

Guidance on advertising in-game purchases

About 5Rights Foundation

5Rights Foundation develops new policy, creates innovative projects and challenges received narratives to ensure governments, the tech sector and society understand, recognise and prioritise children's needs and rights in the digital world. Our work is pragmatic and implementable, allowing us to work with governments, intergovernmental institutions, professional associations, academics, and young people across the globe to build the digital world that young people deserve.

A child or a young person is anyone under the age of 18, as set out in the UN Convention on the Rights of the Child (UNCRC) but many children, particularly teenagers, prefer to be described as young people. We use the terms 'children' and 'young people' variously, but in either case it refers to a person under the age of 18 who enjoys the rights and protections of the UNCRC.

5Rights Foundation welcomes the opportunity to respond to the Advertising Standards Authority (ASA) consultation on guidance for advertising in-game purchases. Children are routinely exposed to and directly targeted by advertising for in-game purchases. Guidance on advertising for in-game purchases and increased enforcement is a much-needed step in creating a digital world that anticipates the presence of children, recognises their developmental vulnerabilities, and upholds their rights.

Response to consultation questions

1. **The degree to which respondents consider the guidance addresses concerns about advertising for in-game purchasing, including whether there are any other factors that should be included.**

The guidance focuses on ‘*the way in-game purchases should be marketed in order to prevent harm or consumer detriment*’. To this end, the guidance sets out specific measures to address concerns of the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP), that some ways of presenting prices for in-game purchases lack clarity or transparency and are misleading.

Though 5Rights share these concerns, the draft guidance does not adequately protect children from the advertising of in-game purchases because it does not apply to adverts that *indirectly* market in-game purchases to children. Below we provide recommendations on the scope, enforcement, and prioritisation of children in this guidance.

Scope

The focus of this consultation, to establish ‘*the way in-game purchases should be marketed in order to prevent harm or consumer detriment*’, should more explicitly refer to existing restrictions on marketing to children. Currently, the draft guidance on advertising in-game purchases ‘*reminds*’ advertisers of the rules about targeting children only once.

In addition to more robustly enforcing the current CAP restrictions on marketing directly to children¹, prohibiting the advertising of in-game purchases to children entirely would ensure children are less likely to encounter advertisements that *indirectly* expose them to in-game purchase, which are not currently covered by the guidance.

Though ‘*the products themselves*’ fall outside the scope of the draft guidance, many games require players to pay for in-game purchases to enjoy the full benefits of the game, or in some cases, to ‘proceed’ to the next level, giving players little choice but to pay.² The advertising of in-game purchases cannot therefore be considered separately from the nature of the in-game purchases themselves, and the way they are engineered into the design of games. Such consideration would address concerns about the link

¹ Section 5 of the Committee of Advertising Practice (CAP) Code.

² Daniel L. King, Paul H. Delfabbro, Sally M. Gainsbury, Michael Dreier, Nancy Greer, Joël Billieux, Unfair play? Video games as exploitative monetized services: An examination of game patents from a consumer protection perspective, *Computers in Human Behavior*, Volume 101, 2019, Pages 131-143,

between in-game purchases and service design, as demonstrated by the prevalence of loot boxes³ which 91% of children who play online games have encountered.⁴

Recommendation: the guidance explicitly state that ‘in-game purchases should not be marketed on services likely to be accessed by children.’

Lack of enforcement

In-game purchases continue to be advertised in games directed at children, despite existing rules set out in the CAP and BCAP Codes to prevent children being directly targeted by advertising.⁵ This demonstrates the limitations of the existing self-regulatory system and the lack of regulatory enforcement, which has led to children being routinely exposed to advertising in games that are immensely popular among young people.

The prevalence of in-game purchases designed into games played by children has created serious financial and consumer risks, and resulted in very real harm to children and families. For example, in the UK alone, 93% of children between the ages of 10 and 16 play online games. Of those, 76% say that online games “try to make you spend as much money as possible.”⁶ 5Rights has found that on the UK Apple App store, 80% of the top 50 ‘free’ apps deemed suitable for children aged 5 and under contain in-app purchases. Similarly, 70% of the top 50 apps suitable for children aged 6 to 8 and 68% of the top 50 apps for children aged 9 to 11 also contain in-app purchases.⁷ Popular mobile games also contain more gambling style features such as loot boxes than popular desktop games.⁸

Children are more susceptible to the commercial pressures of advertising than adults due to their developmental cognitive capacity, and they are less able to recognise the selling intent behind adverts.⁹ When a game appears to be ‘free’, for example, but then requires in-game purchases, children find it difficult to understand that in-game purchases cost ‘real’ money.¹⁰

³ <https://www.gov.uk/government/consultations/loot-boxes-in-video-games-call-for-evidence>

⁴ Of those children who say there are loot boxes available in the games they play, 40% have paid to open one. See: HYPERLINK "<https://parentzone.org.uk/system/files/attachments/The%20Ripoff%20Games%20-%20Parent%20Zone%20report.pdf>"The Rip-Off Games: How the new business model of online gaming exploits children, Parent Zone, August 2019.

⁵ https://www.asa.org.uk/type/non_broadcast/code_section/05.html

⁶ The Rip-Off Games: How the new business model of online gaming exploits children, *Parent Zone*, 2019. [Link here.](#)

⁷ Figure obtained from Top Charts for Kids on UK Apple App store, designated by the age ranges 5 and under, 6 to 8, and 9-11. Last measured 4th January 2021.

⁸ [The prevalence of loot boxes in mobile and desktop games](#), Zendle D., Meyer R., Cairns P., Waters S., & Ballou N, University of York and Queen Mary University of London, January 2020.

⁹ Global Action Plan, [Kids for sale: Online advertising and the manipulation of children](#), p.5.

¹⁰ European Commission, [Study on the impact of marketing through social media, online games and mobile applications on children's behaviour](#), March 2016, p.25

In a digital world where mobile device usage is increasingly popular with children, with half of 10-year-olds now owning their own smartphone,¹¹ in-game purchases have very few friction points to prevent children from spending money. Mobile devices nudge users to provide a working debit or credit card at the point of installation, making the experience of using real-world currency to purchase, seamless.

Clear guidance and robust enforcement of the rules around advertising to children are essential to protect children from consumer and financial harms. The recent formation of the Digital Regulation Cooperation Forum¹² appears to respond to the current fragmented regulatory landscape and the need for coherent, informed and responsive regulation in the UK, however the ASA is notably absent from these collaborative efforts. The UK Government's full Online Harms response defers to the ASA for the regulation of all advertising, with the exception of influencer 'user-generated' advertising. This will divide responsibility for the regulation of online advertising between Ofcom and ASA. Irrespective of the regulatory body or the levers used to regulate online advertising, the outcome must be that children are no longer exposed to online advertising that has a detrimental effect on their physical, mental and moral wellbeing.

Recommendation: that children are protected from online advertising by a single statutory code as part of the forthcoming Online Safety Bill.

Recommendation: ensure robust enforcement of existing regulation in response to harms created by the advertising of in-game purchases.

Ensure guidance takes a robust position against children's exposure to in-game purchases

Currently the CAP Code defines a child as any person under the age of 16.¹³ The United Nations Convention on the Rights of the Child (UNCRC) defines a child as under person under the age of 18 and sets out the rights to which all children are entitled, including the right to be protected from exploitation,¹⁴ and for their best interests to be prioritised in all matters relating to them.¹⁵

The stated aim of this guidance is to define '*what responsible and truthful marketing looks like for in-game purchases*'. This implies that advertising for in-game purchases is inevitable for all users, despite specific restrictions on marketing directly to children in the CAP Code and other relevant guidance.

¹¹ [Children and parents: Media use and attitudes report 2019](#), Ofcom, 2019.

¹² [Digital Regulation Cooperation Forum](#), July 2020.

¹³ [III.i](#), of the Committee of Advertising Practice (CAP) Code, p.7.

¹⁴ UN Convention on the Rights of the Child, Article 36 (other forms of exploitation), [Link here](#).

¹⁵ [UN Convention on the Rights of the Child](#), Article 3 (best interests of the child).

The guidance sets out measures to address specific concerns relating to 1) clarity of information, 2) responsibility of advertising messages, 3) truthfulness in advertising of games containing purchasing.¹⁶ But these measures are based on an understanding that children will not be targeted directly by advertising, as per the CAP code. The consequence of this is that the proposed measures may prevent harm or consumer detriment to adults, but not to children. For example, the guidance includes measures to help players understand the equivalent 'real-world' cost of purchases made using premium (in-game) currency. However, even if the need for consumers to 'cross-reference' costs are minimised (and assuming companies enforce this guidance) it is not reasonable to expect children to calculate this cost once presented with this information. Children are less able than adults to understand the role of probability and chance in the workings of loot boxes or to behave in moderation in the face of addictive features.¹⁷ The guidance must recognise that children are exposed to the advertising of in-game purchases, whether directed at them or not, and the proposed measures must address their specific needs and developmental capacity.

The current guidance may be intended to help users identify games that contain purchases or offer random-item purchasing, and understand the equivalent real-world cost of in-game currency. However, the responsibility for preventing harm should not be put on those most likely to experience it; on children who are frequently exposed to advertisements for in-game purchases or on parents and carers who are concerned about in-game purchases¹⁸ and are often financially impacted.

Recommendation: that the CAP Code and accompanying guidance such as that under consultation define all young people under the age of 18 as children, in line with the UNCRC.

Recommendation: advertisers, game designers, and the ASA in their capacity as administrators of the Codes should ban the marketing of in-game purchases whether this is direct or indirect to prevent children's exposure to detrimental marketing.

¹⁶ Clarity of information at point of purchase Responsibility of advertising messages Truthfulness in advertising of games containing purchasing

¹⁷ Loot boxes in online games and their effect on consumers, in particular young consumers, European Parliament, August 2020.

¹⁸ Ofcom's 2019 [Children and parents: media use and attitudes report](#), p.1 reports parents growing concerns about children's in-game spending, with 47% of parents of children 12-15 years old expressing concerns.

2. Whether any effect of the guidance would present a disproportionate impact on the video game industry or a specific part thereof

Protecting children from harm or consumer detriment is the price of doing business. Moreover, the cost of doing nothing is borne by children and their families,¹⁹ often in games that come with limited or hard-to-use safeguards, or no caps on spending.²⁰

Section 5.2.3 of the CAP Code, states that advertisements must make it easy for children *‘to judge the size, characteristics and performance of advertised products to distinguish between real-life situation and fantasy.’* This rule is routinely ignored in video games, with 20% of Fortnite spenders “not aware” that spending money on in-game purchases does not give them gameplay advantages against other players.²¹ Children are unable to distinguish between real-life situations and fantasy, or to anticipate outcomes of in-game purchases that are made deliberately unclear, even to adult users.

Children are uniquely vulnerable to the power of marketing and have the potential to generate income for advertisers either by parting with their own money or influencing the spending of their family (estimated to be worth over one trillion dollars in the US).²² In-game purchases are core to game revenue in an industry worth £2.91 billion²³ in the UK alone. The video game company Electronic Arts (EA) reports that 27%²⁴ of its net revenue is derived from 'Ultimate Team', referring to the provision of loot boxes on games hugely popular with children, including Fifa. British children spend £270 million a year on in-app purchases,²⁵ which, when accompanied by a lack of regulatory enforcement, is undoubtedly a disincentive for companies to follow codes of practice.

Code rules state that *‘advertisements must not materially mislead or be likely to do so’*²⁶ and that *‘marketing communications must be prepared with a sense of responsibility to consumers and society.’*²⁷ Advertisements for in-game purchases are likely to mislead children due to their developmental capacity. Given the negative impact this has on children and their families, including financial harm, allowing any marketing directly or indirectly to children for in-game purchases is clearly not in the

¹⁹ Ofcom’s 2019 [Children and parents: media use and attitudes report](#), p.26

²⁰ [Skins in the game: A high-stakes relationship between gambling and young people's health and wellbeing?](#), Royal Society for Public Health, December 2019.

²¹ [The Finances of Fortnite: How Much Are People Spending on the Game?](#) LendEDU, June 2018.

²² Global Action Plan, [Kids for sale: Online advertising and the manipulation of children](#), p.5.

²³ [UK games industry makes record £2.91bn contribution to national economy](#), *Ukie*, December 2020.

²⁴ [Fiscal Year 2020 Proxy Statement and Annual Report](#), Electronic Arts Inc., 2020.

²⁵ Temporary citation: <https://www.telegraph.co.uk/technology/2019/08/28/british-children-young-11-spend-270m-year-video-game-loot-boxes/>

²⁶ Draft Guidance on advertising in-game purchases, 3.1 BCAP Code, 3.1 CAP Code, p.3.

²⁷ Draft Guidance on advertising in-game purchases, 1.3 CAP Code, p.3.

best interests of the child²⁸, nor does it show a sense of responsibility to consumers and society. There is evidential need for clear and robust guidance on advertising in-game purchases that bans all forms of advertising in-game purchases on services likely to be accessed by children.

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Building the digital world that young people deserve



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²⁸ Article 3 of the [UNCRC](#) states that the best interests of the child must be a top priority in all decisions and actions that affect children.