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ONLINE ADVERTISING AND MARKETING DIRECTED TOWARD CHILDREN

OECD, Paris, 23-24 March 1999

As part of its 55th Session on 3-4 September 1998, the OECD Committee on Consumer Policy held a Forum Session on Online Advertising and Marketing Directed Toward Children. The session was comprised of brief presentations made by Delegates from the United Kingdom, United States, Sweden and Belgium intended to provide information about how different OECD Member countries are working to deal with issues related to children and the Internet.

The attached is a compilation of the day's proceedings along with background information prepared by the Secretariat, and the Delegations participating in the discussion.

Delegates are invited to submit comments and additional information for incorporation into the draft. Submissions should be forwarded to the Secretariat by 1 May 1999, a revised draft will then be circulated for approval and declassification.

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A GENERAL OVERVIEW OF THE ISSUES

Remarks of Ms. Carolyn Banks, Director, Consumer Affairs, Office of Fair Trading

My task this morning is to highlight general issues related to advertising and marketing online. What is the online medium? What does it do? What benefits does it have to offer? The benefits to business include universal accessibility, a global audience, and they have the prospect of immediate access to consumers. The benefits for consumers can also be considerable. The online medium offers convenience, wider choice, and, theoretically, lower prices through the elimination of intermediaries. So the online medium holds a great deal of potential for good.

However, we are learning that the Internet it is not without its' problems. World Wide Web sites are available to anyone with an Internet connection. Advertising can be viewed and downloaded into all countries and regions that provide access to the Internet. Sellers in this new marketplace can lack control over the dissemination of the information they post online and its availability to particular geographical locations and to particular kinds of consumers. To some degree, access to specific locations can be limited by site operators and services providers; however it is much more difficult to limit the information that flows to particular kinds of consumers.

The issues raised by online marketing and advertising include a number of questions that we are not entirely sure we have the answers to. For example, when is an advertisement on the Internet an invitation to trade? This is a key question of law and one that needs serious consideration in order to be addressed properly. There is also the question of jurisdiction. Who has jurisdiction over a particular advertisement – which country – the consumer's or the trader's – and which is the applicable law? Are these issues clear-cut at the moment? I suggest that they are not and that no one has the definitive answers to all of them.

There are also issues related to compliance and enforcement. How can we practically ensure that a decision made under one country's law can actually be enforced in another? In the context of today's Forum, how can we ensure the suitability of online advertising for vulnerable groups such as children?

In the United Kingdom, advertising regulations are rather complex. However, we are absolutely clear that within the UK legislation applies to advertising on the Internet. The Director General of Fair Trading has powers within the jurisdiction of the United Kingdom to oversee the regulations related to misleading advertising. Advertisements, whether they are found in newspapers or in the broadcast media are covered by those regulations. But the regulations require certain self-regulatory mechanisms to come into play first, and the Office of Fair Trading can only take action in instances where those mechanisms have failed. However, it is absolutely clear that we could tackle advertisements on the Internet because the regulations cover anyone who is concerned or is likely to be concerned with the publication of an advertisement. So if we were very concerned about a particular advertisement we would even have the authority to pursue the service providers.

This authority is made a bit more difficult when it comes to actually finding the person or persons responsible for violating the law. We all know that an individual providing misleading advertising on the Internet from one location can very quickly move his or her operations somewhere else – so the question arises as to whether some sort of international regulation is needed – whether that means developing some sort of an international law or whether more work needs to be done to globalise self-regulation. How can we ensure effective and appropriate co-operation and co-ordination among governments and enforcement officials? What roles do international organisations like the OECD have to play?

My task is to raise the questions and not to provide the answers, which in the UK context is probably just as well at this moment in time. There are a variety of self-regulatory initiatives underway. For example, the Advertising Standards Authority and the British Marketing Association are working on this issue with colleagues in international fora. Our advertising standards code, which we believe applies to Internet advertising, requires that advertisements and promotions directed towards children should contain nothing that is likely to result in a child's physical mental or moral harm. The code also states that they should not exploit a child's loyalty, vulnerability, or lack of experience, and they should not make a direct appeal to purchase unless the product is one that is likely to interest children, and is one that they could reasonably afford.

I recognise that there are many other countries that do things very differently, and I will be interested to learn what they have to say. The challenge for us in the context of this discussion is to determine what can we do to ensure that there is an appropriate balance between regulation, self-regulation and, finally, technological solutions. There are a number of technological mechanisms available including software that allows parents to control access to some classes of online material and it will be interesting to watch those developments as they progress.

There are lots of challenges, I don't have many answers – I wish I did.

A UNITED STATES PERSPECTIVE

Remarks by Mozelle W. Thompson, Commissioner¹ United States Federal Trade Commission

Ladies and gentlemen, good morning, my name is Mozelle W. Thompson and I am a Commissioner at the U.S. Federal Trade Commission. I am pleased to appear before you today to discuss important issues concerning on-line advertising and marketing to children. I am glad to be able to talk to you today about the substantial work the FTC has done in the area of children's advertising and marketing, and perhaps share insight as to how these subjects will be approached in the on-line environment.

As some of you may know, the FTC is the U.S. Federal Government's principal consumer protection agency. In furtherance of its consumer protection mission, the Commission has oversight over commercial advertising and marketing practices -- including advertising and marketing to children.

In this area, the FTC has taken the following actions:

The Commission obtained a \$280,000 penalty to settle charges that Hasbro, Inc. engaged in deceptive toy advertising when it advertised on television that children could operate its "Colorblaster" paint sprayer toy with little effort. In fact, Hasbro used a motorized air compressor during filming to provide the pressure necessary to operate the toy with ease and to achieve the results shown in the commercial.

More recently, the Commission settled charges with Becks North America for its television commercials depicting young adults drinking in a carefree manner on a sailboat, including a young adult holding a can of beer while standing on the bowsprit. I was especially troubled by this advertisement because I believe it was targeted to young adults, including adults under the legal drinking age in the U.S.

We all know by now that many if not most children today are more computer literate than their parents. In fact, that is something that most parents encourage and strive for because they recognize the importance of computers as tools in the information age. But, we also know that certain aspects of the on-line world can pose risks to children.

Children are different from adults. They do not have the same level of experience or judgment to allow them to make important decisions in several ways. First, when a person, such as an advertiser, tells them something, they often cannot determine what is important and what is not. Second, they often cannot determine whether what they're being told is true. In other words, they do not know how to question the quality of the information they are given. And third, they may not be able to determine what key information is missing.

We in the U.S. recognize these considerations and they form the basis for how we look at advertising and marketing directed at children. But on the Internet, our concerns are heightened. This is because the Internet, through its interactivity and new technologies, permits a very sophisticated target marketing, delivering designated messages to persons with corresponding interests or a relevant demographic profile. Contrast this sophisticated advertising medium with an often unsophisticated child

¹ The views expressed within are solely those of Commissioner Thompson and do not necessarily reflect the views of other Commissioners or official USG positions unless otherwise stated.

who may readily believe and trust the many marketers asking them for personal information and selling them products.

That is why the U.S. Government has been especially concerned about the need to protect the privacy of children's personal information on-line. In general, the U.S. supports self regulation as a key element in protecting consumer privacy because we believe that self regulation provides the best opportunity for developing clear and effective policies while at the same time supporting innovation and technological advances. While I am a strong believer in self regulation, I also believe that it must be real, and not cosmetic.

The Commission recently conducted a survey of web sites and of industry guidelines on consumer privacy. I would like to describe some surprising findings specifically about web sites directed to children:

- 89% of the 212 children's sites surveyed collect personal information *from children*.
- Only 8% say that parents can ask that personal information collected from children be deleted or not used in the future (opt-out).
- Only 1% require parental consent to the collection and use information *before* the information is collected or used (opt-in).

As a result, the Commission found that self-regulation was not adequate to protect children's privacy and recommended that the U.S. Congress take legislative action, stated briefly, to provide for parental consent *before* information is collected from children under 13, and to provide parents of children over 13 an opportunity to have their children's information removed from a web site's database after it has been collected. Members of the U.S. Congress have introduced legislation that closely conforms to the FTC's proposal to protect children's privacy on-line.

We believe that this proposal makes sense because it puts parents in control of what information their children provide to the general public so that they, and their children, can feel safe and secure on this new medium. But the FTC is not waiting to take other action to protect children in the online world. Two weeks ago, the Commission brought a well-publicized enforcement action against Geocities -- a popular on-line information web site. In our action, the Commission alleged that Geocities had engaged in a misrepresentation to both children and adults that it would not divulge certain personal information to third parties, and violated this promise by disclosing the information to others.

In addition, the Commission claimed that Geocities deceived children by stating that it operated a GeoKidz Club and contests when in fact, other entities operated those sections of the Geocities site and collected and maintained personal information from children visiting those sections of the site.

Geocities ultimately settled these charges by entering into an agreement with the Commission, where they promised to obtain parental consent before collecting information from children under 13 years old.

All of these activities are important steps in protecting children on the on-line environment. But, children's privacy issues are not the only areas of concern when it comes to marketing to children on-line. I look forward to participating in this next segment of our program in order to discuss on-line privacy and other challenges and hopefully finding some common solutions to protect our children worldwide.

A NORDIC PERSPECTIVE

Remarks of Ms. Carina Tornblom, Director, Consumer Policy Department, Ministry of the Interior

I will attempt to briefly take you on a tour of the Nordic countries and how we view the issues posed by online marketing and advertising directed towards children. We have presented a background paper with more specific information about how the various Nordic countries are currently dealing with these issues, which includes a discussion on online regulation.

The point of departure for the background paper is TV advertising directed towards children. At present, although the Nordic countries have a very large number of PCs per capita, we have not yet had the explosion of advertising on the Internet, however we are bracing ourselves for what we believe will be the inevitable. We think this issue is important, particularly in the context of this new media, because the whole purpose of advertising is to get under your skin. Since children have the kind of complexion that makes you want to protect them, naturally we believe that we need to focus a bit more attention on protecting them in the future.

With respect to television advertising, like the United Kingdom, we have marketing acts that make it possible for us to take action against television advertising in general and, of course advertising on the Internet. However, we also believe it is important to make it clear to the industry in very specific terms that it is not a good idea to advertise to children. We are currently discussing how best to clarify the rules regarding marketing and advertising. The Nordic countries are preparing some recommendations on these issues for our Ministers that should be ready in early 1999, which we hope they will accept. However, as UK delegate said we don't have all the answers yet, so this is just the first step. Since we don't yet have the experience with this kind of advertising, we are especially interested in what is going on in the rest of the world and particularly in the US where they have a lot of experience in this area.

The background paper also clearly shows that although it is possible for us to work with other Nordic countries and also as a member of the EU to establish laws and special regulations concerning television advertising and online marketing, it will be very difficult (perhaps even impossible) to enforce them. It is the view of the Nordic Consumer Ombudsmen, and the individual Nordic governments, that we should be able to use our marketing acts to deal with companies -- whether the marketing is directed from within our countries to the children living there, or from anywhere else in the world.

The Danish Consumer Ombudsman has already done just that. However, once the Consumer Ombudsman has the case, and if he is forced to go to court, the question remains whether the decision can actually be enforced. In Sweden we believe that the applicable law and the forum of adjudication should be the one where the consumer is which, in this case would be the child. As long as there are no international guidelines that we have all agreed upon that will be implemented, abided by, and enforced, we must make a choice for our ombudsmen to deal with companies in the global environment. Because companies can disappear like the Scarlet Pimpernel at any time and there may be no way to get at them if it is really necessary.

We do have a very strong opinion on this matter. But the more that these issues are discussed, and the more we can agree on international regulations that provide the same high level of consumer protection, perhaps it is less necessary to have such a strong view on the forum and law principles that we have now.

I'm sure that my Nordic colleagues would like to focus on the specific details that pertain to their own countries, so I won't go into detailed information on individual countries. But I do want to point to

some principles that the Danish Consumer Ombudsman and the Danish government have put forward and that are currently being discussed within the Nordic countries. Their proposal is based on the premise that in dealing with online marketing – especially if it is intended for children – companies must uphold certain principles that require making a clear distinction between advertising and entertainment. It is evident that children, with the guidance of parents, education (and provided they are not too young), can more or less distinguish what is an ad and what is not when they see it in a newspaper. But, on the Internet while playing games or seeing their favourite Disney characters it makes it much more difficult. Children can get carried away and they have a difficult time distinguishing what is entertainment and what is advertising. We undertook several studies in the Nordic countries in the early nineties that have led us to take a very strong view on this matter. In Sweden, for example, we have gone as far as instituting a ban on television advertising directed towards children under 12. We wouldn't like to have a ban concerning online marketing, and even if that would be necessary, as I mentioned, the problems of implementing and enforcing such laws would be difficult at best.

Another principle that has been discussed within the Nordic countries is the need for clear distinction as to what is marketing directed toward children and what is marketing directed towards adults. We are also considering a proposal stating that children shouldn't be urged to buy goods or enter into agreements on the Internet. Products can be presented, but children shouldn't be encouraged to buy because they don't really know what they are getting into. We are also considering a recommendation that web sites should not contain prizes, rewards, or other games designed to induce children or young people to remain on a site while targeted marketing or advertising information is presented to them.

One interesting thing we learned in compiling the background paper for this meeting is that in Iceland, while they don't yet have many complaints about marketing and advertising on the Internet, they do have real problems with television advertising. Unlike Sweden, they don't have a ban so it is an open market. We have problems in Sweden, even with the ban, but to a lesser degree.

Another interesting development are the guidelines issued by the International Chamber of Commerce on advertising, marketing and distribution on the Internet, that include an article (No. 6) concerning advertising and marketing directed towards children. It reads as follows:

Advertisers and marketers offering goods or services to children online should:

- not exploit the natural credulity of children or the lack of experience of young people and should not strain their sense of loyalty;
- not contain any content which might result in harm to children;
- identify material intended only for adults;
- encourage parents and/or guardians to participate in and/or supervise their children's online activities;
- encourage young children to obtain their parent's and/or guardian's permission before the children provide information online, and make reasonable efforts to ensure that parental consent is given;
- provide information to parents and/or guardians about ways to protect their children's privacy online.

But these are general principles, and it is very easy to say them, but we believe we need to be more concrete and specific than that. This is, however, a sign that the industry agrees that there is a problem, which may be the basis for having some discussions with industry in the future to try to agree to more specific guidelines in this matter.

A BELGIAN PERSPECTIVE

Remarks of Mr. Joseph Royen, Conseiller adjoint, Ministère des affaires économiques

Before beginning, I must make a brief remark about the content of my presentation to put it into context. The topic of this Forum is not within the purview of the Ministry of Economic Affairs, the Ministry in which I work, oversight of such issues falls to various other federal and federate ministries. As such, it will not be possible for me to give comments and provide exhaustive explanations of the various points being examined. My comments today are my own and do not reflect the official view of Belgium.

This subject is vast, complex and very important. Today, we are essentially looking at two issues with which Belgium is very concerned, namely advertising and the protection of minors.

Let's start with advertising. Advertising is a significant element in the consumer society. It often plays an essential role in the purchasing process. Belgium has always been particularly concerned with consumer protection and we have instituted certain rules with respect to advertising information, including requirements that such information be correct and not misleading.

The protection of minors is a matter which is close to the heart for us in Belgium. I believe it is imperative to ensure the effective protection of those who are, by nature perhaps, more sensitive and more vulnerable. Over the last few years, Belgium has reinforced and adapted its legal framework, in particular its penal code.

The Belgian Regulatory Framework

Contrary to what one might think considering what I've just said, in Belgium, the issue of advertising and marketing directed towards children are not covered by one single law or regulation. However, one should not hastily conclude that this issue is not covered by Belgian legislation at all. There are a number of rules that relate to this issue contained in various parts of Belgian law. I would like to point out the principal legal provisions that do exist in Belgium.

The Civil Code:

I think it's necessary to take a moment to define the concept of a "minor". However, the time it would take to adequately analyse just the legal statute that is used to determine what constitutes a minor, would far exceed the time that has been assigned to this Forum. So, I will have to be satisfied to present very general information.

What is a minor? According to the Belgian Civil code a minor is an individual of one or the other sex, who has not yet reached eighteen years of age (article 388). The Civil code regards minors as "incapable" (article 1124 of the Civil code) -- using the legal definition of the word, of course.

Article 1125 of the Civil code sets forth that due to this incapacity, minors are forbidden to file contractual law suits. In addition, people who are able to engage in contractual agreements, cannot oppose the incapacity of a minor with whom they have contracted. However, simple damages can be awarded to non-emancipated minors as redress in many different types of agreements (article 1305 of the Civil code).

After this short enumeration of Belgian legal provisions, it might be helpful to review exactly what they cover.

Although from birth, a minor possesses all the rights attached to a human being, he or she cannot exert those rights his or herself. This general incapacity to exercise these rights is seen as a protective measure, as minors are not seen as having reached a sufficient level of "maturity" to create legal documents. The rights of minors are carried out on his or her behalf by a legal representative (this is generally parents).

The penalties connected to acts carried out by minors are, in part connected to the determination and the distinction between a minor endowed with a certain level of judgement and one that is not. In the latter case, all of the acts carried out by the minor are considered to be null, and this is accepted without it being necessary to prove any specific damage. In the first instance, any act carried out by the minor is not null, but it is rescindable with proof of harm.

The philosophy of the Civil code would be to say that minors endowed with a certain level of judgement are capable of carrying out certain acts that do not require any specific legal specific authorization. However, this capacity does not exist for any act that could be harmful to them. One can contract with minors, but if they are injured, that person is considered to have taken advantage of child's age. Thus, it is not exactly correct to regard minors as "forbidden" to contract, it would be better to speak of anticipated capacity or restricted capacity. But it is obvious that a specific protection exists.

The law of July 14, 1991 on trade practice and for the information and protection of consumers

This law does not contain specific rules applicable to minors. Within this law, a minor is regarded as a consumer in the same manner as an adult would be. In theory, it is the criteria of the "average consumer" -- one who is normally and reasonably informed -- that is taken into consideration when determining the legal character of an advertisement. Generally, other applicable rules and iuregulations are taken into account as well. It is therefore, advisable to take into account the kind of audience the advertisement is intended to reach.

This same law also regulates "joint offers" [sales with premiums]. In general, such offers are prohibited, only a limited number of such sales are legally authorised. With regard to minors for example, it is alright to offer a product or service such as pictures, labels, or other images of minimal commercial value in connection with a purchase (e.g. images representing sports stars or animals).

Article 380 quinquies §1 of the penal code, prohibits the publication, distribution, and the diffusion of advertising offering sexually explicit services directed specifically to minors. The expression " offer of service in sexual matter " is not defined by the law and is aimed at offers such as prostitution, vice, the corruption of the minors, and attempts to induce minors to participate in pornographic materials or scenes of collective debauchery.

Specific Regulations

- Food: The royal decree of 18 February 1991 contains specific requirements related to food advertising and childrens health.
- Drugs: Advertisements for drugs are prohibited in magazines intended for children.

- Tobacco: It is forbidden to advertise tobacco and tobacco products in publications primarily intended for minors.
- Toys: Certain indications (name, addresses of the manufacturer, etc.) must be reproduced on the toy or its packaging.

Television advertising is regulated by both European laws and Belgian laws (controlled by the federate entities).

European Directives

Television advertising is governed by European Directive 89/552/CEE, modified by Directive 97/36/CE relating to television broadcasting, article 16 prescribes a general standard of honesty: Televised advertising should not cause moral physical harm to minors and must, respect the following criteria for their protection:

- a) It should not directly encourage minors to purchase a product or service by exploiting their inexperience or their credulity;
- b) It should not encourage minors to persuade their parents or other third parties buy products or services concerned;
- c) It should not exploit the confidence that minors have in their parents, their teachers, or other people; and
- d) It cannot, without reason, to show minors in dangerous situation.

Article 22 § 1 provides that the Member States take suitable measures to ensure that television broadcast emissions do not contain programs likely to seriously harm the physical, mental or moral well-being of minors, in particular, programs which include pornography or gratuitous violence.

APPLICATION on the INTERNET

After having briefly reviewed the Belgian legal framework, it seems appropriate to raise the question of the applicability of these provisions in the world of Internet. The definition of advertising formulated in article 23 of the law on trade and information practices and consumer protection states the following: "Any communication intended to directly or indirectly promote the sale of products or services, including real goods, rights and obligations, regardless of the place or the means of communication". In reading this definition, one notes first of all that it is very broad, but especially that it applies to all means of communication. Consequently, the Internet would be covered by this definition.

The Belgian legislature adopted the perspective in the drafting of article 380 quinquies of the Penal code (cfr. supra). Consequently, does one have to conclude that any advertising diffused over open networks must answer to prescribed Belgian laws, when accessible on Belgian territory? By no means do I claim that we want to, or even that we can, answer that question within the context of this presentation or to give a course on international law, but considering I have been given this opportunity, I would like to add some element of reflection on the subject to our discussion.

A first principle which seems significant to me is that of the non-discrimination between the forms of commerce. Consequently, electronic commerce cannot be the subject of a deregulation or a depenalisation when comparing the same practices carried out in more traditional commerce.

A second significant point seems to me that of the applicable law. Article 3 of the Civil code provides that the laws of police and safety oblige all those who live within a territory. The Penal code, states that "infringement made on the territory of the kingdom, by Belgians or foreigners, is punished in accordance with the provisions of the Belgian laws ". Through these articles, it appears that criminal law can be applied territorially, which is a significant element of State sovereignty. This rule does not seem to be called in question throughout the world.

Let us not lose sight of the fact children are the subject of our discussion. In Belgium, we agree that there is a need to grant particular protections to minors. So, a judge hearing a case will certainly be more inclined defend the interests of more vulnerable individuals such as minors. When a minor's rights are infringed upon, the law recognises that the person responsible could be outside our national territory. Belgian criminal law extends its sanctions to those who assist or are accessories to the infraction. This suggests that we could think about making server operators and online service providers responsible for what appears online. It seems to me that it one cannot make them responsible for the content of the millions of messages and the commercial information circulating on the network. However, it should be considered in a different light if they were actually aware of the criminal act.

Beyond the problems relating to the applicable law and competent forum, is the the question of the enforcement of the court's decisions in another country. It seems imperative to find innovative ways to accelerate these procedures.

Technologies must also play a significant role, and mechanisms should be developed that allow selective dissemination on the network making it possible for sellers to avoid diffusing advertisements which are prohibited in certain countries.

It is difficult to make conclusions from what I believe was an incomplete presentataion. To use an expression from the world of the Internet, I can say that I only "surfed" the subject. However, the time we have today does not allow me to approach in-depth all the relevant elements of the debate.

The amount of marketing and advertising intended for children requires us to identify the relevant issues. We need to further examine this issue in order to establish the procedures which will allow us to clearly identify the relevant issues. A certain number of problems could be solved by the use of recognized electronic signatures.

Finally I would like to end by posing three questions:

1. When one approaches a problem, is it more convenient to start with a particular point or the general context? In other words is it necessary to first discuss online advertising and marketing in a more general way, or do we begin by discussing issues specifically related to children?
2. The subject which we have proposed to cover today is very significant. Consequently, if the Committee is interested in dealing with this ambitious subject, we need to be sure that we are ready to do it. One cannot make a mistake with such a significant and delicate subject. Is the Committe and the Secretariat ready to implement the means to approach these problems?
3. In this Forum, we are looking at two issues, advertising and marketing. These are two different issues in two different environment. Indeed, advertising is non-contractual while marketing can often be contractual. Consequently, is it convenient to treat these - two subjects as one? Shouldn't one precisely define the terms "advertising" and especially "marketing" ?

ANNEX I – BACKGROUND PAPER

The attached issues paper was prepared by the Secretariat to provide an overview of some of the issues related to Online Advertising and Marketing Directed Toward Children.

ONLINE ADVERTISING AND MARKETING DIRECTED TOWARD CHILDREN

The evolution of digital computer and network technologies and their immersion into the daily lives of people world-wide are adding a new dimension to the commercial and cultural landscape -- improving communication and providing access to information, entertainment and a global marketplace that largely ignores political and geographic barriers. New technologies and creative advertising techniques are being used to deliver interactive messages and product information using combinations of video, audio, text, and graphics. The growing commercial use of these technologies is generating increasing amounts of data about user and consumer reactions and responses to advertising and marketing information; and could make it easier and less expensive for businesses to reach and "connect" with their intended audience. However, along with the promise of these new technologies and the potential to produce a more efficient marketing dynamic, a number of new questions arise, including the integrity of information, misleading and deceptive advertising, data collection and the protection of privacy.

The challenges and issues that face all users and consumers in the global network environment are magnified with respect to children and their activities online. Children are increasingly using the Internet from schools, libraries and homes, to access a wide variety of educational and cultural information and to gain a unique and comprehensive view of the world around them. Children can be challenged to learn and grow through their online experiences, taking virtual trips to visit cities, countries and even planets that they might never see any other way. However, the accessibility of the electronic environment and the information it contains raises a number of concerns about children's safety and increases the international focus on this "vulnerable population" and how to best protect them from harm online.

Children the Electronic Marketplace

In 1996, there were fewer than 40 million people connected to the Internet worldwide; by December 1997, that number grew to approximately 96 million, and growth projections for 2005 predict there will be nearly one billion users online.² Children are an ever-increasing percentage of that total, according to a report by Jupiter Communications, 4.1 million children between the ages of 2 and 17 were online in 1996, and the total is projected to grow to 19.2 million by the year 2000.³ These numbers represent a potential consumer market base that is difficult for advertisers and marketers to ignore. In 1998, world-wide online ad spending is expected to reach just under \$2 billion USD, and a recently released study of US, European, and Asian advertising and media companies estimates global spending on Internet advertisements will reach \$15 billion by 2003.⁴

² CommerceNet and Nielsen Media Research, "CommerceNet/Nielsen Media Demographic and Electronic Commerce Study, Spring '97", http://www.commerce.net/work/pilot/nielsen_96/press_97.html

³ "Digital Kids Report", Jupiter Communications, www.jup.com (March 1997). In addition, early results of a recent study of childrens' use of the Internet by "Kids.net" in the United Kingdom found that one out of every three children have accessed the Internet at least once and two out of five children have a PC at home. (NOP Research Group, Summer 1998).

⁴ "Media's Global Future", Forrester Research (August 1998)

Even in these early stages of its development, the electronic marketplace is proving to be highly competitive environment with millions of individual pages and sites vying for consumers' attention. Peer pressure from competitors and the growing public appeal of the networked environment have encouraged hundreds of thousands of businesses to include this new media as part of their advertising and marketing budgets. Advertisers are attempting to determine how best to harness the unique technological capabilities of the medium to communicate with a global commercial audience. Despite the commercial and legal uncertainties of the electronic environment, advertising and product marketing information are proving to be essential elements of the electronic marketplace and the evolving relationship between businesses and consumers online. The practicalities of doing business in a "virtual" world without the ability to physically hold and inspect merchandise, mean consumers must rely on the information they find, and an electronic "view" of the products and services they are being offered. In addition, just as in the "real world" of newspapers, magazines, television and radio, Internet advertising sponsorship provides revenue for content providers to build and maintain a presence in the marketplace and provide innovative forms of information and entertainment.

Like adults, children are eager to use these new technologies and they are captivated by the variety and interactivity of the content available on the Internet. More and more children are using it both for educational purposes and to fill their free time, in some cases, children are choosing to surf the Web rather than watch television.⁵ By creating unusual and dynamic online environments, advertisers can capture children's' attention and encourage them to spend long periods of time on their sites playing games and viewing content that are seamlessly integrated with advertising information. The growing numbers of children and teenagers online also have an incredible impact and influence on purchasing decisions. Youth spending power has increased steadily for more than a decade and reaching an estimated \$108 billion in 1997, and while estimates vary, the total could reach \$136 billion by 2001⁶, making the online youth market an appealing advertising and marketing target. Some businesses are building exclusive "advertising sites" that may be a simple, single-page advertisement that provides basic information and a phone fax or address where they can be contacted off-line. Others are building elaborate multi-media Web sites that not only offer advertising and product information but could also provide interactive games, electronic pen pals, chat rooms and contests to encourage children to spend time and explore the site. Recognising the potential of this trend, marketing and advertising and companies have begun to devote specific attention to children and teenagers and their habits and activities online.

A survey commissioned by the Internet Advertising Board in the Spring of 1997, indicated that a single exposure to a web banner advertisement can increase brand awareness both online and as part of an overall marketing strategy by reminding people of brands they already know and exposing them to information about products and services that they have never see before. Like traditional magazine newspaper and broadcast and broadcast advertising, online ads can be geared to appeal to a particular audience with particular interests and tastes. Marketers and advertisers have long known the value of brand recognition and loyalty and the ability to develop a relationship with a targeted niche of consumers, hoping to make a "connection" with a consumer as early as possible and begin to establish what could be a long-lasting brand loyalty.

⁵ In a recent survey, children rated their online activities and reported their most common activities online as: the use of e-mail (54 percent); homework (37 percent); games (30 percent); and online "chat" (29 percent). One-third of children under 13 and forty percent of those from 13 to 18, reported they spent fewer hours watching television. Jupiter Communications Digital Kids '98 Conference (San Francisco, CA , June 1998).

⁶ Packaged Facts Report, Interep Research (1998)

Technological tools afford advertisers and marketers immediate access to user information about themselves and their online activities, increasing the risk that personal information may be automatically generated, collected, stored, interconnected and put to a variety of uses without the individual's knowledge or consent. Children are particularly vulnerable to such data collection practices and are likely to be completely unaware of the amount or the potential use of the information they are giving away. Anxious to play a game or enter a contest, children may be willing to answer any number of questions about themselves and their families and may not wait to get their parents approval before providing the information online. Sites may also track and monitor the "clickstream" data generated as the child interacts with the site; enabling them guess the child's favourite spokes-character or type of cereal by the noting the frequency and the duration of his or her activities. All of this information can be compiled to form detailed personal profiles and can be used to design personalised advertising aimed at individual children.

In addition to the direct questions and concerns raised by online advertising and marketing tactics, commercial sites and the activities they offer to attract children and keep them coming back may pose additional risks to children's safety online. The likelihood that children will be exposed to any physical harm as a result of their online interactions is remote. However, helping to educate and inform children and their parents about the potential risks that some online activities may pose, is an important step to help protect children on the Internet. A recent study found that 68 % of parents are concerned about their children being exposed to harmful material on the Internet, ranging from pornography to manipulative e-mail and marketing information.⁷ While, chat rooms, bulletin board postings and online pen-pals offer children the opportunity to express themselves, exchange ideas and make new friends online, however, they may also make children vulnerable to unwanted and potentially harmful conduct or inappropriate information, including messages that:

- contain harassing or threatening language;
- contain inappropriate content (for example: images of a violent or sexual nature, or descriptions of dangerous or illegal activities);
- provide information about and perhaps access to illegal or controlled substances (for example: information advocating the use of drugs, alcohol or tobacco products);
- attempt to collect information about a child and/or his or her family and friends; and
- attempt to set up face-to-face meetings (children often have no way to determine whether they are dealing with another child or an adult posing as a child).

Efforts to Protect Children Online

Although the electronic environment and the information and economic promise it holds offers a number of social and economic benefits, it also increases the opportunities for personal information to be misused. A variety of overlapping and complementary instruments, practices, techniques and technologies are currently being used or are under development for use in networked environments, that are intended to define, implement and enforce the recognised privacy principles of the 1980 OECD Guidelines on the

⁷. Jupiter Communications Digital Kids '98 Conference, NFO Interactive Survey (San Francisco, CA, June 1998).

Protection of Privacy and Transborder Data Flows of Personal Data⁸. Effectively implemented, these government, private-sector and technological instruments and mechanisms can be used to help protect children's privacy online.

Filtering and Blocking Technologies

A number of blocking and filtering software packages⁹ are available which are designed work in conjunction with Internet browser technologies to monitor, filter and prevent access to certain sites on the Internet and could be used to prevent the disclosure of personal data. Most of the current software packages are configured to filter content alone, but a number of them are working to add privacy preference settings to their label-reading software. Many filtering software packages work by reviewing generally the Web site that has been requested to determine whether the site itself or some words on the page are considered "objectionable" by the standards set by the software publisher. Other versions screen out sites that are part of a list of determined to be "objectionable" by either the software vendors or some other rating body.

Blocking and filtering technologies work to prevent access to sites through the use of "digital labelling". Using digital labelling, a particular online community or organisation can develop a uniform "vocabulary" for Web site content¹⁰ or information practices¹¹, which is then used to describe the content or the privacy practices of individual sites. Web site developers then include a description of the content or practices of a particular site in a label embedded in the the header information of a Web page. This information is invisible to the user, but can be read by browser software that examines a Web site's HTML code and allows only those sites that contain a rating label that matches the users' pre-set criteria to be loaded into the browser for viewing.

⁸. For a detailed overview of available privacy instruments and mechanisms, See the "*Draft Inventory of Privacy Instruments And Mechanisms For Implementing And Enforcing The OECD Privacy Guidelines On Global Networks*", DSTI/ICCP/REG(98)12

⁹. Examples include: Bess <http://bess.net> ; CyberPatrol <http://www.cyberpatrol.com> ; CYBERSitter <http://www.solidoak.com> ; InterGo Communications <http://www.intergo.com> ; Net Nanny <http://www.netnanny.com> ; Net Shepherd <http://www.shepherd.net> ; Parental Guidance <http://www.PGuidance.com> ; Specs for Kids http://www.newview.com/specs_home.html SurfWatch <http://www.surfwatch.com>

¹⁰. *Platform for Internet Content Selection* ("PICS") is an example of a technological platform capable of supporting digital labelling. PICS was developed by the W3C as a framework for labelling the content of Web pages to allow users (or parents of children using the Web) to set filtering rules which selectively block access to certain kinds of material.

¹¹ The *Platform for Privacy Preferences* project ("P3P") is being developed by the World Wide Web Consortium (the "W3C") and is based on their framework for labelling Websites. The goal of P3P is to allow Websites to simply express their privacy practices over the collection and use of personal data and to enable users to specify their own preferences. The interaction between the privacy preferences of the site and the user is mediated by P3P. Sites with practices which fall within a user's preference set will be accessed "seamlessly". Otherwise, users will be notified of a site's practices and have the opportunity to agree to those terms, to be offered new terms, or to discontinue browsing that site. See <http://www.w3.org/P3P/>

Safe Online "Communities" for Children

A number of safe "virtual communities" for children are being developed on the Internet that take advantage of filtering and blocking techniques and contain links to approved Web sites, information, games and other entertainment. These are user-controlled virtual communities that allow children to interact using popular Web tools such as e-mail, and monitored chat rooms and bulletin boards to provide a controlled online environment for children. In addition, nearly all of the major online service providers offers parents some sort of blocking or filtering options to help provide a safer environment for children. Some offer parents the ability to limit a child's access to "Kids Only" or the "Teens Only" areas, which contain only approved and pre-selected entertainment and educational sites and content and well as monitored chat and message areas.

Private Sector Guidance

A number of industry-based organisations have developed guidelines and codes of conduct for their members that are intended to help protect children from deceptive or misleading marketing practices. For example in 1996, the Children's Advertising Review Unit (CARU) of the US Council of Better Business Bureaus released a revised version of their *Children's Advertising Guidelines*¹², which are intended to encourage truthful and accurate advertising sensitive to the special nature of children. The *Guidelines* were first adopted in 1974 and were updated in 1996 to include a section that addresses advertising communications with children using interactive electronic media.

Educational Initiatives

Education is an essential aspect of consumer protection, and electronic networks are well suited to help provide comprehensive and up-to-date information and advice. It may not be possible to definitively address some of the problems inherent to the electronic marketplace by legislative or self-regulatory means, and it is important that parents and children are aware of these risks and how best to avoid them. The technologies can be used as tools to distribute information to develop innovative methods to provide information, for example by providing hyper-links to consumer-related Web sites and information.

In addition to the educational initiatives sponsored by governments and schools around the world, a number of private sector efforts have been developed. For example, the Direct Marketing Association has developed an online educational program that provides a "guided tour" of the Internet entitled "*Get CyberSavvy!*"¹³ The site provides three separate interactive "tours" that: helps parents learn the basics of the online environment and how to help protect their children online; teaches children how to safely surf the Web; and provides information to educators and librarians to help them encourage families to surf the Web together. In addition, a co-operative effort between the National Center for Missing and Exploited Children and the Interactive Services Association has developed a Web site called *SafeKids.com* where parents can learn the about the potential risks their children face when using the Internet and specific guidelines for parents and a set of online safety rules for children.¹⁴ Similar information, advice and hyperlinks to "Great Sites for Families to Visit" can be found on the Canadian site *Kids on the Net*.¹⁵ All

^{12.} <http://bbb.com/advertising/caruguid.html>

^{13.} <http://www.cybersavvy.org/>

^{14.} http://www.safekids.com/child_safety.htm

^{15.} <http://cses.scbe.on.ca/kids/kids.htm>

of these sites emphasise the importance of education and parental guidance to help ameliorate the potential risk children may face online.

Government Initiatives

International commercial transactions may be subject to varying legal and self-regulatory standards, including commercial codes for advertising, marketing, and sales disclosure requirements. The global network environment challenges the abilities of the traditional geographically based jurisdictional structures to effectively address the potential threats to children online. Cultural and Efforts to evaluate and apply existing policies, laws and practices to the online environment are being undertaken at both national and international levels keeping the global aspects of the electronic environment in mind. However, cultural and societal differences make it difficult at times for governments to develop a co-ordinated response to the threats facing children online.

A number of countries around the world are growing increasingly concerned about online content and the use of global networks to distribute child pornography and are taking up measures to combat child pornography on the Internet. In July 1998, Germany established a committee to develop methods for the country's states to work together to fight child pornography. In addition, EU telecommunications ministers agreed in May 1998 to fund a four-year action plan to cover initiatives such as a European network of hot lines to allow users to report illegal material. The OECD has developed an inventory of "Approaches to Content on the Internet" which reviews the existing legislation and practices in OECD Member countries concerning Internet content issues¹⁶.

In May 1998, the US Federal Trade Commission issued a notice requesting public comment on a proposal to develop an Enforcement Policy Statement intended to clarify how existing rules commercial rules and guides will apply to "newer forms of electronic media, such as e-mail, CD-ROMs and the Internet." Additionally, in June 1998, the FTC released a detailed report entitled "Report to Congress on Privacy Online", which emphasises the importance of notice, choice, security and access to privacy protection. The report suggests that substantial incentives are needed to spur self-regulation and ensure widespread implementation of basic privacy principles, and recommends the enactment of legislation to protect children's online privacy.

Conclusion

While the proliferation of advertising and marketing information on the Internet is helping to drive the growth and development of the global marketplace; it also increases the potential that users and consumers and particularly children will be faced with misleading or deceptive information and threats to their personal privacy. Governments and the private sector are faced with difficult questions about the application of existing commercial rules and practices in online and whether or not they provide sufficient guidance and protection in the global electronic marketplace.

¹⁶. DSTI/ICCP(97)14/REV1OCED Committee for Information Computers and Communications Policy, (7 October 1998)

ANNEX II - ADDITIONAL INFORMATION SUBMITTED BY FORUM PARTICIPANTS

United Kingdom

GENERAL ISSUES RELATING TO ON-LINE MARKETING AND ADVERTISING

1. **The need to create an appropriate legal and self-regulatory framework for commercial communications in electronic commerce**

- *the application of existing national laws to the online medium*

- adapting, where necessary, existing consumer protection laws on advertising and marketing to accommodate the special circumstances of the online medium:
 - (i) clarifying how the existing regulatory regime applies online - there may be one set of rules for advertisements made in the print media and another for the broadcast media
 - (ii) resolving jurisdictional issues among national regulatory bodies

- *enforcement of national laws in cyberspace*

- enforcement difficulties - establishing and asserting jurisdiction, enforcement of judgments, evasion of law enforcement through cross-border targeting.
- the need for governments to co-operate at the international level - through ongoing information exchange and policy co-ordination - to create global solutions to regulatory problems

- *encouraging effective self-regulatory mechanisms*

- updating self-regulatory codes to include electronic media (many industry codes of practice pre-date the development of electronic commerce).
- encouraging the identification and spread of self-regulatory best practice.
- encouraging co-operative approaches to self-regulation [European Advertising Standards Alliance]
- developing self-regulatory initiatives on an international basis

2. **Universal accessibility of on-line communications**

- Sellers may lack control over the dissemination of advertising or marketing material made available on the Internet:

- technological difficulties in sellers limiting the availability of online communications to particular geographical locations; suppliers can refuse orders from certain countries (although this would reduce consumer choice).

- To what extent can websites be considered invitations to consumers to buy?
 - compliance problems: should sellers be subject to the advertising and marketing laws of all jurisdictions in which the communication can be accessed by consumers?
 - suitability of advertising material for children.

3. **Ease of opportunity for fraudulent or misleading advertising**

- The costs of promoting a commercial activity via the Internet are relatively small - anyone can create, register and promote a website.
- Ease with which marketers can conceal their true identity when sending bulk commercial e-mails.
- Marketers can also set up and close down sites easily and quickly, disappearing with the consumer's money.
- Use of fake brand domain names.
- Advertising may be difficult to recognise. Bulletin boards and chat forums may include areas where comments about the quality or performance of products or services may be advertisements in disguise.
- Difficulty of obtaining evidence from electronic media, for example there may be no 'original' message, and messages may be fleeting and not produced in hard copy.

4. **The advertisement as a 'transaction'**

- Electronic commerce provides the opportunity for immediate interactivity - an online advertisement may generate an immediate responsive action from the consumer.
- Protecting the consumer in a subsequent online 'transaction' - the need for transparency and disclosure.
- Legal issues relating to electronic sales, for example at what moment is a contract formed? How are terms and conditions incorporated into the contract?

5. **Control of unsolicited commercial e-mail**

- Developing technological and self-regulatory solutions to enable consumers to 'opt-out' of receiving unsolicited commercial messages:
 - (i) use of filtering software.
 - (ii) establishment of industry 'e-mail preference services' with which users can register if they do not wish to be approached by direct marketers' offers.

6. **Data Protection**

- Developing technical, self-regulatory, and regulatory solutions

United States

The United States Federal Trade Commission has submitted additional information related to online advertising and marketing to children. Most of these materials are available on the FTC Web site <http://www.ftc.gov>, and include:

FTC business education brochure, “Advertising Practices: Frequently asked Questions” (<http://www.ftc.gov/bcp/online/pubs/buspubs/ad-faqs.htm>)

FTC and National Association of Attorneys General (NAAG) consumer education brochure, “Site-Seeing on the Internet” (<http://www.ftc.gov/bcp/online/pubs/online/sitesee/index.html>)

Children’s Partnership with the National PTA and National Urban League’s consumer education brochure, “The Parents’ Guide to the Information Superhighway – Rules for Families Online”

FTC Testimony before the House Subcommittee on Telecommunications, Trade and Consumer Protection on “Consumer Privacy on the World Wide Web”, 21 July 1998 (<http://www.ftc.gov/os/1998/9807/privac98.htm>)

Chairman Pitofsky’s Testimony Before Senate Subcommittee on Telecommunications on “Protection of Children’s Privacy on the World Wide Web”, 23 September 1998 (<http://www.ftc.gov/opa/1998/9809/privchil.html>)

FTC Press release on Geocities case (<http://www.ftc.gov/opa/1998/9808/geocitie.htm>)

Children’s Online Privacy Protection Act of 1998

FTC business education brochure, “Advertising and Marketing on the Internet” (<http://www.ftc.gov/bcp/online/pubs/buspubs/ruleroad.htm>)

FTC Staff Report: “Public Workshop on Consumer Privacy on the Global Information Infrastructure”, December 1996 (<http://www.ftc.gov/reports/privacy/privacy1.htm>)

FTC Report: “Privacy Online: A Report to Congress” – June 1998 (<http://www.ftc.gov/reports/privacy3/index.htm>)

Sweden

On-line Marketing and Advertising Directed at Children – Experiences from the Nordic Countries

Background paper

1. TV advertising directed at children, etc.

The rules on TV advertising directed at children and the regulations concerning improper marketing constitute a natural point of departure for discussions of on-line marketing directed at children.

Denmark

The instructions issued by the Ministry of Culture about radio and TV advertising and sponsoring (Sections 16–23) contain rules designed to protect children and young people under the age of 18 in connection with radio and TV advertising. The Broadcasting Commission (*Radio- og TV-Reklamenævnet*) takes decisions on matters pertaining to infringements.

According to these instructions, advertising may not be designed in such a way as to exploit the recipient's natural gullibility, loyalty and trust in parents, teachers or others. An advertisement may not undermine social values or contain any suggestions that might place minors in dangerous situations. Persons associated with children's programmes and children under the age of 14 may not urge children to make purchases.

The Marketing Act does not contain any special rules about marketing directed at children and young persons. The point of departure is therefore the general clause about fair marketing practices in Section 1 of the said act, and the criteria laid down in the International Codex for Marketing Practice.

Finland

In Finland the Consumer Ombudsman has drafted instructions for marketing directed at children. These instructions are based *i.a.* on provisions on marketing contained in the Consumer Protection Act and rulings of the Market Court, the practices of the Office of the Consumer Ombudsman itself and the attitudes of the business community.

The problems that arise in connection with TV commercials directed at children primarily involve how easily recognizable the advertisement in question is. According to the instructions, the presentation of the advertisement must be clearly distinguishable from other programmes with regard to imagery, text and sound. Furthermore, an advertisement may not have a harmful effect on children.

Broadcasters may not interrupt children's TV programmes to show advertisements. This applies in particular to programmes lasting less than 30 minutes. Advertisements containing frightening elements, for example loud noises and aggressive behaviour, should not be broadcast during prime time for the very youngest viewers, and absolutely no forms of violence are permitted in commercials directed at children.

With regard to technical execution, TV commercials should be clearly distinguishable from children's programmes. For example, commercials may not use features or figures from children's programmes that are currently being shown on TV. Commercials based solely on animation should be avoided in connection with animated children's programmes. Moreover, it is forbidden to direct a sales appeal to children, in

particular when this appeal is made by a cartoon character. Nor is the sponsoring of children's programmes permitted.

Iceland

Chapter VI of the Icelandic Competition Act no. 8/1993, concerns supervision of marketing activities. Section 22 of the said act contains special rules relating to marketing directed at children. According to the act, when commercials are designed, the possibility that children may see the commercial must be taken into account, since they are particularly impressionable.

Some examples from Iceland indicate a growing need to protect children from advertising in general. TV stations show trailers for prohibited films before 8 pm in the evenings as well as TV advertisements for breakfast cereals, toys and hamburger restaurants immediately before or after children's programmes. Furthermore, the Office of the Children's Ombudsman has received complaints, for example, about young, semi-nude girls being used in an advertisement for a shop in Reykjavik, and about pre-school children being used in advertisements for the State Liquor Shop that opened a local branch on the outskirts of Reykjavik, etc.

Norway

As is the case in the other Nordic countries, Norway has a long tradition of protecting children from commercial influences. The Norwegian Marketing Act does not contain a ban on advertising directed at children and young people, but advertising targeting this category is subject to stricter assessment inasmuch as consideration must be taken to the fact that this category is particularly impressionable and lacking in experience. Among other amendments, the criterion for fair marketing practice was incorporated into the Marketing Act in 1997. This marks a tightening of provisions compared with previously.

The only area in which there are special rules on advertising targeted at children is within the field of TV advertising. The Broadcasting Act (*Kringkastingsloven*) prohibits advertising in direct connection with children's programmes and advertising which is targeted specially at children. The ban applies to advertising that is directed particularly at children, for example, containing a direct appeal to buy a product. Norwegian TV legislation restricts the extent to which these forms may be used in advertising. The increase in the choice of international programmes will most probably mean that Norwegian children will be constantly exposed to commercials.

The Consumer Ombudsman has prepared a document entitled *Orientering om praksis i forhold til TV-reklame* (transl. Orientation about practices in relation to TV advertising). The purpose of this document is to provide general information about the practices of the Consumer Ombudsman and the Marketing Council (*Marknadsrådet*) with regard to TV commercials.

Sweden

The Radio and Television Act contains a ban on TV commercials directed at children under 12 (Chapter 7, Section 4). According to the provisions in the Radio and Television Act, commercials shown during a TV transmission may not have the purpose of attracting the attention of children under the age of 12. The provisions also state that persons or characters who play a prominent role in a programme primarily intended for children under 12 may not appear in commercial advertisements during a TV transmission.

The prohibition of advertising directed at children is closely linked to the question of advert identification. The Nordic report entitled *Børn och TV-reklame – tre nordiske undersøgelser* (transl. Children and TV advertising – three Nordic surveys) (Nord 1992:4) sheds light upon how children perceive adverts on television. The surveys show that younger children have difficulty distinguishing between advertising and other programmes, and that children do not always understand that the purpose of advertisements is to induce them to buy things.

In the period 1992–95, the Broadcasting Commission found TV 4 guilty of infringements of the provision on advertising directed at children under 12 on more than ten occasions, although that provision is formulated quite clearly. There is reason to suppose that companies commit infringements of this provision because advertising of this type directed at young children is effective and therefore lucrative.

The Advertising Association of Sweden (*Sveriges Reklamförbund*) supports the prohibition of advertising directed at children and intends to work to ensure that the ban has an effect in the EU as well. In a questionnaire to its members, the Advertising Association asked them what they think about TV commercials targeted at children under 12. In September 1997, 130 advertising agencies had replied, and close to 90 per cent of them thought that such TV commercials should not be permitted or at any rate that they were not desirable. (Press information from the Advertising Association of Sweden, 9 September 1997).

The Advertising Association holds the view that children should be protected and that a ban on advertising directed at children is therefore justified. However, the Association also thinks that the provision is unpredictable and that it renders advertising for certain products impossible (the journal, *Resumé* no. 23, 1998). Partly on account of the criticism that the prohibition of advertising directed at children is difficult to apply, the Swedish Consumer Agency has concluded an agreement with the industry about criteria for applying the prohibition. The idea is that these criteria will make it easier for companies to observe the regulation.

In the Court of Justice ruling in the *de Agostini* case, *the principle of the transmitting member state* was established, which means that a strict national ban on advertising directed at children cannot be maintained against broadcasts from other Member States. However, the application of such a ban against a television broadcaster established in the same state is in accordance with the TV directive, since the Directive allows the Member States to lay down more strict rules for domestic broadcasters. Furthermore, the TV directive does not prevent one member state, with the support of its national legislation, from intervening against misleading advertising, since the directive does not regulate such advertising. However, it is incumbent on a national court to *i.a.* examine whether the national rules are necessary in order to meet overriding requirements of general public importance, for example consumer protection.

2. Internet advertising directed at children

So far, the Internet has not had the same impact as radio and TV, but it nevertheless reaches a broad audience and has had a marked effect on children and young people. It is easier for children and young people to absorb and use the new medium, and presumably a large proportion of the young population possesses the knowledge required to use the Internet. It is probably not uncommon for children to surf on the Internet without their parents having any control over what the children find there. Thus, there is a risk that children may find advertising targeted at them on the Internet without their parents being aware of this, etc.

Nordic legislation, etc

At the Nordic meeting of Consumer Ministers held in Oslo in July 1997 it was decided that a proposal should be prepared for rules on marketing directed at children and young people using IT media. Such a proposal could form the basis of a possible Nordic initiative in the EU. As a result of the decision in Oslo, a document was compiled listing current legislation in the Nordic countries on Internet advertising directed at children and young people. According to a preliminary schedule, a proposal for rules will be presented at the Nordic meeting of Consumer Ministers due to be held at the beginning of 1999.

A feature common to the Nordic regulations is that advertising targeted at children is judged according to the same rules as those that apply to adults. The difference is that the assessment of what is deemed to be misleading or reliable is stricter when applied to advertising targeted at children. The central laws in this area contain no special rules for marketing directed at children. However, there is special legislation for certain media. For example, the ban on TV commercials targeted at children, which applies in Sweden and Norway.

Documents prepared for the Nordic meeting of Consumer Ministers in Stockholm in February this year contain recommendations that when rules for IT marketing directed at children and young people are drafted the following aspects should be highlighted:

- The sanctity of private life and the procurement of information from children. (There are examples of companies which, via their Web sites, ask children and young people to supply information about themselves and their families.)
- Interactive marketing. (One form of interactive marketing which is to be found on the Internet are games that contain brand-names. The idea underlying these games is that the brand-name will etch itself into the child's consciousness. Children and young people can be assumed to be particularly receptive to this type of marketing.)
- Opportunities for children to shop on the Internet without the knowledge or consent of their parents. (Children and young people do not always fully understand the value of money and may find it difficult to get a full picture of the range of offers on the Internet.)
- Opportunities to filter messages. (Children and young people may have access to marketing that was not intended for them. It is therefore important to work for the introduction of international marking and filter systems.)

Denmark

The Danish Consumer Ombudsman has handled two cases in which American companies (the Walt Disney Company and Kellogg Company) have marketed their products in a way specially designed to attract the attention of children. Both companies, which have large market shares in Denmark, market their operations both in printed and electronic media in Denmark. On the Web sites in question, the borderline between competitions, games, quizzes, advertising and product information is fluid. The Consumer Ombudsman holds the view that this type of advertising is in contravention of the Danish Marketing Act, since, according to the Consumer Ombudsman, in its interactive form it exploited children's natural gullibility and lack of experience.

A central problem is the question of which country's legislation is applicable to the contents of a Web site. The Consumer Ombudsman holds the view that the principle of the receiving country should apply. The arguments in favour of the application of Danish law are briefly as follows:

- The contents of the Web site are read *i.a.* by children and young people in Denmark.
- The contents of the Web site are not targeted solely at the American market, and
- The commercial activities of the companies in Denmark are such that there can be no doubt that the marketing activities conducted in Denmark are targeted at Danish citizens.

The Consumer Ombudsman has not gained a hearing for its views at the Walt Disney and Kellogg companies, which is why the Consumer Ombudsman has notified the two companies that their Internet marketing activities will be taken into consideration if the office receives any complaints about the companies' marketing activities in Denmark in the future.

In August 1998, the Danish Consumer Ombudsman issued instructions on marketing directed at children and young people. The instructions contain minimum rules for marketing that is intended for children and young people. With regard to marketing on the Internet the instructions contain *i.a.* the following rules to companies:

- There should be a clear distinction between advertising, entertainment (various games) etc., and opportunities for entering into agreements via the Internet.
- There should be a clear distinction between marketing directed at children and young people and the marketing of goods and services that is directed solely at adults.
- Children and young people should not be urged to buy goods or enter into agreements via the Internet.
- There should be guarantees that children and young people do not purchase goods or enter into agreements via the Internet.
- Web sites should contain no prizes, rewards etc. designed to induce children and young people to remain at the site or to take part in activities there.
- Parents should not be encouraged to share children's activities on the Internet.
- There should be no links to other Web sites unless these comply with the instructions.
- Companies should use the best available technology to enable parents to restrict children's access to the Internet.

Finland

Finland has no practice on Internet advertising targeted at children. The Consumer Ombudsman has replied to inquiries from companies that have planned children's pages on their Web site, but no cases have been processed.

In the Consumer Ombudsman's instructions on marketing directed at children, it is emphasized that caution must be observed when preparing Web sites, particularly since children are a target group that can be very receptive. Personal details may not be taken from children and it is not permitted to pass on their user profiles for commercial use. Advertisements that are intended for children should be specially marked and kept separate from other material. Furthermore, advertising pages should not be linked to other pages

intended for children. Direct contact between advertisement characters and children should be avoided. Children should not be requested to order direct via the Internet.

Iceland

The Icelandic authorities have not received any complaints about Internet advertising.

Norway

The Norwegian Consumer Ombudsman has intervened to prevent unlawful lotteries and competitions on the Internet. Among other things, the Consumer Ombudsman has intervened against an American company which used competitions that awarded prizes which were directed at children. Such competitions are in contravention of the Norwegian Marketing Act.

The increase in the number of Norwegian households with access to Internet means that children and young people have greater access to an international medium, the contents of which are subject to a minimum of restrictions. It is not unusual for marketing to take the form of a direct dialogue with the user, giving the company the opportunity to find out more about who really assimilates the advertising.

In 1998, the government institute for consumer research (SIFO) was commissioned by the Ministry for children and the family to prepare the report *Reklame rettet mot barn på Internett* (transl. Advertising directed at children on the Internet). The report provides insight into various forms of Internet marketing and, in particular, how children are exposed to advertising. A central conclusion in the report is that the Internet is particularly suited to commercial communication with children. The way in which games and puzzles, competitions, advertising and product information are interwoven make it particularly difficult for children to distinguish between advertising and entertainment. The technology also makes it possible to register information about children, which facilitates direct advertising to children.

Sweden

The same provisions apply to IT-based advertising as to other types of advertising, i.e., the provisions contained in the Marketing Act and the requirements established by the practices of the Marketing Court. However, with respect to IT as an advertising medium special questions arise that should be solved in order to maintain good consumer protection when this medium is used. The interactive feature, i.e., the interplay between user and computer, is an example of one such question that should be highlighted since it has a special impact on children and young people, who are particularly impressionable and vulnerable as consumers.

On 20 July 1998, the Government decided to approve the terms of reference for an inquiry into consumer rights in the IT society. The committee of inquiry is to make a particular study of whether specially vulnerable consumer groups such as children and young people need to be protected from Internet marketing.

3. Transboundary marketing

Denmark

In light of the Council of Justice ruling of 9 July 1997, in a case concerning advertising directed at children (between the Consumer Ombudsman and the media company De Agostini (Svenska) Förlag AB and TV-shop i Sverige AB), the Consumer Ombudsman sent out a message to several different company and consumer representatives. The Danish Consumer Ombudsman asserted that the rules of the receiving country apply in relation to the advertiser regardless of whether the advertisement is transmitted from another member state. (See also the Danish Consumer Ombudsman's argument in the complaint against Disney and Kellogg.)

Norway

The transnational nature of the Internet raises complicated issues about choice of law and court. The jurisdiction of the Marketing Act is determined by whether the said act can be considered to be directed towards the national market. The Consumer Ombudsman has put forward the argument that the Marketing Act is applicable to all marketing that is directed towards Norwegian consumers also when that marketing is transmitted via the Internet.

Sweden

An important issue for Sweden is to what degree Swedish authorities and courts may intervene against transnational marketing. In this context the Court of Justice ruling of 9 July 1997 in the cases concerning advertising directed at children and misleading advertising (between the Consumer Ombudsman and the media company De Agostini (Svenska) Förlag AB and TV Shop i Sverige AB) is of great interest. The pivotal question in the case was whether *the principle of transmitting country* precludes Sweden from intervening against advertisers on the TV3 channel for misleading or inappropriate advertising. According to the EC directive on transboundary TV broadcasts (*Television without Frontiers*), the principle of the transmitting country applies. This means that the country from which a channel is transmitting has supervisory authority over broadcasts in accordance with its national rules.

In its ruling, the Court of Justice states that the TV directive does not preclude a Member State from intervening against advertisers with the support of national legislation with the general aim of consumer protection, since the directive only partially coordinates provisions on television advertising. Rules on misleading advertising fall outside the scope of Article 30 of the EC Treaty, unless it is shown that they have a discriminating effect on products from other Member States. If so, it is for the national court to examine whether the national rules are necessary in order to satisfy overriding requirements of general public importance. According to the Court of Justice, consumer protection falls normally into this category. The national court must also examine the national provisions against Article 59 of the Treaty.

However, with regard to advertising directed at children the Court ascertains that the TV directive contains provisions that confer special protection on children. And it is the transmitting country that on the grounds of the home country control principle, should monitor that these rules are complied with.

The Consumer Ombudsman claims that a trader who targets advertising at Swedish children, even if this takes place via a TV channel transmitting from another member state, commits an infringement of the code of good marketing practice and thus of the Marketing Act (press release from the Swedish Consumer Agency, 9 July 1997).

When questions about applicable law and jurisdiction have been dealt with in other contexts, the basic Swedish attitude has been that the court in the country in which the consumer resides should be the forum for an examination and that the relevant law should likewise be the one which is applied in the place of residence of the consumer.

In work to revise the Brussels and Lugano Conventions, the Nordic countries have been active in promoting the proposal that the conventions should be amended so that applications for prohibitions and injunctions for the purpose of protecting the interests of consumers may be handled by the courts in the country where the infringement has effect. (The Lugano Convention has been approved by 18 European countries, while the Brussels Convention has so far only been approved by 12 EU member states [excluding Austria, Finland and Sweden]).

The Guidelines of the International Chamber of Commerce

The International Chamber of Commerce has already adopted guidelines for advertising directed at children (www.iccwbo.org/Commissions/Marketing/Internet_Guidelines.html). Section 6 of the International Chamber of Commerce's guidelines for marketing and advertising on the Internet contains recommendations about advertising targeted at children. According to these, traders may not exploit children's natural gullibility, their lack of experience or their feelings of loyalty. Nor may advertisements contain anything that might harm the children. Traders are also urged to try to influence parents and guardians to take a more active interest in their children's use of the Internet.

It should be noted that in its guidelines for marketing and advertising on the Internet, the International Chamber of Commerce has stated that the term "legal" is used to denote that marketing and advertising activities should be legal in the transmitting country. The explanation for this is that there is currently no agreement about whether it is the law of the transmitting country or that of the receiving country that should be applied to marketing and advertising activities on the Internet. In certain quarters it is claimed that it is only the principle of transmitting country that applies to *i.a.* Internet marketing (for example, the Federation of European Direct Marketing, FEDMA, asserted this at an OECD conference in Ottawa.)

4. Conclusions

- On account of its interactive nature, marketing via the Internet can influence children and young people to a greater extent than marketing in other media.
- Children are in special need of protection in their role as consumers because of their lack of experience and their inability to distinguish between advertising and other types of material.
- Assessments of Internet advertising directed at children should be based on the rules that apply generally to marketing, for example that marketing should be designed and presented so that the recipient clearly understands that it is actually advertising material. However, rules should be stricter when advertising directed at children is concerned, since the fact that children are particularly impressionable and vulnerable must be taken into account.

It is necessary to agree on a reasonable level that provides strong consumer protection and which at the same time the business community can adhere to.

The following measures should be considered:

- The negotiation together with the business community of measures that traders could initiate themselves or recommendations for marketing activities directed at children.
- The introduction of special legislation for Internet advertising directed at children in order to clarify what principles traders should adopt with respect to such advertising.
- Ultimately it could be necessary to introduce a prohibition on Internet advertising directed at children if the business community is not prepared to take its responsibility and introduce its own effective measures to protect children and young people.
- Before harmonized global rules for transnational marketing have been agreed upon, the point of departure should be that the place of residence of the consumer should be the decisive factor for jurisdiction and applicable law

Australia

The information below should be read in conjunction with the OECD document DSTI/ICCP(97)14REVI, dated 7 October 1998, which provides comprehensive background material on the Australian Government's approach to legislation, policies and practices with regard to information content on the internet (pp17-19 and p74).

In 1997 the Australian Commonwealth Government announced legislative principles for a national approach to regulating the content of online services. These principles were based on a comprehensive report in 1996, by the Australian Broadcasting Authority (ABA) on the content of on-line information and entertainment broadcasting services, including services on the Internet. The Report made some 40 recommendations. Some of the key recommendations were:

- development of industry codes of practice by Australian on-line service providers and the registration of those codes by the ABA;
- the establishment of an On-Line Labelling Task Force to consider the development of Internet content labelling schemes which are compatible with the Platform For Internet Content Selection (PICS). This technology provides tools which enable parents and supervisors to restrict children's access to Unsuitable Material; and
- the adoption of community education initiatives to assist the Australian community to maximise the enormous educational and other opportunities presented by on-line services.

The ABA will be the regulatory authority for on-line services under the Commonwealth Government's self regulatory framework. The Commonwealth principles will form the basis for draft legislation to amend the Broadcasting Services Act 1992 to accommodate the new regime. These amendments may be introduced during 1999.

The ABA's current role is to investigate and advise the Minister for Communications on:

- matters which might be included in industry codes of practice that will apply to on-line service providers, and the operation of effective complaints procedures;
- national and international developments in the use of on-line content labelling services to protect children from content which may be unsuitable for them; and
- national education strategies to promote effective and productive use of on-line services; and international developments in relation to the regulation of the content of on-line services.

The ABA is available to assist in the development of codes of practice by the service provider industry or sectors of the industry. They are also convening a 'Children and Content On-Line Task Force' to consider content labelling and other options to protect children in the online environment. The website for the ABA is <http://www.aba.gov.au>.

The ABA has recently launched a website entitled *Australian Families' Guide to the Internet*. It can be found at www.onlineaustralia.net/au/. The Guide acknowledges that the Internet offers families a wealth of experiences that can be fun, educational and rewarding but points out that there are some parts of

the Internet that are not safe for children. The Guide provides families with some house rules for children and teenagers when using the Internet as well as tips for parents and dealing with risks such as stranger danger. The Guide also provides information on the use of filters to block access to some sites.

The Internet Industry Association

The Internet Industry Association (IAA) aims to promote the growth, technical development and efficient functioning of the Internet in Australia as an open system. The IIA launched the Internet Industry Code of Practice on 11 December 1998. The code was developed by the IIA to provide the rapidly developing Internet Industry with a description of widely agreed standards of behaviour. By agreement with Government matters have been dealt with in the code as a substitute for statutory intervention or a part of a scheme that reduces the role of legislation. The Code covers issues such as;

- Content control;
- Fair e-commerce;
- Privacy; and
- Regulation of specific industries such as gambling.

Members of the industry who chose to adhere to the Code may indicate that they have adopted the principles of the Code by the use of the “Code Compliance Symbol” endorsed by the Administrative Council.

The Code contains certain provisions prohibiting code subscribers from engaging in misleading, deceptive or unconscionable conduct or knowingly exploiting the lack of knowledge of Internet users. The Code also requires subscribers to comply with the Australian Association of National Advertisers Code of Ethics. More specifically the Code prohibits subscribers from collecting personal, family or residency information from any user who they know or might reasonably suspect to be under the age of 18 years without the express consent of one of the user’s parents or guardians.

The IIA website is www.intiaa.asn.au and the Code can be found at www.intiaa.asn.au/code.html.

The New South Wales Department of Fair Trading

The NSW Department of Fair Trading’s website contains some information in relation to shopping on the Internet, although this information is not directly aimed at young people or children. The Department has just commenced investigation into the development of a Youth Channel for their website and this will address issues such as online advertising and marketing at young people on the Internet. The Department’s website is www.fairtrading.nsw.gov.au.

Young Media Australia

Young Media Australia (YMA) is a national community based, information, research, training and advocacy organisation working in the field of children, young people and mass media. YMA believes that Australian children should have access to a range of quality screen material made specifically for them and that their media environment should promote their development, health and well being. Among other things, YMA provides research and information on issues such as violence on TV, and in videos, cinema,

and video and computer games; advertising directed at children and the social health impact of mass media in Australia. YMA also offer courses and tips for parents on Cyber Safety.

YMA's web address is www.youngmedia.org.au.

YMA's Cyber Safety Tips can be found at www.youngmedia.org.au/yma/Cybertips.html