

Children's Right to Healthy Food and the Digital Market

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Abstract: There are several laws, policies, and recommendations providing protection to children from environmental harm. Lack of clean food can be one of such harms. Clean food is not just about food availability or accessibility but also about food safety. This means that food must be free of adverse substances—in other words, it must be healthy food. For decades, there have been discussions and attempts to find solutions on how to reduce the marketing of unhealthy food to children to prevent overweight, obesity, and diseases. It has also been proved that unhealthy food too often reaches children through digital marketing. This article discusses whether the existing legal grounds and policies provide sufficient protection to children from unhealthy food advertised on digital media. It also explores how technology impacts children's right to clean food and what could be the solutions for managing this issue.

Keywords: *children's rights, clean environment, digital marketing, healthy food, technology and child*

1. Introduction

Millions of children suffer each year from environmental harm, be it a disease, disability, or any other environmental impact that can have a lifelong effect (OHCHR, n.d.; Radina, 2017, p. 12). Children are considered as a group more vulnerable to environmental harm than adults (Knox, 2015). Due to immaturity, a child cannot defend themselves the same way as a grown-up and, for this reason, needs special protection from environmental impact. The UN Special Rapporteur on human rights and the environment has written: "Numerous studies have found that environmental harm interferes with a host of children's rights including their rights to life, health and development, food, housing, water, and sanitation, play and education, and the right to a safe, clean, healthy and sustainable environment." (OHCHR, 2021)

Clean food is not merely a question of food availability or accessibility but also concerns food safety. This means that food must be free of adverse substances—in other words, it must be healthy food. In literature, these two terms 'clean food' and 'healthy food' can be used interchangeably; however, when talking about clean environment, the term 'clean food' is mainly used. In this article, 'clean food' is used in a wider sense, derived from the term 'clean environment,' although the main focus in the discussions of this article is 'healthy food.' There are discussions on how to reduce the marketing of unhealthy food to children to prevent overweight, obesity, and several diseases. As children spend more and more time on digital media, marketing has moved to digital media as well. Several studies prove that child-oriented websites advertise more unhealthy food.

This article discusses whether the existing legal grounds and policies provide sufficient protection to children from unhealthy food advertised on digital media. It explores how technology impacts children's right to healthy food and what could be the solutions to manage these challenges. The study reviews international law and policies regarding children's rights to a clean environment, specifically focusing on clean food. It observes the application of these principles in digital media when protecting children's health. The analysis considers a selection of policies and laws, practices, and research to map and suggest solutions for the problem. The research methodology used involves formal legal analysis and dogmatic analysis.

2. Child's right to a clean environment

Several human right conventions are connected to environmental issues but most of them do not contain direct provision ensuring the right to a clean environment. However, there are interpretations that protected human rights can be directly affected by adverse environmental factors (see *Manual on Human Rights and the Environment* in Council of Europe, 2012, p. 8), and if not directly then indirectly. The Convention of the Rights of the Child (CRC) provides that a child has a right to life (Art. 6), an adequate standard of living (Art. 27), survival and development, and to the highest standard of health (Art. 24). State parties have the obligation to ensure these rights, including through the provision of adequate nutritious foods and clean drinking water, while taking into consideration the dangers and risks of environmental pollution. States must also ensure that all segments of society, in particular parents and children, are informed, have access to education, and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene, and environmental sanitation, and the prevention of accidents. Economic, social, and cultural rights provided by the European Social Charter (revised, 1996) include the human right to a healthy environment (Lambert, 2020, p. 9; Council of Europe, 2012, p. 9), the Lugano Convention provides in its preamble that “one of the objectives of the Council of Europe is to contribute to the quality of life of human beings, in particular by promoting a natural, healthy and agreeable environment” (The Lugano Convention, cited in Lambert, 2020, p. 6). Unfortunately, the European Convention on Human Rights does not have a specific norm for the protection of environment (Lambert, 2020, pp. 12–13).

However, it has not always been so clear whether these human rights provided by the CRC or in other convention also cover the right to a clean environment. Several discussions and interpretations have questioned whether the right to a clean environment is a right that derives from other rights in the convention, such as the right to life, survival, and development, the right to health, the best interest of the child, etc., or whether it is a separate human right? (Fitzmaurice, 1999, pp. 613–618; Lambert, 2020, p. 3) Radina wrote in 2017 that the human right to an environment has not been recognised in any human rights treaty “but it is widely accepted that the enjoyment of fundamental human rights such as the right to life and health is preconditioned and strongly influenced by environmental factors” (Radina, 2017). Commissioner of Human Rights Dunja Mijatović has stated

in 2019 that “[d]espite the absence in the Convention of a specific reference to environment, the European Court of Human Rights has clearly established that various types of environmental degradation can result in violations of substantive human rights,” and that the right to health in the European Social Charter also covers the right to a healthy environment (Mijatović, 2019). In 2020, the complementarity and mutual relationship between environment and human rights were clarified (see Council of Europe, 2020).

Today there is no question that a right to a clean environment exists as a separate human right, providing more tools to protect such a right—not only as a normative framework but also as the strategic tools provided or already practised by the states. For this reason, more than 90 states have recognised some form of right to a healthy environment in their constitutions, ensuring additional legal tool to protect this right (Knox, 2015, p. 15). The 2002 Background Paper of World Summit on Sustainable Development noted that “health and human rights are complementary and interconnected approaches towards sustainable human development and the advancement of human well-being” (OHCHR, 2002, p. 6). Moreover, Lambert has proposed adopting a binding European pact on environmental human rights, including various rights, responsibilities, and principles, together with a monitoring mechanism related to the environment (Lambert, 2020, p. 2).

The right to a healthy environment has been called a “third generation human right” (Schwartz, 1993, p. 556). For this reason, there has been a lot of research regarding child's right to a clean environment, more specifically related to health and food. Also, it has been emphasised that a child's right to health “is indispensable for the enjoyment of all the other rights in the Convention” (UN Convention CRC/C/GC/15). And this means *inter alia* that it should be considered by the stakeholders working in the fields of children's rights and public health, including policymakers, programme implementers and activists, as well as parents and children themselves (UN Convention CRC/C/GC/15).

From the perspective of international policies and human rights law, there are clear legal bases to provide protection to a child from an unhealthy environment and ensure their access to healthy food.

3. Child in the digital market and healthy food

While the right to a clean environment gives a general idea as to what should be followed, it also covers several specific rights as human rights to protect a child. One of such rights is the right to healthy food. It is important to recognise that when talking about healthy food it is not just the question of the minimum essential level of the right to adequate food, but it means that any child has the right to healthy food, and not only in regions where pollution is very high but also in a welfare state. In this respect, this is not so much about food availability or accessibility but more about food safety and food security. (OHCHR, 2002, p. 10; Kraak, Zhou & Rincón-Gallardo Patiño, 2020)

Food must be free of adverse substances. Radina has noted: “Food can contain biological contaminants and a wide range of chemical contaminants such as methylmercury and other heavy metals, and children are most at risk” (Radina, 2017, p. 16). Chemicals and pesticides can cause cancer, diabetes, asthma, etc. Children may be born “pre-polluted” if the mother consumes food contaminated with harmful chemicals. Even low levels of pesticides can disrupt mental and physiological growth and lead to a lifetime of diseases and disorders (UN Human Rights Council, A/HRC/37/58, p. 8).

International organisations have discussed how to reduce food marketing to children, as it can cause overweight and obesity, raised blood pressure, diabetes, and cardiovascular diseases (WHO, 2016, p. 1; Rutgers, 2018, p. 13; Wickramasinghe & Breda, 2020, p. 13; Kraak, Zhou & Rincón-Gallardo Patiño, 2020). The attention has been turned to highly processed food and beverage products with excessive energy and high content of fat, sugars, and salt (HFSS) (Delmue *et al.*, 2020). According to a WHO analysis (Delmue *et al.*, 2020), overweight and obesity are highly prevalent among children in Europe. In a wider context, the situation is labelled as a global risk to health (Delmue *et al.*, 2020). At the same time Montgomery *et al.* (2017, cited in Delmue *et al.*, 2020, p. 9) state that “[c]ompanies are using digital technologies to perpetuate unsustainable consumer behaviours that contribute to obesity,” children are drawn to striking visuals, humour and fun, competitions, endorsement by internet, movie, and sports celebrities popular among children, sharing the brands, photos and videos, and following influencers that are popular among children (Tatlow-Golden & Garde, 2020, p. 5; Kraak, Zhou & Rincón-Gallardo Patiño, 2020; Naumovska & Milenkovska, 2017).

Several analyses prove that promoting unhealthy food in the digital market is a rising problem as more children are spending more time on social media every day (UN Human Rights Council, 2018, p. 8; Kraak, Zhou & Rincón-Gallardo Patiño, 2020; Krstić & Piper, 2020; Radesky *et al.*, 2020; Levine, 2023; Naumovska & Milenkovska, 2017). Marketing food specifically for children is considered a separate marketing branch monitoring the nature and activities of children. Protecting children in such a situation is more complicated as it is harder to monitor children's activity and 'clicks' online than, for example, when watching TV (see Wickramasinghe & Breda, 2020, p. 65). Also, children are not mature enough to understand when they have been manipulated, and online environments allow to lie about one's age as well (Rutgers, 2018, p. 15) which brings them even nearer to the products not meant for children. Naumovska and Milenkovska (2017, p. 279) argue that "[c]hildren lack cognitive skills to be able to distinguish between commercial and non-commercial content." According to Rutgers (2018, p. 15), "[t]echnology provides an invisible, automatic means of collecting and analysing personal data to construct detailed consumer profiles." When a child does not understand when and how their personal data is used, parents cannot control what their child is actually doing on social media, and the state has insufficient tools to identify how children's data is collected and analysed, children are deprived of proper protection in social media. Tatlow-Golden and Garde (2020) argue that regulations regarding children's protection are too narrow in scope, focusing on traditional media and not on the media children actually use.

With no doubt, children have the right to participate in digital media (CRC, Art. 17 provides the right to access to information and mass media); on the other hand, a child has the right to be protected. Tatlow-Golden and Garde (2020, p. 3), referring to Rutgers (2018), argue that "[h]uman rights apply equally online as they do offline, and the duty of states to protect and advance the right to privacy must meet the current global realities of pervasive collection, storage and retention of children's data, and the aggregation of their data." The previous analysis of international law on child's right to a clean environment proves the same.

According to the WHO, "[r]esearchers examining food brand websites have found that child-oriented webpages frequently promote unhealthy products with dynamic, engaging, persuasive techniques" (WHO, 2016, p. 11). The food advertised is in most cases unhealthy food. There are several studies proving that children are unable to distinguish between healthy food and unhealthy food (Weissová & Prokop, 2019), proving that "smart marketing"

can manipulate children (Tatlow-Golden & Garde, 2020, p. 4; Naumovska & Milenkovska, 2017, p. 280). Parents have little awareness of the situation and a child receives inadequate meaningful protection (Tatlow-Golden & Garde, 2020, p. 13) And, more importantly, this is not merely parents' obligation to support and protect their children, the responsibility also rests with the state (Tatlow-Golden & Garde, 2020, p. 20; Radesky *et al.*, 2020; Naumovska & Milenkovska, 2017; Kraak, Zhou & Rincón-Gallardo Patiño, 2020, pp. 16–17).

Already in 2010, the WHO adopted a set of recommendations regarding marketing food and non-alcoholic beverages to children, stating specifically that the policy aim should be to “reduce the impact on children of marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt” (WHO, 2010). Despite this, the problem remains highly topical.

Most European states have general marketing regulations also covering children; however, it is often unclear how effectively the rules are applied in practice. For example, what is the extent to which such rules are specifically applicable to children and whether these rules are applicable in the digital market. For example, the Estonian Advertising Act includes a separate section for advertising targeting children (Art. 8) but it does not have specific rules for digital advertising and no clear reference to food, which raises the question of whether these rules are applicable to food marketing in digital media at all? The state supervision office, Consumer Protection and Technical Regulatory Authority, has laid down guidelines which provide that marketing on social media has similar rules to marketing in other places, but this rule is restricted by the reference to the Advertising Act, which leads back to the question of whether and how much the aforementioned Act applies to the digital media and children at all.

An additional legal question is the age of a child: not all age groups are covered uniformly, and as digital marketing does not have state borders, it is more complicated to enforce and control the needed rules. It has been suggested that “parents and paediatric health care providers need to be aware of the ways different marketing messages reach children” (Radesky *et al.*, 2020, p. 1) but, evidently, this alone is not enough to protect a child. Radesky *et al.* (2020) suggest that parents should teach children digital literacy, including thinking critically about digital media. Unfortunately, parents' own digital literacy has proved to be weak (see Iskül & Joamets, 2022; Chochia & Sicat, 2023). However, Radesky *et al.* also argue that parents should not be the only ones held responsible for a child's privacy

in the digital environment. Also, food market has always been a step ahead from state policies and actions.

The EU's Audiovisual Services Directive (2010/13/EU) provides that “media literacy’ refers to skills, knowledge and understanding that allow consumers to use media effectively and safely.” This means that media-literate persons can better protect themselves and their children from harmful and offensive online information. This clearly refers to the need to consider children in media literacy. Article 9 of the Directive has specific rules regarding food, providing that

Member States and the Commission shall encourage media service providers to develop codes of conduct regarding inappropriate audiovisual commercial communications, accompanying or included in children’s programmes, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended. (Directive 2010/13/EU, Art. 9)

Backholer *et al.* (2020, p. 104) suggest that deep-learning algorithms offer an alternative to the highly complex and sensitive task of collecting data from children “that could revolutionize the way in which unhealthy advertising to children is captured and monitored,” arguing that “no personal information is captured and recorded.” They also suggest using in the process “web-based image-scraping methods through machine-learning algorithms, supplemented by crowdsourcing data platforms, [...] to generate the large and diverse image library required to train the algorithms to identify advertising imagery” (Backholer *et al.*, 2020). In principle, not only collecting the data but also analysing it can be done by machine-learning algorithms. However, such tools are not yet widely known and used. Discussions, new technological solutions, such as age-verification tools that could be used to restrict children’s exposure to digital marketing, are still in process (Wickramasinghe & Breda, 2020, p. 64).

Next to technological tools, a lot of discussion has been around education and awareness—children should understand what healthy food is by themselves. This is linked to the right to receive information stated by the European Convention on Human Rights (Art. 10). The Human Rights Council argues that a state should, among other things, “collect information about sources of environmental harm to children and make the information publicly available and accessible” and “adopt and implement environmental standards that

are consistent with the best available science and relevant international health and safety standards” (ECHR, Art. 10). The UN promotes the use of “good” practices in human rights obligations in environmental policymaking: it “should integrate human rights and environmental standards, including through the application of human rights norms to environmental decision-making and implementation or the use of environmental measures to define, implement and (preferably) exceed minimum standards set by human rights norms,” covering also making environmental information public (Knox, 2015). Mijatović (2019) explains that the state’s responsibility is not only to “investigate the violations and compensate the victims” but also to prevent the violations encompassing the citizen’s right for information about the environmental issues, enshrined in the 1998 Aarhus Convention. She demands that states develop ambitious and holistic policies and measures to preserve and ensure the protection of environmental human rights and pay special attention to children as a vulnerable group who can be “disproportionally affected by environmental degradation” (Mijatović, 2019).

Article 17 of the CRC outlines the responsibilities of mass media organisations. In the context of health, these can be further expanded to include promoting health and healthy lifestyles among children; providing free advertising space for health promotion; ensuring the privacy and confidentiality of children and adolescents; promoting access to information; not producing communication programmes and material that are harmful to children’s health; and not perpetuating health-related stigma.

The right to information also covers the situation in which child is a consumer. According to EU law, a child as a consumer must get relevant information about the service or product to be able to consider all useful facts and make an informed choice. In several EU directives regulating commercial practices, children are considered a vulnerable group that needs more protection than others. Such are, for example, Directive 2005/29/EC of European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, Directive 2001/95/EC on general product safety, Council Directive 87/357/EEC on the approximation of the laws of the Member States concerning products which, appearing to be other than they are, endanger the health or safety of consumers, and Directive 2009/39/EC of the European Parliament and of the Council of 6 May 2009 on foodstuffs intended for particular nutritional uses.

The EU General Data Protection Regulation has specific rules for data collection, and children are under special protection. It demands that “cookie

policy, as part of the website Privacy Policy must be clear and legible for children” (Krstić & Piper, 2020, p. 137); however, are there sufficient tools to control it? Radesky *et al.* (2020, p. 3) argue that as “AI and machine learning form the core of many technologies accessed by children and teenagers, including virtual assistant, it is unclear how much data are being collected and used.”

4. Conclusion

Developments in digital technologies have created new challenges in protecting children's health while at the same time providing new tools to protect it. There are sufficient legal grounds to protect a child from unhealthy food at the level of international law related to environment, health, and clean food. There are also several laws to protect a child from unhealthy food promoted by digital marketing. Unfortunately, this analysis shows that there is still no sufficient awareness, knowledge, and capacity among the stakeholders who are responsible for ensuring children's rights regarding clean food in the digital market. Technology could help, but it needs to be adopted more widely, to collect the data of where and how children are harmed and develop and implement AI tools that would not allow advertising of unhealthy food reach the children. These measures could be special privacy and security settings by default, age verification measures, but also banning targeted ads for children.

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