



Inspiring Generations of Play

June 11, 2021

Steve Cornish
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American National Standards Institute (ANSI)
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Re: Opposition to the ISO New Work Item Proposal “Guidance for advertising and marketing affecting children”

Dear Mr. Cornish:

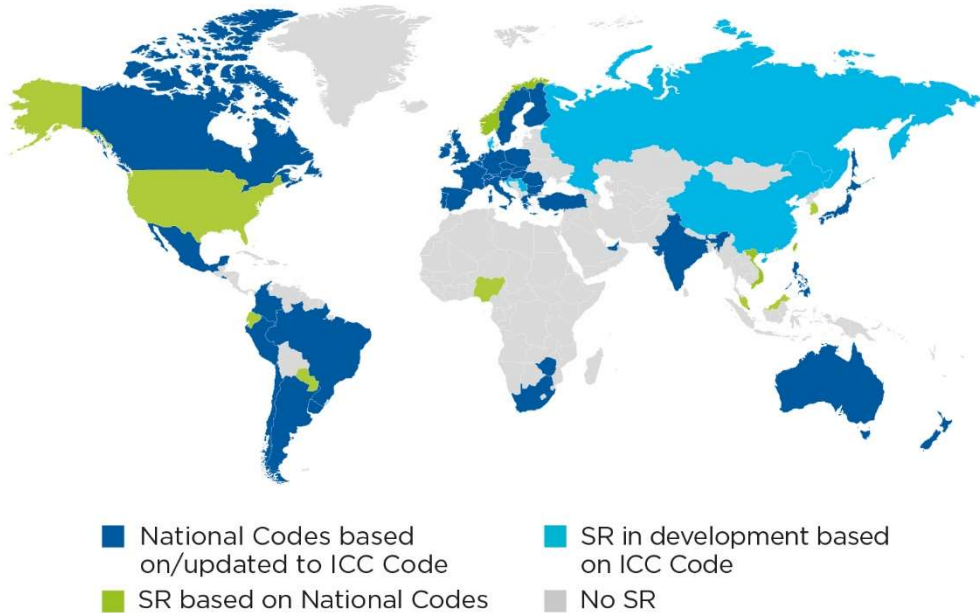
The Toy Association, Inc., on behalf of its members, submits these comments in opposition to the new work item proposal (NWIP) dated April 24, 2021 on “Guidance for advertising and marketing affecting children.” We urge ANSI to oppose this NWIP when it comes before the International Organization for Standardization (ISO) Committee this summer. The proposal duplicates the well-recognized global code developed by the International Chamber of Commerce (ICC) governing advertising and marketing, including marketing and advertising to children and teens. Moreover, from the U.S. perspective, we have a robust system of advertising self-regulation managed through the BBB National Partners (BBB NP), which administers and enforces the Children’s Advertising Review Unit (CARU) Guidelines, which are applied to all national children’s advertising in the U.S., regardless of the products or services involved. The BBB NP also manages the voluntary Children’s Food and Beverage Advertising Initiative (CFBAI), an advertising pledge program supported by major U.S. food manufacturers, and the related Children’s Confectionery Advertising Initiative (CCAI). More information on the BBB NP and its programs is available at BBB National Programs (<https://bbbprograms.org/>).

The Toy Association represents more than 950 businesses – toy manufacturers, importers and retailers, as well as toy inventors, designers and testing labs – all involved in bringing safe, fun and educational toys and games for children to market. Our members believe it is appropriate to market and provide information about toys and games to families – from grandparents to children – so long as that information is provided responsibly. Protecting children and maintaining the trust of parents are the most vital concerns for the toy industry. Accordingly, The Toy Association monitors and reviews relevant laws and standards pertaining to responsible marketing and advertising to children, educates its members about these principles, and provides information and resources that help toy companies interact with children in a responsible way. Just as we do with product safety, The Toy Association is committed to promoting best practices in all aspects of marketing and advertising to children and to adhering to all applicable laws, regulations, standards and other requirements.

Overview of Comments

The Toy Association has previously expressed concerns to ANSI about the absence of a defined need for an ISO standard on marketing to children and the incomplete and conclusory project description. We remain opposed to this proposal to develop such a standard on grounds that it is wholly unnecessary and duplicative. A comprehensive, protective, and widely-followed global code of marketing and advertising practice developed by the International Chamber of Commerce (ICC) – the *Consolidated ICC Code of Advertising and Marketing Communication Practice (ICC Marketing Code)* – exists. The ICC Code includes specific provisions on marketing to children and teens and is supplemented by a variety of other materials. Most importantly, the ICC Code *is widely*

followed throughout the world. In fact, the ICC Code is recognized in 42 countries currently and serves as the gold standard for advertising self-regulation (SR), as illustrated by the graphic below:



As noted in the attached ICC paper (see Attachment I), the ICC Marketing Code has achieved wide international recognition, contributing to consumer-protective advertising and marketing standards that provide enhanced protections for children and teens across the globe. The ICC Marketing Code is the basis of national code or self-regulatory regimes in 42 countries, and additional countries are currently in the process of developing self-regulation based on the ICC Marketing Code.

The Toy Association supports, and incorporates by reference here, the attached comprehensive ICC paper (Attachment I) that describes important deficiencies in the April 24 NWIP and illustrates in detail why this work project should be rejected. The ICC paper outlines key provisions of the ICC Marketing Code and related globally accepted ICC guidance that were ignored by the drafters of the proposal. Despite objections voiced by The Toy Association and others to an earlier iteration of this NWIP in May 2019, ANSI remained neutral on this subject during the May 2019 COPOLCO Plenary discussions, and COPOLCO chose to proceed with proposing a duplicative and unnecessary ISO standard focusing on advertising and marketing to children. While the proposal has since been revised somewhat, the April 24 NWIP (pages 15-17) still fails to fully describe and analyze relevant, applicable provisions of the ICC Code. Additionally, the list of referenced documents in the NWIP (under the heading “relevant existing documents at the international, regional and national levels”, pages 9-10) remains entirely incomplete as well. The list of omitted well-recognized research articles is far too long to describe fully in this response, but suffice to say the April 24 NWIP not only fails to include relevant ICC documents, but ignores a vast library of research that identifies and describes differences in the cognitive abilities of children versus teens. Those differences have formed the basis for differentiating between children and teens in advertising and marketing codes and in product safety laws as well. Treating all those under 18 as “children” is contrary to both U.S. law and policy, and is entirely inconsistent with the globally recognized ICC Code framework.

From that standpoint, an ISO standard would not be followed in the U.S. The U.S. has its own self-regulatory programs, as noted above. The U.S. Federal Trade Commission (FTC) has historically rejected reliance on ISO standards as part of its legal framework. For example, the FTC’s Guides for the Use of Environmental Marketing

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Claims (“Green Guides”) do not reference or rely on ISO’s 14021 standard; indeed, the FTC expressly rejected such reliance in prior reviews.

ICC Code Provisions on Marketing and Advertising Directed to Children and Teens

The ICC Code requires that marketers take special care when marketing and advertising to children and teens. Notably, however, the ICC Code and related guidance recognize that children and teens should not be treated identically for such purposes. The ICC Code provisions on marketing to children and teens are grounded in many decades of established child-development research, demonstrating the growth in physical, emotional, social and, of course, physical growth. From this perspective, children are defined as those 12 and younger. This is also consistent with U.S. privacy laws, such as the Children’s Online Privacy Protection Act (COPPA) (15 U.S.C. § 6501 *et seq.*), which defines “children” as those “under 13,” and with U.S. product safety laws, such as the Consumer Product Safety Improvement Act (CPSIA) (Pub. Law No. 11-314 (2008)), which defines “children” as those “12 and younger.” U.S. Consumer Product Safety Commission (CPSC) rules and guides, including the “Age Determination Guidelines: Relating Consumer Product Characteristics to the Skills, Play Behaviors and Interests of Children” (CPSC Age Determination Guidelines), likewise consider “children” to be 12 and younger, but also identify social, emotional, cognitive and physical differences between children in the 12 and younger age group as well.¹ Related ICC documents, also attached to this letter, include the ICC Toolkit: Marketing and Advertising to Children (see Attachment 2) and the Reference Guide on Advertising to Children (see Attachment 3). Notably, the ICC’s approach to children and teens draws from works of respected child development researchers like Jean Piaget, whose work is also a seminal source for the CPSC Age Determination Guidelines.²

ICC Codes and guidance on the specific considerations involved in marketing to children and teens are, of course, subject to the broader ICC Marketing Code provisions, which cover all aspects of advertising and marketing in all media. This key point was not mentioned by the drafters of the April 24 NWIP. The ICC Code, in general, addresses creation and substantiation of advertising claims, modes and methods of communication, different forms of advertising and promotion, protection of social values and human rights, and data security and privacy (including enhanced protections for children’s privacy). In addition, as noted above, the ICC makes available a suite of resources relevant to advertising in general and to the specific issue of marketing to children and teens through its Toolkit: Advertising and Marketing to Children. The Toolkit includes policy statements that help address additional matters such as interpretation and implementation of the ICC Code, conduct of market research and social opinion and data analytics, labeling and packaging, and independent frameworks for advertising and marketing food, beverages, etc.

¹ Per the Guidelines, updated in January, 2020, “CPSC staff performs age determinations, in which the various characteristics of a consumer product are matched to the skills, play behaviors, and interests of children in a particular age group. For manufacturers, age grading is an important step in developing, marketing, and labeling consumer products. Using information from the Age Determination Guidelines to determine whether a general use product would be appropriate for children is an important consideration for them as well. Once manufacturers determine a target age for a product through age grading, CPSC staff encourages manufacturers to label, promote, and market it to that age group. Accurate age labels provide parents and other consumers with guidance for selecting age-appropriate products for children.” CPSC Age Determination Guidelines, January, 2020, p. 1, available at [Updating Age Determination Guidelines for Toys \(cpsc.gov\)](https://www.cpsc.gov/updates/2020/01/2020-01-01-CPSC-Age-Determination-Guidelines-Updated).

² The first iteration of this document was released by CPSC in 1985. CPSC notes that the age groups in the CPSC Age Determination Guidelines are based in part on those in the original Age Determination Guidelines, “and are also modeled after developmental psychology, anatomy, and early childhood literature, particularly from the work of researcher Jean Piaget.” *Id.* at p. 14.

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As we pointed out in our comments on earlier iterations of this proposal, the NWIP includes a table at pages 15 – 17 that purports to compare the outline of a potential future ISO standard on marketing to children with the ICC Marketing Code. It is disappointing that the updated table in the April 24 NWIP remains wholly incomplete, failing, as it does, to recognize that the ICC Code, Toolkit, Reference Guide and other ICC documents together create a comprehensive framework for marketing to children and teens. That framework achieves all the goals outlined in the ISO NWIP.

Annex II of the attached ICC submission fills in the many major gaps in the NWIP’s comparison to the ICC frameworks. Annex II of the ICC paper describes exactly how the ICC Code and guidance already address stated concerns about advertising and marketing to children and teens, dramatically illustrating that due to the existence of the globally accepted ICC Marketing Code and guidelines, there is no need for an ISO standard. **All the stated goals of this proposed ISO Standard are fully addressed by the ICC instruments, which are grounded in a practical evaluation of advertising requirements and standards worldwide, applicable child development research, and established advertising self-regulatory programs in the U.S. and elsewhere.**

The Toy Association is concerned that proceeding with developing an ISO standard for advertising and marketing to children will be counterproductive and wasteful. The latest proposal illustrates the extent to which the submitters’ limited familiarity with the comprehensive and sophisticated framework of the ICC Marketing Code – and the level of global acceptance – has resulted in a fatally flawed proposal. Moving forward with this proposal could create confusion, and perhaps even impede the global effort to further promote the adoption of national codes or self-regulatory systems that rely on the ICC Marketing Code framework. That would be counter to the intended goal of ‘protection of children’.

U.S. Children’s Advertising Self-Regulation

From the U.S. perspective, given the robust system of self-regulation that has existed in the U.S. for decades, U.S. businesses will not likely adopt or follow an ISO standard on marketing to children. Therefore, we provide a few comments on the U.S. advertising self-regulatory system.

The CARU Guidelines, first issued in the 1970’s and updated many times since, establish a recognized framework of best practices for marketing to children in the U.S. The CARU staff applies and enforces the CARU Guidelines on all national advertising directed to children in the U.S., and in all media. Like the ICC Code, CARU also uses a benchmark age of 12 in administering its Guidelines and programs. CARU not only issues and administers these Guidelines, but offers an advertising pre-screening service, and investigates and issues decisions related to application of its Guidelines in specific circumstances. The principles of the CARU Guidelines are very much in keeping with those in the ICC Code and related documents that form a complete framework for marketing and advertising to children and teens, including in how “children” and teens are defined. Notably, CARU, part of the widely recognized BBB NP, is in the final stages of completing one of its periodic updates to the CARU Guidelines.

The U.S. FTC has also recognized CARU’s self-regulatory children’s privacy program as a “Safe Harbor” under FTC’s Children’s Online Privacy Protection Act (COPPA). COPPA, enacted in 1995, was the first children’s privacy law in the world.³

³ COPPA is yet another seminal resource not listed in the NWIP “relevant” documents, along with Europe’s General Data Privacy Regulation (GDPR), further evidence that the ISO proposal is not grounded in a complete assessment of existing laws and standards and thus fails to demonstrate a need for an ISO initiative.

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More information on these various CARU programs and services is available at Children's Advertising Review Unit (CARU) (bbbprograms.org).

The BBB NP also administers the CFBAI children's food advertising pledge program. CFBAI was the first food advertising "pledge" program in the world, and the program has been in existence since 2007. Nineteen (19) leading U.S. food, beverage, and restaurant companies participate in CFBAI. The BBB NP also administers the related CCAI) which is geared to smaller U.S. confectionery companies. Consistent with U.S. law and with the CARU Guidelines, CFBAI and CCAI adopt the reference age of 12.

Conclusion

For the reasons outlined above, The Toy Association respectfully opposes ISO's new work item proposal on "Guidance for advertising and marketing affecting children." An existing global standard, the ICC Code, is currently recognized in 42 countries and the Code and related ICC guidance fully cover considerations identified in the NWIP. Foundational principles of the ICC's approach to marketing to children reflect existing U.S. law and self-regulatory standards. The ICC Code and related documents recognize that children and teens are different, and use the reference age of 12, consistent with COPPA and CPSIA. Further, the U.S. has a mature system of children's advertising self-regulation that is entirely consistent with the ICC Code, and will not follow an ISO standard.

The Attachments hereto illustrate the extent to which the April 24 NWIP is unnecessary, incomplete, and duplicative of an existing globally recognized ICC Code for marketing and advertising. To the extent ISO proceeds with the project, any such standard will not be followed in the U.S. and, an ISO work item in this area would demand, and waste, countless hours and resources of all stakeholders to develop unnecessary guidance. We therefore urge ANSI to oppose the proposal and the unnecessary expenditure of time and resources that work on this NWIP will entail.

If you would like to discuss these comments in more detail, please contact Ed Desmond at edesmond@toyassociation.org or Joan Lawrence at jlawrence@toyassociation.org.

Sincerely,



Steve Pasierb
President & CEO

cc: Kemi Allston (kallston@ansi.org)
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Enclosures

Attachment I: ICC Response to ISO Proposal
Attachment II: ICC Toolkit
Attachment III: ICC Reference Guide on Advertising to Children