

ICC STATEMENT ON CODE INTERPRETATION ICC REFERENCE GUIDE ON ADVERTISING TO CHILDREN

Prepared by the ICC Commission on Marketing and Advertising



ICC Statement on Code Interpretation

The International Chamber of Commerce Consolidated Code of Marketing and Advertising Practice (ICC Code) sets forth standards for marketing communications, including provisions addressing special responsibilities for marketing “products” (as defined by the ICC Code, which includes services) to children and young people. Article 18 of the ICC Code outlines principles for advertising to children and young people, while Article 19 establishes principles for data collection involving children. The purpose of this Statement on Code Interpretation is to clarify the age of “children” and the age of “young people” for purposes of the ICC Code.

The ICC’s approach has been informed by almost 100 years of research on child development, and recognizes that children, on the one hand, and teens, on the other, require special consideration based on their differing ability to understand marketing messages. A wealth of data and historical customs and practices support defining “children” as age 12 and younger (i.e. under 13 years old) for marketing-related purposes, and this is generally the age the ICC intends when referring to “children” in the ICC Code. Where the ICC Code refers to “young people,” the ICC generally intends this phrase to mean teenagers (“teens”) under age 18. Children and teens are typically considered “minors” and are barred from purchasing, consuming or using particular products intended for adults.

An overarching principle of the ICC Code is that marketing communications must be legal, decent, honest and truthful, considering how the communication is likely to be interpreted by the primary target audience. The ICC Code recognizes that some added fair marketing communications principles should apply to both children and teens, while other specific marketing communications principles should apply only to children. For example, products that are unsuitable for purchase, use or consumption by children and teens in the jurisdiction where the marketing communications appear should not be advertised in media targeted to them, while other provisions of the Code (e.g. the use of fantasy in advertising) include additional best practices for child-directed marketing communications. Likewise, children and teens should not be portrayed in advertisements using products that are not appropriate for them to use.

The ICC recognizes that some local laws may define “children” and “young people” differently. Marketers of course must respect local laws when it comes to structuring local marketing communications. The ICC decision to adopt age 12 and younger as the reference age of “children” for purposes of advertising and privacy provisions of the ICC Code, and to define “young people” as teens under 18, reflects proven differences in the ability of children versus teens to understand marketing communications, the very real differences in teens’ interests as compared to children, the practical impediments to obtaining parental consent where data collection from teens is concerned, sensitivities about teen privacy rights, and respect for freedom of commercial communications where the principal audience is adults. Harmonization around this age will help maintain international consistency, and is consistent with many content ratings and safety laws around the world.

Reference Guide

I. Background

The International Chamber of Commerce (ICC) has issued a Statement on Code Interpretation to clarify the age of “children” (12 and younger) and the age of “young people,” also referred to here by the more common terms “teenagers” or “teens,” for purposes of the ICC Code. This reference guide reflects the almost 100 years of child development research and sources supporting that interpretation.

II. Applicable ICC Codes and Documents

- ICC Statement on Code Interpretation
- ICC Code of Marketing and Advertising Practices (see <http://www.iccwbo.org/Data/Policies/2011/ICC-Consolidated-Code-of-Advertising-and-Marketing-2011-English/>)
- ICC paper on the freedom of commercial communications developed by the Commission on Marketing and Advertising (see <http://www.iccwbo.org/Advocacy-Codes-and-Rules/Document-centre/2015/ICC-policy-statement-on-Freedom-of-Commercial-Communications/>)
- ICC Framework for Responsible Food Marketing Communication (see <http://www.iccwbo.org/Data/Policies/2012/Framework-for-Responsible-Food-and-Beverage-Marketing-Communications-2012/>)

III. ICC Code Provisions on Children and Young People

(Emphasis has been added to the provisions below)

Article 18 of the ICC Code provides:

Children and young people

Special care should be taken in marketing communications directed to or featuring **children or young people**. The following provisions apply to marketing communications addressed to **children and young people** as defined in national laws and regulations relevant to such communications.

- Such communications should not undermine positive social behaviour, lifestyles and attitudes;
- Products unsuitable for **children or young people** should not be advertised in media targeted to them, and advertisements directed to **children or young people** should not be inserted in media where the editorial matter is unsuitable for them.

Material unsuitable for **children** should be clearly identified as such.

For rules on data protection relating specifically to **children’s** personal information see article 19.

Inexperience and credulity

Marketing communications should not exploit inexperience or credulity, with particular regard to the following areas:

1. When demonstrating a product’s performance and use, marketing communications should not
 - a. minimise the degree of skill or understate the age level generally required to assemble

- or operate products;
- b. exaggerate the true size, value, nature, durability and performance of the product;
 - c. fail to disclose information about the need for additional purchases, such as accessories, or individual items in a collection or series, required to produce the result shown or described.
 - d. While the use of fantasy is appropriate for younger as well as older **children**, it should not make it difficult for them to distinguish between reality and fantasy.
 - e. Marketing communications directed to **children** should be clearly distinguishable to them as such.

Avoidance of harm

Marketing communications should not contain any statement or visual treatment that could have the effect of harming **children or young people** mentally, morally or physically. Children and young people should not be portrayed in unsafe situations or engaging in actions harmful to themselves or others, or be encouraged to engage in potentially hazardous activities or behaviour.

Social values

Marketing communications should not suggest that possession or use of the promoted product will give a **child or young** person physical, psychological or social advantages over other **children or young people**, or that not possessing the product will have the opposite effect.

Marketing communications should not undermine the authority, responsibility, judgment or tastes of parents, having regard to relevant social and cultural values.

Marketing communications should not include any direct appeal **to children and young people** to persuade their parents or other adults to buy products for them.

Prices should not be presented in such a way as to lead **children and young people** to an unrealistic perception of the cost or value of the product, for example by minimising them.

Marketing communications should not imply that the product being promoted is immediately within the reach of every family budget.

Marketing communications which invite **children and young people** to contact the marketer should encourage them to obtain the permission of a parent or other appropriate adult if any cost, including that of a communication, is involved.

For other specific rules on marketing communications with regard to **children**:

- in the digital interactive media see chapter D, article D5;
- within the context of food and non-alcoholic beverages see the ICC Framework for responsible food and beverage marketing communication.

Article 19 of the ICC Code provides (in part):

Children's personal information

When personal information is collected from individuals known or reasonably believed to be **children 12 and younger**, guidance should be provided to parents or legal guardians about protecting **children's** privacy if feasible.

Children should be encouraged to obtain a parent's or other appropriate adult's permission before providing information via digital interactive media, and reasonable steps should be taken to check that such permission has been given.

Only as much personal information should be collected as is necessary to enable the **child** to engage in the featured activity.

Data collected from **children** should not be used to address marketing communications to the **children's** parents or other family members without the consent of the parent.

Identifiable personal information about individuals known to be **children** should only be disclosed to third parties after obtaining consent from a parent or legal guardian or where disclosure is authorised by law. (Third parties do not include agents or others who provide technical or operational support to the marketer and who do not use or disclose **children's** personal information for any other purpose.)

Additional rules specific to marketing communications to **children** using digital interactive media can be found in chapter D, article D5.

Chapter D, Article D5 provides:

Digital marketing communications and children

- Parents and/or guardians should be encouraged to participate in and/or supervise their **children's** interactive activities;
- Identifiable personal information about individuals known to be **children** should only be disclosed to third parties after obtaining consent from a parent or legal guardian where disclosure is authorised by law. Third parties do not include agents or others who provide support for operational purposes of the website and who do not use or disclose a **child's** personal information for any other purpose;
- Websites devoted to products or services that are subject to age restrictions such as alcoholic beverages, gambling and tobacco products should undertake measures to restrict access to such websites by **minors**;
- Digital marketing communications directed at **children** in a particular age group should be appropriate and suitable for such **children**.

IV. Child Development Research

The ICC's approach to Code provisions governing advertising to children and teens has been informed by almost 100 years of research on child development, and recognizes that children, on the one hand, and teens, on the other, differ in their ability to understand marketing messages. Child development experts have identified important stages during which children develop the ability to recognize and understand language and symbols, to perceive and build their understanding of the world around them, and to think critically. These developmental stages are relevant to children's ability to understand and process advertising. The age at which most children have the ability to think critically about advertising is generally considered to be around age 12.

The developmental stages of children have been described by noted child development researcher, Jean Piaget, among others, in terms of the following stages:

- Sensorimotor (0 – 2 years)
- Preoperational (2 – 7 years)
- Concrete operational (7 – 11 years)
- Formal operational (11 and up) (Piaget, 1929).

(Piaget, 1929; Piaget, 1970.)

Piaget's seminal work has informed much of the subsequent research on children's ability to identify and understand advertising. For decades, researchers have focused primarily on children's

responses to television advertising, which remains the principle mode of delivering advertising, especially to younger children, even while digital content options expand. These researchers have generally confirmed that children's ability to understand advertising develops and matures over time on a trajectory that closely parallels the stages of child development identified by Piaget. Called the conceptual or cognitive development model of advertising literacy, the stages relevant to understanding advertising communications include the following:

1. recognition of advertising—differentiating advertising from other media content like television programs and editorial Web content;
2. understanding selling intent—understanding that advertising tries to sell products;
3. recognition of advertising's source—understanding who pays for advertising messages;
4. perception of intended audience—understanding the concept of audience targeting and segmentation;
5. understanding persuasive intent—understanding that advertising attempts to influence consumers' behavior by changing their mental states, for instance, their attitudes and cognitions about a product;
6. understanding persuasive tactics—understanding that advertisers use specific tactics to change consumers' attitudes, cognitions, and behaviors; and
7. understanding of advertising's bias—being aware of discrepancies between the advertised and the actual product.

(Wright, Friestad & Bousch, 2005.)

In general, very young children begin to perceive advertising around age 3. Between ages 3 – 5, most children develop the ability to identify or recognize advertising, largely based on perceptual cues, and are developing defenses to the persuasive tactics of advertisers. In middle childhood (ages 6 - 9), children develop an understanding of advertising or selling intent, with most studies agreeing that by age 8 most children understand that advertisers are trying to sell them something. Late childhood (ages 10 – 12) is the period when children develop the cognitive ability to think critically about advertising. (Ward, Wackman & Wartella, 1977.) Credence in advertising decreases as children age. (D'Alessio, M. & Laghi, F., 2009.) Most researchers, including in markets where advertising is less mature, have concluded that the cognitive development theory better explains how children grow to understand advertising as compared to theories such as the social learning theory. (Chan, K. & McNeal, J., 2006.)

V. International Law & Self-Regulation

The extensive research on children's ability to think critically about advertising has been the basis for most international laws and policies on child-directed advertising. Policymakers generally draw a distinction between children and teens in establishing policies on marketing to children, and some have focused advertising literacy initiatives on children ages 8 – 12. For example, the U.S. Federal Trade Commission (FTC) developed an advertising literacy program called Admongo which targeted children ages 8 – 12.

There is no doubt that teens are interested in significantly different types of products, services and activities than children, and that issues affecting teenagers "are vastly different from those affecting younger children." (The Impact of the Commercial World on Children's Well-Being: Report of an Independent Assessment, 2009.) For example, many teenagers wear clothing and shoes sized for adults. They are interested in toiletries, like deodorants, anti-acne cleansers and cosmetics which, for safety reasons, may not be appropriate to advertise to children but are entirely appropriate for teens. Teens may have jobs, a phenomenon that tends to increase as teens get older, and thus may themselves be economic actors. They consume different types of music, films, and other

entertainment than children 12 and younger do.

The difference in cognitive abilities, sensibilities and understanding between children and teens with regard to content is reflected in various content ratings around the world. The Pan-European Game Information (PEGI) rating system, for example, adopts ratings for minors ages 3, 7, 12, 16 and 18, recognizing that a child's ability to understand entertainment content changes as a child grows into adulthood. Organizations like the Electronic Software Ratings Board (ESRB) assign ratings to video games and apps, distinguishing "T" for "teens" from ratings like "EC" (early childhood) and "E" (everyone). Similarly, in the U.S., parents are encouraged to attend movies rated PG-13 with children 12 and younger.

Use of age 12 as a reference to define children is consistent with safety laws as well. For example, the U.S. Consumer Product Safety Improvement Act of 2008 (CPSIA) defines a "children's product" as one "designed and intended primarily for children 12 and younger."

The ICC Code was revised in 2011, expanding the provision on children's privacy to take note of the age definition of the U.S. Children's Online Privacy Protection Act (COPPA). (15 U.S. C. §6501 *et seq.*) Adopted in 1998, COPPA established requirements mandating "verifiable parental consent" when collecting personal information from children 12 and younger. At the time COPPA was enacted, some noted privacy advocacy organizations endorsed adoption of 12 and under (or "under 13") as the age requiring "parental consent" for purposes of data collection because they viewed teens to have privacy rights of their own. While the U.S. Congress considered a separate set of requirements governing teen privacy, it ultimately chose to define a "child" as under 13, consistent with principles of cognitive development of children. This age was supported by the agency responsible for implementing COPPA, the U.S. Federal Trade Commission (FTC).

When the FTC considered updating COPPA in 2010, some advocates urged the FTC to support modifications to the rule to protect teen privacy. The FTC did not do so. While recognizing that teen privacy is important, the FTC concluded that the parental notice and consent requirements of COPPA were ill-suited to protect teen privacy, and could raise constitutional, privacy and practical issues. The FTC noted:

COPPA's parental notice and consent model works fairly well for young children, but the Commission continues to believe that it would be less effective or appropriate for adolescents. COPPA relies on children providing operators with parental contact information at the outset to initiate the consent process. The COPPA model would be difficult to implement for teenagers, as many would be less likely than young children to provide their parents' contact information, and more likely to falsify this information or lie about their ages in order to participate in online activities. In addition, courts have recognized that as children age, they have an increased constitutional right to access information and express themselves publicly. Finally, given that adolescents are more likely than young children to spend a greater proportion of their time on Web sites and online services that also appeal to adults, the practical difficulties in expanding COPPA's reach to adolescents might unintentionally burden the right of adults to engage in online speech. For all of these reasons, the Commission declines to advocate for a change to the statutory definition of "child."

(76 Fed. Reg. 59804 at 59805 (Sept. 27, 2011)).

Privacy of all consumers is a critical issue. Recognizing the sophistication and complexity of the digital advertising ecosystem, a variety of self-regulatory programs have developed around the world to support Fair Information Practice Principles (FIPPS) related to privacy. The U.S., Canada, Europe, Australia and New Zealand have developed and continue to expand self-regulatory programs in third party digital advertising space through the combined efforts of most of the key trade associations representing businesses in the sector. These programs define children as "under 13" to maintain

international consistency, recognizing that teens have privacy rights and that efforts to impose a broader parental consent obligation on teens will fail.

VI. Conclusion

The ICC recognizes that teens have significantly different interests and understanding, and have greater cognitive abilities to think critically about advertising as compared to children. Rules that attempt to treat teenagers 13 – 18 like children are, quite simply, unworkable. Given the growing globalization of markets, inconsistency in how “children” are defined from both a regulatory and self-regulatory perspective risks undermining the ability to provide free advertiser-supported content suitable for these distinct demographic groups, and could result in a need to collect more personal information from teens to confirm their age. Weighing the considerations outlined above, the ICC adopts, and encourages international harmonization around, a definition that “children” are age 12 and younger for purposes of advertising, and “young persons” are teenagers under age 18.

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The International Chamber of Commerce (ICC)

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