

**UNCROC, business and the child consumer**  
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This paper will take you through some of the intersections between children's rights and consumer rights, using examples mainly relating to children as consumers of the media. There will be some discussion of the UN Convention on the Rights of the Child, but I will be spending more time on the Children's Rights and Business Principles, recently promulgated by UNICEF.

I would like to start by inviting you to reflect on the face of children's rights. I was struck when looking at the document containing the [Children's Rights and Business Principles](#) by how many of the photos depicted children who look like [Roathy](#): brown-skinned, impoverished third world children. I counted and out of 26 photos in that document, only two are of white, Western children.

This makes me ask: what about [Jazzy](#), a 4 year old who lives in Kentucky? She clearly has every material need met, but might there still be a children's rights issue in her life? Or 11 year old [Joey](#), also from Kentucky? Do we have any reservations about his prospects of growing up into a happy, healthy adult? I will return at the end of the presentation to the implications, as I see them, of limiting the children's rights frame to the materially deprived.

Before discussing the application of the principles I need to say a few words about the child consumer. The child consumer is not just a small adult, but has needs and interests particular to his or her age and stage of development. On the whole, children are more open to manipulation and exploitation than adults. Up until the age of about 5 they have difficulty separating out entertainment content from advertising content. In this sense I often say that from their perspective all advertising is '[cash for comment](#)': we were outraged when radio announcers talked up products and companies without disclosing that they were being paid to do so, because listeners were unable to judge the message accordingly. The line between content and advertising had been blurred in a way that was unfair to the listeners. For young children, that line is always blurred.

Once children can distinguish advertising from other content, their next task is to understand that the intent behind advertising is to get them to buy a product and to listen with an appropriately critical ear. This doesn't start to happen until about 8; in the meantime children are more likely to take ads at face value, believing that the advertiser's primary interest is in making them happier.

And yet children are exposed to advertising, and this in turn has an impact on the world. We would all be aware of the traditional, tried-and-true mechanism of pester power: where advertisers can make children want something so desperately, they drive their parents crazy asking for it. On top of that, children also have a considerable degree of influence over their [parents' spending](#), even on big-ticket items like cars and holidays, and they control their own money - more than \$1.8 billion in Australia alone, according to [a recent report](#). Advertising can also build 'brand loyalty' to guide children's consumer behaviour when they grow up.

When we have discussions about children's engagement with commercial messaging, we'll often hear somebody say, 'But they're so savvy these days ...'. This needs to be identified as the misconception that it is. The idea seems to be that because children are so adept at accessing content using digital hardware and software they must also be adept at decoding the messages they find. However, recent research has shown that children are actually more likely to have a sophisticated understanding of traditional advertising than of nontraditional advertising.<sup>1</sup> When we think of the range of new forms of advertising available – program-length commercials, merchandise-driven films, product placement (or 'native marketing'), advergames and integrated marketing – we see the need for action to protect children from manipulation and exploitation is getting greater, not less.

The UN Convention on the Rights of the Child (UNCROC) entered into force in 1990. Australia has ratified it, and it has more signatories than any other convention (all except the USA) so it is clearly a very important document. It embraces four core principles: the best interests of the child; participation; non-discrimination; and survival and development. The first of those is built on article 3(1), which provides:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. (emphasis added)

Some of the rights that UNCROC covers are very similar to what we would expect to see in any human rights treaty, for example art 13 (freedom of expression and access to information) and art 16 (privacy), but there are some child-specific ones as well. Article 6(2) guarantees survival and development; art 17 guarantees access to the mass media but also envisages guidelines to protect children from inappropriate material; and art 29 outlines the principles to underlie the child's education.

There are 10 *Children's Rights and Business Principles* and four of those are of particular relevance for the relationship between businesses and the child consumer:

1. All businesses should meet their responsibility to respect children's rights and commit to supporting the human rights of children.
5. All businesses should ensure that products and services are safe, and seek to support children's rights through them.
6. All businesses should use marketing and advertising that respect and support children's rights.
10. All businesses should reinforce community and government efforts to protect and fulfil children's rights.

The fuller statement of **Principle 1** includes expectations that businesses address the impact of their actions on children; that they take measures informed by relevant expertise; that they 'take into

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<sup>1</sup> Laura Owen et al, 'Is Children's Understanding of Nontraditional Advertising Comparable to Their Understanding of Television Advertising?' (2013) 32 *Journal of Public Policy and Marketing* 195.

account that girls and boys may face different risks'; that they monitor effectiveness and draw on feedback. As part of their commitment to support children's human rights it is suggested that they engage in strategic investments and philanthropy.

My two case studies for considering the application of Principle 1 are both from the AANA Code on Advertising and Marketing Communications to Children (CAMCC): the definition of advertising and marketing communications to children and section 2.4 on sexualisation.

Principle 6 (as we shall see) recognises that children's rights can be adversely affected by advertising. Therefore Principle 1 raises an expectation that an industry Code seeking to protect children from advertising would address the adverse impact of advertising. However the AANA's definition of Advertising and Marketing Communications to Children limits the Code's application to:

Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for [goods, services and/or facilities which are targeted toward and have principal appeal to Children]. (emphasis added)

As you see, there are two branches to the definition, one relating to the communication itself and the other relating to the thing being promoted. The first branch requires consideration of three separate matters, and the second has two sub-branches. Within this complicated definition there is only a vague and oblique reference to the impact on the child, with the concept of 'principal appeal'. It is debatable whether 'appeal' is the same thing as impact, and in any case the definition makes it clear that the Code applies only if the appeal to children is stronger than the appeal to adults. Note also that 'appeal' applies only to the product, not to the ad itself. The only aspect of the ad that we care about is the intent behind it – to whom it is 'directed', and not whom it will 'hit'.

With such a definition, the CAMCC appears to be some way off meeting Principle 1's expectation that businesses 'address any adverse impact on children's rights'.

When the AANA was revising its code in 2007 to take account of growing concerns about the sexualisation of children in advertising, it called for comment from the community. I am now going to show you what the Australian Council on Children and the Media's (ACCM'S) submission suggested as the basis for a new provision, and then we will compare it with the final product. Bear in mind the expectation under Principle 1 that businesses engage in 'meaningful consultation with children and other potentially affected groups and relevant stakeholders' and 'draw[] on feedback from internal and external sources, including affected children, families and other stakeholders.' (p 15)

ACCM, the peak Australian body on children's interests as media users, made two suggestions: first that children should not be directly portrayed in sexualised ways; and second that children should not be carelessly exposed to 'representation of teen and adult sexuality in advertising' at times and in environments where they have every right to be. The AANA introduced the following provision, section 2.4, into the CAMCC:

Advertising or Marketing Communications to Children [as restrictively defined, see above]:

(a) must not include sexual imagery in contravention of Prevailing Community Standards;

(b) must not state or imply that Children are sexual beings and that ownership or enjoyment of a Product will enhance their sexuality.<sup>2</sup>

It was not surprising that s 2.4 completely failed to address the second part of ACCM's submission, considering it would have required a change to the definition of advertising to children. Slightly more surprising, however, was the way that instead of acting on how children are themselves portrayed, the section referred to the much vaguer concept of 'sexual imagery' and even then diluted it with reference to 'Prevailing Community Standards' – as if the Community might tolerate a degree of sexual imagery in the kind of advertising to which the Code applies (see above). Sub-section (b) also missed the point that ACCM was raising about 'sexualised ways' of representing children, with its references to the contrasting concept of children's sexuality. The stark difference between our submission and the provision inserted in the industry Code raises real questions as to whether the consultation between them and us had been 'meaningful' and indeed as to whether they had drawn on our feedback at all.

**Principle 5**, as we have seen, relates to safe products and services that support children's rights. The document explains that this applies to products and services 'likely to be used or consumed by children' including products 'for children or to which children may be exposed'. There is a positive obligation to restrict children's access to a product that is unsuitable or harmful (though this is subject to other standards). Businesses are expected to 'take reasonable steps to eliminate discrimination against any child or group of children in the provision of products and services' and to seek 'to prevent and eliminate the risk that products and services could be used to abuse, exploit or otherwise harm children'. (p 24)

My case studies on this Principle include examples of compliance and non-compliance, as well as an idea of an issue that could prompt a business to take action in reliance on the principle.

First, to non-compliance. I'm sure you are all familiar with the excellent US television series *Breaking Bad*: a dark, MA15+ tale of a chemistry teacher who turns to crime when diagnosed with cancer. What you might not have known is that the toy store chain 'Toys R Us' had a line of ['Breaking Bad' action figures](#) complete with guns and bags of crystal meth. The safety of such products for children can be questioned, in so far as they are likely to raise interest in inappropriate content that could terrify or desensitise them, and to undermine the classification's statement about the inappropriateness of the content.

Writing in the Money column at Time.com, Bradley Tuttle provides an [explanation](#) that makes business sense, but not children's rights sense:

sales of traditional toys have been slumping—and therefore so have stores whose bread-and-butter is selling those traditional toys. ... It's understandable, then, that toy makers and

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<sup>2</sup> Section 2.4 was later revised and now reads:

Advertising or Marketing Communications to Children:

- (a) must not employ sexual appeal;
- (b) must not include sexual imagery in contravention of Prevailing Community Standards; and
- (c) must not state or imply that Children are sexual beings and that ownership or enjoyment of a Product will enhance their sexuality.

toy stores have taken steps ... to try to expand their customer bases by manufacturing, marketing, and selling products that are for “more mature” folks.

Under Principle 5, as elaborated in the document, it is not to the point that the toys are ‘for’ adults: if they are being sold in a toy store, children are not only likely to be exposed to them, but also to use or consume them.

The sale of the *Breaking Bad* action figures was the subject of a [change.org petition](#) and the items were removed from sale (though not without a backlash and [counter-petition](#) from the collector community, [endorsed](#) by one of the show’s stars). Another example of a business responding to public pressure, and in a way that supports Principle 5, was the recent move by Target (US) away from gender segmentation of its products. As the company [explained](#):

Right now, our teams are working across the store to identify areas where we can phase out gender-based signage to help strike a better balance. For example, in the kids’ Bedding area, signs will no longer feature suggestions for boys or girls, just kids. In the Toys aisles, we’ll also remove reference to gender, including the use of pink, blue, yellow or green paper on the back walls of our shelves

This is a laudable example of a business eliminating discrimination between groups of children, that is, boys and girls.

My third example is one where no particular business is in breach of the principles, but there is an opportunity for action to advance the project they represent. One product that we all know children use a lot is screens. [Research](#) has shown that the light that emanates from the screens of devices such as phones and tablets can interfere with children’s sleep, which leads to the conclusion that the products are not as safe for children as they could be. If a business were minded to develop child-friendly products with less-bright screens, that would be within the spirit of Principle 5.

As previously mentioned, **Principle 6** relates to marketing and advertising. This includes labelling and other product information, which ‘should be clear, accurate and complete, and empower parents and children to make informed decisions.’ (p 26) Marketing and advertising should not reinforce discrimination, and they should consider children’s greater susceptibility to manipulation. Moreover, marketing and advertising should promote children’s rights, positive self-esteem, healthy lifestyles and non-violent values. Reference is made in particular to the effects of unrealistic body images.

Once again the AANA provides my first case study. The definition of Advertising or Marketing Communications in its Codes (Code of Ethics, CAMCC and Code on Advertising and Marketing of Food and Beverages) specifically excludes labels and packaging. So for example none of the codes would apply to a biscuit company that included a misleading [‘Canteen’ logo on a child-oriented product](#) even though the product would not be recommended on the canteen menu – quite the opposite of empowering parents to make informed decisions! (The company won a ‘Shonky’ award from Choice, and the consumer organisation has also referred the matter to the Australian Competition and Consumer Commission, whose brief does extend to labelling.)

My second case study is one where for many years film companies have been obeying the letter but not the spirit of the law by using children’s merchandise to market M-rated films. The M rating says the film is not appropriate for young children, but that message is easily smothered by the blanket of

toys, stationery, kitchenware, bedding, clothing and other products that lands in the stores, often before the film has even been given a rating. The irony is that the law requires that the rating symbol be included in advertising for any film, but broader marketing strategies, such as merchandising, are not covered. Compliance with Principle 6, however, might require companies to include the information on the merchandise, again to empower parents and children to make informed decisions.

My third case study also comes from the film industry, and it is summed up by the plaintive cry of one parent in a recent blog: [What in the name of man-hole covers have you done with my Ninja Turtles?](#) The writer details the many ways in which the new version of *Teenage Mutant Ninja Turtles* differs from the one he knew and loved as a child; and this is not an isolated incident. A related issue is where a film is made based on a children's book, but the story and/or tone is changed to make it less suitable, or at least vastly different from what an unsuspecting parent would expect. I was deeply disappointed myself, when I took my then-6 year old daughter to the Yoram Gross film of Norman Lindsay's *The Magic Pudding*, a book we had enjoyed together. The addition of a giant subterranean wombat who had enslaved Bunyip's parents not only offended my sense of fidelity to the story, it terrified my daughter and we had to leave the cinema. My guess is that hundreds if not thousands of parents have been similarly misled in recent years by remakes and adaptations. Compliance with Principle 5 might require some sort of disclosure in promotions of such films about the ways in which they differ from the original (or perhaps just coming up with a new story and not trying to trade on an existing, trusted brand).

**Principle 10** on reinforcing community and government efforts to protect children's rights extends to respecting rule of law; engaging in responsible business practices; paying taxes; and making strategic social investments. Areas suggested for such investments are health, education, recreation, child protection and raising awareness of children's rights.

These expectations seem to raise a question about industry self-regulation, coming as it so often does from a resistance to government regulation. Some industry lobbying for deregulation might also be open for discussion under Principle 10: obviously there is a fundamental right to request changes to the law but when unfair or dishonest tactics are used this would seem to be in direct contravention of the principle. On the positive side, Principle 10 might encourage businesses to contribute to the funding of research on children's development and interests: that is, objective research, not just research about how better to access the child market.

Much of my discussion so far has been about parents and that is no coincidence. Parents are obviously hugely important in children's lives in a variety of ways, and acting as a gatekeeper for their children's consumption is one of them. 'Parental responsibility' is a very easy catch-cry to blurt out when we are considering the role of other sectors in protecting children's rights, but then again parenting is one of the most under-theorised activities in the world so these discussions are always frustrating and impoverished.

Thankfully, UNCROC itself provides a framework for a principled way forward. It recognises parents as a resource for children;<sup>3</sup> as 'responsible' for children or having 'duties' towards them;<sup>4</sup> as a

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<sup>3</sup> Art 7, 9, 18, 22, 23, 24.

<sup>4</sup> Art 5, 14, 18, 27.

potential source of harm to children;<sup>5</sup> as entitled to support from the state and/or society;<sup>6</sup> and as rights-bearers themselves.<sup>7</sup>

What are some of the ways that parents' role and responsibilities can be supported or undermined? One thing we know from research is that parents have an important role in co-viewing media content with their children. If this is done in an active way, it can lessen the undesired impacts of advertising.<sup>8</sup> This suggests that we should have a system of media regulation that encourages and supports co-viewing, and in a sense we have had that in Australia for many years in the form of classification time zones to ensure that programming during peak family viewing time was indeed suitable for family viewing – that is, rated no higher than PG. However with the recent review of the Commercial Television Industry Code of Practice, inappropriate (M-rated) content can be shown earlier, from 7.30 pm. Doubtless other strategies are available for parents to create opportunities for active co-viewing, but this development still represents a rolling-back of the support parents have had up till now.

An example of a business's effort to support parents in their gatekeeping role is Telstra's ['My First Mobile Agreement'](#), which represents an excellent resource for parents to start a constructive, respectful conversation with their children about an important milestone in their lives. I know that many parents are bewildered about how to approach the management of their children's access to mobile telephony and Telstra is to be commended for creating this attractive and highly accessible resource.

Finally, an example of another idea that business may wish to take on board. Many parents are concerned about their children's use, and over-use, of video games, and research has shown that a ['calm, warm approach'](#) is the best way to limit the time children spend playing. Could industry play a role in supporting parents to adopt that approach? That is certainly a discussion worth having.

I hope that in the course of this presentation I have shown the connection between rights, power and values. I have provided a number of examples where the exercise of corporate power has been clearly guided by values; sometimes these are supportive of children's rights but sometimes they are the opposite. The trick is to convince more businesses that rights-supporting values can be adopted without an undue impact on their bottom line.

This brings me back to the images I showed at the beginning of the presentation, and the abundance – what I would argue is an overabundance – of images of poor, third-world children in the *Business and Children's Rights Principles* document. One difficulty I see with those images is that they seem to perpetuate the idea that respecting children's rights is a matter of charity. I was also struck by the preponderance of examples in the ['Good Practices per Principle'](#) document that took the form of a donation to a worthy cause, rather than a rethinking of how a company goes about its business. The model seems to be that businesses make their money, however they make their money, and then decide how much of their profit to give over to supporting children's rights.

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<sup>5</sup> Art 19.

<sup>6</sup> Art 18, 19, 24, 27.

<sup>7</sup> Art 3, 5, 9, 14, 29.

<sup>8</sup> Moniek Buijzen & Patti M Falkenberg, 'Parental Mediation of Undesired Advertising Effects' (2005) 49 *Journal of Broadcasting and Electronic Media* 153.

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In my view that is not consistent with the concept of human rights. Human rights, and children's rights, should be woven into everything we do, not just an afterthought. They are also, unlike charity, a matter of obligation, not choice.

Finally I hope to have demonstrated that children's rights are everybody's business: not just children's, nor even just families', or civil society's, but everybody's, and it's really important for all of us to keep the dialogue going about how best to advance those rights.

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