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Digital Regulation Cooperation Platform (SDT)

Basic principles for advertising and marketing directed at children online

Markten goed laten werken voor mensen en bedrijven

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The Netherlands Authority for Consumers and Markets (ACM), the Dutch Authority for the Financial Markets (AFM), the Dutch Data Protection Authority (AP), and the Dutch Media Authority (CvdM) work together in the Digital Regulation Cooperation Platform (SDT). The SDT members see that, in all their online activities, children are exposed to marketing efforts from companies. Whether they play a game, use social media, or watch a video, they encounter ads or are otherwise encouraged to make purchases. At the same time, companies collect the data that children leave behind online, and use this data for commercial purposes. This is often not in the child's interests.

In online environments, children are extra susceptible to commercial influencing. They are able to foresee the consequences of their online activities usually less well than do adults, and they do not recognize or understand the commercial motives behind specific messages or images in the same way. Children are also, in general, extra susceptible to other misleading or aggressive commercial practices. That is why children need additional protection against misleading and aggressive advertising and marketing, as well as with regard to their personal data. The latter is particularly important when their personal data is used for marketing purposes or for creating personality or user profiles.

As children are extra vulnerable, there are rules in place for online advertising and marketing directed at children. Organizations that offer online services that are likely to be used by children need to take into account the specific vulnerabilities of children when designing such services and when using marketing techniques and advertising. They cannot take advantage of those vulnerabilities, and, when preventing misleading practices and undue influence, they must take into account the children's various comprehension capabilities. Furthermore, organizations need to take into account that certain practices are inappropriate or illegal vis-à-vis children. For example: on the basis of the rules regarding unfair commercial practices, children cannot be directly encouraged to make any purchases, and on the basis of the General Data Protection Regulation (GDPR), no personal data of children can be used for advertising or marketing purposes, unless they are able to demonstrate clearly that such is in the child's interests, and on the basis of media regulations, audiovisual media content directed at children cannot contain any product placement.

The four SDT members enforce compliance with the rules and standards regarding advertising and marketing directed at children, each within their own area of expertise. This concerns, for example, rules regarding unfair commercial practices, the AVG, and the Dutch Media Act. These rules are interlinked, and sometimes overlap each other. That is why the four SDT members decided to jointly draw up basic principles for advertising and marketing directed at children. The basic principles are intended for organizations and businesses that offer online services that are used by children. The aim is to help these organizations comply with these standards as a whole. In June 2022, the network of European consumer protection authorities subscribed to five key principles (not an exhaustive list), which were drawn up in collaboration with representatives of European data protection authorities. The document at hand can be seen as a further continuation of that European initiative in the Netherlands. The basic principles exist next to the guidance that each of the individual regulators have published themselves, for example:

- ACM: guidelines on the protection of the online consumer
- AP: Guidelines on automated individual decision-making and profiling (in Dutch)
- European Data Protection Board (EPDB): Guidelines 03/2022 on deceptive design patterns in social media platform interfaces: how to recognize and avoid them
- CvdM: guidelines on transparency about the commercial intent of ads (in Dutch: Beleidsregel reclame commerciële media-instellingen 2022, which can be found under the header 'Reclame')

By publishing this document, the four SDT members give an overview of the most important statutory standards regarding misleading practices, undue influencing, and profiling of children in the context of marketing and advertising. Also, they call on organizations that design and use marketing and advertising techniques to embed compliance with these rules in their design processes. Furthermore, the SDT members stand behind the principles of the Code for Children's Rights, which was published by the Dutch Ministry of the Interior and Kingdom Relations. This code broadly focuses on the application of children's rights in the development of digital services, and includes examples for the real-world implementation.

Finally, the SDT members point out that advertising companies in the Netherlands have drawn up rules for advertising that is fully or partially directed at children. These rules have been laid down in the Code for advertising directed at children and young people, which is part of the Dutch Advertising Code.

The SDT basic principles for advertising and marketing directed at children online are:

1. Advertising and marketing techniques cannot unduly influence children, and cannot take advantage of the specific vulnerabilities of children

- If companies use their influence to exercise pressure to such an extent that consumers (including underage consumers) are unable to make well-informed decisions about purchases, it is considered undue influencing. Such influencing techniques are prohibited.

- This applies in particular to products or services of market participants that target children, such as games. Professional market participants, including game developers, cannot directly encourage children to make purchases. They need to refrain from using techniques that illicit a strong desire in children to make in-game purchases. For example, think of capitalizing on a child's desire to 'fit in' with their peers.

- Games can only be called free if they are truly free. And with regard to games that are marketed as free, players should not have to make in-app or in-game purchases in order to be able to play these games in a satisfactory manner.

- the standard privacy settings, for example about the sharing of data for advertising purposes and the public availability of data, must be set as strict as possible in the interests of the child. Privacy settings that pose substantial risks to children cannot be accessed by children or can only be changed together with a parent. It must be explained to children why certain settings cannot be changed by children or why they have been turned off.

- Ads cannot take advantage of the vulnerabilities of children (including those specific to children), such as their gullibility or their fear of missing out (FOMO).

2. Information about the commercial intent of ads, about the commercial aspects of services, and about the sharing of personal data must be presented in such a way that it is easily accessible, appropriate for, and clear to children

- Ads that are specifically directed at children must be easily recognizable in terms of design and content, appropriate for the comprehension capabilities of children. This can be achieved by including in the message the word "commercial" or "advertisement" in a way that is clear, and which can be observed at a single glance.

- If a game contains paid elements, the game developer must make this clear when offering the game, so before the game is purchased or downloaded.

- with regard to the products offered in an in-game store, the game developer must always clearly indicate their prices in euros, even if it uses an in-game currency.

- All information regarding the processing of personal data when using an online service must be provided in advance in plain language and in a way that is easily accessible, clear and easy-to-understand for children. When providing information, the development stage of the child must be taken into account.

3. Organizations refrain from profiling children for advertising and marketing purposes

- Online services must refrain from collecting personal data of children aimed at tailoring ads and marketing messages to them by using profiles of children and their behavior, because children may not fully understand what the reasons are behind such marketing practices as well as the possible consequences for them.

4. The SDT members call on organizations that develop and use advertising and marketing techniques that are likely seen by children to design their processes in such a way that unfair data processing, misleading practices, and undue influencing of children are prevented

- Organizations work in accordance with the basic principles of fairness by design. This means that, when designing online environments, they make sure that children are able to make choices in a fair manner.

- Organizations work in accordance with the basic principles of privacy by design. This means that, when designing online environments, they make sure that the personal data of children will be protected well.

- When designing online environments, they take into account the children's interests, and make sure that harmful effects on children are prevented.

- In that context, they test the effects of the ads or marketing techniques for any harmful effects on children.

- In addition, they test whether children see and understand the advertising purposes and important information about the conditions of their services, including about the use of their data.