



Self-regulation and children's digital rights: in harmony or out of tune? Verdoot Valerie, KU Leuven

Over the past two decades, ensuring a safe digital environment for children has to a significant degree been left to self-regulatory mechanisms.¹ This was confirmed in the European Commission Communication on a European strategy for a better internet for children of May 2012, which stated that “[l]egislation will not be discarded, but preference will be given to self-regulation, which remains the most flexible framework for achieving tangible results in this area”.

The added value of a self-regulatory framework lies in its flexibility and adaptability (to technological change), a higher degree of expertise and a relatively low cost. However, at the same time, self-regulatory mechanisms have been considered to suffer from low levels of transparency and accountability and the fact that private interests are put before the public interest. Moreover, the degree of legal certainty is sometimes low, resulting in a decrease in democratic quality of regulation. Considering the important drawbacks of self-regulation, this article questions whether something as fundamental as children's rights should be safeguarded by self-regulation to such a significant extent.

In order to illustrate this argument, this article will focus on the advertising sector, which has a very strong tradition with respect to self-regulation.¹ Companies are strongly encouraged by the Unicef Children's rights and business principles, to “use marketing and advertising that respect and support children's rights”.¹ On a daily basis, children are confronted with a broad variety of (digital) marketing techniques distributed through a range of devices and technologies.¹ New advertising formats such as behavioural advertising, for which children's personal data are processed, or advergames, which integrate editorial and commercial content, may have a significant impact on children's rights, including their fundamental right to privacy, access to (high-quality) information and freedom of expression. The paper will assess the current self-regulatory framework in this domain from a children's rights perspective, evaluating the degree of protection as well as participation, and compliance with essential principles such as accountability and transparency.