

# Youth Day 2020: Safeguarding children's rights in the digital era

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On 16 June annually, South Africa [commemorates](#) the Soweto youth uprising of 1976. More than four decades later, the youth of today continue to grapple with a vast array of challenges to the full realisation of their fundamental rights, both on- and offline.

The [Constitution of the Republic of South Africa, 1996](#) requires that a child's best interests must be of paramount importance in every matter concerning the child. This applies equally to matters that arise in the context of the digital era. According to [statistics](#), one in three internet users globally is a child, which proportion is likely to be even higher in the global south. For organisations working with children, or whose services are targeted at children, it is imperative to ensure that appropriate measures are put in place to reduce the risk of harm that children face online, while maximising the opportunities that are available to them.

For the marketing industry, children are an important demographic who occupy a unique position in the marketing ecosystem. With increasing access to, and influence over, online services, children play a critical role in shaping narratives, strategies and service offerings. This has been driven by a range of different factors, including growing access to digital devices, an increasing trajectory towards digital media, and the ability to rely on data-driven profiles to target particular consumers and facilitate automated decision-making. This presents significant opportunities, but also brings with it risks and responsibilities.

It is undeniable that the internet and digital technologies have transformed how children enjoy human rights. According to a discussion paper published by Unicef titled [Children and Digital Marketing](#), the starting point is that "children must not be treated as simply another consumer group to be exploited or avoided by the industry". This means that advertisers, agencies, data brokers, publishers and technology providers that link them have a responsibility to ensure that advertising practices afford children the enjoyment of the full range of their fundamental rights.

Unicef identifies three key rights in this regard. The first is privacy and the protection of personal information. As noted in the discussion paper, the digital marketing ecosystem is sustained, in part, by the collection, analysis, storage and safety of children's personal information. In some circumstances, this occurs without the appropriate informed consent or under circumstances that do not empower children to understand and control the use of their personal information. The privacy rights of children are closely aligned to their dignity, autonomy and ability to develop free from adverse influences. In the South African context, the [Protection of Personal Information Act 4 of 2013](#) contains specific requirements for the processing of personal information relating to children.

The second right is the right to freedom of expression and access to diverse information. The Unicef discussion paper explains that digital marketing often comes hand in hand with free content for children online, and, therefore, contributes to their enjoyment of freedom of expression and access to information. While, on the one hand, digital advertising has become an enabler for children to have access to relevant content, this needs to be tempered against a concern of such advertising having an undue influence over the children accessing the content. Regard needs to be had to the evolving maturities of children and the fact that they may still be developing the necessary media and information literacy skills. Importantly, children should be allowed the freedom to form their own views and opinions.

The third right identified by Unicef relates to protection from economic exploitation and adverse effects on children's development. In this regard, Unicef notes the potential risks that arise when advertising practices are underpinned by covert data collection for the purpose of profiling child consumers. Unicef argues that in extreme cases, the profiling of children for the purpose of monetising their data might arguably amount, in certain circumstances, to economic exploitation. This

might arise, for instance, where the behaviours, emotions or vulnerabilities of children are deliberately manipulated to increase the impact of the advertising.

There are arguably a number of changes that need to occur in the digital marketing ecosystem to better protect children's rights in the digital era. Data protection is one of the primary issues that need to be addressed to safeguard children's rights online. The constitutional imperative to treat the best interests of the child as being of paramount importance should be borne in mind in all dealings with children.

There is various regulatory guidance that can assist on this issue. For example, the International Chamber of Commerce has published specific guidance relating to children in article 18 of the [Advertising and Marketing Communications Code](#), and advises as follows:

- Products unsuitable for children or young people should not be advertised in media targeted to them, and advertisements directed to children or young people should not be inserted in media where the editorial matter is unsuitable for them.
- Marketing communications directed to children should be clearly distinguishable to them as such.
- Marketing communications should not suggest that possession or use of the promoted product will give a child or young person physical, psychological or social advantages over other children or young people, or that not possessing the product will have the opposite effect.
- Marketing communications should not include any direct appeal to children and young people to persuade their parents or other adults to buy products for them.

Further, in South Africa, the Code of Advertising Practice, as administered by the Advertising Regulatory Board (ARB), includes an [appendix](#) that specifically deals with advertising of 'junk food' to children. The Code of Advertising Practice also has general provisions dealing with children, which would apply equally to digital advertising, as appropriate. The Interactive Advertising Bureau of South Africa (IAB SA) and the ARB have been working together to assess further needs relating to advertising in the digital space, including in relation to children.

Notably, the Covid-19 pandemic has been a stark reminder of the digital divide that the youth of today still face. It is both important to ensure that the youth have access to online services, as well as that they are safe when accessing this. As Covid-19 increasingly causes more people – including children – to move online to communicate, engage, transact and learn, the perspectives and experiences of children need to be considered in the adoption of any measure that affects the child. Marketers should not overlook the important responsibility to safeguard the rights of children in the digital era.

***Please note: The information contained in this note is for general guidance on matters of interest, and does not constitute legal advice.***

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