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DSTI/CP(99)1/REV1



Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development

OLIS : 23-Aug-1999
Dist. : 24-Aug-1999

PARIS

DIRECTORATE FOR SCIENCE, TECHNOLOGY AND INDUSTRY
COMMITTEE ON CONSUMER POLICY

Or. Eng.

DSTI/CP(99)1/REV1
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**ONLINE ADVERTISING AND MARKETING DIRECTED TOWARD CHILDREN
FORUM SESSION PROCEEDINGS**

OECD, Paris, 9-10 September 1999

The attached document represents the proceedings of the Forum Session on Online Advertising and Marketing Directed Toward Children, which was held as part of the September 1998 meeting of the Committee on Consumer Policy. Additional information submitted by national Delegations and minor revisions to the text have been incorporated into the draft since the Committee was first presented with this document in March 1999.

Under Item 7e of the Agenda for the 9-10 September 1999 meeting of the Committee on Consumer Policy, Delegates will be invited to approve the declassification of the following document and its posting on the CCP Web site.

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TABLE OF CONTENTS

FOREWORD	3
ONLINE ADVERTISING AND MARKETING DIRECTED TOWARD CHILDREN.....	4
BACKGROUND PAPER	4
A GENERAL OVERVIEW OF THE ISSUES - UNITED KINGDOM	10
A UNITED STATES PERSPECTIVE	11
A NORDIC PERSPECTIVE.....	13
A BELGIAN PERSPECTIVE	15
ANNEX I - ADDITIONAL INFORMATION SUBMITTED BY FORUM SPEAKERS AND NATIONAL DELEGATIONS.....	19
United Kingdom.....	19
United States.....	21
Sweden	22
Australia	31
The Nordic Consumer Ombudsmen.....	33

FOREWORD

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 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 additional information provided by national Delegations.

ONLINE ADVERTISING AND MARKETING DIRECTED TOWARD CHILDREN

The following was prepared by the Secretariat to provide a brief overview of some of the issues related to online advertising and marketing directed toward children.

BACKGROUND PAPER

The evolution of digital computer and network technologies and their immersion into the daily lives of people worldwide 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. Business-to-consumer interactions in this emerging electronic environment represent only a fraction of the total activity. Nevertheless, with household transactions accounting for over half of all domestic final demand¹, much of the attention and speculation about this new media continues to focus on consumer related issues.

Within the emerging commercial environment, creative advertising techniques are being used to deliver interactive messages and product information using combinations of video, audio, text, and graphics. The growing 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, the advantages offered by this global electronic network and its potential to produce a more efficient marketing dynamic, also give rise to a number of questions including how to verify the integrity of information, and concerns about the use of misleading and deceptive advertising, data collection and the protection of privacy.

Children and teenagers represent one of the fastest growing categories of online users. They are encouraged to use the Internet and computer technologies by parents, teachers, governments and others who believe that technology literacy will be an important tool for their future. 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. As a result, children are increasingly using the Internet from schools, libraries and homes to access a wide variety of educational and cultural information and enabling them to gain a unique and comprehensive view of the world around them. However, 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. The accessibility of the electronic environment, the potential anonymity it provides, and the information it contains and generates raise a number of concerns about children's safety and increases the focus on this "vulnerable population" and how to best protect them from harm online.

¹. OECD (1995), *The OECD Input-Output Database*, Paris. Domestic final demand is the same as total final demand excluding imports.

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 by 2005, growth projections predict there will be nearly one billion users online.² Children and teenagers represent one of the fastest growing segments of these totals. According to a report by Jupiter Communications, 4.1 million children between the ages of 2 and 17 were online in 1996, a number that is expected to grow to 19.2 million by the year 2000.³ Through a separate survey, analysts predict that globally, more than 77 million users under the age of 18 will be online by 2005.⁴

Children and teenagers also have an incredible economic impact, their influence ranges from the money they earn and spend on themselves to their ability to affect the purchasing decisions made by their friends and families. Youth spending power has increased steadily for more than a decade reaching approximately \$108 billion in 1997 and, while estimates vary, that total could reach \$136 billion by 2001⁵. These numbers represent a potential consumer market base that is difficult for advertisers and marketers to ignore, making the online youth market an appealing target.

Advertisers and Marketers Online

Despite the commercial and legal uncertainties, advertising and product marketing information are proving to be essential elements of the electronic marketplace and the evolving relationship between businesses and consumers online. 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. Efforts to build brand loyalty, pressure from competitors and the growing public appeal of the Internet have encouraged hundreds of thousands of businesses to include this new media as part of their advertising and marketing budgets. Advertisers and marketers are attempting to determine how best to harness the unique technological capabilities of the Internet to communicate with a global commercial audience. As is the case in with more traditional advertising, a significant amount of time and effort is likely to be spent to develop online advertising that will appeal to children and teenagers.

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. In 1998, online advertising spending world-wide is expected to reach just under USD2 billion, and a study of US, European, and Asian advertising and media companies estimates global spending on Internet advertisements will reach USD15 billion by 2003.⁶

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 off. As part of an overall marketing strategy, online ads can serve to remind people of brands they already know and

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 children's 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 Computer Economics, Inc., (April 1999), <http://www.computereconomics.com/new4/pr/pr990422.html>

⁵ Packaged Facts Report, Interep Research (1998)

⁶ "Media's Global Future", Forrester Research (August 1998)

expose them to information about products and services that they have never seen before. Like traditional magazine, newspaper 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. By making a “connection” with a consumer as early as possible, companies can begin to establish what could be a long-lasting brand loyalty.

Children are quickly developing their computer skills and are eager to use new technologies. Drawn to the variety and interactivity of the content available on the Internet, more and more children are using the Internet for both educational purposes and as entertainment to fill their free time, in some cases, choosing to surf the Web rather than watch television.⁷ In an effort to extend their efforts to this new media, some businesses are building simple, single-page advertising sites that provide basic information and a phone, fax, or address where they can be contacted off-line. Others are building elaborate multi-media sites that not only offer advertising and product information but often also provide interactive games, electronic pen pals, chat rooms and contests to encourage children to spend time and explore the site. By creating unusual and dynamic online environments, advertisers can capture a child’s attention and encourage them to spend long periods of time on Web sites playing games and viewing content that can be seamlessly integrated with advertising information. Recognising the potential of this trend, marketing and advertising companies have begun to devote specific attention to children and teenagers and their habits and activities online.

Potential Problems and Risks

Once they have the user’s attention, technological tools can be used to provide advertisers and marketers with immediate access to user information about themselves and their online activities. While this can help to provide a more personalised and efficient online experience for the user, it also increases 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; allowing them to guess the child’s favourite spokes-character or type of cereal by noting the frequency and the duration of his or her activities connected with a certain product. 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 questions and concerns about children’s privacy and data collection, commercial sites and the activities they offer to attract children and keep them coming back may pose other risks to children’s safety. Online chat rooms, bulletin board postings and pen-pals offer children an opportunity to express themselves, exchange ideas and make new friends. However, these interactive encounters may also make children vulnerable to unwanted and potentially harmful conduct or inappropriate information. Parents are often concerned that their children may be exposed to harmful material on the Internet. These concerns include exposure to harassing or threatening language; “inappropriate” content (e.g. images of violent, sexual or dangerous activities); information and/or access

⁷ In one 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).

to illegal or restricted substances (e.g. drugs, alcohol or tobacco); and attempts to make face-to-face contact with strangers. 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 parents about the potential risks that some online activities may pose and how they can protect themselves from those risks, is an important step in helping to reduce the chances for harm.

Efforts to Protect Children Online

A variety of overlapping and complementary government and private-sector policies, practices, techniques and technologies are currently being used or are under development for use on networked environments that are intended to help protect children.

Filtering and Blocking Technologies

A number of blocking and filtering software packages⁸ are available that 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 content⁹ or information practices¹⁰, 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 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. 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>

9. *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.

10. 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 Web sites. The goal of P3P is to allow Web sites 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*¹¹, 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!*”¹² 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.¹³ Similar information, advice and hyperlinks to “Great Sites for Families to Visit” can be found on the Canadian site *Kids on the Net*.¹⁴ All of these sites emphasise the importance of education and parental guidance to help ameliorate the potential risk children may face online.

11. <http://bbb.com/advertising/caruguid.html>

12. <http://www.cybersavvy.org/>

13. http://www.safekids.com/child_safety.htm

14. <http://cses.scbe.on.ca/kids/kids.htm>

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 issues¹⁵.

The OECD has also developed an inventory of government, private-sector policies, practices and technological tools that are intended to define, implement and enforce the recognised privacy principles of the 1980 OECD Guidelines on the Protection of Privacy and Transborder Data Flows of Personal Data¹⁶. Effectively implemented, these approaches can work together to help protect children's privacy online.

In June 1998, the FTC released a detailed *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. The Commission is currently engaged in a rulemaking proceeding to implement the Children's Online Privacy Protection Act, which was enacted into law on October 21, 1998. The Act requires that operators of Web sites directed to children or who knowingly collect personal information from children provide parents with notice of their information practices and obtain verifiable parental consent prior to collecting personal information from children ages 12 and under.

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 and well-being. 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.

^{15.} DSTI/ICCP(97)14/REV1 OECD Committee for Information Computers and Communications Policy, (7 October 1998).

^{16.} 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.

A GENERAL OVERVIEW OF THE ISSUES - UNITED KINGDOM

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.

A UNITED STATES PERSPECTIVE

Remarks by Mozelle W. Thompson, Commissioner¹⁷ United States Federal Trade Commission

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 motorised 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 bow sprint. 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 are. In fact, that is something that most parents encourage and strive for because they recognise the

¹⁷ 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.

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. recognise 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 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 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-publicised 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 Törnblom, Director, Consumer Policy Department, Ministry of the Interior

I will attempt to take you on a brief tour of the Nordic countries and how we view the issues posed by online marketing and advertising directed towards children. At present, although the Nordic countries have a very large number of PCs per capita, we have not yet experienced 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.

While 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.

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. Oversight of the issues related to marketing and advertising to children falls to various federal and federate ministries in Belgium other than my own. As such, my comments today are my own and do not reflect the official view of the government of Belgium.

This subject is at once vast, complex and very important. The today's session is intended to examine two issues with which Belgium is very concerned, namely advertising and the protection of minors.

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

The protection of minors is a matter that is close to the heart for everyone 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 the Belgian Penal code) to help reflect the importance of this issue.

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 a number of rules that relate to this issue contained in various parts of Belgian law and I would like to point out the principal legal provisions that do exist.

The Civil Code

I think it's necessary to take a moment to define what we mean when we refer to a "minor". Unfortunately, the time it would take to adequately analyse just the legal statute that is used to determine what constitutes a minor, would far exceed that which has been assigned to this Forum, so I will have to be satisfied to present only very general information.

What is a minor? According 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 lawsuits. 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).

Although from birth, a minor possesses all the rights attached to a human being, he or she cannot exert those rights for him 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 having 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 authorisation. 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 regulations 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 all right 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 but it is intended to cover offers such as prostitution, vice, the corruption of minors, and attempts to induce minors to participate in pornographic materials or scenes of collective debauchery.

Specific Regulations Related to Children

- Food: The royal decree of 18 February 1991 contains specific requirements related to food advertising and children's 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). 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 that 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 into 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, judges hearing such a case will certainly be more inclined to 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 that 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 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. A certain number of problems could be solved by the use of recognised electronic signatures.

It is difficult to make conclusions from what I believe was an incomplete presentation. 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.

ANNEX I - ADDITIONAL INFORMATION SUBMITTED BY FORUM SPEAKERS AND NATIONAL DELEGATIONS

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 Web sites 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 Web site.
- 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 the following 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>.)

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

Background Paper: On-line Marketing and Advertising Directed at Children

Experiences from the Nordic Countries

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 recognisable 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 p.m. 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 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 emphasised 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 that used competitions that awarded prizes that 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 especially 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, including where such 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 co-ordinates 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 harmonised 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 that 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 Web site for the ABA is <http://www.aba.gov.au>.

The ABA has recently launched a Web site 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 reasonable suspect to be under the age of 18 years without the express consent of one of the user’s parents or guardians. The IIA Web site 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 Web site 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 Web site and this will address issues such as online advertising and marketing at young people on the Internet. The Department’s Web site 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

The Nordic Consumer Ombudsmen

Position Paper to Trading and Marketing on the Internet and in Similar Communication Systems.

Introduction

The Nordic consumer ombudsmen have noted the rapid development in the use of information technology. In that connection, the consumer ombudsmen have ascertained a need to adopt a common position in connection with trading and marketing on the Internet and in similar communication systems.

The consumer ombudsmen have found it desirable to express their views at a common Nordic level. These views are intended to form the basis of a common Nordic position in national as well as international contexts. National negotiation situations may, however, make it necessary to modify the principles in the spirit of compromise.

This common position reflects the current knowledge of and expectations about the Internet. The rapid development of the Internet may necessitate an adjustment from time to time of some of the views expressed. The common position should therefore be considered a dynamic work intended to ensure the consumers a good legal position in the information society.

The consumer ombudsmen note that the consumers' confidence is a prerequisite for regarding the Internet as a serious medium. Moreover, the consumers' confidence is an important prerequisite for realising the potential for electronic trading. Consequently, it is very much in the interest also of trade and industry that trade and industry observe the principles expressed in this common position.

The term "should" is used consistently in this common position. The reason for this is partly that what is expressed is a joint recommendation, partly that not in all cases is the legal position the same throughout the Nordic countries. In some cases, a "should" may thus cover a "shall" in national legislation.

The consumer ombudsmen further note that within the EU a number of initiatives have been taken to regulate areas comprised by this common position. Among other measures, a Directive on the Protection of Consumers in Respect of Distance Contracts (97/7EC), a Directive on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data (95/46EC), a Directive on Treatment of Personal Information in the Telesector (97/66EC) and a Directive on Injunctions for the Protection of Consumers' Interests (98/27EC) have been adopted. These directives will be implemented as part of the legislation of the Nordic countries and thus - like any other legislation - have to be complied with by businessmen using the Internet for trading and marketing.

The Nordic Consumer Ombudsmen, December 1998.¹⁸

¹⁸ <http://194.198.70.14/norombud.htm>

1. Scope of application

- **The common position comprises trading and marketing on the Internet and in similar communication systems.**
- **The common position comprises cases in which it must be assumed that the trader through his/her marketing intends to affect supply and demand on the Nordic market.**

This common position shall thus apply to e.g. the use of World Wide Web, to the transmission of e-mails and to the use of news groups, etc.

This common position comprise marketing which from an overall point of view is directed at the Nordic market. Especially the following criteria can be taken into account in connection with the evaluation:

- which languages, currencies or other national characteristics are used,
- to what extent the business or the service in question is otherwise being marketed in the Nordic country concerned,
- whether there is a connection between marketing on the Internet and other marketing activities in the Nordic market concerned,
- whether the businessman accepts concluding contracts with consumers resident in the Nordic country concerned.

The marketing laws of the Nordic countries apply in accordance with case law when the marketing is directed at the market in question.

The provisions applying to trading and marketing in the physical world, including existing legislation governing contracts, purchases, distance selling, marketing, electronic data processing, etc shall also apply to trading and marketing on the Internet. Provisions governing international choice of law also apply to the Internet. Pursuant to the Rome Convention, a mandatory civil regulation cannot be derogated from if this is detrimental to the consumer, when a contract is concluded on the basis of marketing directed at the consumer. Norway have not acceded the Rome Convention, since Norway is not a member of the EU.

Internet suppliers have to allow for the fact that in certain situations they may also be held liable for unlawful marketing material deriving from their purchasers. Such liability might arise especially in cases where the Internet supplier is aware of the infringements (e.g. as a result of a complaint made by one of the Nordic consumer ombudsmen), but allows such infringements to continue. Among other remedies, the consumer ombudsmen have the possibility of issuing different types of prohibitions. If occasion should arise, such prohibitions may also be issued to the Internet suppliers.

2. Identification

- **Marketing material should be elaborated and presented in such a way that it is obvious to the consumer that it is marketing. It should be possible to separate marketing material from other material.**
- **Information about the businessman's name, physical address, form of organisation and e-mail address, if any, should be easily accessible to the consumer in a clear and comprehensible manner.**
- **When a businessman uses hyperlinks to material other than his/her own, the businessman is, basically, liable also for the content of such material.**
- **Businessmen should not use hyperlinks to material that does not comply with the legislation of the Nordic country in question and with the recommendations put forward in this common position.**

When hyperlinks are used, it should furthermore be made clear to the consumer when the businessman's marketing material is being left.

When marketing material is transmitted by use of a technique whereby a sender address is naturally generated (especially newsgroups and e-mails), the sender address should be the same as the address to be used by the consumer for getting in touch with the businessman or his/her representative.

3. Information obligations

- **In connection with trade and marketing, the businessman should in a clear and comprehensible form provide all relevant information in order to enable the consumer to evaluate the marketed service and any offers made.**
- **The marketing material on the Internet should be updated on a constant basis and be dated. If the marketing material is valid for a limited period of time, this should appear clearly from the material.**
- **The businessmen should retain for a sufficient period of time relevant marketing material that has been published on the Internet.**

The businessman should provide information enough to enable the consumer to evaluate both the product and the offer. The information to be provided by the businessman should include the following:

- the price of the product/service including all taxes and duties,
- the main characteristics of the product/service,
- limitations, qualifications or conditions, if any, applying to the product,
- terms of payment,
- existence of a right of withdrawal from the contract, including information on how to exercise such right,
- costs and terms of delivery, and the normal time of delivery,
- guarantee, if any, terms of guarantee and after-sales services,
- how and where the consumer can complain,
- duration of the contract in case of contracts to be performed recurrently,

- any other information necessary for evaluating the service or the offer,
- how the consumer can get into contact with the businessman prior to ordering,
- if the consumer has questions he/she wishes to ask the businessman.

4. Electronic conclusion of contracts

- **The contract function should be clearly separated from other functions.**
- **The businessman should give proper and reasonable directions about the properties of the product/service, including its useful qualities, its durability, safety risks and maintenance.**
- **Prior to an electronic conclusion of a contract, the consumer should be fully aware of all terms and conditions of the contract, including what the consumer orders and at what prices (including costs of transportation, taxes, duties, etc.). Furthermore, the businessman should fully and clearly inform the consumer whether he/she has any agreed or statutory right of withdrawal.**
- **The businessman should give the consumer an order confirmation. The order confirmation should be sent by ordinary or electric mail, if the consumer so requests.**
- **The consumer should have easy access to keeping all the information supplied in a physical or machine-readable form.**

It is up to the complaints boards and the law courts to establish when a contract has been concluded and how much it takes to regard the contract terms as having been agreed upon. It should be noted that especially standard conditions can be of such an extent, be formulated in such a way or can enter into the material (e.g. through hyperlinks) in such a way that the contract terms are not binding on the consumer.

The businessman should thus ensure that the consumer is provided with all relevant information in respect of the contract prior to the conclusion of the contract. This may be ensured e.g. by requiring the consumer to "pass" and "accept" a page of information prior to the conclusion of the contract.

5. Binding communication

- **Businessmen should send binding electronic communication - i.e. notices, orders, etc that may contain a duty to act or a legal obligation on the part of the receiver - to the consumers only when it appears unambiguously from the circumstances that the consumer has accepted it.**
- **Businessmen using electronic mail as means of communication should ensure that any messages received from consumers are collected from the electronic mailbox and made accessible to the business as soon as possible. This also applies when the addressee because of holidays, illness or for any other reason is absent from the business.**
- **The businessman should not regard an e-mail as having been received by the consumer until the consumer has collected the e-mail from his electronic mailbox with the Internet supplier.**

When messages are allowed to be sent by e-mail, and when these can be said to have a binding effect must be determined by the complaints boards or by the courts of law on the basis of a number of concrete circumstances.

It should be noted that the person sending binding messages prima facie bears the risk of the message reaching the receiver.

In relation to the transmission of e-mail to the consumers, the businessmen should pay special attention to the fact that consumers do not necessarily collect their e-mail from their electronic mailboxes as often as consumers collect their physical mail from their ordinary mailboxes. This entails that consumers do not necessarily react as quickly to electronic mail as the businessman might expect in the case of traditional, physical mail.

6. Payment

- **Payment via the Internet presupposes that the consumer has expressly accepted that the businessman can debit the consumer's account and that the security requirements set up by the country in question in respect of such payment are complied with.**
- **Payment on the Internet should not entail bigger risks to the consumer than the risks connected with other means of payment.**
- **The fact that the consumer uses electronic payment should not make it more difficult for the consumer to have defects, if any, remedied or the contract cancelled.**
- **If the consumer has paid before the product/service is delivered, the businessman should charge back the whole amount immediately if the consumer claims not having received the purchased item or if the consumer uses his/her agreed or statutory right of withdrawal.**

It should be noted that in certain cases consumers may address their claims for having an amount charged back to the issuer of the credit card for defects in the services/products for which the consumer has paid by means of the credit card. The consumer can thus raise a claim against the supplier of credit if the seller fails to fulfill his obligations.

7. Performance and complaints procedure

- **Businessmen should execute an order within the time period agreed upon or as quickly as possible. Digital services to be supplied electronically should be supplied on receipt of order, unless otherwise agreed.**
- **If, within a reasonable time, a consumer claims that a digital product to be supplied electronically has not been received or does not function, the businessman should take measures immediately to remedy or to redeliver. The fact that the businessman has remedied or redelivered, however, does not exclude the consumer from pleading other remedies for breach of contract.**
- **It should be possible for the consumer to give notice to exercise his right of withdrawal or**

right of complaint in a way that is not any more difficult than the procedure for ordering the product, and immediately upon receiving such notice, the businessman should issue receipt for the notice.

- **All reasonable mail expenses connected with the return of defective products/services should be paid by the seller.**

Exercising a right of withdrawal or a right of complaint need not involve the use of the same technique as the technique used for concluding the contract. The decisive factor is whether the technique indicated is relevant in the situation in question. When consumers have access to concluding contracts via the Internet, it should generally be expected, however, that their right of withdrawal and right of complaint can be exercised electronically.

8. E-post etc.

- **Businessmen should send marketing material via e-mail or by similar means of distance communication only when the consumer has given his/her consent.**
- **Marketing material to a consumer should be clearly identified as marketing. As a minimum, this should appear from the heading.**
- **Businessmen should not encourage consumers to send on the businessman's marketing material to other consumers.**
- **Businessmen should not send marketing material via systems set up with a view to exchanging information between private parties (e.g. news groups and list-servers). This does not apply, however, if it appears explicitly from the circumstances that the system may be used for transmitting or exposing such material.**

The request for consent should be formulated in such a way that the consumer knows what forms of marketing material he/she can expect to receive - and the extent hereof.

The businessman should set up the system in such a way that the consumer can easily decline to receive further marketing material.

9. Registration and processing of data

- **Consumers should be able to operate freely on the Internet. Data concerning identified or identifiable persons should only be registered if the consumer (the data-subject) has specifically consented hereto.**
- **Businessmen registering data on the Internet should give information on the Internet about how the businessmen register and process data on consumers. This information should be provided for registering and processing of data concerning identified and identifiable persons as well as for data concerning non-identified and non-identifiable persons.**
- **This information should include information about what data are registered, how the data**

are registered, what the registered data are used for, for how long the data are retained, whether the data are passed on and, if so, to whom, as well as other information of relevance to the consumer.

- **Businessmen registering data on the Internet concerning identified and identifiable persons should enable the consumers to exercise electronically the rights they have pursuant to data-processing legislation. Businessmen should provide adequate information on the Internet about these rights (right of objection, right of erasure etc.).**

The provisions of the electronic data processing legislation in force at any time in the Nordic countries should be complied with.

It is recommended that businessmen see to it that data concerning identified and identifiable persons to be used for specially adapted marketing are primarily collected from the consumer (the data-subject) directly. Hereby, it is ensured that the consumer him/herself has influence on the criteria according to which data on the consumer are processed.

10. Marketing directed at children and young persons

- **The recommendations expressed in sections 1 to 9 of this common position apply to marketing directed at children and young persons subject to the more rigorous rules contained in this section. Moreover, specific provisions of the country in question applies.**
- **The marketing should be elaborated in such a way that it is obvious to that age group - which is the target group - that it is a question of marketing.**
- **The businessman should take into account the development stage of the target group and therefore should not take advantage of children's and young persons' credulity and lack of experience. If entertainment features form part of the marketing - in the form of, e.g., play, games and the like - this entertainment should not be combined with or interrupted by advertising features.**
- **Children and young persons should not be encouraged to give information about themselves, the household or about any other persons. Giving information may not be made a condition of gaining access to contents.**
- **Children/young persons should not be offered rewards (money, gifts or anything else of a monetary value) for staying on or participating in activities on the Internet. This rule does not prevent the holding of prize competitions that neither directly nor indirectly have the effect that the child/young person stays longer on the businessman's homepage.**
- **Businessmen should use the techniques available at any time for allowing parents to limit the material to which their children have access via the Internet.**
- **Children and young persons should not be encouraged to buy goods or conclude contracts via the Internet, and appropriate precautions should be taken to ensure that children and young persons do not make purchases or conclude contracts via the Internet.**
- **Businessmen, whose marketing is directed at children and young persons should not use hyperlinks to places containing material that is not suited for children and young persons, or which do not comply with existing legislation.**

Interactive marketing on the Internet is especially problematic in relation to children and young persons. Interactive advertising is more than just product presentation and product orientation. It is sophisticated forms of advertising such as games, play instruments and competitions where animal figures, dolls and other images and trade marks affiliated with the products typically form part of the marketing. This marketing method has a tendency to be hidden to the child, and trademarks etc. are thus played into the child's subconsciousness. Businessmen should not use techniques fit for affecting children's and young persons' subconsciousness.

Businessmen should bear in mind that marketing targeted to adults may also be of the interest to children. Furthermore, contracts entered by minors are prima facie not valid.

In addition to this common position paper, many of the Nordic countries have developed and released separate reports and guidelines related to marketing and advertising practices targeted towards children.

In August 1998, the National Consumer Agency of **Denmark** released Guidelines from the Consumer Ombudsman entitled *Children, Young People and Marketing Practices*. Section 8.0 of the Guidelines refers to *Marketing directed towards children and young people in specific Media* and includes a reference to the Internet under section 8.2. The text of the Guidelines is available at <http://www.fs.dk/index-uk.htm>.

Finland released The Consumer Ombudsman's Guidelines: *Children and Marketing 1997* available at <http://www.kuluttajavirasto.fi/kuas/guidel.html>.

In **Norway**, The National Institute for Consumer Research (SIFO) released a report entitled *Children and Advertising on the Internet*, (SIFO Working Report 2:98, Anita Borch) <http://www.sifo.no/sider/english/publications/advertising/2-98.htm>.

In December 1998, the Consumer Agency/Consumer Ombudsman of **Sweden** released *Interpretative Advice on the Prohibition of Commercial Advertising to Children on Television* (<http://194.198.70.14/interpre.htm>). While this paper is not specifically related to marketing and advertising on the Internet, it does provide detailed guidance in interpreting of Chapter 7, Section 4 of the Swedish Radio and Television Act (1996:884), which prescribes that commercial advertisements in a television broadcast must not have the purpose of attracting the attention of children under the age of 12.