distinction between advertising and programme content** for them.³⁹ For (child) audiences, it becomes much more difficult to know whether digital content has a persuasive intent or not.⁴⁰ The seamless integration of commercial messages into the storyline and the imagery of media content often bypasses potential irritation or resistance on the part of the child. This effect is particularly pronounced among younger children (under the age of 12), as their capacity to engage critically with integrated marketing practices is less developed.⁴¹

³⁶ *ibid.*

³⁷ L. Watkins and others, 'An Objective Assessment of Children's Exposure to Brand Marketing in New Zealand (Kids'Cam): A Cross-Sectional Study' (2022) 6 *The Lancet Planetary Health* e132; D. Doganay, 'Council Post: A Holistic Digital Marketing Strategy Is More Important Than Ever' (Forbes, 2020) <https://www.forbes.com/sites/forbesbusinesscouncil/2020/03/31/a-holistic-digital-marketing-strategy-is-more-important-than-ever/>.

³⁸ K. Tutaj and E. A. van Reijmersdal, 'Effects of Online Advertising Format and Persuasion Knowledge on Audience Reactions' (2012) 18 *Journal of Marketing Communications* 5.

³⁹ K. Daems, P. De Pelsmacker and I. Moons, 'The Effect of Ad Integration and Interactivity on Young Teenagers' Memory, Brand Attitude and Personal Data Sharing' (2019) 99 *Computers in Human Behavior* 245.

⁴⁰ E. A. van Reijmersdal and E. Rozendaal, 'Transparency of Digital Native and Embedded Advertising: Opportunities and Challenges for Regulation and Education' (2020) 45 *Communications* 378; Rozendaal and Buijzen (n 22).

⁴¹ De Veirman, Hudders and Nelson (n 23).

The societal consequences of this blurred boundary between commercial and non-commercial content are substantial.

Integrated marketing practices capitalise on the fact that (young) consumers cannot wholly disregard the commercial message, as it is intrinsically interwoven with the informational component.⁴² Consequently, (young) consumers often encounter challenges in recognising persuasive commercial messages, impairing their ability to critically evaluate the content.⁴³

Persuasive tactic:

Integration

What is it?
The term refers to integration of commercial messages into non-commercial content.

What forms can it take?
The most common forms are format integration (entails embedding commercial messages in editorial context such as presenting an ad in the style of regular content), thematic integration (involves seamless incorporation of commercial message in thematically relevant content such as sports branding at sporting events), and narrative integration (entails integration of commercial message directly into storyline of regular content such as product placement in online videos).

What are potential risks for young people online?
The tactics of integration can lead to intensified blurring of boundaries between advertising and programme content, which, in turn, makes it more difficult for young people to recognise the persuasive intent of a message.

At a glance 1: Persuasive tactic - integration

As an illustration, research has shown that **children can better recognise traditional television commercials as marketing practices as compared to the following new formats relying on integration: advergames, sponsored**

⁴² L. Hellemans, E. Lievens and P. Valcke, 'Playing Hide-and-Seek? A Legal Perspective on the Complex Distinction between Commercial and Editorial Content in Hybrid Advertising Formats' (2015) 17 info 19.

⁴³ Rozendaal and Buijzen (n 22).

content and brand placement.⁴⁴ Although children can easily recognise and understand the concept of advertising banners, they have less understanding of the persuasive intent of commercial communication when exposed to advergames and sponsored content. They also find it more difficult to recognise the commercial nature of these digital marketing practices compared to television and online banners.

According to De Pauw et al., children in general do not actively look out for commercial communication that is embedded into entertaining or interactive media content. This also entails that children do not reflect on the tactics such new marketing practices employ (e.g., positive affect transfer, the collection of personal data).⁴⁵ According to Nairn and Fine, **these techniques are particularly likely to persuade young consumers in an implicit manner.**⁴⁶

Furthermore, there is also a trend of **using immersive technologies**, like virtual and augmented reality, as part of the marketing approach.⁴⁷ In addition to immersive gaming environments (see *infra*), the concept of the metaverse is garnering attention within the marketing industry – a virtual world accessible to consumers, where tracking and commercial surveillance can be even more streamlined and extensive than traditional digital platforms.⁴⁸

It is argued that **in the metaverse**, brands and marketers would be able to forge **deeper connections with (young) consumers**, by offering new levels of

⁴⁴ F. Loose and others, 'A Qualitative Approach to Unravel Young Children's Advertising Literacy for YouTube Advertising: In-Depth Interviews with Children and Their Parents' (2023) 24 Young Consumers 74 (ages 4-7); S. De Jans, L. Hudders and V. Cauberghe, 'Is reclame kinderspel?: Een vergelijking van de reclamewijsheden en reclame-effectiviteit van traditionele en online reclamevormen bij kinderen van verschillende leeftijden' ['Is advertising child's play: A comparison of the advertising evidence and advertising effectiveness of traditional and online forms of advertising among children of different ages'] (2020) 48 Tijdschrift voor Communicatiewetenschap <https://www.aup-online.com/content/journals/10.5117/2020.048.003.002> (ages 7-12); S. An, H. S. Jin and E. H. Park, 'Children's Advertising Literacy for Advergames: Perception of the Game as Advertising' (2014) 43 Journal of Advertising 63 (ages 8-9).

⁴⁵ P. De Pauw and others, 'From Persuasive Messages to Tactics: Exploring Children's Knowledge and Judgement of New Advertising Formats' (2018) 20 New Media & Society 2604.

⁴⁶ Nairn and Fine (n 36).

⁴⁷ O. Adeola and others, 'The Future of Marketing: Artificial Intelligence, Virtual Reality, and Neuromarketing' in O. Adeola, R. E. Hinson and AM Sakthivel (eds), Marketing Communications and Brand Development in Emerging Economies Volume I: Contemporary and Future Perspectives (Springer International Publishing 2022).

⁴⁸ S. Hollensen, P. Kotler and M. O. Opresnik, 'Metaverse – the New Marketing Universe' (2023) 44 Journal of Business Strategy 119; McKinsey & Company, 'Marketing in the Metaverse: An Opportunity for Innovation and Experimentation | McKinsey' (2022) <https://www.mckinsey.com/capabilities/growth-marketing-and-sales/our-insights/marketing-in-the-metaverse-an-opportunity-for-innovation-and-experimentation>.

integration, interaction and engagement.⁴⁹ Virtual reality (VR) headsets, for instance, allow users to interact with objects from a 360° perspective in virtual space, creating immersive simulations that enrich the consumer's product experience (see *infra*).

1.1.2 Interactive nature of the marketing practice

Another tactic used by digital marketers is **involving the consumer actively in marketing campaigns**. McMillan and Hwang have identified three dimensions of interactivity encompassing (1) **user control**, (2) **communication direction**, and (3) **temporal aspects**.⁵⁰

- **User control** pertains to the user's ability to search for and manage the quantity of information accessible online.
- Within the digital context, the **direction of communication** will often assume a two-way nature, given that internet users can readily engage in dialogue and interaction with others, including marketers and brands, online.
- The third dimension, **time**, underscores the synchronisation, as interaction may take place simultaneously or delayed.⁵¹

Beyond these three dimensions, scholars have argued that interactivity within marketing practices can be characterised by **different features**.⁵² For instance, contemporary marketing campaigns or strategies leverage the **constant connectivity** of young individuals and their **extensive use of digital media**. Moreover, **interactivity frequently intertwines with other persuasive tactics, such as personalisation and integration**. This is exemplified by practices like

⁴⁹ Y. K. Dwivedi and others, 'Metaverse Marketing: How the Metaverse Will Shape the Future of Consumer Research and Practice' (2023) 40 *Psychology & Marketing* 750.

⁵⁰ S. J. McMillan and J. Hwang, 'Measures of Perceived Interactivity: An Exploration of the Role of Direction of Communication, User Control, and Time in Shaping Perceptions of Interactivity' (2002) 31 *Journal of Advertising* 29.

⁵¹ V. Cauberghe and P. De Pelsmacker, 'Advergaming: The Impact of Brand Prominence and Game Repetition on Brand Responses' (2010) 39 *Journal of Advertising* 5; K. Daems and P. De Pelsmacker, 'Marketing Communication Techniques Aimed at Children and Teenagers. A Research Report within the Frame of the AdLit Project' (2015).

⁵² Daems and De Pelsmacker (n 51).

social games, where promotional messages are placed in a context where peers play a central role,⁵³ or targeted advertisements on social media.

Persuasive tactic:

Interaction

What is it?
The term refers to the interactive nature of (newer) marketing practices in which consumers are actively involved in a marketing campaign.

What dimensions are most relevant?
User control refers to the user's ability to search for and manage the quantity of information accessible online, direction of communication is often two-way in digital contexts, and time emphasises synchronous interaction. Furthermore, online marketing strategies leverage the constant connectivity of young people.

What are potential risks for young people online?
These tactics (typically occurring in combination with others) foster positive product or brand associations by delivering engaging interactive content to young people. Through the appeal of such interactive content, young people can become multipliers of commercial content, by producing and sharing it within their own networks. Furthermore, research found children to be more susceptible to the persuasive impact of marketing seamlessly integrated into interactive content such as social games.

At a glance 2: Persuasive tactic - interaction

Interactive marketing practices, like advergames and branded mobile applications, have emerged as invaluable tools for marketers, particularly when targeting children. These techniques **facilitate the creation of positive product or brand association by delivering engaging interactive content**.⁵⁴ Consequently, children transcend their passive roles as mere receivers of marketing messages and actively participate in the marketing process.⁵⁵ Marketers harness this dynamism,

⁵³ E. Rozendaal and others, 'Children's Responses to Advertising in Social Games' (2013) 42 Journal of Advertising 142.

⁵⁴ B. Feijoo and C. Sádaba, 'When mobile advertising is interesting: interaction of minors with ads and influencers' sponsored content on social media' (2022) 35 Communication & Society 15; A. D. Cheyne and others, 'Marketing Sugary Cereals to Children in the Digital Age: A Content Analysis of 17 Child-Targeted Websites' (2013) 18 Journal of Health Communication 563; A. Nairn and H. Hang, 'Advergames: It's Not Child's Play: A Review of Research' (Commissioned by the Family and Parenting Institute 2012) http://www.agnesnairn.co.uk/policy_reports/advergames-its-not-childs-play.pdf.

⁵⁵ Daems and De Pelsmacker (n 51); Kathryn C Montgomery and Jeff Chester, 'Interactive Food and Beverage Marketing: Targeting Adolescents in the Digital Age' (2009) 45 Journal of Adolescent Health S18.

encouraging young consumers to share and produce content to promote certain brands, products, and services within children's personal networks. This is achieved through various means, such as likes and comments, the use of sponsored filters in photos, or the sharing of videos featuring brand-related songs or products.⁵⁶ Also, immersive technologies, like virtual and augmented reality can be used to offer enhanced interactions between consumers and brands (see *supra*).⁵⁷

Furthermore, from this review, it appears that **children encounter notable challenges when applying their advertising literacy skills to interactive advertising**. It is generally acknowledged that peers such as friends or classmates wield significant influence in shaping children's commercial decision-making. Banerjee and Dittmar clarify that **as children mature, they come to believe that possessing specific products and brands dictates the quality of their friendships**.⁵⁸ In this context, the peer group establishes a benchmark for brands and products that are considered cool and desirable.

Additionally, Rozendaal et al. underscore the role of peer influence within the realm of social games, rendering **children more susceptible to the persuasive impact of marketing seamlessly integrated into these games**.⁵⁹ In accordance with these findings, Zarouali et al. found that **online peer communication on social media generally diminishes advertising literacy among adolescents** concerning commercial messages that appear in their newsfeeds.⁶⁰ More specifically, the study concluded that when adolescents chat with peers they might be less able to interpret a message containing social elements, such as likes of their friends, as being content originating from 'a persuasive agent' (i.e. an advertiser).⁶¹

⁵⁶ Daems and De Pelsmacker (n 51).

⁵⁷ Dwivedi and others (n 49).

⁵⁸ R. Banerjee and H. Dittmar, 'Individual Differences in Children's Materialism: The Role of Peer Relations' (2008) 34 Personality & Social Psychology Bulletin 17.

⁵⁹ Rozendaal and others (n 53).

⁶⁰ B. Zarouali and others, 'The Impact of Online Peer Communication on Adolescents' Persuasion Knowledge and Attitudes toward Social Advertising', *Paper presented at Etmaal van de Communicatiewetenschap 2017* (2017).

⁶¹ *ibid*.

1.1.3 Personalisation of digital marketing practices

A third persuasive tactic that has prominently emerged in recent years revolves around the **personalisation of digital marketing practices**.⁶² This development is attributed to technological advancements and the rise of data-driven business models, which have collectively led to the collection and processing of personal data on an ever-expanding scale. This is also true for young consumers, whose personal data is being gathered by various entities, from businesses to governmental bodies and educational institutions.⁶³ **Children's online activities are meticulously tracked, and the harvested data is converted into profiles**,⁶⁴ on the basis of which **marketers are able to target children** with personalised advertisements.

The literature review reveals that **personalised advertising techniques allow for a more effective transmission of the commercial message**, as advertisers can respond explicitly to a specific user's developmental level and knowledge base.⁶⁵ This is a distinct advantage when it comes to building a strong and lasting personal interaction and connection with the (child) consumer. Research has shown that commercial messages aligned with the interests and behaviour of consumers tend to cultivate a more positive brand attitude. **Such messages are perceived as less intrusive, more pertinent and useful, ultimately elevating consumers' intent to make purchases**.⁶⁶ Moreover, Yan et al. observed a substantial surge in click-through rates for marketing practices employing behavioural targeting techniques.⁶⁷ However, it is worth noting that the **level of personalisation** of marketing can vary depending on the types and amount of

⁶² M. Walrave and others, 'Like or dislike? Adolescents' responses to personalized social network site advertising' (2018) 24 Journal of Marketing Communications 6.

⁶³ D. Lupton and B. Williamson, 'The Datafied Child: The Dataveillance of Children and Implications for Their Rights' (2017) 19 New Media & Society 780; S. van der Hof, 'I Agree, or Do I: A Rights-Based Analysis of the Law on Children's Consent in the Digital World' (2016) 34 Wis. Int'l LJ 409.

⁶⁴ F. Bosco and others, 'Profiling Technologies and Fundamental Rights and Values: Regulatory Challenges and Perspectives from European Data Protection Authorities', Reforming European Data Protection Law (Springer 2015) http://link.springer.com/chapter/10.1007/978-94-017-9385-8_1.

⁶⁵ S. L. Calvert, 'Children as Consumers: Advertising and Marketing.' (2008) 18 The Future of Children 205.; Cauberghe and others (n 14).

⁶⁶ L. F. Bright and T. Daugherty, 'Does Customization Impact Advertising Effectiveness? An Exploratory Study of Consumer Perceptions of Advertising in Customized Online Environments' (2012) 18 Journal of Marketing Communications 19; A. Ghose and S. Yang, 'An Empirical Analysis of Search Engine Advertising: Sponsored Search in Electronic Markets' (2009) 55 Management Science 1605; Walrave and others (n 62).

⁶⁷ J. Yan and others, 'How Much Can Behavioral Targeting Help Online Advertising?', Proceedings of the 18th international conference on World wide web (ACM 2009) <http://dl.acm.org/citation.cfm?id=1526745>; De Pauw and others (n 45).

personal data used.⁶⁸ **Excessive personalisation in a commercial message may lead to consumers perceiving it as a breach of their privacy,**⁶⁹ which was also validated in a study examining the effects of retargeting on adolescents (16-18 years).⁷⁰

The literature review also reveals a concerning trend where both **children and adolescents remain largely unaware of the pervasive tracking and commercial targeting** that occurs in the **online** environment.⁷¹ Research findings illustrate that among children aged 9 to 11, even though some could recognise a personalised advertisement (when it was not integrated in the media content), very few comprehended that these marketing practices were tailored based on their previous browsing behaviour.⁷²

⁶⁸ S. C. Boerman, S. Kruikemeier and F. J. Zuiderveen Borgesius, 'Online Behavioral Advertising: A Literature Review and Research Agenda' (2017) 46 Journal of Advertising 363.

⁶⁹ M. L. Anteunis and G. van Noort, 'Interactivity Effects in Social Media Marketing on Brand Engagement: An Investigation of Underlying Mechanisms, The 10th ICORIA Conference Berlin' (2011). In relation to this, research has shown that there could even be 'reactance', where consumers mentally resist persuasive attempts and even do the opposite of the advertiser's wishes. J. van Doorn and J.C. Hoekstra, 'Customization of Online Advertising: The Role of Intrusiveness' (2013) 24 Marketing Letters 339.

⁷⁰ B. Zarouali and others, "'Do You like Cookies?'" Adolescents' Skeptical Processing of Retargeted Facebook-Ads and the Moderating Role of Privacy Concern and a Textual Debriefing' (2017) 69 Computers in Human Behavior 157.

⁷¹ S. C. Boerman, S. Kruikemeier and F. J. Zuiderveen Borgesius, 'Online Behavioral Advertising: A Literature Review and Research Agenda' (2017) 46 Journal of Advertising 363.

⁷² De Pauw and others (n 45).

Persuasive tactic:

Personalisation

What is it?

The term refers to a tactic that harvests data from tracking children's online activities and converts these into profiles on the basis of which marketers are able to target children.

What are potential risks for young people online?

Research found that personalised advertising techniques allow for a more effective transmission of commercial messages and that children and young people often remain largely unaware of the pervasive tracking and commercial targeting online. They frequently perceive such personalised messages as less intrusive, more pertinent, and useful, ultimately elevating their intent to make purchases. However, research also found that excessive personalisation of commercial messages may also be perceived by young people as a breach of their privacy.

At a glance 3: Persuasive tactic - personalisation

Shifting the focus to teenagers, who are frequent users of social media, we find a similar lack of awareness regarding data collection and personalisation tactics.⁷³ One study shows that while children's advertising literacy for these tactics tends to improve with age, almost half of 17-year-olds exhibit a limited understanding of persuasion tactics, with many failing to grasp the underlying data processing practices in these advertisements.⁷⁴

Moreover, **teenagers frequently lack awareness regarding the commercial use of their personal information and are susceptible to the persuasive effects of personalised advertising.** Their coping strategies also often prove inadequate in this context.⁷⁵ Some studies suggest that teenagers may exhibit minimal concern regarding personalised marketing practices and the preceding data

⁷³ M. Stoilova, R. Nandagiri and S. Livingstone, 'Children's Understanding of Personal Data and Privacy Online – a Systematic Evidence Mapping' (2021) 24 Information, Communication & Society 557.

⁷⁴ B. Zarouali and others, 'Adolescents' Advertising Literacy and Privacy Protection Strategies in the Context of Targeted Advertising on Social Networking Sites: Implications for Regulation' (2020) 21 Young Consumers 351.

⁷⁵ S. Holvoet and others, 'Exploring Teenagers' Folk Theories and Coping Strategies Regarding Commercial Data Collection and Personalized Advertising' (2022) 10 Media and Communication 317.

collection. More specifically, teenagers increasingly prioritise the social value of their online participation, downplaying potential associated risks, and subsequently accepting commercial data collection without significant privacy concerns.⁷⁶

However, it is important to exercise caution in generalising these findings. A systematic evidence review of children's understanding of privacy and data protection from 2021 showed that there is still a gap in research about children's understanding of businesses drawing inferences from data collected about them.⁷⁷

1.1.4 Use of emotion in (digital) marketing practices

A fourth persuasive tactic is the use of emotion. To some extent, one could argue that all marketing messages aim to **evoke an emotional response from consumers**. More specifically, marketers seek to elicit emotional responses in order to create awareness, positive brand association, and an emotional desire for a product or service.⁷⁸

In this context, both positive and negative appeals may be used to elicit an emotional response.⁷⁹ Whereas positive appeals promise positive emotions as a result of the use or purchase of the advertised product or service⁸⁰, negative appeals associate negative consequences for those who fail to comply with the marketing message.⁸¹ However, while **positive appeals have long been viewed as a safe approach to capturing consumer attention and influencing their attitudes**, there is **less consensus** within the scientific community **regarding the efficacy of employing negative emotions** in marketing practices.⁸²

⁷⁶ S. Youn and W. Shin, 'Adolescents' Responses to Social Media Newsfeed Advertising: The Interplay of Persuasion Knowledge, Benefit-Risk Assessment, and Ad Scepticism in Explaining Information Disclosure' (2020) 39 International Journal of Advertising 213; G. Hasselbalch Lapenta and R. Frank Jørgensen, 'Youth, Privacy and Online Media: Framing the Right to Privacy in Public Policy-Making' (2015) First Monday <https://firstmonday.org/ojs/index.php/fm/article/view/5568>.

⁷⁷ Stoilova, Nandagiri and Livingstone (n 73).

⁷⁸ V. Verdoodt, D. Clifford and E. Lievens, 'Toying with Children's Emotions, the New Game in Town? The Legality of Advergaming in the EU' (2016) 32 Computer Law & Security Review 599.

⁷⁹ N. Henley, R. J. Donovan and H. Moorhead, 'Appealing to Positive Motivations and Emotions in Social Marketing: Example of a Positive Parenting Campaign' (1998) 4 Social Marketing Quarterly 48.

⁸⁰ O. L. Reed and J. L. Coalson, 'Eighteenth-Century Legal Doctrine Meets Twentieth-Century Marketing Techniques: F.T.C. Regulation of Emotionally Conditioning Advertising' (1976) 11 Georgia Law Review 733.

⁸¹ Verdoodt, Clifford and Lievens (n 78).

⁸² M. Balconi, M. Sansone and L. Angioletti, 'Consumers in the Face of COVID-19-Related Advertising: Threat or Boost Effect?' (2022) 13 Frontiers in Psychology <https://www.frontiersin.org/articles/10.3389/fpsyg.2022.834426>.

Emotions can shape decision-making⁸³ in two important ways:

- Certain emotions are associated with different patterns of cognitive assessments that **allow to predict the outcome of the decision-making process** (e.g., anger or joy).
- Emotions influence how individuals process information and whether they do so superficially or in detail.⁸⁴

Marketers aim at inducing emotional responses with consumers to **create awareness and positive brand associations**.⁸⁵ In turn, this will evoke an emotional desire for the advertised product or service, which motivates them to take action.⁸⁶ **Emotional appeals can be used both for the content and the delivery of the commercial message.** With regard to the latter, **gamification elements** are often used to exploit cognitive biases, including when a marketing campaign is targeted at children.⁸⁷ For instance, by using elements such as countdowns (e.g., counting down the time left until a certain offer is no longer valid), marketers make use of people's loss aversion and their tendency to evaluate potential losses as larger and more significant than equivalent gains.⁸⁸

⁸³ J. S. Lerner and others, 'Emotion and Decision Making' (2015) 66 Annual Review of Psychology 799.

⁸⁴ C. R. Hullett, 'The Impact of Mood on Persuasion: A Meta-Analysis' (2005) 32 Communication Research 423; D. Clifford, 'Citizen-Consumers in a Personalised Galaxy: Emotion Influenced Decision-Making, a True Path to the Dark Side?' (2017).

⁸⁵ S. Bansal and M. Gupta, 'Towards Using Artificial Intelligence in Neuromarketing' (2022).

⁸⁶ *ibid.*

⁸⁷ Z. M. C. van Berlo, E. A. van Reijmersdal and M. Eisend, 'The Gamification of Branded Content: A Meta-Analysis of Advergame Effects' (2021) 50 Journal of Advertising 179; R. Terlutter and M. L. Capella, 'The Gamification of Advertising: Analysis and Research Directions of In-Game Advertising, Advergames, and Advertising in Social Network Games' (2013) 42 Journal of Advertising 95.

⁸⁸ Koh W. C. and Seah Y. Z., 'Unintended Consumption: The Effects of Four e-Commerce Dark Patterns' (2023) 11 Cleaner and Responsible Consumption 100145.

Persuasive tactic:

Use of emotion

What is it?

A final persuasive tactic aims to evoke an emotional response from people who come in contact with the commercial message or content. While positive emotional appeals have long been viewed as a safe approach to capturing attention and influence attitude, there is less consensus regarding the efficacy of negative emotional appeals.

What are potential risks for young people online?

These tactics can become a risk for children and young people online as emotions can shape decision-making in two ways: First, certain emotions are associated with patterns of cognitive assessment, allowing to predict the outcome of decision-making. Second, emotions have an influence on how people process information and whether they do so superficially or more in-depth. Research has shown that highly affective media content makes it difficult for children to apply their advertising literacy skills to process the persuasive message in a critical manner.

At a glance 4: Persuasive tactic - use of emotion

The review shows that **highly affective media content does not motivate children to process the content critically**. Indeed, as children need all their cognitive capacities to process and understand the media content, they do not have the capacity to critically evaluate the commercial message as well.⁸⁹ Furthermore, the affect-based nature of digital marketing also makes it difficult for children to apply their advertising literacy skills as a defence against the persuasive message.⁹⁰

In the online world, emotions are now easier to detect, and artificial intelligence can be used to create **emotion-based marketing messages**. Furthermore, research with young adults has shown that consumer exposure to brands facilitated by **VR-**

⁸⁹ M. K. Waiguny, M. R. Nelson and R. Terlutter, 'The Relationship of Persuasion Knowledge, Identification of Commercial Intent and Persuasion Outcomes in Advergates—the Role of Media Context and Presence' (2014) 37 Journal of Consumer Policy 257; Rozendaal and others (n 14); S. An and S. Stern, 'Mitigating the Effects of Advergates on Children: Do Advertising Breaks Work?' (2011) 40 Journal of Advertising 43.

⁹⁰ E. Rozendaal, Advertising Literacy and Children's Susceptibility to Advertising (2011) <https://dare.uva.nl/search?identifier=59a96c2a-1dd8-4fbc-8ac1-1c0cf4836420>.

technology can evoke emotional responses - which drive both brand attitude and purchase intention.⁹¹

This cross-cutting trend in marketing will be addressed in more detail in the following section.

⁹¹ Z. M. C. van Berlo and others, 'Brands in Virtual Reality Games: Affective Processes within Computer-Mediated Consumer Experiences' (2021) 122 Journal of Business Research 458.

1.2 (Emerging) digital marketing practices targeting children and cross-cutting trends

Children eagerly engage with digital technologies. Recent studies show that they devote a substantial portion of their time to consuming a wide array of audiovisual and social media content across various devices online.⁹² User-generated content has become part of the daily media diet of many young viewers around the world.⁹³

In particular, video-sharing and social media platforms, like YouTube and TikTok, have emerged as particularly popular choices among children.⁹⁴ Notably, a significant number of the most-liked YouTube channels are specifically tailored to children, and content creators have recognised that videos on topics appealing to children attract a lot of views.

Research reveals that **YouTube is the most widely used platform among children**, with impressive numbers ranging from 88 per cent of 3- to 17-year-olds in the United Kingdom,⁹⁵ to 86 per cent of 6- to 12-year-olds and 96 per cent of 13- to 18-year-olds in Flanders.⁹⁶ **TikTok has also gained substantial popularity**, being used by more than 50 per cent of children in the UK and Flanders, with numbers climbing to 86 per cent for the older ones.⁹⁷

An EU-wide consultation with children regarding their technology usage yielded similar findings. Respondents highlighted various reasons for using digital platforms, such as watching sports, instructional videos, humorous content, and even culinary-related material.⁹⁸

⁹² European Schoolnet, 'How to Make Europe's Digital Decade Fit for Children and Young People?' (2022) <https://www.betterinternetforkids.eu/documents/167024/6847388/How+to+make+Europe%E2%80%99s+Digital+Decade+fit+for+children+and+young+people+-+A+report+from+the+consultation+with+children+and+young+people+-+October+2021.pdf/ae344db2-5b56-0f67-625e-a66244aa023c?t=1633359093370>.

⁹³ C. Goanta and S. Ranchordás, *The Regulation of Social Media Influencers* (Edward Elgar Publishing 2020).

⁹⁴ Ofcom, 'Children and Parents: Media Use and Attitudes 2023' (2023); D Smahel and others, 'EU Kids Online 2020: Survey Results from 19 Countries' (2020).

⁹⁵ Ofcom (n 94).

⁹⁶ H. Vanwynsberghe and others, 'Onderzoeksrapport Apestaartjaren : De Digitale Leefwereld van Kinderen En Jongeren. Mediaraven.' ['Research Report *Apestaartjaren*: The Digital World of Children And Adolescents.'] (Mediawijs 2022) https://assets.mediawijs.be/2022-05/apestaartjaren_2022_210x210_issuu.pdf.

⁹⁷ Ofcom (n 94); Vanwynsberghe and others (n 96).

⁹⁸ European Schoolnet (n 92).

Aside from video-sharing and social media platforms, children are also actively engaging in **interactive gaming environments and feel passionate about this pastime**.⁹⁹ The 2020 EU Kids Online survey found that playing online games is a common entertainment activity in most countries, engaged in daily by many children, ranging from 27 per cent (Slovakia) to 71 per cent (Lithuania).¹⁰⁰ Research in Flanders from 2022 shows that 21 per cent of 6- to 12-year-olds spend 1 to 2 hours a day on gaming, compared to 28 per cent of 12- to 18-year-olds.¹⁰¹ These trends in children's digital media use have been closely followed by marketers and advertisers.¹⁰² Despite a notable slowdown in the growth of **digital ad spending** in 2022, this sector continues to anticipate double-digit annual increases over the coming years.¹⁰³ In particular, digital advertising spending aimed at children is expected to grow annually and reach around 21,1 billion US dollars worldwide by 2031.¹⁰⁴

In other words, in today's digital landscape, children must navigate an evolving online environment in which the **content they consume and interact with is (often) leveraged for commercial purposes**. The literature review highlighted two important digital marketing practices employed to target children, namely **influencer marketing** and **in-game advertising**. In relation to the latter, the business models of video gaming have evolved significantly over time, with microtransactions and **data-driven** marketing taking over. Many digital platforms and services are now tailored to individual preferences and behaviours, offering a personalised user experience. While this enhances engagement and relevance, it also ushers in concerns regarding the personalisation of commercial offers.

Finally, the literature review highlights a broader more cross-cutting issue in the area of digital marketing. This entails **harnessing emotions for marketing**

⁹⁹ *ibid.*

¹⁰⁰ Smahel and others (n 94) 30.

¹⁰¹ Vanwynsberghe and others (n 96) 19.

¹⁰² Loose and others (n 19).

¹⁰³ E. Cramer-Flood, 'Worldwide Digital Ad Spending 2023 - Insider Intelligence Trends, Forecasts & Statistics' (2023) <https://www.insiderintelligence.com/content/worldwide-digital-ad-spending-2023>.

¹⁰⁴ Statista Research Department, 'Global Kids Digital Ad Spend 2021' (*Statista*, 2021)

<https://www.statista.com/statistics/1326893/children-digital-advertising-spending-worldwide/>.

purposes, for instance, by relying on neuromarketing research or emotional analytics and targeting. With the advancements in artificial intelligence, these practices are poised to become even more effective and widespread. In the following sections, we will explore these issues in greater depth.

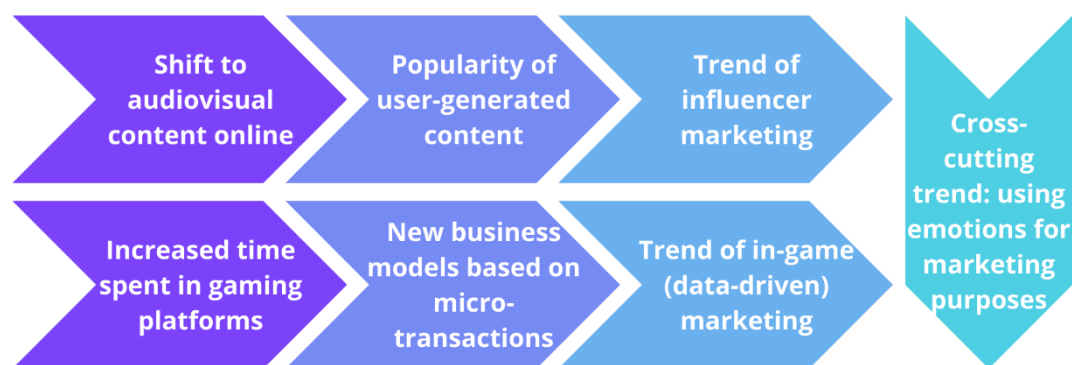


Figure 1: Visualisation of trends in children's digital experiences and in marketing

1.2.1 Influencer marketing

Within this evolving marketing landscape, **influencer marketing** has emerged as a standout phenomenon. Influencers typically grant their audiences an insight into their preferred products and, in many cases, they even give direct recommendations on which products (not) to use.¹⁰⁵ These messages are conveyed via the **platform(s)** deployed by the influencer in question (e.g., video-sharing platforms, social media platforms, video game live streaming platforms). In return for the endorsement of a promoted product, influencers usually receive free promotional goods or payment, granted **by the provider of the featured product or service**.

In the context of influencer marketing, the key actors to be identified are as follows:

¹⁰⁵ S. De Jans, V. Cauberghe and L. Hudders, 'How an Advertising Disclosure Alerts Young Adolescents to Sponsored Vlogs : The Moderating Role of a Peer-Based Advertising Literacy Intervention through an Informational Vlog' (2018) 47 Journal of Advertising 309.

- The influencer.
- The provider of the promoted product or service.
- The platform via which the message is conveyed (e.g., a video-sharing platform).
- If applicable, an advertising agency or marketer functioning as an intermediary between the influencer and the provider of the promoted product or service.
- The consumer, in this case a child, generating and disclosing (personal) data through the consumption of the influencer's content.

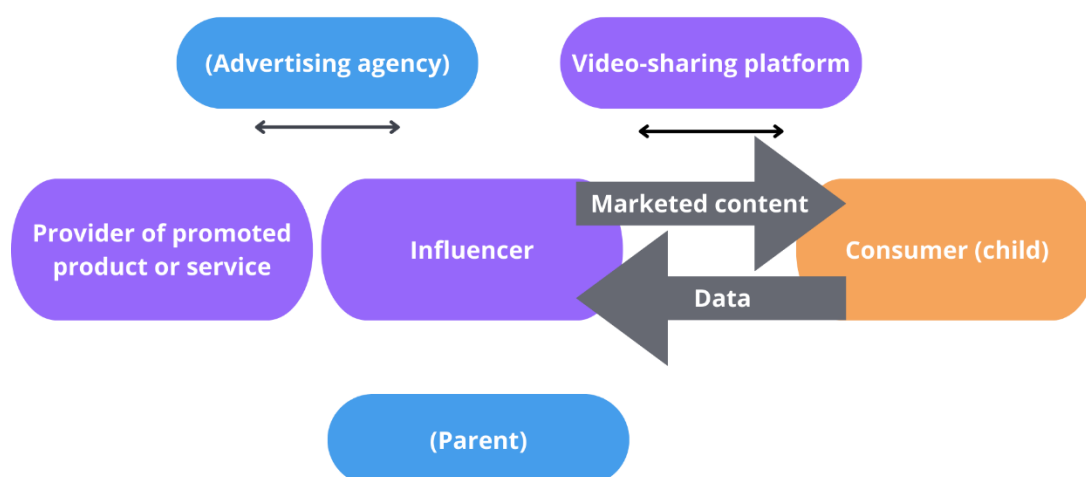


Figure 2: The chain of actors involved in influencer marketing

Influencers are not exclusively adults. In **child influencer** ('kidfluencer') marketing, minor children are endorsing promoted products or services. For example, YouTube channel 'Ryan's World' features a young boy named Ryan, playing with and reviewing branded products. It is one of the most watched YouTube channels for children and he is one of the highest-paid YouTubers, earning no less than 30 million US dollars in 2023.¹⁰⁶ In the case of child influencer marketing, an additional relevant actor can be identified: the child's **parent**.

¹⁰⁶ 'Ryan Kaji' (Forbes) <https://www.forbes.com/profile/ryan-kaji/>.

Research shows that **the majority of influencers followed by young individuals actively endorse brands or products** through their accounts.¹⁰⁷ According to statistics from the Influencer Marketing Hub, influencer marketing has not only gained **widespread popularity** but has also proven to be **highly effective** in the realm of online advertising.¹⁰⁸ Its global market value has more than doubled since 2019, surging to an impressive 21.1 billion US dollars in 2023, with expectations of further acceleration in the future.¹⁰⁹

Digital marketing practices:

Influencer marketing

What is it?
The term refers to a marketing practice where influencers grant their audiences an insight into their preferred products, and, in many cases, give direct recommendations on which products (not) to use. These messages are conveyed across influencers' profiles on different platforms (e.g., TikTok, Instagram, YouTube). Marketers 'pay' to be featured in these types of contents, for instance, by giving free promotional goods or payments to the influencer. It is important to note that influencers are not exclusively adults. Sometimes, it is a minor child (child influencer, 'kidfluencer' who endorses promoted products or services online, often along with (a) parent(s)/guardian(s).

What are potential risks for young people online?
This type of marketing practice can become deceptive for young people, as it leverages the relationships that young people have developed towards influencers and content creators on social media platforms, as they perceive them as very relatable and approachable. Research has shown that children are more receptive to the (commercial) messages and consider themselves affected by endorsements in influencer videos.

At a glance 5: Digital marketing practices - influencer marketing

¹⁰⁷ For example see B. Halefoğlu and O. Demir, 'How Are Instagram Influencers Perceived by Different Generations?' (2022) International Journal of Arts and Social Studies.

¹⁰⁸ For more information see <https://influencermarketinghub.com/influencer-marketing-benchmark-report/>.

¹⁰⁹ Dencheva, 'Global Influencer Market Size 2023' (Statista, 2023) <https://www.statista.com/statistics/1092819/global-influencer-market-size/>; F. Michaelsen and others, 'The Impact of Influencers on Advertising and Consumer Protection in the Single Market' (Policy Department for Economic, Scientific and Quality of Life Policies Directorate-General for Internal Policies 2022).

The review revealed that **user-generated content significantly influences consumers' brand perspective, brand choices and new consumer acquisition**.¹¹⁰ For children particularly, digital influencers are perceived as very relatable and approachable, as they share the same interests and activities.¹¹¹ Furthermore, children readily recall products and brands featured in influencer videos, and considered themselves and others affected by endorsements in vlogs.¹¹²

The implications of these findings have not gone unnoticed by the advertising and marketing industry, propelling influencer marketing to the forefront as one of the most popular and effective forms of online advertising. As a consequence, becoming an influencer has become an appealing career choice for many young individuals, allured by the opportunities and financial incentives accompanying their influential digital presence.¹¹³ Studies also indicate that **audiences exposed to brand promotions by influencers on platforms like Instagram tend to exhibit more favourable attitudes toward the promoted brands** compared to traditional celebrities.¹¹⁴

In addition, one study shows that teenagers (12-16) generally exhibit a non-judgmental attitude towards influencers, making them more receptive to the messages conveyed.¹¹⁵ Neuroscience research underscores the preference for photographs with a high number of likes, a common occurrence in influencer posts, further cementing their influence in the digital environment.¹¹⁶

¹¹⁰ M. Mayrhofer and others, 'User Generated Content Presenting Brands on Social Media Increases Young Adults' Purchase Intention' (2020) 39 The Review of Marketing Communications; M. Naeem and S. Okafor, 'User-Generated Content and Consumer Brand Engagement' (2019) in G. Bowen and S. Ozuem, Leveraging Computer-Mediated Marketing Environments (IGI Global); M. Trusov, R.E. Bucklin and K. Pauwels, 'Effects of Word-of-Mouth versus Traditional Marketing: Findings from an Internet Social Networking Site' (2009) 73 Journal of marketing 90; T. W Gruen, T. Osmonbekov and A. J. Czaplewski, 'eWOM: The Impact of Customer-to-Customer Online Know-How Exchange on Customer Value and Loyalty' (2006) 59 Journal of Business Research 449.

¹¹¹ De Veirman, Hudders and Nelson (n 23).

¹¹² F. Folkvord and others, 'Children's Bonding with Popular YouTube Vloggers and Their Attitudes toward Brand and Product Endorsements in Vlogs: An Explorative Study' (2019) 20 Young Consumers <https://doi.org/10.1108/YC-12-2018-0896>.

¹¹³ T. Hödl and T. Myrach, 'Content Creators Between Platform Control and User Autonomy' (2023) Business & Information Systems Engineering; Michaelsen and others (n 109).

¹¹⁴ S. Venus Jin, A. Muqaddam and E. Ryu, 'Instafamous and Social Media Influencer Marketing' (2019) 37 Marketing Intelligence & Planning 567.

¹¹⁵ S. van Dam and E. van Reijmersdal, 'Insights in Adolescents' Advertising Literacy, Perceptions and Responses Regarding Sponsored Influencer Videos and Disclosures' (2019) 13 Cyberpsychology: Journal of Psychosocial Research on Cyberspace.

¹¹⁶ L. E. Sherman and others, "Peer Influence Via Instagram: Effects on Brain and Behavior in Adolescence and Young Adulthood" (2018) 89 Child development 37.

Moreover, a recent study into the effectiveness of mandatory disclosures of the commercial intent of a message – a requirement enshrined in several EU legislative instruments, such as the Audiovisual Media Services Directive (see *infra*), revealed noteworthy findings. The study encompassed early adolescents (aged 12 to 14) and middle adolescents (aged 15 to 16) and indicated that **the presence of a disclosure had no discernible impact on the purchasing intentions of adolescents across both age groups**.¹¹⁷ These insights underscore the complex dynamics at play within influencer marketing and raise critical issues for policymakers and researchers to address.

The **susceptibility of young consumers to influencer marketing**, driven by their extensive use of social media platforms coupled with relatively lower levels of advertising literacy, raises **concerns regarding the potential manipulative character of such practices**. Certain influencer marketing approaches have been shown to have adverse effects on consumers, including those who are vulnerable, such as children and teenagers (e.g., increasing overall materialistic behaviour, being confronted with age-inappropriate content, affecting expectations about body image).¹¹⁸ Findings also suggest that preschool children exhibit advertising literacy skills when it comes to TV commercials and YouTube pre-roll advertisements, but lack the same level of understanding for influencer marketing.¹¹⁹

Furthermore, as follower counts and likes are key metrics for assessing the reach of commercial messages, brands and other commercial actors seek out influencers with substantial audiences. This dynamic has fostered a culture where some influencers resort to unethical marketing practices, like purchasing fake followers (e.g., through bots and click-farms).¹²⁰ Research further indicates that **young viewers exhibit a strong attraction to 'dramatic videos'** characterised by elements of "*gossip, conflict, controversy, extreme challenges and high stakes*".¹²¹

¹¹⁷ E. A. van Reijmersdal and S. van Dam, 'How Age and Disclosures of Sponsored Influencer Videos Affect Adolescents' Knowledge of Persuasion and Persuasion' (2020) 49 Journal of Youth and Adolescence 1531.

¹¹⁸ Michaelsen and others (n 113).

¹¹⁹ Loose and others (n 19).

¹²⁰ De Veirman, Cauberghe and Hudders (n 16).

¹²¹ Ofcom, 'Children's Media Lives' (2023) https://www.ofcom.org.uk/__data/assets/pdf_file/0025/255850/childrens-media-lives-2023-summary-report.pdf.

This audience preference may serve **as a motivating factor for influencers to produce content aligning with these themes.**

Anticipated in the area of influencer marketing is a forthcoming shift toward more data-driven practices.¹²² This shift is driven, in part, by recent regulatory restrictions on targeted advertising to children (see *infra* on the Digital Services Act). Consequently, it is anticipated that businesses may increasingly turn to influencer marketing as an alternative approach. Influencers already share account metrics when collaborating with brand owners, including on average likes and comments, as well as aggregated demographic statistics on the age, gender and location of their followers. Especially those influencers who possess a good understanding of their community can offer valuable insights to brands. Marketers can leverage this knowledge when selecting influencers whose followers align most effectively with the brand's target demographic. Furthermore, these insights can inform the customisation of marketing messages, geographic targeting, engagement optimisation, content strategies, and various other aspects of influencer marketing campaigns.¹²³

1.2.2 In-game (data-driven) marketing

The **gaming environment** has also emerged as one of the most prominent and effective channels for marketing practices targeting children. A prominent example is in-game advertising. It entails that an **advertiser** uses a **video game or gaming platform** in order to commercially promote their products or services. In-game marketing can take on many forms, varying from¹²⁴ ad pop-ups or product placement in the game itself to advergames – games specifically designed to promote a certain product or brand¹²⁵ – and offers to purchase in-game goods. As

¹²² L. Hartley, 'Digital Services Act: Considerations for Influencer Marketing' (Clifford Chance Media and entertainment - Talking Tech) <https://www.cliffordchance.com/content/cliffordchance/insights/resources/blogs/talking-tech/en/articles/2021/03/digital-services-act--considerations-for-influencer-marketing.html>.

¹²³ C. Brown, 'Creating Data-Driven Influencer Marketing Campaigns' (Forbes, 2023) <https://www.forbes.com/sites/forbesbusinesscouncil/2023/04/13/creating-data-driven-influencer-marketing-campaigns/>; F. Hyba, 'Understanding Data-Driven Influencer Marketing: Data Breadth and Depth | Phyllo' <https://www.getphyllo.com/post/data-driven-influencer-marketing-data-breadth-and-depth-depth>.

¹²⁴ Please note that this list is non-exhaustive.

¹²⁵ EASA (n 17).

regards the latter two techniques, the provider of the promoted goods or services and the gaming platform concern the same entity.

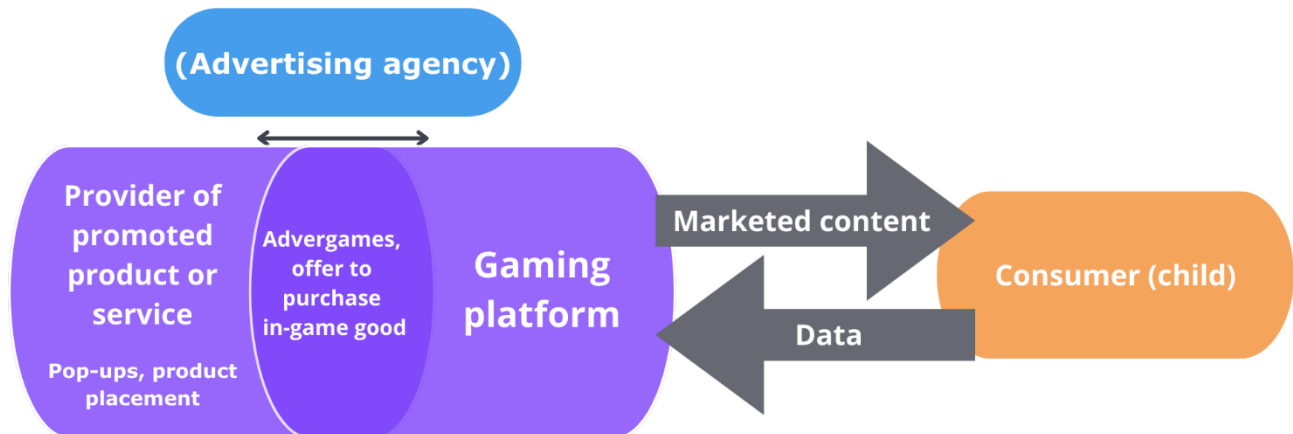


Figure 3: The chain of actors involved in in-game marketing

The relevant actors to be identified in the case of in-game marketing thus include:

- the provider of the promoted product or service.
- the gaming platform or video game provider.
- if applicable, an advertising agency or marketer functioning as an intermediary between the gaming platform and the provider of the promoted product or service.
- the consumer, in this case a child, generating and disclosing (personal) data while playing the game.

Beyond these main actors it has also been argued that marketing or other commercial practices in the video game environment should be assessed within the **broader video gaming ecosystem**.

Digital marketing practices:

In-game (data-driven) marketing

What is it?

This term refers to the practice of advertisers using video games or gaming platforms to commercially promote products or services.

What forms can it take?

This type of marketing can come in a variety of shapes and forms, varying from ad pop-ups, over product placements in the gameplay itself, to offers to purchase in-game goods and advergames. The latter are games that have been specifically designed to promote a certain product or brand.

What are the potential risks for young people online?

Aside from the fact that advergames remain frequently unrecognised as advertising by younger gamers, research has shown that video gaming ecosystems often comprise many layers that subtly influence players to spend time and money on/in the game. This means that aside from in the game itself, gamers may also be rewarded for linking their social media account to their player account and may be encouraged to play and spend more by gaming live streamers who are sponsored by the game provider.

In addition, videogame business models increasingly rely on microtransactions. One example is when playing a game on a smartphone, gamers must watch ad pop-ups in between game play (which, in turn, are designed based on insights from vast bodies of collected gamer data to be ever more effective). Alternatively, gamers can choose to pay a small amount of money to skip these ads.

Other examples are loot boxes, where gamers can pay to obtain certain in-game items without knowing beforehand which items they will obtain.

These types of money transfers are referred to as microtransactions, and can become difficult to keep track of, especially for children and young people, because games typically use in-game or virtual currencies. It might be unclear for young gamers whether or how much real money they spend.

At a glance 6: Digital marketing practices - in-game marketing

Research has shown that **video gaming ecosystems often comprise multiple layers that subtly influence players to spend time and money in the game,**

and where real and virtual currencies can become blurred.¹²⁶ Within these layers, different marketing messages and formats may be disseminated, such as pop-ups featuring time limited offers both within the game and its associated app, rewards for players who link their social media accounts to their player account, and sponsored videos created by gaming live streamers. These actors collectively contribute to and shape the complex landscape of in-game marketing.

Market research shows that with each younger generation, gaming engagement increases, and estimates that global player numbers will continue to grow to reach 3.1 billion players by the end of 2027.¹²⁷ Furthermore, there is the exponential growth of the global video gaming market, with estimates projecting its value to reach up to 321 billion US dollars by 2026.¹²⁸ Integral to this development are **microtransactions**, which have assumed a substantial role, as **in-game spending and mobile revenue account for more than half of the global market** according to market research agencies.¹²⁹ Indeed, there has been an important shift from traditional one-time transactions at physical game stores to ongoing smaller payments known as microtransactions occurring throughout gameplay.

This transformation has evolved alongside the digitisation of distribution channels and the increasing influence of game analytics. In relation to the latter, developers have skilfully applied a data-driven approach to extract data of gamers (e.g., location, in-app behaviour, likes), based on which marketing is tailored. For example, research has shown that such a **data-driven marketing approach** is used to design pop-up advertisements in games.¹³⁰ Such game-based and data-driven marketing practices are getting more popular because of, among other

¹²⁶ For more information about the media, design and legal implications of these different layers, see M. Denoo and others, 'Loot Boxes as Part of a Layered Platform Ecosystem' [Forthcoming] Convergence.

¹²⁷ J. Clement, 'Global Video Game Users 2027' (Statista, 2023) <https://www.statista.com/statistics/748044/number-video-gamers-world/>.

¹²⁸ S. Read, 'Gaming Is Booming and Is Expected to Keep Growing. This Chart Tells You All You Need to Know.' (World Economic Forum, 2022) <https://www.weforum.org/agenda/2022/07/gaming-pandemic-lockdowns-pwc-growth/>.

¹²⁹ Newzoo, 'Global Games Market Report 2023' (2023) <https://newzoo.com/resources/trend-reports/newzoo-global-games-market-report-2023-free-version>; The Business Research Company, 'Online Microtransaction Global Market Report' (2023) <https://www.thebusinessresearchcompany.com/report/online-microtransaction-global-market-report>.

¹³⁰ A. Zaib Abbasi and others, 'Do Pop-up Ads in Online Videogames Influence Children's Inspired-to Behavior?' (2022) 23 Young Consumers: Insight and Ideas for Responsible Marketers 362.

things, the personalisation and the large online gaming community and their engagement in online video games. The game gets to know the users and exploits what triggers them, including predicting which users will turn into buyers of in-game content.¹³¹ Some of these games have millions of players worldwide, whose data is collected and fed into supervised machine learning algorithms to create detailed user profiles.

In addition to collecting player data within the game, the **integration of social media** into video games has made it possible to collect and link game behaviour to what players are doing outside the game.¹³² This integration gives rise to a multitude of nudging techniques used within the broader video gaming ecosystem, all geared towards enhancing player engagement and encouraging in-game spending through the utilisation of data surveillance.¹³³

Various in-game marketing practices wield different impacts on children's advertising literacy. These practices encompass different forms, such as **pop-up advertising** that momentarily disrupt a child's gaming experience. Such advertisements manifest across multiple stages of the game, including pre-game, inter-level, and post-game promotions. These may appear in the form of videos during loading screens, within gameplay, or as commercial messages at the end of the game.¹³⁴

Research conducted with 10- to 14-year-olds, shows that this age group often struggles to distinguish between such in-game advertisements and the actual gameplay. They tend to **perceive these ads as integral components of the game itself**, rather than as distinct promotional content. Consequently, children often exhibit a lack of annoyance or irritation towards pop-up ads encountered in online videogames.¹³⁵

¹³¹ T. Crepax and J. T. Muehlberg, 'Upgrading the Protection of Children from Manipulative and Addictive Strategies in Online Games: Legal and Technical Solutions beyond Privacy Regulation' (2022) 31 The International Review of Information Ethics.

¹³² J. R. Whitson and B. Simon, 'Game Studies Meets Surveillance Studies at the Edge of Digital Culture: An Introduction to a Special Issue on Surveillance, Games and Play' (2014) 12 Surveillance & Society 309.

¹³³ S. Degli Esposti, 'When Big Data Meets Dataveillance: The Hidden Side of Analytics' (2014) 12 Surveillance & Society 209.

¹³⁴ F. Lupiáñez-Villanueva and others, 'Study on the Impact of Marketing through Social Media, Online Games and Mobile Applications on Children's Behaviour' (European Commission 2016) https://commission.europa.eu/publications/study-impact-marketing-through-social-media-online-games-and-mobile-applications-childrens-behaviour_en.

¹³⁵ Abbasi and others (n 130).

Additionally, **advergames** are purposely crafted to serve a singular marketing goal, promoting a brand or product. These advergames predominantly leverage integration and interaction as their persuasive tactics. As mentioned previously, research findings suggest that children possess a less developed comprehension of the persuasive intentions behind advergames and branded environments in comparison to traditional advertising.¹³⁶ Furthermore, studies indicate that **when exposed to lesser-known brands, teenagers often fail to recognise the persuasive intent of the message**, leaving them without the opportunity to resist its influence.¹³⁷

Besides advergames, the practice of **brand or product placement** is frequently employed in videogames. This concept refers to the integration of a brand or product within an entertainment medium, such as an online game, as discussed earlier in the context of integration.

In recent times, there has been a notable upsurge in interest among policymakers and researchers regarding children's exposure to **loot boxes** in videogames.¹³⁸ Researchers advocate for a comprehensive examination of loot boxes, not just in isolation, but **within the broader context of the video gaming ecosystem**.¹³⁹ This perspective considers links with social media, (live) streaming and other third-party services, giving rise to various other marketing practices such as limited-time offers, influencer marketing, push notifications delivered to connected devices even when the game is not being played, and potentially personalised loot box advertisements, among others.

Finally, children themselves have expressed concerns about in-game marketing practices and spending. During consultations leading up to the Better Internet for

¹³⁶ Z. Van Berlo, E. Van Reijmersdal and E. Rozendaal, 'Weet wat er speelt: De rol van merkbekendheid in effecten van mobiele advergames op tieners' ['Know what plays: The role of brand awareness in effects of mobile advergames on teenagers'] (2017) 45 Tijdschrift voor Communicatiewetenschap <https://www.aup-online.com/content/journals/10.5117/2017.045.003.006>.

¹³⁷ *ibid.*

¹³⁸ See for example Forbrukerradet [Norwegian Consumer Protection Council], 'Insert Coin: How the Gaming Industry Exploits Consumers Using Loot Boxes' (2022) <https://storage02.forbrukerradet.no/media/2022/05/2022-05-31-insert-coin-publish.pdf>; A. Cerulli-Harms and others, 'Loot Boxes in Online Games and Their Effect on Consumers, in Particular Young Consumers. Publication for the Committee on the Internal Market and Consumer Protection (IMCO), Policy Department for Economic, Scientific and Quality of Life Policies' (European Parliament 2020).

¹³⁹ Denoo and others (n 126).

Kids (BIK) + strategy, **children reported feeling harassed by advertisements in games** that encourage the installation of gambling apps and feeling pressured to spend significant amounts of money to enhance performance or gameplay experiences.¹⁴⁰

1.2.3 Cross-cutting trend: advances in the use of emotions for marketing purposes

An essential marketing trend that cannot be easily categorised within one marketing practice, but is of **cross-cutting importance**, especially for children, revolves around the use of emotions for marketing purposes and the technological advances in this area.

First, over the years, neurosciences has enriched marketing research by providing profound insights into consumer behaviour.¹⁴¹ **Neuromarketing research** specifically seeks to find ways to influence consumers' decision-making at the unconscious level, tapping into subconscious mechanisms within the brain.¹⁴² This deeper understanding of how advertising and marketing stimuli impact the brain empowers marketers to craft campaigns that elicit more powerful and longer-lasting positive responses from consumers,¹⁴³ effectively gaining access to the emotional brain where crucial purchase decisions are made. Indeed, such marketing practices are designed to bypass rational consumer behaviour, making use of the fact that emotions play a key role in decision-making and that consumers are mostly unaware of them.¹⁴⁴

¹⁴⁰ European Schoolnet (n 92).

¹⁴¹ C. Morin, 'Neuromarketing: The New Science of Consumer Behavior' (2011) 48 Society 131.

¹⁴² Morin explains that consumers are unable to describe their own cognitive processes, which has many subconscious components. Thus traditional methods of marketing research, such as interviews and focus groups have significant limitations. C. Morin, 'Neuromarketing: The New Science of Consumer Behavior' (2011) 48 Society 131.

¹⁴³ A. Al Abbas, W. Chen and M. Saberi, 'The Impact of Neuromarketing Advertising on Children: Intended and Unintended Effects', KnE Social Sciences (2019); D. Ariely and G. S. Berns, 'Neuromarketing: The Hope and Hype of Neuroimaging in Business' (2010) 11 Nature Reviews Neuroscience 284.

¹⁴⁴ E. Laureckis and À. M. Miralpeix, 'Ethical and Legal Considerations in Research Subject and Data Protection' in A. R. Thomas and others (eds), *Ethics and Neuromarketing: Implications for Market Research and Business Practice* (Springer International Publishing 2017) https://doi.org/10.1007/978-3-319-45609-6_5; Ariely and Berns (n 143).

Some scholars argue that neuroscience methods offer a predictive capability of up to 70 to 80 per cent in determining advertising effectiveness.¹⁴⁵ Existing research underscores the **heightened susceptibility of children** to content structured around neuroscience-based marketing insights.¹⁴⁶ Furthermore, the **utilisation of big data analytics and machine learning techniques within neuromarketing** is believed to lead to innovative and refined marketing strategies.

Second, digital marketers are learning when to strategically employ **emotional analytics and targeting**, which in turn can significantly enhance the effectiveness of marketing campaigns. This refers to the potential **capacity to personalise the link between positive and negative moods and the effect of marketing practices**, which has raised the interest of commercial entities.¹⁴⁷ For instance, a leaked internal Facebook document unveiled the platform's capability to target users during moments of self-doubt and diminished self-worth.¹⁴⁸ In relation to this, the marketing industry has recognised AI's emotional analysis capabilities, meaning its capacity to process vast volumes of data concerning consumer buying patterns, enabling the design of advertisements tailored to individual preferences, and optimising pricing strategies to maximise revenue from each consumer.¹⁴⁹

¹⁴⁵ L. Mañas-Viniegra, P. Núñez-Gómez and V. Tur-Viñes, 'Neuromarketing as a Strategic Tool for Predicting How Instagramers Have an Influence on the Personal Identity of Adolescents and Young People in Spain' (2020) 6 Heliyon e03578; D. Varan and others, 'How Reliable Are Neuromarketers' Measures of Advertising Effectiveness?: Data from Ongoing Research Holds No Common Truth among Vendors' (2015) 55 Journal of Advertising Research 176.

¹⁴⁶ Open Evidence, London School of Economics and Brainsights, 'State of the Art of Neuromarketing and Its Ethical Implications' (European Commission Directorate-General Justice and Consumers 2023).

¹⁴⁷ Clifford (n 84)

¹⁴⁸ W. Christl, K. Kopp and P. Urs Riechert, 'How Companies Use Personal Data against People' (Cracked Lab – Institute for Critical Digital Culture 2017) http://crackedlabs.org/dl/CrackedLabs_Christl_DataAgainstPeople.pdf.

¹⁴⁹ C. Marinchak, E. Forrest and B. Hoanca, 'Artificial Intelligence: Redefining Marketing Management and the Customer Experience' (2018) 8 International Journal of E-Entrepreneurship and Innovation 14.

Digital marketing practices:

Cross-cutting trend: use of emotions for marketing purposes

What is it?

Emotions can be used for marketing purposes in two ways. First, the field of neuroscience studies how people's brains and the nervous system function and, for instance, react to different emotions. Neuromarketing research, in turn, investigates how emotions can be best used to create ads that people will perceive positively, remember, or ideally, react to with the purchase of a good or service. Second, emotional analytics and targeting can be used to personalise the link between positive and negative moods and the effect of marketing practices.

What are potential risks for young people online?

Research has shown that children and young people are particularly susceptible to marketing practices that harness emotions. Because these newer forms of ads are developed based, not only on neuromarketing research, but also on users' emotional analytics and profiling, they have the potential to become ever more effective. With the advancements in Artificial Intelligence, there is a need for increased awareness and careful monitoring of such practices.

At a glance 7: Digital marketing practices - use of emotions

Finally, the evolutions in the area of **emotional AI**¹⁵⁰ are also relevant in this context. Emotional AI technologies can capture children's biometrics to infer emotions and other qualitative states. Such technologies are already being integrated into children's toys and in educational technologies. As a result, such devices could potentially deliver real-time marketing messages tailored to an individual child's emotions and emotional state, which would be termed by the marketing industry as **hyper-personalisation**.¹⁵¹ This becomes even more pertinent with the emergence of the metaverse as an immersive environment where VR goggles, helmets, or even full body haptic suits are employed to track sensory signals.

¹⁵⁰ A. McStay, Emotional AI: The Rise of Empathic Media (2018).

¹⁵¹ D. Shankavaram, 'How Marketers Can Prepare for the Rise of Hyperpersonalisation' (Marketing Tech News, 2019) <https://www.marketingtechnews.net/news/2019/jun/17/how-marketers-can-prepare-rise-hyperpersonalisation/>.

From the studies reviewed in this report, **it is unclear** to what extent marketing practices involving neuromarketing research and/or emotional analytics are applied to target children in the digital environment. Nevertheless, the potential effectiveness of such emotion-based tactics, coupled with the rapid technological advancements in this area, underscores the need for increased awareness and careful monitoring of this cross-cutting issue among policymakers, regulatory bodies, parents, (young) consumers, and marketers. Moreover, research with **parents** showed that the majority of them were **concerned about who has access to insights into their children's emotional state**.¹⁵²

¹⁵² A. McStay and others, 'Comment on Children's Rights In Relation To Emotional AI And The Digital Environment' <https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRC/GCChildrensDigitalEnvironment/2020/others/emotional-ai-lab-2020-11-11.docx>.

1.3 Other findings

During the review of the relevant studies, a number of general findings were also extracted. First, the available research often focuses on a **particular technique** for a certain and often **narrow age group** making it **difficult to generalise** findings regarding effects for broader age ranges and digital marketing practices more widely. Nevertheless, these studies do indicate certain **vulnerabilities in all age ranges**, pointing to the importance of re-evaluating the acquisition of advertising literacy skills in the digital age. Second, De Veirman et al. point to the fact **that existing research on digital marketing practices and children has focused predominantly on YouTube**, compared to other platforms that are very popular with children like TikTok or Snapchat. Furthermore, **a discernible age-related disparity in research focus emerges**, with the majority of investigations concentrating on children aged 9 to 14. This leaves a **noticeable void in research coverage for younger children, including preschool-aged children**.¹⁵³ Consequently, these age groups remain relatively underrepresented in the current body of literature. Finally, **the practices under scrutiny often concern advertising for unhealthy food products**,¹⁵⁴ **beverages**, and **toys**. While these categories undoubtedly merit examination, a broader exploration encompassing a more diverse array of products and their marketing practices could provide a more comprehensive understanding of the marketing landscape targeting children and young audiences.

¹⁵³ De Veirman, Hudders and Nelson (n 23).

¹⁵⁴ E. Bozzola and others, 'The Use of Social Media in Children and Adolescents: Scoping Review on the Potential Risks' (2022) 19 International Journal of Environmental Research and Public Health 9960.

Section 2: Children's rights in relation to digital marketing practices

In this section, the report delves into the connection between the digital marketing practices previously examined and the rights that children have under the United Nations Convention on the Rights of the Child (UNCRC).

2.1 The relevance of the children's rights framework in a consumer context

The complexity, sophistication, immersiveness and opaqueness of certain digital marketing practices pose substantial challenges to **children's rights**. Children's rights policy documents increasingly acknowledge these challenges associated with certain unfair digital marketing practices that can impact children's fundamental rights.¹⁵⁵

2.1.1 United Nations Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child (UNCRC) attributes children a wide range of rights. Rights that may be affected by the marketing practices under study include the right to **freedom of expression** and **freedom of thought** (Articles 13 and 14 UNCRC), the **right to privacy** (Article 16 UNCRC), **access to diverse information and protection against harmful content** (Article 17 UNCRC), the **right to play** (Article 31 UNCRC) and the **right to protection against economic exploitation** (Article 32 UNCRC).

At the UN level, General Comment No 25 (GC25), adopted by the Committee on the Rights of the Child (CRC) in 2021, addresses several crucial aspects of children's

¹⁵⁵ UN Committee on the Rights of the Child, 'General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment'; Council of Europe, Committee of Ministers, 'Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on Guidelines to Respect, Protect and Fulfil the Rights of the Child in the Digital Environment'; European Commission, 'Communication "EU Strategy on the Rights of the Child", COM(2021) 142 Final'; OECD, 'The Protection of Children Online - Recommendation of the OECD Council' (2012) [https://legalinstruments.oecd.org/api/download/?uri=/private/temp/d9c3513a-221e-41ea-975b-b5bb2fe1c424.pdf&name=OECD-LEGAL-0389%20\(2012\)-en.pdf](https://legalinstruments.oecd.org/api/download/?uri=/private/temp/d9c3513a-221e-41ea-975b-b5bb2fe1c424.pdf&name=OECD-LEGAL-0389%20(2012)-en.pdf).

rights in relation to digital marketing practices. It underscores the significance of safeguarding children's privacy and data protection, protecting them from targeting, personalisation, neuromarketing and emotional analytics. Additionally, GC25 emphasises the need for ensuring a clear distinction between commercial and non-commercial content, and that children should be protected from misleading and opaque advertising and marketing practices.

GC25 also puts forth recommendations concerning the content of marketing messages, advocating for restrictions on ads for unhealthy products, avoidance of gender and racial stereotypes, and the prevention of children's exposure to extreme content in marketing. Furthermore, GC25 recognises that the marketing sector holds a significant responsibility in upholding and advancing children's rights within the scope of its advertising and marketing endeavours. It is up to the State to ensure that the sector meets its responsibilities.¹⁵⁶

Children's rights on- and offline

What rights do children and young people have online?

The United Nations Convention on the Rights of the Child (UNCRC) enshrines the wide range of rights of young people. The Committee on the Rights of the Child has explicitly acknowledged that these rights apply both in the offline world as well as in digital environments (see [UN General Comment No. 25](#)). These rights include – among others – the right to freedom of expression and freedom of thought, the right to privacy, the right to access diverse information and protection against harmful content, the right to play and the right to protection against economic exploitation.

The fundamental rights of children and young people are also protected in Article 24 of the Charter of Fundamental Rights of the EU.

The EU has further secured that these rights are respected and protected online by identifying the digital and information society as a key pillar in its Strategy on the Rights of the Child and by developing the new Better Internet for Kids strategy (BIK+ strategy).

At a glance 8: Children's rights on- and offline

¹⁵⁶ See also UN Committee on the Rights of the Child, 'General Comment No. 16 (2013) on State Obligations Regarding the Impact of the Business Sector' (2013).

2.1.2 Organisation for Economic Co-operation and Development

The Organisation for Economic Co-operation and Development (OECD) has also paid significant attention to children's consumer risks in the digital environment. Already in 2011, the OECD recognised that **children are targeted as consumers on the internet and deserve specific protection in this regard**.¹⁵⁷ In the digital environment, consumer risks such as embedded ads, privacy-invasive practices, age-inappropriate content, as well as the exploitation of their incredulity and inexperience resulting in economic risks such as overspending or online fraudulent transactions, are pointed at.¹⁵⁸

This remains true today, considering the host of emerging digital marketing practices that potentially pose risks to children.¹⁵⁹ The risk entails that such practices amount to commercial or peer pressure, have an impact on their privacy, or lead to the exposure of the child to inappropriate products or messages. In a 2020 report, the OECD points, in particular, to **video games as a platform for advertising and in-game purchases, which can result in direct financial harm**.¹⁶⁰

The OECD also critiques the fact that legislative responses have focused mostly on specific risks, leaving responsibility for addressing such risks with the ministries or departments who would be responsible for similar acts in the offline space. This results in a siloed approach, whereas, in reality, this is a space that crosses traditional legislative boundaries. More specifically, consumer risks to children can relate to both commercial issues (e.g., nudging to spend on in-app purchases) and privacy issues (e.g., data-driven marketing).¹⁶¹

2.1.3 Council of Europe

In addition, the Council of Europe explicitly mentions the **risk of harm from advertising as one of the areas of concern for children's healthy**

¹⁵⁷ OECD, 'The Protection of Children Online - Recommendation of the OECD Council' (n 155) 25.

¹⁵⁸ OECD, 'The Protection of Children Online - Recommendation of the OECD Council' (n 155).

¹⁵⁹ OECD, 'Protecting Children Online: An Overview of Recent Developments in Legal Frameworks and Policies' (2020) 295.

¹⁶⁰ *ibid.*

¹⁶¹ *ibid* 6.

development and well-being in the digital environment.¹⁶² In its 2018 Recommendation, the Council underlines that **children have a right to be protected from all forms of exploitation** in the digital environment. More specifically, it is up to the States to *“take measures to ensure that children are protected from commercial exploitation in the digital environment, including exposure to age-inappropriate forms of advertising and marketing.”*¹⁶³

Furthermore, States are recommended to ensure that the industry does not engage in unfair commercial practices towards children. This entails that **digital advertising and marketing towards children must be clearly distinguishable to them as such**. Moreover, all relevant stakeholders are recommended to limit the processing of children’s personal data for commercial purposes.

2.1.4 European Union

At the EU level, the Strategy on the rights of the child¹⁶⁴ included the digital and information society as one of its key pillars. More specifically, several recent policy documents have brought into focus the consumer risks that children face when they go online. For example, the New Consumer Agenda recognised the importance of addressing specific consumer needs and, in particular, the needs of children and young people navigating the digital landscape.¹⁶⁵

In parallel, the European Strategy for a Better Internet for Kids (BIK+), which was adopted in May 2022, highlights the growing trend of children using digital technologies for purposes spanning education, entertainment, social interaction, and societal engagement from an increasingly young age.¹⁶⁶ In the course of these

¹⁶² Council of Europe, Committee of Ministers (n 155).

¹⁶³ Council of Europe, Committee of Ministers, ‘Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on Guidelines to Respect, Protect and Fulfil the Rights of the Child in the Digital Environment’ (n 155), para 57.

¹⁶⁴ Article 24 of the Charter of Fundamental Rights lays down the rights of the child. It states a.o. that children shall have the right to such protection and care as is necessary for their well-being and that in all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration. European Commission, ‘Communication “EU Strategy on the Rights of the Child”, COM(2021) 142 Final’.

¹⁶⁵ European Commission, Communication from the Commission to the European Parliament and the Council, New Consumer Agenda Strengthening consumer resilience for sustainable recovery. COM/2020/696 final 2020.

¹⁶⁶ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: a Digital Decade for children and youth: the new European Strategy for a better internet for kids (BIK+) 2022.

digital experiences, children frequently encounter content and services that were not specifically tailored to cater to their needs and interests. Moreover, the BIK+ strategy devotes significant attention to consumer risks that children encounter online, and points to risks in relation to online marketing techniques, including targeted advertising, influencer marketing, and gamification of marketing.

The Commission has also recognised in its 2023 Strategy on Web 4.0 and virtual worlds that the development of such worlds may also pose challenges to children's rights.¹⁶⁷ In relation to this, actions to ensure that children are empowered and protected in this context are foreseen, such as the support of research on the impact of virtual worlds on children's health and well-being.

In sum, these diverse policy documents underscore a growing awareness of the complex consumer challenges children face within the digital environment, and the impact thereof on their rights. They call upon States, policymakers, and the marketing sector to take proactive measures to protect and empower children in relation to digital marketing practices.

2.2 The interplay of rights affected by current and emerging digital marketing practices

The analysis in the first section of this report showed that a number of digital marketing practices or cross-cutting trends are more common, have a greater impact, or raise serious legal questions. These practices are used as case studies to make the analysis of children's rights more concrete. Many of the rights discussed within each of these practices are also applicable to the others.

2.2.1 Influencer marketing

In the context of influencer marketing, on the one hand, content produced by influencers can serve as a valuable channel for children to exercise their right to access good-quality media (Article 17 UNCRC). Furthermore, given the significance

¹⁶⁷ European Commission, 'Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions: An EU Initiative on Web 4.0 and Virtual Worlds: A Head Start in the next Technological Transition. COM(2023) 442/Final'.

of influencers in contemporary youth culture, it offers children the opportunity to engage online, facilitating the exercise of their rights to freedom of expression (Article 13 UNCRC) and culture (Article 31 UNCRC).

Yet, **influencer marketing also gives rise to significant concerns related to the right to protection from economic exploitation** (Article 32 UNCRC), particularly when considered in conjunction with other fundamental rights and principles such as the right to development (Article 6 UNCRC) and the right to freedom of thought (Article 14 UNCRC). In the digital era, 'economic exploitation' can be interpreted far more broadly than a child undertaking labour.¹⁶⁸

'Exploitation' means 'taking unjust advantage of another for one's own advantage or benefit'.¹⁶⁹ This includes manipulation, misuse, abuse, victimisation, oppression or ill-treatment.

The child's right to development, coupled with the right to freedom of thought and the right to protection against economic exploitation, holds a vital protective dimension. **It requires safeguarding children from certain types of marketing practices, especially those that they cannot identify as commercial in nature and are unable to critically evaluate.**¹⁷⁰

¹⁶⁸ UN Committee on the Rights of the Child, 'General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment' (n 155); van der Hof and others (n 11).

¹⁶⁹ UN Committee on the Rights of the Child, 'UNCRC Discussion Day 1993, Economic Exploitation of Children, CRC/C/20' (1993).

¹⁷⁰ Verdoodt, *Children's Rights and Commercial Communication in the Digital Era* (n 18).

Digital marketing practices and their impact on children's rights: influencer marketing

How can influencer marketing impact the rights of children and young people?

On the one hand, the content that influencers produce can serve as a valuable channel for children to exercise their rights to access good-quality media and support their right to freedom of expression. On the other hand, some influencer marketing practices may pose a risk to children in that they may compromise the right of children to development, to freedom of thought and to be protected from economic exploitation. This is because young people frequently struggle to identify (some forms of) influencer marketing practices as advertising.

The often-concealed nature of influencer marketing, together with the appeal of captivating content, can result in a direct influence on children's consumption behaviour without them being aware of the commercial aspects of these interactions. When both the influencer and the viewer are children, the commercial intent might even be more obscured and lead to more potent commercial pressure.

At a glance 9: Children's rights - influencer marketing

As observed in this report, children may struggle to discern when information, content, or entertainment actually is a persuasive commercial message. The often-concealed nature of influencer marketing, paired with captivating content, may lead influencers to directly influence children's consumption behaviour **without children being aware** of the commercial aspects of these interactions. The lack of clarity regarding the commercial nature of certain content can make them vulnerable to manipulation. For example, watching peers who are influencers engage in play or entertainment may **obscure** the underlying commercial message, as children perceive it as just another child enjoying exciting toys.¹⁷¹

¹⁷¹ V. Verdoodt, S. van der Hof and M. Leiser, 'Child Labour and Online Protection in a World of Influencers' in C. Goanta and S. Ranchordás (eds), *The Regulation of Online Influencers* (Edward Elgar Publishing 2020).

In addition, the review showed that viewers perceive themselves as sharing similar opinions and preferences with influencers. This suggests that a positive review of a brand or product from an influencer may lead to a favourable response or purchase by the viewer.¹⁷² Humans, being inherently social creatures, tend to copy behaviours and beliefs of people they like.¹⁷³ The impact of **commercial pressure via peer influencing** can be even more potent when both the influencer and the viewer are children.

In the case of child influencers, familiarising children with influencer work and the promotion of goods and services at a young age may lead them to normalise commercialisation and/or exploitation.¹⁷⁴ High-earning child influencers who endorse a lifestyle rooted in consumption (e.g., receiving new toys on a daily basis) could artificially cultivate materialism or an unnatural attachment to money in children, **affecting their decision-making and freedom of thought in commercial contexts**.¹⁷⁵ This also raises significant concerns about their overall well-being and development.

2.2.2 In-game (data-driven) marketing

In relation to in-game marketing practices, several rights are implicated, most notably the **right to play** (Article 31 UNCRC). Play – even in digital form – has an important function in a child's development. It has long been associated with children gaining knowledge and skills, and digital games are sometimes used as education tools, directly addressing different forms of learning – cognitive, affective, and physical skills.¹⁷⁶ The concept of '**play**' articulated in Article 31 UNCRC encompasses **unstructured informal activities that children engage in**

¹⁷² This phenomenon is also known as social comparison theory. J. Eun Lee and B. Watkins, 'YouTube Vloggers' Influence on Consumer Luxury Brand Perceptions and Intentions' (2016) 69 Journal of Business Research 5753.

¹⁷³ A. R. Bentley, M. Earls and M. O'Brien J, I'll Have What She's Having - Mapping Social Behavior (MIT Press, 2011).

¹⁷⁴ V. Verdoodt, 'The Privacy Implications of Child(-Targeted) Influencer Content on Digital Platforms' in J. Kerckaert and S. Geiregat (eds), Social Media Influencers and the #Law (LeA Uitgevers Forthcoming); Verdoodt, van der Hof and Leiser (n 171).

¹⁷⁵ S. J. Oprea, M. Buijzen, E. A. van Reijmersdal and P. M. Valkenburg, 'Children's Advertising Exposure, Advertised Product Desire, and Materialism: A Longitudinal Study' (2014) 41 Communication Research 717.

¹⁷⁶ G. T. Richard, 'Video Games, Gender, Diversity, and Learning as Cultural Practice: Implications for Equitable Learning and Computing Participation Through Games' (2017) 57 Educational Technology 36.

without adult control. These activities are characterised by free choice and are not obligatory. They typically occur outside formal educational and work settings.¹⁷⁷

While play has historically involved some level of influence from commercial companies, such as those developing children's toys and products, the digital environment introduces new challenges. **Certain commercialised forms of play in the digital environment may not align with a child's right to play** under the UNCRC.¹⁷⁸ For example, even after purchasing a videogame or app, commercial interests may persist, manifesting through mechanisms like microtransactions or the collection and use of children's personal data for commercial purposes.

Research underscores that children find the commercial pressures and compulsive features that accompany their play to be intrusive and problematic.¹⁷⁹ Therefore, it is up to States to ensure that videogame businesses do not employ marketing practices designed to prioritise commercial interests over the interests of the child.

Furthermore, the CRC also recommends that practices that rely on **immersive advertising and advertising in virtual and augmented reality environments** to promote products, applications and services should be **prohibited** from engagement directly or indirectly with children.¹⁸⁰ While this ban is unlikely to cover all types of in-game marketing, it is likely to include cases where the immersive experience overwhelms children to the extent that they have no room for independent thought or decision-making. This becomes especially relevant with the emergence of the metaverse and advanced virtual reality technology.

¹⁷⁷ P. David, A Commentary on the United Nations Convention on the Rights of the Child, Article 31: The Right to Leisure, Play and Culture (Brill 2006).

¹⁷⁸ UN Committee on the Rights of the Child, 'General Comment No. 17(2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31)' (Refworld, 2013) 14.

¹⁷⁹ S. Livingstone and K. Pothong, 'Playful by Design: A Vision of Free Play in a Digital World' (Digital Futures Commission 2021) <https://digitalfuturescommission.org.uk/wp-content/uploads/2021/11/A-Vision-of-Free-Play-in-a-Digital-World.pdf>.

¹⁸⁰ UN Committee on the Rights of the Child, 'General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment' (n 155) 7.

Digital marketing practices and their impact on children's rights: in-game (data-driven) marketing

How can in-game (data-driven) marketing impact the rights of children and young people?

First and foremost, advertising that is (sometimes seamlessly) woven into the fabric of games and game platforms can have an impact on young gamers' right to free play.

The United Nations Convention on the Rights of the Child (UNCRC) describes play as unstructured informal activities that children engage in without adult control. In that respect, certain commercialised forms of play in the digital environment may not align with a child's right to play.

Beyond the right to play, data-driven aspects of in-game marketing raise concerns related to children's rights to privacy, freedom of thought and protection from economic exploitation.

While data-driven business models play a pivotal role in enabling free-to-play games and ensuring access to digital culture for all players, including children from diverse socio-economic backgrounds, they simultaneously raise issues concerning profiling, behavioural targeting and personalisation practices as these techniques might directly influence user behaviour (for instance, make an in-game purchase), without children being aware of the underlying data processing.

At a glance 10: Children's rights - in-game marketing

Beyond the right to play, the data-driven aspects of in-game marketing introduce significant concerns related to various other children's rights, including the **rights to privacy** (Article 16 UNCRC), **freedom of thought** (Article 14 UNCRC) and **protection from economic exploitation** (Article 32 UNCRC). While data-driven business models play a pivotal role in enabling free-to-play games and ensuring access to digital culture for all players, including children from diverse socio-

economic backgrounds, they simultaneously raise issues concerning **profiling, behavioural targeting, and personalisation practices**.¹⁸¹

In addition, data-driven in-game marketing extends beyond mere observation of user behaviour for the purpose of serving tailored advertising, but also involves **directly influencing user behaviour**.¹⁸² It can limit a child's self-development and autonomy, as behavioural predictions and nudging techniques can predetermine options and choices.¹⁸³ In the context of video games, this behavioural targeting can, for instance, lead to children being subconsciously encouraged to make in-game purchases ('nudging') or make other decisions that may affect them.

Consequently, the CRC has recognised the potential manipulative character of these marketing practices: States parties are advised to prohibit, by law, the profiling or targeting of children of any age for commercial purposes on the basis of a digital record of their actual or inferred characteristics, including group or collective data, targeting by association, or affinity profiling.

2.2.3 Cross-cutting trend: advances in the use of emotions for marketing purposes

The review of legal document and policy reports reveals a growing consensus among policymakers, civil society organisations, and scholars that **marketing practices that rely on the use of emotions should not be targeted towards children**. Several policymakers have also recognised the potential impact of using AI for such purposes.

For instance, the Committee of Ministers of the Council of Europe expressed concerns about the fact that the "*fine-grained, sub-conscious and personalized levels of algorithmic persuasion may have significant effects on the cognitive autonomy of individuals and their right to form opinions and take independent*

¹⁸¹ P. Declerck and N. Feci, 'Mapping and Analysis of the Current Regulatory Framework on Gambling(-like) Elements in Video Games. A Research Report in the Framework of the FWO "Gam(e)(a)Ble" Project.' (2022).

¹⁸² UNICEF, 'Child Rights and Online Gaming: Opportunities and Challenges for Children and the Industry' (2019) https://www.unicef-irc.org/files/upload/documents/UNICEF_CRBDigitalWorldSeriesOnline_Gaming.pdf.

¹⁸³ J. Cannataci, 'Artificial Intelligence and Privacy, and Children's Privacy Report of the Special Rapporteur on the Right to Privacy' (2021) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/015/65/PDF/G2101565.pdf?OpenElement>.

decisions".¹⁸⁴ Furthermore, the OECD has taken a significant step in adopting a legally binding standard for the responsible development of neurotechnology.¹⁸⁵ This recommendation underscores, among other things, the importance of safeguarding personal brain data, particularly within commercial contexts.

Marketing practices that rely on the use of children's emotions have the potential to render (children's) consumer choices highly predictable.¹⁸⁶ This is of particular significance to children's **right to freedom of thought** (Article 14 UNCRC)¹⁸⁷, **to development** (Article 6 UNCRC), and **to privacy** (Article 16 UNCRC).

Given the potential influence that emotion-based marketing may have on children's decision-making, scholars have expressed concerns about a potential impact on children's development and freedom of thought. In that regard, it is important to underline that limitations on freedom of thought are not permissible, in contrast to, for example, freedom of expression.¹⁸⁸

¹⁸⁴ Council of Europe, Committee of Ministers, 'Declaration by the Committee of Ministers on the Manipulative Capabilities of Algorithmic Processes, 2019' https://search.coe.int/cm/pages/result_details.aspx?ObjectId=090000168092dd4b.

¹⁸⁵ OECD, 'Recommendation of the Council on Responsible Innovation in Neurotechnology. OECD/LEGAL/0457'.

¹⁸⁶ See for example: S. J. Stanton, W. Sinnott-Armstrong and S. A. Huettel, 'Neuromarketing: Ethical Implications of Its Use and Potential Misuse' (2017) 144 Journal of Business Ethics 799.

¹⁸⁷ This right can also be found in the following articles: article 18 of the Universal Declaration on Human Rights, article 18 of the International Covenant on Civil and Political Rights, and article 9 of the European Convention on Human Rights and Fundamental Freedoms, article 10 CFEU. See also F. Shaheed, 'Report of the Special Rapporteur in the Field of Cultural Rights' (2014) A/69/286 <https://digitallibrary.un.org/record/755488>.

¹⁸⁸ R. Hodgkin and P. Newell, 'Implementation Handbook for the Convention on the Rights of the Child: Fully Revised Third Edition' (UNICEF 2007).

Digital marketing practices and their impact on children's rights: cross-cutting trend of using emotions for marketing purposes

How can marketing practices that heavily rely on the use of emotions impact the rights of children and young people?

The analysis of legal documents and policy reports has shown that there is a growing consensus that these types of marketing practices should not be targeted at children. This is because such types of ads can strongly influence children's consumer decisions and disregard their autonomy which is viewed as manipulative. Because of their (frequently) subliminal nature and high efficacy, they pose a significant risk to children's rights to freedom of thought, development and privacy, as well as their right to protection from economic exploitation.

The UN Committee on the Rights of the Child emphasised the need to prohibit marketing practices that rely on neuromarketing, emotional analytics and related practices in promoting products, applications and services, either directly or indirectly to children.

At a glance 11: Children's rights - use of emotions for marketing purposes

Individual consumers (including children) operate within a sociocultural, economic and political framework that shapes their thinking patterns and feelings in the marketplace.¹⁸⁹ Marketing practices relying on emotions could help shape this framework for children from a very young age, ultimately affecting their development and ability to direct their own path in life,¹⁹⁰ and consequently there is a concern about the normalisation of such marketing practices within society.

Moreover, there are concerns that digital marketers may employ tactics that influence consumer decisions and disregard their autonomy in selecting products or

¹⁸⁹ Shaheed (n 187) 3; E. J. Arnould and Craig J Thompson, 'Consumer Culture Theory (CCT): Twenty Years of Research' (2005) 31 Journal of Consumer Research 868.

¹⁹⁰ Al Abbas, Chen and Saberi (n 143).

services, which is viewed as being **manipulative**.¹⁹¹ These concerns become even more pressing when children are involved, as they are considered to be a particularly vulnerable segment of consumers.

Targeting such manipulative practices to children raises concerns about potential violations of their **right to protection from economic exploitation** (Article 32 UNCRC).¹⁹² Even though there might be little hard evidence at this moment in time how the effects of such practices materialise and what their long-term impact may be, the precautionary principle might come into play.¹⁹³

This principle compels society to act cautiously if there are certain – not necessarily absolute – scientific indications of a potential danger, and not acting upon these indications could inflict harm.¹⁹⁴ When it comes to practices that give rise to substantial concerns regarding the risk of harm to the well-being and rights of children, the precautionary principle may underpin the implementation of legal prohibitions or restrictions.¹⁹⁵

In this regard, the UN Committee on the Rights of the Child emphasised in GC25 the need to **prohibit** marketing practices that rely on neuromarketing, emotional analytics and related practices in promoting products, applications and services, either directly or indirectly to children.¹⁹⁶

¹⁹¹ Stanton, Sinnott-Armstrong and Huettel (n 186); Al Abbas, Chen and Saberi (n 143).

¹⁹² Verdoodt, *Children's Rights and Commercial Communication in the Digital Era* (n 18).

¹⁹³ E. Lievens, 'Growing Up with Digital Technologies: How the Precautionary Principle Might Contribute to Addressing Potential Serious Harm to Children's Rights' (2021) 39 *Nordic Journal of Human Rights* 128.

¹⁹⁴ E. Lievens, *Protecting Children in the Digital Era: The Use of Alternative Regulatory Instruments*, vol 105 (Martinus Nijhoff Publishers 2010).

¹⁹⁵ Lievens (n 193).

¹⁹⁶ UN Committee on the Rights of the Child, 'General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment' (n 155) 7. The Committee also encourages States parties to introduce or update data protection regulation and design standards that identify, define and prohibit practices that manipulate or interfere with children's right to freedom of thought and belief in the digital environment, for example by emotional analytics or inferences about a child's inner state.

Section 3: The EU legal framework for digital marketing practices targeted at children

This section of the report focuses on the obligations for commercial actors that target or facilitate the targeting of marketing practices to young audiences in the digital environment at the EU level. Within each of the selected practices, a separate set of requirements and protective measures is examined. Nevertheless, it is important to note that the analysis presented in each subsection may also be relevant and applicable to other marketing practices. The aim of this section is not to give an exhaustive overview of legislation and self-regulation in this area, but rather to give an idea of the complexity and interplay of these instruments.

Within the European Union, a complex web of regulation applies to marketing practices targeting children online.¹⁹⁷ Rather than having a single piece of legislation devoted exclusively to marketing practices in the digital environment, existing instruments and provisions have been retrospectively adapted to new technologies and services and new instruments have been adopted.¹⁹⁸ These include:

- the Electronic Commerce Directive (ECD).¹⁹⁹
- the Unfair Commercial Practices Directive (UCPD).
- the Audiovisual Media Services Directive (AVMSD).²⁰⁰
- the General Data Protection Regulation (GDPR).

¹⁹⁷ For a more comprehensive overview, see Verdoodt, *Children's Rights and Commercial Communication in the Digital Era* (n 18).

¹⁹⁸ 'New Forms of Commercial Communications in a Converged Audiovisual Sector' (European Audiovisual Observatory 2012).

¹⁹⁹ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce').

²⁰⁰ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities.

- the Digital Services Act (DSA).
- (potentially) the future Artificial Intelligence Act (AIA).

In addition, it is essential to recognise the role of self-regulation, as the marketing sector has traditionally been very active in developing guidance for its members.

EU rules protecting children and young people online in relation to digital marketing practices

What are the most important EU laws that protect children and young people online, and particularly in relation to (manipulative) digital marketing practices targeted at them?

The European Union has a set of strong laws that aim at the protection of children against marketing practices that are targeted at them. The most important ones, that are currently in effect, are:

- the Electronic Commerce Directive (ECD): This foundational legal framework regulates information society services in the EU. It sets out the basic rules for (among others) mandatory consumer information, online contracts and commercial communications.
- the Unfair Commercial Practices Directive (UCPD): This horizontal legal framework sets the harmonised rules in relation to misleading, aggressive or otherwise unfair business-to-consumers commercial practices (including marketing), both on- and offline. It considers children as a group of consumers who are particularly vulnerable for such practices. Besides general rules applicable to all consumers, it also contains a specific prohibition on direct exhortation towards children.
- the Audiovisual Media Services Directive (AVMSD): This set of rules applies to all services that provide audiovisual media content, as well as video-sharing platforms, and regulates the requirements for commercial communication in this context.
- the General Data Protection Regulation (GDPR): This legal framework ensures that the personal data of all people in the EU are protected, both on- and offline. It sets ground rules for how marketers may and may not use personal data for their goal of conveying commercial messages as effectively as possible, and underlines that children need specific protection in this context.
- the Digital Services Act (DSA): This set of rules ensures that online platforms offer a safe, predictable and trustworthy environment. In doing so, it imposes stricter rules to the largest online platforms in the EU, such as Instagram, Snapchat, TikTok or YouTube. It requires such online platforms to more carefully assess the risks associated with their services, also with regard to vulnerable users like children and young people.

At a glance 12: EU rules protecting children in digital marketing practices

3.1 Influencer marketing

Turning to the regulatory framework, both legislative and self-regulatory instruments exist which contain requirements for influencer marketing.²⁰¹ In this section, we focus on the ECD, AVMSD, UCPD, DSA, and the International Chamber of Commerce (ICC) Code.

3.1.1 Obligations for influencers and platforms

Obligations are imposed both on **influencers** – as ‘traders’ or parties who act on behalf of traders (UCPD)²⁰² or providers of ‘audiovisual media services’ (AVMSD) or ‘information society services’ (ECD) – and on the **platforms** that offer influencers a channel to communicate with their audience – as ‘traders’ (UCPD),²⁰³ providers of ‘information society services’ (ECD) or ‘video-sharing platform services’ (VSP) (AVMSD) or ‘(very large) online platforms’ (DSA).

3.1.2 Disclosure requirements

Crucially, all marketing practices on digital platforms must be **clearly disclosed**. This stems from the **identification principle**, which entails that commercial communications should be **recognisable**. A host of instruments include disclosure requirements. The ECD, for instance, compels Member States to ensure that commercial communications which are part of, or constitute, an information society service shall be clearly identifiable as such (Article 6). The AVMSD requires that audiovisual commercial communications are readily recognisable (Article 9).²⁰⁴

²⁰¹ See also ERGA, ‘How to Identify and Localise Vloggers and Regulate Their Commercial Communication?’ (2022) <<https://erga-online.eu/wp-content/uploads/2022/12/2022-12-ERGA-SG1-Report-Vloggers-2.pdf>>.

²⁰² “Persons engaging in commercial endorsement activities online, such as influencer marketing (...), could qualify as traders if they engage in such practices on a frequent basis, regardless of the size of their audience. Alternatively, in case the persons do not qualify as traders, they could nevertheless be considered to act ‘on behalf of’ the trader whose products are promoted by the practice and therefore fall within the scope of the Directive. The obligations to be clear about the commercial communication, in particular under Article 7(2) UCPD, apply to traders regardless of whether they are the supplier of the products or not.” European Commission, ‘Commission Notice - Guidance on the Interpretation and Application of Directive 2005/29/EC of the European Parliament and of the Council Concerning Unfair Business-to-Consumer Commercial Practices in the Internal Market. Official Journal of the European Union C 526/1’ (n 10).

²⁰³ “In addition to the obligations of influencers and brands, the online platform that is used for the promotional activities is subject to its own obligations of professional diligence under the UCPD (...). This includes the obligation to take appropriate measures to enable third party traders to comply with their obligations under EU law, e.g., to provide specific and appropriate disclosure tools in the platform’s interface”. *ibid*.

²⁰⁴ A similar disclosure requirement stems from Article 6(a) of the e-Commerce Directive for online commercial communications.

Recital 3 of the AVMSD explicitly mentions that channels on video-sharing platforms (e.g., YouTube channels) could constitute audiovisual media services. Hence, influencers who fulfil the AVMSD criteria to be considered as an audiovisual media service provider will need to comply. These elements include having editorial responsibility over the programmes, targeting the general public as their audience, and being considered as an economic service.²⁰⁵ The obligation included in Article 9 also extends to VSP providers for the advertisements that they market, sell or arrange.

EU rules in relation to influencer marketing

How do EU laws strengthen the protection of children and young people's rights in the context of influencer marketing?

The EU's legal instruments impose obligations on both influencers and platforms.

Among other requirements, influencers and platforms must ensure that advertising in general (also when targeted at children and young people) is clearly recognisable as such.

Furthermore, the EU laws prohibit that advertisers address calls to action directly to children and young people, for instance, in the form of "Tell your mom to buy ... for you!". Influencer marketing cannot unduly influence children and cannot contain harmful messages.

At a glance 13: EU rules for influencer marketing

VSP providers must take appropriate measures to comply with the rules related to audiovisual commercial communications, taking into account the limited control they exercise over the content.²⁰⁶ They must inform users clearly where programmes and user-generated videos contain audiovisual commercial

²⁰⁵ Important to note is that the economic service criterion 'normally provided for remuneration,' Article 57 TFEU) should be interpreted broadly and not merely as monetary payment.

²⁰⁶ Article 28 b (2) AVMSD.

communications²⁰⁷ and, where appropriate, must have a functionality for users to declare when a user-generated video includes audiovisual commercial communication.²⁰⁸ In this regard, the Digital Services Act also requires online platforms to provide recipients of the service – including influencers – with a functionality to declare whether the content they provide is or contains commercial communication.²⁰⁹ This can, for instance, entail offering a toggle that can be switched on when an influencer uploads a video.

The UCPD prohibits misleading or hidden marketing messages.²¹⁰ The Commission has indicated that the failure to clearly declare the commercial element in an influencer's content or practice (for instance, when sharing paid posts, sharing a discount code or link to their audience for a commission fee, retweeting or tagging a brand) could amount to a misleading practice under Articles 6 and 7 UCPD and could also be considered prohibited practices under Points 11 and 22 of the Annex to the UCPD.²¹¹ Importantly, the UCPD considers children as a **vulnerable group of consumers**, and the impact of marketing practices specifically targeted to them must be interpreted from the perspective of the average member of that group.²¹² It entails that disclosures of marketing practices must be understandable for the likely target audience, also depending on other circumstances such as the specific platform through which the marketing practice is delivered.²¹³

The various EU legislative instruments do not indicate how exactly marketing messages should be disclosed, but guidance indicates that disclosures must take into account context, placement, timing, duration, language, target audience and

²⁰⁷ *ibid.*

²⁰⁸ Article 28 b (3) (c) AVMSD.

²⁰⁹ Article 26 (2) Digital Services Act. The same requirement has been pointed to by the Commission in the context of the UCPD: "This includes the obligation to take appropriate measures to enable third party traders to comply with their obligations under EU law, e.g., to provide specific and appropriate disclosure tools in the platform's interface".

²¹⁰ Article 6 and 7(2) and point No 11 and 22 of Annex I UCPD.

²¹¹ European Commission, 'Commission Notice - Guidance on the Interpretation and Application of Directive 2005/29/EC of the European Parliament and of the Council Concerning Unfair Business-to-Consumer Commercial Practices in the Internal Market. Official Journal of the European Union C 526/1' (n 10).

²¹² Recital 19 UCPD. Article 9.1(g) AVMSD.

²¹³ European Commission, 'Commission Notice - Guidance on the Interpretation and Application of Directive 2005/29/EC of the European Parliament and of the Council Concerning Unfair Business-to-Consumer Commercial Practices in the Internal Market. Official Journal of the European Union C 526/1' (n 10).

other aspects.²¹⁴ Across EU Member State legislation, various approaches on how to label such messages have been adopted.²¹⁵

Self-regulatory codes at international level – such as the ICC Advertising and Marketing Communications Code – encompass disclosure obligations that extend to influencers, but also lack concrete guidelines. Such guidance is included in national self-regulatory codes but the diversity in disclosure notices and hashtags to be used (e.g., #ad, #advertising, #sponsored, #brandambassador, #collaboration, #gifted) varies considerably.²¹⁶

Finally, the **Digital Services Act** adds complementary obligations for **platforms** to collect and verify the information from traders or those who promote messages or products or services on behalf of brands (which includes influencers).²¹⁷ Platforms also have the duty to investigate, verify, and share this information with public authorities.²¹⁸

3.1.3 No direct exhortation to buy

Both the UCPD and AVMSD **prohibit direct exhortations to children to buy** advertised products or services or encourage children to or persuade their parents or other adults to buy advertised products or services for them.²¹⁹ Statements by influencers like 'Buy my sweaters now' or 'Tell your mom to order it from my website' would thus be prohibited. As another example, influencers who encouraged

²¹⁴ The Commission Notice states that the "disclosure of the commercial element must be clear and appropriate, taking into account the medium in which the marketing takes place, including the context, placement, timing, duration, language, target audience and other aspects. The disclosure must be sufficiently salient to adequately inform the average or vulnerable consumer that receives the content. For example, the disclosure cannot be considered adequate in case the information concerning the commercial communication is not displayed prominently (e.g., hashtags at the end of a lengthy disclaimer; merely tagging a trader) or requires the consumer to take additional steps (e.g., click on 'read more')". *ibid.*

²¹⁵ See for instance, as an illustration of the implementation of AVMSD related requirements, the Content Creator Protocol of the Flemish Regulator for the Media: <https://www.vlaamseregulatormedia.be/en/content-creator-protocol>. For EU consumer protection law requirements, the Influencer Legal Hub is worth mentioning as a platform providing basic guidance for the different actors involved in influencer marketing on how to comply. For more information see https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/influencer-legal-hub_en.

²¹⁶ For a comparison of influencer self-regulation in the United Kingdom, Belgium and the Netherlands see V. Verdoodt and N. Feci, 'Digital Influencers and Vlogging Advertising: Calling for Awareness, Guidance and Enforcement' (2018) 1 Auteurs en Media.

²¹⁷ Article 30(1) of the DSA and Recital 72 DSA.

²¹⁸ Article 30 of the DSA. See also C. Cauffman and C. Goanta, 'A New Order: The Digital Services Act and Consumer Protection' (2021) 12 European Journal of Risk Regulation 758.

²¹⁹ Point 28 Annex I UCPD and Article 9(1) g AVMSD.

children to interact with an animal character by sending premium-rate messages were regarded to violate this prohibition.²²⁰

3.1.4 Aggressive commercial practices

Considering the close connection that influencers establish with their audience, specific actions might be deemed as constituting undue influence, thereby qualifying as an **aggressive commercial practice** under the UCPD. This becomes especially pertinent when the audience comprises children.²²¹

3.1.5 Harmful promotional messages

The revised AVMSD also contains specific **protections for children against harmful audiovisual commercial communications** which influencers need to abide by.²²²

VSP providers are required to **take appropriate measures** to ensure that influencers comply with the rules of the AVMSD when they upload videos.²²³ Thus, VSP providers are required to take measures to protect minors from harmful audiovisual commercial communications and the general public from audiovisual commercial communications containing hate speech or illegal content.²²⁴

In order to determine what measures are appropriate, VSP providers have to take into account the *"nature of the content in question, the harm it may cause, the **characteristics of the category of persons to be protected** as well as the rights and legitimate interests at stake, including those of the video-sharing platform providers and the users having created or uploaded the content as well as the public interest."*²²⁵ Additionally, the measures have to be practicable and proportionate, in light of the actual size of the VSP service and the nature thereof. Potential measures could be adding the identification requirement in their terms

²²⁰ European Commission, 'Commission Notice - Guidance on the Interpretation and Application of Directive 2005/29/EC of the European Parliament and of the Council Concerning Unfair Business-to-Consumer Commercial Practices in the Internal Market. Official Journal of the European Union C 526/1' (n 10).

²²¹ *ibid.*

²²² Article 9 AVMSD.

²²³ Verdoodt and Feci (n 216).

²²⁴ Article 28b (1) of the AVSM Directive.

²²⁵ Article 28b (2) of the AVMS Directive.

and conditions; installing flagging, age verification, parental control and rating mechanisms; and media literacy measures.²²⁶

3.2 In-game (data-driven) marketing

Several legal instruments are applicable in the context of in-game (data-driven) marketing. In this section, we will focus on selected provisions from the UCPD, the GDPR and the DSA.²²⁷

3.2.1 Disclosure, misleading and aggressive commercial practices

Similar to influencer marketing, the **identification requirement of the UCPD**²²⁸ comes into play for in-game marketing, as the different types of marketing practices significantly rely on the integration of commercial messages into the gaming environment. In this scenario, the requirement is crucial for the gaming (platform) provider who will, in practice, have to ensure that marketing practices within the game are identifiable as such. In-game promotions and advertisements could also amount to a **misleading practice** under Articles 6 and 7 UCPD, if the commercial element is not sufficiently clear and distinguishable from gameplay.²²⁹

In addition, when marketing practices in games are personalised based on information or data about the vulnerabilities of gamers, and children in particular, this could have an effect on the (child) consumers' transactional decision. It has been argued that this could amount to the exercise of undue influence, which could qualify as an **aggressive commercial practice** prohibited under Articles 8 and 9 UCPD.²³⁰

²²⁶ Article 28b (2) of the AVMS Directive. In relation to the age verification and parental control mechanisms, the Directive prohibits that any personal data of minors collected in this context is used or resold for commercial purposes (e.g., behavioural advertising, direct marketing).

²²⁷ While the videogames sector in Europe has developed the Pan European Game Information system (PEGI), which provides age-ratings and content labels to assess the appropriateness of video games for players of certain age categories, this system does not specifically provide a descriptor for games containing in-game advertising. PEGI, 'The PEGI Code of Conduct' (2017) <https://pegi.info/pegi-code-of-conduct>.

²²⁸ Note that in this context, the disclosure requirements of the ECD may also apply.

²²⁹ European Commission, 'Commission Notice - Guidance on the Interpretation and Application of Directive 2005/29/EC of the European Parliament and of the Council Concerning Unfair Business-to-Consumer Commercial Practices in the Internal Market. Official Journal of the European Union C 526/1' (n 10).

²³⁰ *ibid.*

3.2.2 Profiling

Furthermore, in relation to the data-driven nature of in-game marketing, the **GDPR** pays particular attention to children and acknowledges that they merit '**specific protection**' regarding their personal data and that the processing of children's personal data may result in risks to their rights and freedoms.²³¹ Such specific protection should be awarded to children especially when their personal data are processed in the context of marketing and profiling, or in relation to services offered directly to a child.²³²

Although there is no absolute prohibition on the profiling of children in the GDPR,²³³ the Article 29 Working Party (the predecessor of the European Data Protection Board) has recognised that they "*can be particularly susceptible in the online environment and more easily influenced by behavioural advertising*" and, therefore, "*organisations should, in general, refrain from profiling them for marketing purposes.*"²³⁴

EU rules in relation to in-game (data-driven) marketing

How do EU laws strengthen the protection of children and young people's rights in the context of in-game (data-driven) marketing?

Similar to the context of influencer marketing, the EU rules require marketers and advertisers to clearly designate in-game marketing as such.

Furthermore, platforms are prohibited from targeting advertisements to children based on profiling. Personalised marketing practices should not exploit vulnerabilities of young gamers.

At a glance 14: EU rules for in-game marketing

²³¹ Recital 75 GDPR.

²³² Recital 38 GDPR.

²³³ Article 29 Data Protection Working Party, 'Guidelines on Automated Individual Decision-Making and Profiling for the Purposes of Regulation 2016/679' (2017).

²³⁴ *ibid* 26.

More recently, Article 28(2) of the **Digital Services Act** introduced a **prohibition on targeting advertisements based on profiling** “*when they are aware with reasonable certainty that the recipient of the service is a minor.*” This seems to codify the call by the Article 29 Working Party not to profile children for marketing purposes, and the call by the UN Committee on the Rights of the Child (see *supra*). The prohibition applies to **providers of online platforms**, which are a subset of the category of hosting service providers in the DSA.²³⁵ Online platforms offer storage of other people’s information with a public distribution function, for instance, apps and websites that feature user generated content.²³⁶

This scope may also encompass video games and video gaming environments, depending on their functionalities. This could be the case, for instance, if a game incorporates a system that allows for multiplayer communications (e.g., through a public chat) and where those communications are not a minor or ancillary part of the service; or if a game enables players to create and distribute content within the game; or if a gaming environment contains a type of bulletin board or social media functionality.²³⁷

3.3 Cross-cutting trend: advances in the use of emotions for marketing purposes

Regarding the use of emotions in marketing practices, a number of relevant instruments can be mentioned. As previously noted, in 2021, State parties to the UNCRC received explicit recommendations to prohibit practices that rely on neuromarketing and emotional analytics for commercial purposes directed at

²³⁵ Article 3(i) of the DSA, which defines the notion of online platform as a “*hosting service that, at the request of a recipient of the service, stores and disseminates information to the public, unless that activity is a minor and purely ancillary feature of another service or a minor functionality of the principal service and, for objective and technical reasons, cannot be used without that other service, and the integration of the feature or functionality into the other service is not a means to circumvent the applicability of this Regulation*”. See also Recital 13 DSA.

²³⁶ M. Husovec, ‘The DSA’s Scope Briefly Explained’ [2023] SSRN Electronic Journal <https://www.ssrn.com/abstract=4365029>.

²³⁷ G. Couneson and others, ‘Gaming Series #2: Online Safety and Gaming – EU and UK Approaches to Regulation’ (Linklaters Tech Insights, 2023) <https://techinsights.linklaters.com/post/102ig9a/gaming-series-2-online-safety-and-gaming-eu-and-uk-approaches-to-regulation>.

children.²³⁸ Notably, a similar explicit ban at the EU level has yet to be incorporated into EU advertising legislation.

At the national level, France has taken the lead by introducing a provision that effectively bans any commercial research and any act of commercialisation involving brain imaging techniques.²³⁹ Nevertheless, marketing practices relying on neuromarketing research or emotional analytics targeted to children could still be problematic under existing EU legislation, in particular the UCPD, the GDPR, and the future AIA.²⁴⁰

3.3.1 Fairness and sensitive data

First, practices relying on **emotional analytics and targeting** might involve crafting highly personalised marketing messages that rely on emotional cues. Consequently, it raises essential questions about the **fairness** of processing under the GDPR,²⁴¹ particularly when it comes to using children's data for marketing purposes.

Additionally, emotional analytics and targeting could involve processing of **highly sensitive data, which could be classified as 'special categories of data'** (e.g., data related to a person's mental health, Article 9 GDPR), **necessitating enhanced protection**²⁴² **and a more cautious approach from data controllers**. The fact that these practices are opaque and lack transparency is also problematic regarding the principle of **transparency**.²⁴³

²³⁸ UN Committee on the Rights of the Child, 'General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment' (n 155).

²³⁹ Article 16-14 Civil Code reads as follows: "Brain imaging techniques may only be used for medical or scientific research purposes, or in the context of forensic investigations. The person's express consent must be obtained in writing before the examination is carried out, after the person has been duly informed of its nature and purpose. The consent must specify the purpose of the examination. It may be revoked without formality at any time." (Translated). S. Desmoulin-Canselier, 'La France à «l'ère du neurodroit»? La neuro-imagerie dans le contentieux civil français' (2019) 101 Droit et société 115.

²⁴⁰ While self-regulatory instruments such as the ICC Code contain provisions on the processing of children's data, no mention is made of 'emotion' or marketing practices relying on neuromarketing research or emotional analytics.

²⁴¹ Article 5(1)a GDPR.

²⁴² Article 9(1) GDPR prohibits the processing of special categories of data unless an exception listed in the second paragraph applies.

²⁴³ Article 5(1)a GDPR.

EU rules in relation to the use of emotion for marketing purposes

How do EU laws strengthen the protection of children and young people's rights in the relation to cross-cutting trends such as the use of emotion for advertising?

The EU's legal instruments pay specific attention to the potential manipulative nature of marketing that relies on emotional analytics and targeting. This is because such practices can involve the processing of highly sensitive data, which requires anyone making use of these data for marketing purposes to observe strict rules. In addition, the use of emotions to target children should not unduly influence children's choices or conduct.

At a glance 15: EU rules for using emotion for marketing purposes

3.3.2 Aggressive commercial practices and professional diligence

Second, under the UCPD, **marketing practices relying on neuromarketing and/or emotional analytics that are targeted to children could potentially qualify as an aggressive commercial practice**. Marketing techniques are aggressive if they “*by harassment, coercion or undue influence significantly impair the freedom of choice or conduct of the average consumer*”.²⁴⁴

Although actual harassment or coercion (including the use of physical force) are not likely applicable in the context of marketing practices that rely on the use of emotions, **undue influence** could be applicable.²⁴⁵ The qualification of undue influence will depend on the specificities of the particular case. Moreover, as children are considered to be vulnerable consumers, the assessment should take into account their specific vulnerabilities.²⁴⁶

²⁴⁴ Article 8 UCPD.

²⁴⁵ By ‘undue influence’ is meant “exploiting a position of power in relation to the consumer so as to apply pressure, even without using or threatening to use physical force, in a way which significantly limits the consumer's ability to make an informed decision”; see Article 2 (j) UCPD.

²⁴⁶ Article 5(3) UCPD. Verdoodt, *Children's Rights and Commercial Communication in the Digital Era* (n 18).

The intentional targeting of cognitive or emotional traits, for instance, through the use of emotional AI, may also constitute a **breach of professional diligence**.²⁴⁷ Such systems measure existing individual emotions by technical means and harness them by confronting the consumer with content optimised on view of the measurements. In this regard, it has been argued that consumers generally will not expect – at least for now – to be subjected to the automated analysis of emotions online.²⁴⁸

3.3.3 Unfair AI practices

Finally, the proposed AIA contains a number of interesting provisions that could be relevant in the context of the use of emotions for marketing purposes facilitated through AI systems. Article 5(1)(a) of the European Commission's proposal for an AIA contains a prohibition on **subliminal influence by AI systems resulting in physical or psychological harm**.²⁴⁹

In addition, BEUC (The European Consumer Organisation) has suggested that Article 5(2)(b), which prohibits the use of AI to exploit vulnerabilities, such as age, should extend its protection to consumers experiencing temporary vulnerabilities, like grief, sorrow, or emotional distress.²⁵⁰ Lastly, the EDPB (European Data Protection Board) and EDPS (European Data Protection Supervisor) have both recommended that the use of AI to infer emotions of a natural person is highly undesirable and should be prohibited, except in very specific circumstances related to health or research purposes.²⁵¹ Hence, the AIA in its final, adopted form may bear substantial implications for this cross-cutting issue in marketing.

²⁴⁷ Article 2(h) UCPD defines professional diligence as behaviour “commensurate with honest market practice and/or the general principle of good faith in the trader's field of activity”.

²⁴⁸ Hacker (n 12).

²⁴⁹ *ibid*; Proposal for a Regulation of the European Parliament and of the Council Laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union Legislative Acts COM/2021/206 final.

²⁵⁰ BEUC, ‘Regulating AI to Protect the Consumer: Position Paper on the AI Act’ https://www.beuc.eu/publications/beuc-x-2021-088_regulating_ai_to_protect_the_consumer.pdf.

²⁵¹ EDPB and EDPS, ‘Joint Opinion 5/2021 on the Proposal for a Regulation of the European Parliament and of the Council Laying down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act)’ (2021) https://edps.europa.eu/system/files/2021-06/2021-06-18-edpb-edps_joint_opinion_ai_regulation_en.pdf.

Section 4: Conclusion – A snapshot of digital marketing practices, children's rights and business obligations

This research report focused on a number of important developments in, and the (potential) impact of, marketing practices targeting children within the digital environment, drawing insights from a wide range of sources, including scholarship, market research, and reports intended for policymakers. These findings serve as crucial indicators for determining which marketing practices warrant specific attention in the forthcoming awareness campaign.

The study identified four major persuasive tactics employed by digital marketers, namely **integration**, **interaction**, **personalisation**, and **emotion**, which are often used in combination and can pose significant challenges for children's advertising literacy. In terms of specific marketing practices, **influencer marketing and in-game marketing** have become prominent and impactful forms of digital marketing targeting children. Although specific statistics quantifying the frequency of children's exposure to these practices are notably scarce, it is evident that substantial financial resources are being allocated to digital marketing aimed at children.

Looking ahead, the integration of AI within the digital marketing landscape may bring about significant changes in marketing practices aimed at children. **AI is already contributing to the data-driven nature of marketing**, highlighting the **need to address potential risks associated with intrusive techniques** like emotional analytics, and to promote awareness not solely among children and parents about the existence of such practices but also among marketers concerning the appropriateness of employing such techniques.

This review confirms that marketing practices permeate nearly all aspects of children's online lives, including their social media pages, the environments in which they play games, and the influencer videos they watch. **The increased**

commercialisation of these environments may shape children's thinking patterns and feelings in the marketplace, which affects a number of rights including the **right to development and autonomy**, the **right to freedom of thought**, and the **right to play**.

Furthermore, the **collection of children's personal data for advertising purposes and for profiling and personalisation impacts their rights to development, privacy, and protection against economic exploitation**. In relation to this, it is necessary to emphasise that **children should be able to maintain their autonomy in commercial decision-making**. Furthermore, their ability to experiment online without undue (commercial) influence should also be safeguarded.

At the same time, the **digital environment provides ample opportunities for children's rights to participation, education, and play**, with the marketing industry playing a pivotal role in creating and maintaining high-quality content and online services for children. **Rather than solely adopting a protective stance to regulate (emerging) digital marketing practices, a balanced approach is necessary from a children's rights perspective**. This balance should encompass **shielding children from misleading or manipulative marketing practices where advertising literacy may not serve as an immediate solution while also empowering and educating children and allowing them to practice their commercial decision-making skills**.

Certain marketing practices or trends are extremely effective when used on children, for which the limits of advertising literacy and education and the need for additional protection for children need to be recognised. In relation to this, the UN Committee on the Rights of the Child has recently designated a number of marketing practices as unacceptable, notably profiling, immersive advertising, practices relying on emotional analytics, or neuromarketing research, while cautioning against other practices that might be considered 'manipulative' or as exerting 'undue influence'. However, it should also be noted that the threshold to qualify a practice as 'manipulative' will not always be obvious to determine. The opaqueness of certain practices, the use of information about vulnerabilities of

specific (groups of) consumers and the use of deceptive or malicious nudging techniques, or a combination thereof, are some of the relevant factors in that regard.

Children are entitled to develop the ability to make well-balanced decisions, to develop a healthy lifestyle, and their critical thinking, which are all crucial when it comes to coping with digital marketing practices. In relation to this, it is contended that children's rights to education and access to information require that children are provided with the necessary opportunities to hone and practice their advertising-related knowledge, attitudes, and skills, such as the ability to recognise commercial messages, to understand the persuasive intent of such messages, and to critically evaluate them, both offline and online. Yet, it should be underlined that **advertising literacy and the creation of awareness campaigns cannot be intended to shift responsibility from commercial actors to children.** All actors in the marketing chain (including social media, video-sharing or game platform providers, videogame companies, and influencers) must comply with the obligations that have been strengthened in recent times, through the adoption of new legislative instruments and the evolutive interpretation of existing laws.

As shown in our analysis, **different instruments may apply to the same digital marketing practice.** Obligations throughout these instruments are often similar but not exactly the same. Implementing the obligations necessitates careful consideration of the target group. Disclosures to children, for instance, must be intelligible by this particular target group. At the same time, the evolving capacities of children differ greatly as children grow older. A more granular approach for children of different ages might be warranted in this respect. Co-creation and validation of disclosures with children is a good practice.

Given the fact that different legislative instruments apply, cooperation between regulatory authorities responsible for enforcement will be necessary. Awareness campaigns could also clarify which remedies are available to children (and parents) when their rights are violated.

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