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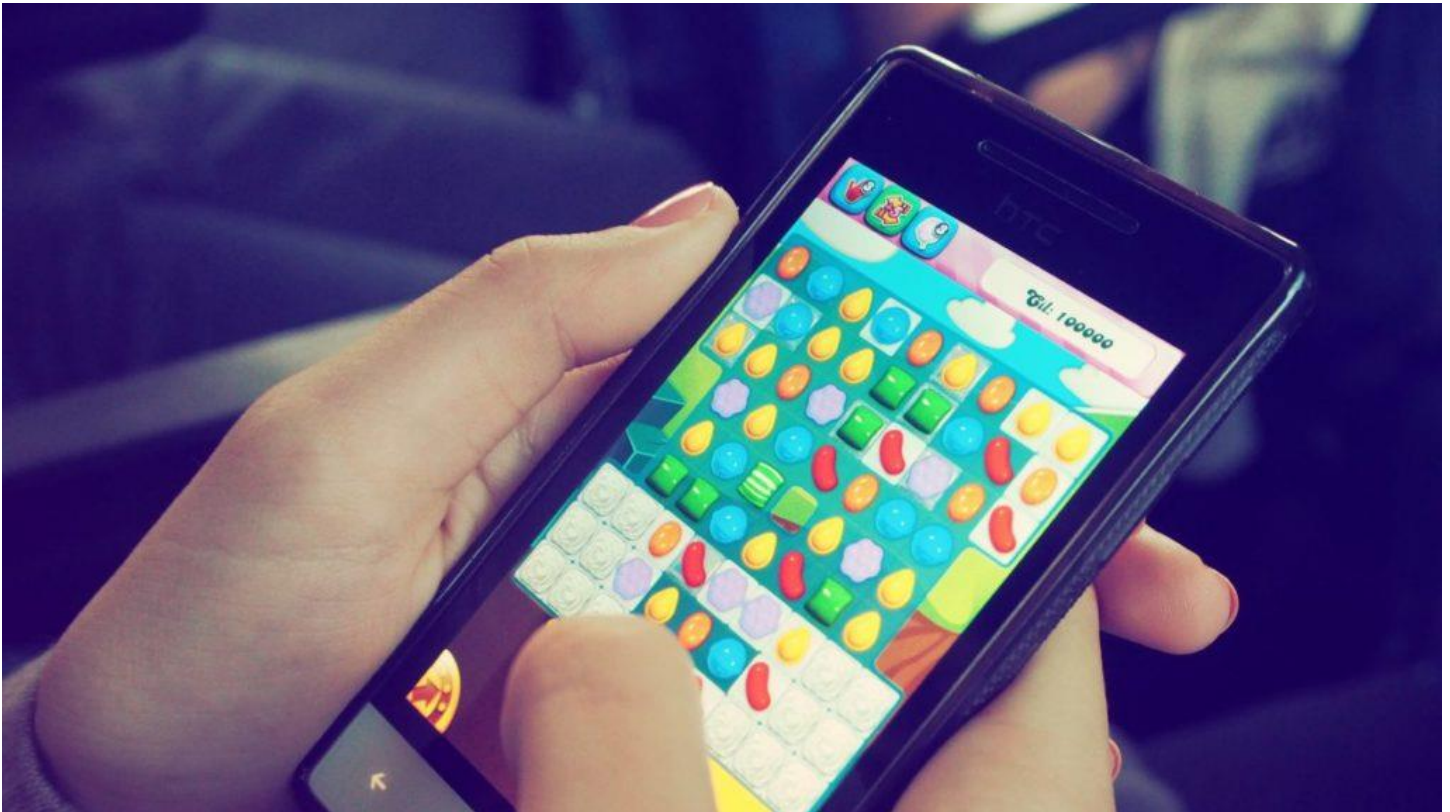
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# Gen Z: The (Illegal?) Target Audience for Digital Advertising

BY [GINA GAZIVODA](#)/ ON NOVEMBER 14, 2018



The social media pop culture marvel is an explosion of interconnectedness through numerous virtual platforms, exploited by billions of users. Recent studies show that roughly two-thirds of American adults are Facebook users and three-quarters of American adults YouTube users.<sup>[1]</sup> The percentages skyrocket for younger Americans ages 18-24, and includes several other platforms such as Snapchat, Instagram, and Twitter, to name a few of the big-hitters.<sup>[2]</sup> While Facebook and YouTube remain the top players, 78% of 18-24 year-olds use Snapchat, 71% use Instagram, and close to 45% use Twitter.<sup>[3]</sup> With the expansion of social media to users of all ages,—e.g., Facebook has 2.2 billion users worldwide, with exponential growth in users ages 55 and older<sup>[4]</sup>—the utility of social media has vastly departed from serving its original, designated purpose. Take, for instance, Instagram. Instagram was originally created as a photo-sharing mobile application (“app”) to connect with friends (or other “followers”) by uploading and editing pictures of pretty sunsets, selfies, and the like to your personalized account. The app has steadily broadened its horizons, becoming a feeding frenzy for consumer marketing and advertising. An individual’s feed now includes a photo of a McDonald’s Big Mac among your friend’s post depicting her wedding proposal.<sup>[5]</sup>

Advertising has prevailed for decades in television, radio, and print. However, it has been predicted that 40% of the global ad spend will take place online.<sup>[6]</sup> Particularly, “ad spend on social media is expected to increase by more than 20%, totaling \$58 billion” for 2018.<sup>[7]</sup> Platforms such as Facebook, YouTube, and Instagram, exchange user data and ad space for advertisers’ crafted mixed media of images and videos to provide the consumer with fierce marketing displays.<sup>[8]</sup> Other advertising efforts include influencing retail purchases, or even prompting political preferences, among others.<sup>[9]</sup> Advertisers have gone beyond merely buying up ad space on these platforms. Advertisers now utilize individual social media users to actively engage in the business of consumer marketing through the user’s own personal account. This is a modern phenomenon with users going by the term of “brand ambassadors”<sup>[10]</sup> or “influencers”<sup>[11]</sup> to endorse products and services.

Adults, however, are not the only demographic engaged in this online universe, nor are they the only audience subject to this state-of-the-art digital advertising. As technology advances, so does Generation Z (“Gen Z”) that is comprised of all Americans born after 1997.<sup>[12]</sup> The younger people of Gen Z do not know a reality before mobile technology. This has resulted in children as young as 7 years old<sup>[13]</sup> (or quite possibly even younger) creating their own social media accounts and embracing the immersive tech world to which they were born. Not only do they have access at such a young age, but studies show that “children under 8 years of age now spend about 1 hour/day using mobile devices, displacing time they used to spend watching TV.”<sup>[14]</sup> The types of online activity include educational and gaming apps,<sup>[15]</sup> as well as mainstream platforms adults use.<sup>[16]</sup> Accordingly, the same advertising occurs in the apps, regardless of whether the user is an adult or adolescent. Even apps that are “educational” contain advertisements.<sup>[17]</sup> The question then arises: are the advertisements targeting adults appropriate for children as well? First, let’s take a look at the existing legal tools that monitor advertising.

There are many legal issues and privacy concerns implicated with children signing up and using online platforms.<sup>[18]</sup> However, the focus here is on the explicit advertising content not well-suited for children, yet they are exposed to through social media. The Federal Trade Commission Act (FTCA) prohibits unfair methods of competition and unfair or deceptive acts in or affecting commerce,<sup>[19]</sup> and vests the Federal Trade Commission (FTC) with the legal authority to “act in the interest of all consumers to prevent” against such acts or practices.<sup>[20]</sup> The FTC assesses whether “the practice is one that would likely deceive a consumer acting reasonably under the circumstances in a material way—that is, in a way that affects the consumer’s conduct or choice regarding a product or service,”<sup>[21]</sup> mostly to the consumer’s detriment.<sup>[22]</sup> But how does this standard apply to children? Scholars have articulated that “children under age 6 to 8 years cannot distinguish between media content and advertising,” therefore making it difficult for them to avoid.<sup>[23]</sup> Recently, groups such as Campaign for a Commercial-Free Childhood and Center for Digital Democracy have petitioned to the FTC to launch an investigation of Android apps marketed to or played by children under the age of five.<sup>[24]</sup> For example, many groups were outraged that certain apps

displayed crying characters if the child-user did not pay to unlock part of a game.<sup>[25]</sup> One commentator argued that apps appear to be “more focused on making money than the child’s play experience.”<sup>[26]</sup> This troubling tale is one reflection of the alarming apparatus of digital advertising and how easy it can be to make money by exploiting children that engage in technology.

From a policy perspective, the FTC and other legal devices could regulate and protect against entities preying on impressionable adolescents. Unfortunately, the existing framework is not without its limitations. While the FTCA and other statutes prohibit against certain actions directed towards children, they fall short of targeting mobile apps that are not only tailored to children, but to the world at large (e.g., YouTube, the game Candy Crush).<sup>[27]</sup> Currently, the FTC could investigate whether certain apps violate the FTCA or other statutes by way of illegally processing a child’s personal information, which is prohibited. However, as today’s youth rapidly become extraordinarily proficient in technology, there needs to be more legal tools available to minimize the risks to children by digital advertising, and the dangers that may come with it.

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<sup>[1]</sup> Aaron Smith & Monica Anderson, *Social Media Use in 2018*, Pew Research Center (Mar. 1, 2018), <http://www.pewinternet.org/2018/03/01/social-media-use-in-2018/>.

<sup>[2]</sup> *Id.*

<sup>[3]</sup> *Id.*

<sup>[4]</sup> Garret Schaffel, *It’s Official: Facebook Is Becoming the Platform for You*, AARP (Feb. 20, 2018), <https://www.aarp.org/home-family/personal-technology/info-2018/facebook-users-age-fd.html>.

<sup>[5]</sup> Elle Hunt, *What is Instagram actually for these days? Is it any good?*, The Guardian (May 12, 2017), <https://www.theguardian.com/culture/2017/may/12/what-is-instagram-actually-for-these-days-is-it-any-good>; Alicia Lu, *McDonald’s-Sponsored Instagram Ads Are Annoying Absolutely Everybody*, Bustle (Aug. 5, 2014), <https://www.bustle.com/articles/34551-mcdonalds-sponsored-instagram-ads-are-annoying-absolutely-everybody>.

[6] Joe Marinucci, *Five Social Media Trends That Will Impact Digital Advertising*, Forbes (Sept. 14, 2018), <https://www.forbes.com/sites/forbesagencycouncil/2018/09/14/five-social-media-trends-that-will-impact-digital-advertising/#4a9362eb2f05>.

[7] *Id.*

[8] *Id.*

[9] Katerina E. Matsa & Elisa Shearer, *New Uses Across Social Media Platforms 2018*, Pew Research Center (Sept. 10, 2018), <http://www.journalism.org/2018/09/10/news-use-across-social-media-platforms-2018/>.

[10] Andreas Rivera, *3 Reasons Your Company Could Benefit From a Brand Ambassador Program*, Business News Daily (Aug. 30, 2018), <https://www.businessnewsdaily.com/11023-brand-ambassador-program.html>.

[11] Hunt, *supra* note 5.

[12] Rachel Premack, *Millennials love their brands, Gen Zs are terrified of college debt, and 6 other ways Gen Zs and millennials are totally different*, Business Insider (July 12, 2018), <https://www.businessinsider.com/gen-zs-habits-different-from-millennials-2018-6>.

[13] Sirin Kale, *Logged off: meet the teens who refuse to use social media*, The Guardian (Aug. 29, 2018), <https://www.theguardian.com/society/2018/aug/29/teens-desert-social-media>.

[14] Marisa Meyer et. al, *Advertising in Young Children's Apps: A Content Analysis*, 1 J. Dev. & Behav. Pediatrics (Oct. 31, 2018), [https://journals.lww.com/jrnldb/Abstract/publishahead/Advertising\\_in\\_Young\\_Children\\_s\\_Apps\\_\\_A\\_Content.99257.aspx](https://journals.lww.com/jrnldb/Abstract/publishahead/Advertising_in_Young_Children_s_Apps__A_Content.99257.aspx).

[15] *Id.*; Leo Kellon, *Android's under-5s apps have 'unfair and deceptive' ads*, BBC (Oct. 30, 2018), <https://www.bbc.com/news/technology-46030753>.

[16] Judi Ketteler, *When Is a Child Instagram-Ready?*, N.Y. Times (Feb. 21, 2018), <https://www.nytimes.com/2018/02/21/well/family/children-technology-instagram-youtube.html>; *Number of child, teen and young adult Facebook, Instagram, and Snapchat users in the United States as of August 2017 (in millions)*, statista (2018), <https://www.statista.com/statistics/250176/social-network-usage-of-us-teens-and-young-adults-by-age-group/>.

[17] Meyer et. al, *supra* note 14; Kellon, *supra* note 15.

[18] See Children's Online Privacy Protection Act (COPPA), 15 U.S.C. § 6501 (1998) (imposing "certain requirements on operators of websites or online services directed to children under 13 years of age, and on operators of other websites or online services that have actual knowledge that they are collecting personal information online from a child under 13 years of age.").

[19] 15 U.S.C. § 45(a)(1).

[20] *Id.*; *Advertising and Marketing on the Internet*, Fed. Trade Comm'n, Bureau of Consumer Prot. (Sept. 2000), <https://www.ftc.gov/tips-advice/business-center/guidance/advertising-marketing-internet-rules-road#laws>.

[21] Roscoe B. Starek, Former Comm'r, *The ABCs at the FTC: Marketing and Advertising to Children* (July 25, 1997), <https://www.ftc.gov/public-statements/1997/07/abcs-ftc-marketing-and-advertising-children>.

[22] Meyer et. al, *supra* note 14, at 2.

[23] *Id.*

[24] Kellon, *supra* note 15; Letter from Angela J. Campbell, Dir., Inst. for Pub. Representation at Georgetown University Law Center, to Donald S. Clark, Sec'y of Comm'n (Oct. 30, 2018) [https://www.commercialfreechildhood.org/sites/default/files/develop/generate/piw/apps\\_FTC\\_letter.pdf](https://www.commercialfreechildhood.org/sites/default/files/develop/generate/piw/apps_FTC_letter.pdf).

[25] *Id.*

[26] *Id.*

[27] Meyer et. al, *supra* note 14, at 7.