

**2014 Day of General Discussion of the Committee on the Rights of the Child,
Digital Media and Children's Rights**

Working Group 1 – Children's equal and safe access to digital media and ICT

Violation of the rights of the child due to commercial communications targeting children on digital media and information and communications technologies (ICT).

Isabella Henriques, Pedro Hartung, Thaís Dantas

I. Introduction.

Instituto Alana is a Brazilian nongovernment organization that takes actions to defend and promote the rights of the child [alana.org.br], with the mission of *honoring the child*. With a view to debating childhood-related issues in the province of consumer relations, as well as to point out the means of minimizing and preventing damages caused by commercial communications¹ targeting children under the age of 12, **Alana** created the **Child and Consumption Project** [criancaeconsumo.org.br].

Thus, the approach to the issue addressed in the *2014 Day of General Discussion* is such that this paper will seek to examine it from three main angles: (i) how digital media and ICT are being used as means to direct consumption messages to children; (ii) to what extent does this marketing strategy disregard the rights of children in this age bracket; and (iii) what are the measures recommended to curb this type of violation of children's rights.

II. Children's relationship with the media.

Mass social communications channels currently play a major role in child education, and take up as much or even more time of their lives as other traditional social institutions such as family and school. For example, in Brazil, children's daily media consumption happens in a number of different forms: 85.50% watch TV; 85.40% listen to the radio; 58.80% go to the movies; 54.30% read magazines; and 41.40% play videogames². Brazilian children are among the top-ranking media users and consumers in the world.

A recent research conducted by TIC Kids Online³ concluded that 73% of children between 10 and 17 years of age have access to the Internet, and 63% of these access the Internet every or almost every day, with the use of social networks being the second major online activity (81%), losing only to the use of the Internet for schoolwork (87%).

It should be mentioned that most of the parents recognize the risks posed by the Internet and try to offer guidance to their children. A total 69% have already talked to the children on the safe use of the Internet, that is, free of running any risk or watching something inappropriate. Even so, it is worth pointing out that access to the Internet is not always monitored by an adult or person in charge, because of the different sites access to the Internet can be made: although 68% of the interviewees access the Internet from a common point in the home, remote access via mobile phones (35%) and cyber cafés (22%) enable children to use these media without any surveillance.

Besides, there are many means used to access the Internet. Even though desk tops are the most used (71%), new support devices such as mobiles (53%), notebooks (41%), tablets (16%), videogames (11%) and television (13%) are starting to replace these.

Because the child is a major user of digital communication platforms, it is the favorite target of all manner of marketing communications, which decisively influence up to 80% of the purchase decisions in the household⁴.

¹The term 'commercial communications' encompasses any and all marketing communication activities to advertise products and services, independently of the support or medium used, including digital media and ICT. Besides printed ads, TV commercials, radio spots and Internet banners, we can include, for example, packages, sales promotions, merchandising, point-of-sale product displays, etc.

²Nickelodeon Business Solution Research (2007). Kiddo's Brazil, children ages 6 to 12 years old (2006).

³Research on the Use of the Internet by children and adolescents in Brazil. TIC Kids Online Brasil (2013)

⁴Interscience. *Informação e Tecnologia Aplicada*. (2003). Available at: <http://www.interscience.com.br/site2006/index.asp>. Packaged facts. The Kids Market, 2000. Access on 7.11.2008.

To illustrate use of ICT for broadcasting marketing messages addressed to children, children between the ages of 10 and 17 years were questioned on which medium had they had most frequent contact with advertising and they replied: TV (81%), social networks (61%), newspaper or comic books (54%), video sites (48%), only game sites (30%), e-mails (26%), messaging (24%), instant messages on the Internet (22%) and other media (7%)⁵.

We thus perceive an expansion of marketing communications via ICT, even though television continues to be the main advertising platform. In Brazil, TV is still a major source of media consumption for the child population. Children's exposure to the television is on average five hours and twenty-two minutes per day⁶. Furthermore, the 360 degree marketing strategy is steadily growing, that is, a combination of the TV medium with all other information and communication technologies (ICT) to advertise a product or service. For example, the children's TV channel *Cartoon Network*, which boasts the highest Pay-TV audience share in Brazil, in step with the TV, Internet and mobile convergence trend exhibits on its site a wide range of games featuring its program characters, as well as commercials on toys and Smartphone applications and a social network page that has more than 1.2 million followers.

It is also quite usual to see children's programs repeatedly invite viewers to access their Internet sites. The main decoy, according to the survey on child consumption and the Internet⁷, are online games. Advergaming is a way advertisers can reach the target child market by offering games and virtual entertainment pegged to a company brand or product and service. A fun environment is thus created in which the child finds entertainment, but this is permeated with references to the brand, either inserted in the name of the games offered, or requiring that the products be purchased in order to access the games or by promoting the use of the characters as mascots.

Another relevant form of allurements is product placement, which consists of disclosing a brand or advertising message in the entertainment content that provides an additional opportunity for brands to cause consumers to become emotionally involved with their products⁸. This form is frequently used in the broadcasting of child content on television, as well as on video sites, to subtly involve the child, which cannot distinguish its favorite program from the advertising message.

The strategies mentioned above take advantage of this audience's lack of experience and critical sense, especially of children under 12 years old. Central to commercial communications aimed at children is to encourage and lure them into directly consuming a given product or service and to win them over as future consumers, or even turn them into sales promoters within the family.

III. The hyper-vulnerability of children in consumer relations and to commercial communications

The child, in the natural process of the bio-psychological development of human beings, still lacks a number of psychic, cognitive and emotional mechanisms that enable it to fully understand the world and social relations, making it hyper-vulnerable, including in regard to consumer relations. Hence, it is important to introduce the concept of evolving capacities, which is that which must be taken into account in the interpretation of the provisions of the International Convention on the Rights of the Child. This principle recognizes that the child must be heard; establishes the need to protect these human beings according to their stage of development; and the need to protect them from premature exposure to certain situations⁹, given their vulnerability.

One of the most relevant studies on the question of child advertising was conducted by the sociologist ERLING BJURSTRÖM¹⁰. As a result of the survey, he proves that children are powerless to understand the advertising messages directed at them, because they cannot distinguish them from the program content they are watching, or even grasp their persuasive nature. Also on this issue, the specialist in child development, YVES DE LA TAILLE, in an opinion submitted on the subject-matter to the Brazilian Federal Psychology Council, believed that advertising had a greater chance of inducing children under the age of 12 years to error because they do not have the same mental resistance and

⁵ Research on the Use of the Internet for children and adolescents in Brazil. TIC Kids Online Brasil (2013)

⁶ *Painel Nacional de Televisores*. IBOPE (2012)

⁷ Millward Brown Internet and child consumption: what is the actual influence of the Internet on the post-Google generation's power of choice? (2010).

⁸ Definition by IBOPE. Available at: <http://www.ibope.com.br/pt-br/conhecimento/infograficos/paginas/merchandising.aspx>. Access on 16.7.14.

⁹ *The Evolving Capacities of the Child* (2005). Available at: <http://www.unicef-irc.org/publications/pdf/evolving-eng.pdf>. Access on 28.7.2014.

¹⁰ Available at: http://biblioteca.alana.org.br/banco_arquivos/arquivos/docs/biblioteca/pesquisas/children_tv_ads_bjurstrom_port.pdf. Access on 11.3.2013.

comprehension of reality as an adult; therefore, they are unequipped to stand up against the pressure exerted by advertising¹¹.

This then clearly evidences the child's double unique conditions when it is faced with advertising appeals: (i) the child is vulnerable because its psychic, cognitive and emotional development has not been completed; and (ii) the child does not understand advertising *per se*, that is, its persuasive character. Besides, to expose child viewers to advertising content directed at them often contributes towards intensifying problems that jeopardize child development such as: precocious eroticism, behavioral disorders, family stress, violence, and alcoholism, lack of environmental sustainability as well as eating disorders, such as obesity, anorexia and bulimia.

IV. The violation of the rights of the child due to advertising messages targeting them.

a) The violation of rights assured in the Convention on the Rights of the Child (CRC).

Advertising and marketing communications targeted at an audience of children under the age of 12 years, on preying on their vulnerability, undermine the guarantee of the child's best interest (article 3)¹² by violating the following rights assured in CRC: the right to survival and development (article 6)¹³; the right to access to appropriate information (article 17)¹⁴; the right to protection from all forms of violence and other forms of exploitation (articles 19 and 36)¹⁵; the right to freedom of thought and conscience (article 14)¹⁶; and the right to leisure, play and culture (article 31)¹⁷.

b) General Comment No. 16.

In the debate on violations caused by marketing communications aimed at children, General Comment No. 16 is also relevant. It states that provided that the best interests of the child shall be a primary consideration for the State and it must guarantee that business activities are restricted when they pose a threat to child rights.

According to this General Comment, although it recognizes the influence that marketing communications and the media have on children because they are still undergoing development and thus more susceptible to manipulation and takes into consideration the negative impacts of advertising targeted at children, deems that there could be "beneficial" child advertising, that is, advertising that would theoretically have positive impacts by carrying relevant information to children, such as, for example, information on healthy hygiene habits.

However, these messages are always pegged to a specific product or service, promoting the idea that these healthy habits can only be developed by using these particular products. It is also necessary to be aware of the fact that, independently of the content of the advertisement – even though it encourages good habits – it still violates the rights of the child, since it also carries a consumption appeal targeted at a hyper-vulnerable individual, whose best interest, non-exploitation and access to appropriate information to its stage of development are supposed to be guaranteed, as mentioned above.

Therefore, based on the international legal framework, only public utility messages would not cause any infringement, since these have no marketing designs. Whenever any commercial addressed to children carries an appeal to consume a given product or service, it is violating their rights.

¹¹ Available at: http://www.pol.org.br/pol/export/sites/default/pol/publicacoes/publicacoesDocumentos/Cartilha_publicidade_infantil.pdf. Access on 14.5.2012.

¹² According to that established in General Comment No. 14: "The right of the child to have his or her best interests assessed and taken as a primary consideration should be explicitly included in all relevant legislation, not only in laws that specifically concern children". (Paragraph 2, letter 'd' of GC No. 14)

¹³ Requires the States Parties to assure the child's full development, clearly highlighting the importance of being careful with the content to which children are exposed.

¹⁴ Governs the relationship between the rights of the child and the media, establishing that the media content to which it is exposed must respect its well being, as well as its physical and mental health, to ensure the quality of the information that reaches the child and that this information is consistent with its stage of development.

¹⁵ These rights are aimed at curbing not only physical but also mental exploitation, which is where child advertising comes in, since this easily persuades and manipulates children into purchasing products, due to their unique development conditions. To this effect, General Comment No. 13 foresees that: "As recipients of information, children may be exposed to actually or potentially harmful advertisements, spam, sponsorship, personal information and content which is aggressive, violent, hateful, biased, racist, pornographic, unwelcome and/or misleading". (Paragraph 31, letter 'c', I of GC No. 13).

¹⁶ Aiming these persuasive strategies at the child without its being equipped to critically respond to this strong stimulus, will eventually mitigate also its right to freedom of thought and awareness.

¹⁷ General Comment No. 17 recognizes that marketing in fun environments exerts bad influence on the ways in which the child handles its leisure time, as well as its cultural and artistic activities. It thus provides: "That many children and their families are exposed to increasing levels of unregulated commercialization and marketing by toy and game manufacturers. Parents are pressured to purchase a growing number of products which may be harmful to their children's development or are antithetical to creative play (...). Global marketing can also serve to weaken children's participation in the traditional cultural and artistic life of their community". (Paragraph 47 of GC No. 17).

Furthermore, the document does not define any given age bracket for marketing content recipients: according to this specific study¹⁸, it is only when children are around 8 to 10 years of age that they can distinguish advertising from the entertainment content, and it is only after they are 12 years old that children can understand the persuasive character of advertising and critically analyze the advertising message.

Even so, one must acknowledge the merits of the document. The guideline provided in paragraph 58, on stressing that the States Parties have an obligation to encourage media to disseminate information and material that brings some kind of benefit to children, does foster the production of content that is more heedful of children's needs. This paragraph further establishes that media must be properly regulated so as to protect children from harmful information, including child advertising, a measure that has to be implemented by the States Parties¹⁹, including by their business communities²⁰.

c) Unique traits of the violation of the rights of Brazilian children.

Brazil has a population of a little over 200 million inhabitants²¹, 29.7% of which are in the 0-17 age bracket, according to the 2010 Census²². The scenario drawn on Brazilian infancy unfortunately shows an extremely vulnerable reality: 29% of the population comes from the poorer classes, and, alas, the percentage share of children in this class is 45.6%, where the chances of dying are twice as high as those of children from the richer classes²³.

Malnutrition is also a serious problem: around 60,000 children of one year or less are undernourished. Besides, Brazil now faces a new challenge: according to study published by the Brazilian Geography and Statistics Institute (IBGE) in 2010, the number of children from 5 to 9 years of age that are overweight has skyrocketed in the last 34 years. In 2008/2009, 34.8% of the boys weighed more than average weight bracket considered healthy by the World Health Organization (WHO). In 1989, this figure was 15%, as compared to 10.9% in 1974/1975. A similar pattern was followed by the girls, which from 8.6% in the '70s rose to 11.9% at the end of the '80s, and to 32% in 2008/2009.²⁴ Overweight and obesity are frequent in children of five years of age and over across income level spectrum and in all Brazilian regions²⁵. These data underpin the perception that the question of malnutrition has become more complex in Brazil. In other words, it is not only a question of fighting hunger, but also of fighting poor eating habits.

Also in the sphere of the juvenile justice system, 2006 data showed that the total number of inmates of the socio-educational juvenile detention system in Brazil was 15,426, most of whom were confined (10,446). Then there were those who were temporarily detained (3,746) and those that only had to report back to the juvenile center at night (1,234)²⁶. There are an estimated 30,000 adolescents detained each year, although only 30% have been sentenced for committing violent crimes²⁷. Most of the youth – more than 90% - held in the socio-educational juvenile centers have committed less serious crimes such as theft, robbery or drug trafficking.

In this scenario, although problems such as obesity and child and youth violence cannot be attributed solely to market communications, there is evidence that they are aggravated by misguided advertising.

In the case of obesity, there is one datum that stands out: more than 70% of printed and TV advertisements feature fast food items, sweet food, ice cream, soft drinks and artificial juices²⁸, and TV commercials on food products can influence the development of food preferences of children between two and six years of age in a mere thirty seconds²⁹.

¹⁸Children and television advertising – Swedish Consumer Agency – Erling Bjurström, sociologist hired by the Swedish Government in 1994-95.

¹⁹“It is necessary for States to have adequate legal and institutional frameworks to respect, protect and fulfil children's rights, and to provide remedies in case of violations in the context of business activities and operations”. Paragraph 4 of GC No. 16.

²⁰“States have an obligation to protect against infringements of rights guaranteed under the CRC and its protocols, by third parties. This duty is of primary importance when considering States' obligations with regards to the business sector. It means that States must take all necessary, appropriate and reasonable measures to prevent business enterprises from causing or contributing to abuses of children's rights”. Paragraph 28 of GC No. 16.

²¹*A população do Brasil ultrapassa a marca de 200 milhões*, diz IBGE. Available at: <http://g1.globo.com/brasil/noticia/2013/08/populacao-brasileira-ultrapassa-marca-de-200-milhoes-diz-ibge.html>. Access on 28.7.2014.

²²Available at: <http://teen.ibge.gov.br/mao-na-roda/criancas-adolescentes-e-jovens>. Access on 28.7.2014.

²³*Infância e adolescência no Brasil*. Available at <http://www.unicef.org/brazil/pt/activities.html>. Access on 23/01/2014

²⁴Available at: http://www.ibge.gov.br/home/presidencia/noticias/noticia_visualiza.php?id_noticia=1699&id_pagina=1. Access on 15.2.2012.

²⁵IBGE, *Pesquisa de Orçamentos Familiares 2008-2009* (PDF), in partnership with the Ministry of Health

²⁶“*Levantamento Nacional do Atendimento Socioeducativo ao Adolescente em Conflito com a Lei.*” Available at: http://portal.mj.gov.br/sedh/ct/Noticias_Anexos/apresenta%C3%A7%C3%A3o%20do%20levantamento%20consolidado.doc. Access at 28.7.2014.

²⁷*Infância e adolescência no Brasil*. Available at <http://www.unicef.org/brazil/pt/activities.html>. Acessado em 23/01/2014

²⁸Ministry of Health and Media Surveillance of the Federal University of Espírito Santo (Natal 2011)

²⁹“The 30-second effect: an experiment revealing the impact of television commercials on food preferences of preschoolers” (Author: DINA L. G. BORZEKOWSKI and THOMAS N. ROBINSON)

Furthermore, according to the reputed non-governmental organization Consumers International³⁰, one in every ten children worldwide is overweight or obese, which would amount to approximately 155 million children. Another alarming datum gleaned by this organization is that there are currently 22 million children under five years of age who are overweight³¹. The causes pointed out for this phenomenon is the increased consumption of food rich in simple sugars and fat and the presence of a television and computer in the home³², since early exposure to the advertising of this type of food is decisive in developing their food habits in adult life. This panorama fosters the rise in child obesity rates and consequent non-transmissible chronic diseases. A total ban on advertising would reduce the number of obese children by some 14.2% to 33.3%³³.

We must admit in the discussion on juvenile violence and delinquency that these are partly spurred by the desire to acquire frequently advertised products, a situation that is further aggravated in countries like Brazil, where there is profound and staggering social inequalities due to the very bad distribution of income. On stimulating consumer desires in those that do not have the money to satisfy them, marketing communications targeting children heightens their sense of inferiority, since they make the satisfaction of this desire seem the path to a happy life.

According to a survey made by *Fundação Casa* in São Paulo, the organization found that the main causes for juvenile detention was property robbery and drug trafficking. An analysis of these data shows that children and youth start by trafficking drugs or robbing to satisfy their consumer desires, such as to acquire a leading-brand pair of tennis shoes³⁴. Because they are unable to deal with this information which causes them pain, many children seek alternative ways to satisfy their desires, one of which is to resort to violence and enter a life of crime.

If we recognize how marketing communications aimed at children help aggravate these problems, we will clearly see why they need to be regulated. In Brazil, the principal governing law on the matter is Resolution 163, issued by the National Council on the Rights of Children and Adolescents - CONANDA. This resolution is based on article 227 of the Federal Constitution³⁵, which grants children absolute priority in the protection of their rights, in addition to the guarantees provided in the Child and Adolescents Act and the Consumer Protection Code.

To begin with, Resolution 163 defines “marketing communications” and specifies the wide spectrum of strategies used in marketing communications, showing that it is well aware of the newly existing media. After establishing this preliminary concept, it provides that “the practice of directing advertising and marketing communications at children with the intent of persuading them to consume any product or service is abusive”, based on the arguments mentioned above.

It should be mentioned that Brazilian law defines a child as an individual between 0 and 12 years old, and an adolescent as an individual between 12 and 18 years old. Based on this difference, a full ban has been placed on advertising and marketing communications targeting children under the age of 12 years, with a description of their aspects and characteristics.

In the case of children in the 12-18 age bracket, the Resolution sets out such guidelines as the respect for the human dignity, intimacy, social interest, special attention to and heed for the adolescents’ psychological characteristics and the fact that they are still under development, among others.

From the explanations above, we can deduce that Brazil has drawn up a well-advanced regulatory model, which is still being implemented and needs to be better monitored, in view of the great resistance offered by the market, including by major corporations established and operating in other countries which have specific laws and policies on this subject-matter in place, such as Sweden, Norway, Germany, Ireland, England, Chile, Mexico, Canada and others.

³⁰ www.consumersinternational.org/

³¹ <http://www.consumersinternational.org/our-work/food/key-projects/junk-food-generation#UcwttuPlwo0E>

³² Information gleaned from an article published by ABESO – Associação Brasileira para o Estudo da Obesidade e da Síndrome Metabólica, Authors: Cecília L. de Oliveira and Mauro Fisberg.

³³ Veerman et al. – *European Journal of Public Health*, v. 19, n. 4, 2009

³⁴ Study on the profile of adolescents and public servants of Fundação CASA, 2006.

³⁵ Art. 227, CF. “It is the duty of the family, society and the State to ensure children and adolescents, with absolute priority, the right to life, health, nourishment, education, leisure, professional training culture, dignity, respect, freedom and family and community life, as well as to guard them from all forms of negligence, discrimination, exploitation, violence, cruelty and oppression.” (bold added)

ATTACHMENT

Recommendations:

We suggest to the Committee on Rights of the Child that:

- (i) It hold an in-depth discussion on commercial communications targeted at children and their effects;
- (ii) It recommend that the States Parties issue restrictive regulations on the practice of directing commercial communications to children under the age of 12 years in all media, including digital media and ICT;
- (iii) It recommend that the States Parties create mechanisms to evaluate the effectiveness of the restrictive regulations on the practice of directing commercial communications to children under the age of 12 years in all media, including digital media and ICT.

CONTACTS

Participant in the DGD 2014:

Pedro Hartung - Attorney for the Alana Institute and Adviser at Brazilian National Council for the Rights of Children and Adolescents (CONANDA).

pedro@alana.org.br

T: 55+ 11 3472-1602