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Researching the Researchers:
Market Researchers, Child Subjects
and the Problem of "Informed" Consent

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Abstract

Children's online activities raise a number of ethical challenges for academics, market researchers and other media professionals. Public debates over privacy and commercialization within popular children's websites have led to the establishment of a small number of governmental initiatives aimed at regulating online data-collection involving children. To date, however, preliminary responses have been ineffective in providing ethical standards of practice to the online children's marketing research industry, wherein commonly accepted rules for conducting research on children, including informed consent, seem to be bypassed altogether. The resulting disjuncture between these practices and academic ethical standards causes unexpected challenges for researchers, wherein rules intended to protect children could inadvertently exclude studies of the more questionable facets of market research.

Introduction

As digital technologies continue to blur traditional boundaries between public and private, social conceptions of childhood as a separate and protected domain are eroding. Whereas children have historically been excluded from directly participating in most aspects of the public sphere—from voting to mass media production—the Internet now

offers users of all ages and ability a variety of opportunities for participation in the collaborative construction of a highly-fragmented, yet wide-reaching, digital public sphere. More than any other group, children and youth have flocked to these opportunities, often becoming society's earliest and most enthusiastic adopters of online communication tools (chat, MSN), social-networking sites (*Club Penguin*, *Bebo*), and collaborative cultural experiences (online games, mash-ups, file sharing). Yet, children's involvement in online culture has also raised a number of new challenges for families, governments, academics, and media professionals. Children are not always able to make responsible and informed decisions about Internet content and interactions, and they are not always equipped to navigate the increasingly ambiguous boundaries between private and public life online (Turow, 2001; Turow, 2003; Shade et al., 2004). Younger children in particular are vulnerable to exploitation, manipulation and harm as a result of unregulated exposure to the darker aspects of the World Wide Web. Children have thus become the locus of heated debates and tensions about the role of digital technologies in Western society—representing both the hope that the Internet will open up possibilities for democratic cultural participation, as well as the fears associated with lowering the domestic floodgates to the unrelenting access of the digital world.

In North America, children spend the vast majority of their time online on commercially owned and operated websites (Seiter, 2004; Moore, 2006). Despite the vastness of the Internet, the number of children's sites with no advertising or branding is almost negligible. As Neuborne (2001) reports, "[T]he number of children's sites with no advertising dropped from 10% of all kids' sites [in 1999] to just 2%" in 2000 (p. 108). As a result, one of the most prevalent new issues to emerge from children's increasing Internet use is the way in which it enables a deepening relationship between child users and commercial entities (Montgomery, 2000). Every day, children enter into complex relationships with the adults who create and manage profit-driven online spaces directed at kids. These include business relationships, consumer relationships, and legal relationships, most of which occur 'behind-the-screen' of seemingly entertainment-oriented spaces. For while many of these websites provide children with hours of online fun, vibrant communities of interest, as well as access to and information about beloved media characters (Aikat, 2005), they also operate as important marketing tools (Seiter,

2004; Grossman, 2005; Steeves & Kerr, 2005). Many of the most popular commercial kids' sites function primarily as forms of interactive advertising and branding, as well as venues for market research—wherein the unique levels of access enabled by the Internet are used to gather hitherto unimaginable amounts of personal information, thoughts and opinions from children (Kapur, 1999; Montgomery, 2000; Steeves, 2006).

A growing public debate around issues of privacy within commercial children's websites has slowly led to the establishment of a small number of governmental and institutional initiatives aimed at regulating online and electronic data-collection involving children. Most notable among these is the *Children's Online Privacy Protection Act* (COPPA) in the United States, and the *Personal Information Protection and Electronic Documents Act* (PIPEDA) in Canada, both of which establish nationally-enforced restrictions on the collection of minors' personal information (such as name, address, postal code). Yet, market research in children's websites and online communities persists, and a growing body of literature now suggests that inadequate industry regulation and loose ethical standards have led to the emergence of highly questionable standards of practice among at least some online market researchers (Kapur, 1999; Klein, 2000; Montgomery, 2000; Linn, 2004; Seiter, 2004; Rushkoff, 2006; Nairn, 2006). From surveys and polls disguised as "personality quizzes," to behind-the-screen surveillance of online activities and communications (Chung & Grimes 2005), many children's websites contain features that enable the compilation of vast databases of non-personally identifiable, and thus unprotected, information about child users. The resulting aggregated data is then sorted and made sense of (and sometimes sold) in the form of detailed "youth trend" reports (Grimes & Shade, 2005), which are highly valuable to those involved in the production and promotion of children's consumer goods. These highly invasive, yet conspicuously covert, practices raise new questions about the scope and limitations of children's privacy (both in terms of expectations, as well as the protection thereof), intellectual property, and media literacy, which have yet to be adequately addressed within academic and policy discourses.

Like so much privately-funded, proprietary research, only a fraction of the studies conducted by the children's industries is made available to the public (Kline, 1993; Schor & Ford, 2007). While large-scale market research reports, such as trend and demographic

reports, are occasionally made available for purchase—as published reports or as trade publications—companies that conduct market research internally have little incentive to share their methodology and results with other researchers. Academics attempting to study the children's market research industry thus often grapple with limited access to findings and a lack of information about the research methods used. Examples of recent approaches used by scholars include retroactive analysis of published reports and marketing literature (Kline, 1993; Cook, 2000), participation in marketing industry conferences (Quart, 2003; Linn, 2004), and interviews with marketing professionals willing and able to share trade secrets (Klein, 2000; Schor, 2004; Rushkoff, 2006). With the integration of online techniques, however, new possibilities for more direct forms of observation have emerged, allowing academics to track and witness certain market research activities firsthand.

This paper provides an overview of the ethical challenges involved in conducting an academic study of some of the market research practices described above, and the difficulties encountered while attempting to secure ethical clearance to conduct the research. While a detailed review of the study itself is beyond the scope of this paper (as well as published in full elsewhere—see Grimes and Shade, 2005; Chung & Grimes, 2005; Grimes 2007), the first section will establish the contextual background of this discussion by providing a brief description of the project, its key findings, and the themes that emerged during analysis. The subsequent section will review the regulatory frameworks within which contemporary online market research practices operate, including relevant government policies and industry guidelines. I will then discuss how this framework differs from the ethical standards required of research conducted within the context of a Canadian university, highlighting points of contention that could problematize, and potentially disrupt, academic inquiry into market research practices (particularly those involving minors). The third section consists of a case study illustrating the disjunction that exists between the ethical standards applied by industry and those applied within a specific academic institution, and the impact this can have on the ethical clearance process and research design. The final section will discuss unresolved issues and ethical questions that arose during the case study, and highlight

persisting gaps within current academic standards of practice for researching children online.

Terms of Service, Terms of Play

Children's newfound role as user-producers of Internet content is often assumed within the context of commercial websites ("Kids Ages 2-11," 2004; Steeves, 2006; Prescott, 2007; Richtel & Stone, 2007), which implicate them in a complex network of business and legal relationships. In order to determine the nature and scope of these relationships, an in-depth content analysis was conducted of game-themed.[1] websites ranked among the "top ten" most frequented by children in 2002 and 2003 (Grimes, 2007). Sixteen case studies[2] were selected based on web-traffic statistics released by industry research firms Hitwise (Greenspan, 2003) and Nielson/Netratings ("Nearly 20 Percent," 2002). The content analysis included a comprehensive survey of the activities, features and information available on each site, which included preliminary discourse and textual analyses of the sites' contents. Where applicable, a step-by-step record was made of any member registration processes required to participate in the sites, and of additional features or activities that these processes enabled. The presence of interactive and user-generated features was recorded, and a random sample was observed. This included reading a small number of forum posts and user-created webpages (where available), participating in surveys and polls, and playing a representative sample of games on each site. The content analysis also included observation of the presence, positioning and contents of relevant texts such as privacy policies and TOS contracts. The TOS contracts were then analyzed in depth, using Russo's (2001) checklist of "15 significant points" to look for when reading TOS or EULA contracts.

[1] Game sites were specifically chosen to reflect the activity that children report engaging in and enjoying the most while online. Industry analyst NPD Funworld recently announced that 45% of "heavy gamers" and nearly one-third of "avid console gamers" are between the youthful ages of 6 and 17 (Graft, 2006). In 2003, 87% of children aged 7 to 12 years reported "playing online games" as their favourite online activity (Greenspan, 2003), and all five of the "top five" online destinations most visited by children aged 2 to 11 featured online games. More recently, Roberts, Foehr and Rideout (2005) found that children aged 8 to 18 years spent more time playing online games than on any other online activity (including email, instant messaging and chatrooms).

[2] Yahoo!Games: Yahoo! Fantasy Sports Baseball; Yahoo! Fantasy Sports; Yahoo! Fantasy Sports Football; EA Online; Pogo (EA); MSN Game Zone; Kraft Entertainment; Neopets; EverythingGirl: Diva Starz; EverythingGirl: Polly Pocket; EverythingGirl: Barbie; Disney Online; Disney's Toontown Online; gURL.com.

Among the major trends identified[3] was a predominance of "advergames"—games containing themes, activities or images that directly related to a specific product(s) or brand(s)—some of which consisted of little more than brand-recognition exercises. A second key trend among the sites reviewed was the collection of personal information, such as email address, date of birth and gender, although some also asked for names and home address identifiers (such as state/province, country, or zip code/postal code). Although the current industry enthusiasm for "Web 2.0" applications had not yet occurred at the time of the study, another key trend identified was an emphasis on "user-generated content." The vast majority included some form of social software or community-building tools (for example, multiplayer components, forums or chat rooms, or even email and e-card services), and more than half allowed participants to submit content (such as game reviews, poetry contest submissions or fan art). Two-thirds of the sites solicited players to complete polls or surveys, or to customize some aspect of the site or gameplay. These same sites often featured surveys, polls or customizable features directly relating to (and soliciting customer opinion about) particular products or brands.

The patterns uncovered during this study are consistent with previous work in this area, which has found market research taking an increasingly central role in both the creation and manipulation of children's digital content (Montgomery, 2000; Seiter, 2004; Steeves & Kerr, 2005; Moore, 2006). For example, the prominence of polls and other overt forms of market research have been noted by Seiter (2004), who describes how children's "interests, habits, and abilities in the online environment [have become] the subject of intense interest by marketers" (p.93). Similarly, Montgomery's (2000) overview of kids' online culture describes how the "intense focus on research within the new media industries has produced a wealth of information, much of it proprietary, which is guiding the development of digital content and services for children" (p.638). In their study of children's online play and chat activities within commercial websites, Steeves and Kerr (2005) found marketers "artificially manipulating the child's social environment and communications in order to facilitate a business agenda" (p.91). For example, the *ELLEgirl.com* site used an automated system to guide chat discussions towards specific

[3] For a full description of the features and contents of the websites examined, please see Grimes, 2007. For a detailed account of the methodology and content analysis protocol, see Grimes, 2005.

products, or to ask users about consumer preferences (Steeves & Kerr, 2005). The utility of "child-generated content" for market research purposes has also been explored in depth within the marketing literature (Lindström, 2003; Solomon & Peters, 2005; Bennett, 2006; Helyar, 2007), which often legitimate covert research strategies by emphasizing the opportunities for consumer "empowerment" and cultural participation that these applications may concurrently provide.

For the most part, the market research strategies utilized within children's commercial websites are rarely divulged in full to their users. While some of the sites included in the analysis identified a small number of features as "advertising content," little to no explanation was provided that certain features—such as polls and surveys, for example—could be used for advertising and market research purposes. Instead, these were presented as entertainment (such as "personality quizzes"), as a way to earn the "currency" or points needed to participate in the sites, or as a way for users to "help out" (e.g. sharing information to keep the site free, or as a way to improve the site's content). As for more covert practices, like data-mining and chat room ethnography, children are rarely (if ever) warned that their contributions could provide valuable information to market researchers. Yet, it is wrong to presume that children's digital literacy extends to these types of activities. Studies of young children reveal significant limitations in their overall ability to think critically about online information and activities (Kline, 2001; Livingstone, 2006). This in turn is supported by longstanding research showing that younger children are not always able to differentiate advertising from programming content in traditional media forms such as television (Preston, 2004). Child development experts generally agree that children under eight years of age are "prone to accept advertiser messages as truthful, accurate and unbiased" ("Television Advertising," 2004). When faced with a choice to respond to an online survey that promises to "help us make the site more fun for you!," for example, younger users may not have the critical skills to recognize the survey as market research, or to understand that their answers could be used to target advertisements at them later on.

Furthermore, emerging research shows that younger children often do not understand common "e-business" practices, such as the use of "Cookies" to track users online (Shade et al., 2004). They also do not always comprehend the full repercussions of

divulging personal information online, which may in part explain why children are more likely than adults to give out sensitive information, particularly in exchange for a free gift or reward (Turow, 2001). On the other hand, Livingstone (2006) argues that children deeply value privacy, and often use the Internet to "carve out private spaces" and experiences as respite from their otherwise "increasingly restrained lives." As Livingstone describes, "Our findings on what children say and do online suggest a series of 'uses of privacy'. These include feeling in control, mastery of the situation, something they may experience less when under the surveillance of an adult gaze" (p.137). While the "adult gaze" of the marketer is substantially different from that of a parent or teacher, it is unclear that children would feel as comfortable contributing to spaces they knew were under continuous adult monitoring and analysis.

The majority of children's websites seek to establish the parameters of their relationships with users through website privacy policies and TOS contracts. A user's consent to abide by the rules established by the privacy policy and TOS contract is assumed once he/she begins using the site. In the vast majority of the TOS contracts reviewed, a stipulation was included that any and all user submissions would automatically become the exclusive and unlimited property of the site (the only exceptions were the *Yahoo!Games* sites, which were also some of the only sites that did not provide space for user-generated content). In most of the cases reviewed, the types of user submissions and breadth of copyright assumed were both broadly defined—even though the user was rarely acknowledged as the original owner of her/his submissions in the first place. Significantly, it was not standard practice to include detailed information about marketing research practices in either the TOS contracts or the privacy policies unless these directly involved "personally identifiable information" (such as name, address, Social Security number).

Within the realm of adult users, TOS contracts and end-user license agreements (EULAs) are at the centre of ongoing debate and legal conflict (Grimes, 2006). These debates have challenged the validity of the sweeping terms and wide-ranging intellectual

property (IP) claims often included in these documents.[4] Most recently, a similar conflict has surfaced within the context of Massively Multiplayer Online Games (MMOGs). While the EULAs of these games often require that players consent to transfer and waive all subsequent claims to copyright over their in-game creations and communications, player communities, legal experts and scholars are challenging the legality of these terms and advocating that players should retain certain rights of authorship over their contributions (Castronova, 2003; Dibbell, 2003; Lastowka & Hunter, 2004). For instance, Taylor (2002) argues that online environments, such as MMOGs, are also spaces in which individuals invest a significant amount of time congregating, creating avatars, producing cultures and communities, sharing in leisure activities, and reproducing economies. In terms of the characters and items players acquire and create through the process of gameplay, Taylor (2002) writes that players are at the very least the collaborative authors (and hence partial owners) of any cultural artefacts that result from their efforts:

> It takes a player to create a character and it takes the time of the player to develop the character. Through their labor they imbue it with qualities, status, accomplishments. Indeed, while the owners of a game provide the raw materials through which users can participate in a space, it is in large part only through the labor of the players that dynamic identities and characters are created, that culture and community come to grow. (p.232)

While the MMOG debates have not yet considered how these same arguments might apply to child players, there is no immediate reason to exclude children's in-game submissions from discussions of authorship and the significance of users' creative contributions. Like the adult players described by Taylor (2002), children also produce a substantial amount of content when the necessary features are made available to them. For example, *Neopets.com* contains over 12 million pages of content created by its members, 39% of whom are under 13 years of age ("Frequently Asked Questions," 1999-

[4] It should be noted that many MMOGs require the player to click "Agree" to the EULA upon installation. However, although some require the player to scroll down to the bottom of the document, the length of the contracts (which are often between 10 and 20 pages) and their heavy use of jargon can be seen as likely deterrents to players taking the time to read and fully understand the terms to which they are agreeing.

2006). Issues surrounding children and authorship in the digital context, and the intellectual property that might result, have not yet been addressed within academic and legal fields. However, the notion that child-generated content has some form of tangible value is readily apparent within the TOS contracts' sweeping copyright claims, as well as the revenue generated from market research reports.

Unlike the case of the MMOG debates, TOS contracts found on children's websites become vulnerable to a special type of challenge, in that contracts made with minors are voidable and unenforceable in North America.[5] This raises serious questions about the applicability and validity of the claims and terms made within TOS documents *vis-à-vis* child users. As with questions of authorship, however, the validity of the minors' contracts found in commercial websites has yet to receive public attention. In the meantime, children's websites appear to operate as though the contracts were legal and binding.[6] In the absence of governmental or official industry policies regulating children's non-personally identifiable information, the privacy policies and TOS contracts currently fulfill a sort quasi-regulatory function that has not only become common practice within the children's digital environment, but could eventually set the tone for future, formalized regulatory initiatives. As Coombe (1998) argues, "People's anticipations of law (however reasonable, ill informed, mythical, or even paranoid) may [eventually come to] shape law and the property rights it protects" (p. 9).

The content analysis of the gamesites' TOS contracts revealed a number of additional problems relating to research ethics and participant rights (Grimes, 2007). The TOS contracts reviewed were difficult to find, often only accessible by clicking a link at the bottom of the page. They often consisted of lengthy texts (ranging between 3 and 12 single-spaced printed pages) that made heavy use of legal terminology, jargon, and long,

[5] In Canada, contracts with children can be voided at their request if they are not beneficial to the child. The only exception, as established in Miller v. Smith & Co., [1925] 2 W.W.R.360, 377 (Can.), is in instances where the child enters into a contract to obtain the "necessities of life" (food, clothing, shelter, etc.). For US legislation on minors' contracts see California Family Code 6710 (West 2004); Sparks v. Sparks [1950] 101 CA2d 129 (Cal.); Burnand v. Irigoyen [1947] 186 P.2d 417 (Cal.); Scollan v. Gov't Employees Ins. [1963] 35 Cal. Rptr. 40, 41 (Cal. Dist. Ct. App.); and Mitchell v. Mitchell [1998] 963 S.W.2d 222, 223 (Ky. Ct. App.) (Hruby, 2006).

[6] Surprisingly, minors' rights and special legal status have thus far been excluded from the adult-oriented MMOG debates, which tend to focus on T-rated games that have traditionally been played primarily by adults (Yee, 2006).

convoluted sentences. Generally, only a minimum effort was made to make the contents of these contracts accessible to children—in some cases, players were not even directly instructed to read the TOS, assuming instead a prior knowledge and experience of contracts that many children do not have. Only two of the sites reviewed provided a child-friendly version of the TOS (Kraft/Postopia and Neopets), both of which abridged and over-simplified important clauses of the full-text document. It is highly doubtful that children can legitimately be expected to have the skills and knowledge required to understand the concepts and implications of many of the clauses included—assuming, of course, that they are inclined and able to read through these difficult texts in the first place.

It is here that the issue of "consent" becomes significant. Recent studies suggest that children rarely read privacy policies (Sandvig, 2000; Turow, 2001), which they find "long and boring" (Burkell et al., 2007). Furthermore, it is questionable that young children have the skills and knowledge required to understand the contents of policies and legal documents without adult assistance or child-friendly explanations. While little research has been conducted on children's understanding of website policies and contracts, studies of adult Internet users reveal that only a small proportion understand the legal implications of privacy policies (Turow, 2003). Studies of children's understanding of economic concepts show that while rights of use and control are relatively easy for children to grasp, other concepts, such as the right of transfer, are much more difficult for children to comprehend (Cram, Ng & Jhaveri, 1996). For example, it is not until the age of 11 years that notions of private ownership and the right of transfer are fully understood by the majority of children. For very young children (under 6 years of age), Furnham (1996) argues, "[M]ost economic events are still simply observed and accepted as mere ritual" (p. 31). With this in mind, it is easy to see how clicking "I Agree" to a TOS contract can become a ritualized part of children's online experience, rather than a true indication of consent.

In terms of parental consent, there appears to be no standard framework for ensuring that parents are aware that kids' online activities are used for research purposes (Turow, 2001), or that verifiable informed consent is granted. In the few instances where some form of parental consent was sought—for the child's participation in the site or in

research where personal information was gathered—no evidence was found during the content analysis of a consistent strategy for ensuring that an *actual* parent was the one granting the consent. The websites reviewed were thus found to be doing very little to a) ensure that child users were both properly informed and had given explicit consent to present *and* future participation in market research; or to b) ensure that the child's parents had given informed consent for their child's online interactions to be used for market research purposes. It remains questionable that children and parents are ever truly informed of the full extent of corporate and legal mechanisms at work within many commercial websites and online games. This highlights the growing need for an in-depth examination of the issues surrounding informed consent in children's commercial websites, and its relationship to the academic research context.

"Business as Usual" vs. Research Ethics

Marketing research in Canada is regulated by a combination of federal, provincial and industry initiatives. In terms of federal regulation, PIPEDA provides a number of restrictions around the collection, use, and disclosure of personal information within the private sector. One of these restrictions includes a warning that seeking consent for data-collection "may be impossible or inappropriate when the individual is a minor" (Clause 4.3 Principle 3). However, the policy fails to provide any guidelines or restrictions specific to the special needs and vulnerabilities of minors, or to acknowledge the vast variability in aptitude and legal responsibility that exists among children and youth. Provincial policies, such as Quebec's *Loi sur la protection de la consommateur*, also enforce restrictions on such activities as using information from draws and contests for marketing research. Since a large proportion of popular children's websites originate from the US, many sites must conform to the Federal Trade Commission's (FTC) *Children's Online Privacy Protection Act* (COPPA) (2000). As with PIPEDA, however, the COPPA regulations only apply to "personal information" (defined as any identifier that permits identification or physical contacting of a specific individual) and personally identifiable information (which includes any information gathered from the child when combined with a "personal information" identifier) (Section 1302, p. 8). Children's non-

personally identifiable content, which includes all other types of content, does not receive any special protection in either Canada or the U.S.

The industry's self-regulatory guidelines do not provide much additional protection for children's content. The Canadian Marketing Association's (CMA) recently updated *Code of Ethics and Standards of Practice*, for example, requires that "all marketing interactions directed to children that include the collection, transfer and requests for personal information require the express consent of the child's parent or guardian" (Section K3) for participants under the age of 13 years. Relevant US-based associations, including the Marketing Research Association and the Interactive Marketing Research Organization, merely require that members comply with COPPA requirements. As with the COPPA and PIPEDA requirements, industry guidelines only provide safeguards to personally-identifiable information, such as names, addresses, and telephone numbers, with little consideration for the various other types of information that market researchers often find most useful (Smith & Clurman 1997; Sutherland & Thompson 2001; Lindström 2003). For example, COPPA only protects consumer preference data, such as hobbies, interests, and Cookie-enabled behavioural tracking, when it is directly linked to personal identifiers. As a result, a vast array of online market research activities—for example product preference polls that do not ask participants any personal information, or behind-the-screen tracking of user interactions in forums and online games—are not currently subject to regulation.[7]

Children's websites thus operate under very loosely defined, often highly self-serving, notions of "consent" that allow market researchers to collect vast databases of information on child users. For the academic researcher hoping to explore the ethical dimensions of online market research practices, however, this presents an immediate problem. The ethical standards required of academic research are established at various levels of governance, depending on the study's context and funding sources. Generally, however, these standards are much more stringent and comprehensive than those required of the private (marketing research) industry. The disjuncture between industry and

[7] One game-site that is particularly active in conducting marketing research, Neopets.com, flaunts this fact in their press kit, noting, "Neopets has the largest COPPA compliant (Children's Online Privacy Protection Act) online market research panel in the world, containing more than 50,000 12 and younger panellists complete with written parental permission" (Neopets Press Kit FAQ, 1999-2006).

academia can make it difficult to obtain ethical clearance to study marketing research processes and findings. For example, in academic research, informed consent and other considerations are necessary whenever human subjects are involved, whether the information gathered is "personally identifiable" or not. Market researchers, on the other hand, employ a much lower benchmark of consent and do not regulate the collection of non-personally identifiable data. Studies of marketing research processes and findings thus run a very real risk of coming across data that fail to meet academic ethical standards, and produce research without proper participant consent.

The question of consent is particularly crucial to ensuring ethical research. For example, in the case of the Office of Research Ethics (ORE) at Simon Fraser University, "expressed opt-in," one form of informed consent, is defined as "voluntary, informed, unambiguous, obtained before beginning the research and may be withdrawn at any time, and unless there is explicit consent at the time of data collection, there will be…no further analysis of the data initially collected" (*Policy R20.01* 1992: Requirement 8a). In order to qualify as "informed consent," the researcher must provide detailed information about the study's methods and purpose. A thorough description of the type of data to be collected is required, along with an accurate explanation of how it will be used. Although unanticipated secondary usage of findings is allowed as long as the findings are kept anonymous and published in aggregate form, the fact that informed consent was granted at the time of the initial data-collection distinguishes this exception from the marketing research practices explored above. In studies involving minors (defined as persons under the age of majority), parental consent is required, along with additional precautions and heightened ethical sensitivity.

Publicly-funded research involving children in Canada must also conform to special ethical standards. The *Tri-Council Policy*[8] (1998) includes children in its category of "vulnerable persons" warranting high ethical obligations. Not only must researchers obtain the "free and informed" consent of an authorized third party (parent or guardian), but they must also seek the consent of the subjects themselves:

[8] The *Tri-Council Policy* provides research guidelines for the Canadian Institutes of Health Research (CIHR), the Natural Sciences and Engineering Research Council of Canada (NSERC), and the Social Sciences and Humanities Research Council of Canada (SSHRC).

> Many individuals who are not legally competent are still able to express their wishes in a meaningful way, even if such expression may not fulfill the requirements for free and informed consent. Prospective subjects may thus be capable of verbally or physically assenting to, or dissenting from, participation in research. Those who may be capable of assent or dissent include: (a) those whose competence is in the process of development, such as children whose capacity for judgment and self-direction is maturing… (Article 2.7)

The notion of pairing parental consent with children's assent to participate is also found in the *Ethical Guidelines* of the Association of Internet Researchers (AoIR), which recommends that researchers adopt the broad consideration that "the greater the vulnerability of the author/subject—the greater the obligation of the researcher to protect the author/subject" (Ess & AoIR, 2002, n.p.). These standards not only go beyond the regulatory frameworks provided by government policies and industry guidelines, but they also give stronger consideration to children's participatory rights than is required by certain national and state laws.[9]

In comparing the standards applied within the private marketing research industry to those required of academic (or other publicly funded) research, it is thus clear that numerous points of contention exist between these two areas of research. This creates a special set of challenges for critical examinations of marketing research practices, not the least of which involves sufficiently reconciling two contrasting sets of ethical standards in order to secure ethical clearance. For the TOS study described above, the ethical approval process itself becomes an interesting case study in the disjuncture between industry and academia, and the problems this disjuncture can cause for academic research. It also illustrates significant oversights within current academic understandings of online research that will need to be remedied if children's rights as research subjects and cultural producers are to be respected within the digital context.

Case Study: Securing Ethical Clearance

[9] For example, in the US, children are not considered legally capable of giving informed consent (Ess & AoIR 2002).

The study of children's websites and TOS contracts described above was subject to three sets of ethical standards: Simon Fraser University's ORE *Policy*, the *Tri-Council Policy*, and the AoIR's *Ethical Guidelines*. Yet, the research subject—online marketing research—employed its own research design which did *not* meet the ethical standards required by any one of these policies. For example, both *Neopets.com* and *Toontown Online* incorporated child-generated content which could be used for market research, and both had secured a form of consent from the children and their parents to use that content in sweeping and ambiguous ways. On the other hand, neither of the sites provided any details about how the content would be used, and it was unclear that the children or parents understood that submissions could be used for market research purposes. It was thus unlikely that the consent the parents and children had granted to these sites qualified as "informed consent," and thus unlikely that these submissions would meet the level of consent required for inclusion in an academic study. In light of these conflicting interpretations of consent, the project was submitted for ORE review in early April 2005.

A series of questions was released by the director of the ORE, Hal Weinberg, requesting clarification on a number of aspects of the research design. Two of the questions involved the issue of whether or not the study would require the approval of the website owners/operators. Another related more specifically to the issue of participant consent:

> When parents give consent for their children to use the web site do they know that the site may be used for studies of the kind you will be conducting? (Weinberg, 2005a, n.p.)

In response, it was clarified that the majority of the contents under study were online submissions and "after-the-fact" communications[10] (such as pre-existing forum discussions). Since the websites were published online, it was argued that their contents fell within the scope of public domain, and thus permission from the site owners was unnecessary. This position was further supported by the commercial nature of the sites

[10] The only exception was in *Toontown Online*, Disney's MMORPG, where I would be privy to a restricted form of user interaction wherein users communicate by choosing from a limited selection of pre-defined communicative statements.

and the high amounts of publicity they generated, which relates to the AoIR guideline, "[T]he greater the acknowledged publicity of the venue, the less obligation there may be to protect individual privacy, confidentiality, right to informed consent" (Ess & AoIR, 2002, n.p.). For the final question concerning parental consent, excerpts from the TOS contracts were provided to show that by granting consent for their children (under the age of 13 years) to participate in the sites, parents[11] had already given explicit consent to abide by the website privacy policies and TOS contracts, which included transfer of intellectual property ownership of any child-generated content over to the site owners. Since the websites then published these "copyrighted" materials online and within the public domain, there was no legal reason why the submissions should not then become available for academic analysis.

On June 13, 2005, the project was categorized as Minimal Risk and provisionally approved by the Director, to be ratified by the Research Ethics Board (REB) at their next meeting (Weinberg 2005b). When the REB met in July, however, similar questions were raised, and data collection was suspended while legal opinion was sought. An email was forwarded to the Associate VP for Legal Affairs with a number of queries about the ownership of the data. The Board also expressed concern about two issues that are particularly relevant and significant to future work in this area:

> Does the web site policy sufficiently identify the parent/guardian understanding regarding the use of their child's data?

and

> Is there a Canadian law prohibiting the transfer of ownership of data given to the web site? (Weinberg, 2005c, n.p.)

On July 29, a letter (July 29, 2005) was sent by the REB announcing that in the opinion of the university's legal counsel the data was in the public domain, and that therefore the study had finally been granted ethical clearance. The disjuncture between marketing research ethics and academic ethical standards was ultimately resolved as a public

[11] Assuming that the child has not bypassed the system by providing false parent contact information.

domain issue. Nonetheless, the questions that had been put forth by Weinberg and the REB reveal that there remain a number of significant ethical dimensions of online research involving children that have not yet been adequately addressed within academic research ethics policies. It seems clear from both the case study and the content analysis research that the ethical standards for conducting research involving child-generated content online need to be re-examined within both industry and academia.

Discussion

From the above analysis, a number of preliminary recommendations for how ethics policies might be revised to better accommodate the special needs and vulnerabilities of children within the online context can be identified. The issue of informed consent cuts deeply into both questions of ownership as well as notions of the public domain. From the previous research in this area, it is unlikely safe to assume that the majority of parents or children are aware of the full implications of submitting content online. Rather than let commercial researchers diminish standards for informed consent by driving this content into the public domain, a more proactive approach must be undertaken by academic researchers to ensure that subjects' rights receive better protection within the online environment. This applies to both academic research practices as well as any unethical practices uncovered during the course of research. Furthermore, the requirement that children's assent be secured along with parental consent should be established within the university's ethical guidelines, a consideration that upholds the spirit of children's participatory rights found within the United Nations Convention on the Rights of the Child, and is in line with the recommendations of both the *Tri-Council Policy* and the *AoIR Ethical Guidelines*.

Until now, studies of documents and materials in the public domain have not been subject to ethical review, but then again until now contributing to the public domain was a predominantly adult activity. It has not been established that children truly understand the full meaning and implications of the public domain, or how this relates to their contribution to online culture. The apparent disconnect uncovered in the literature, between children's understanding of privacy (Turow, 2001; Shade et al., 2004) and the value they place on the Internet as a provider of "private spaces" (Livingstone, 2006) is

perhaps reflective of the high levels of ambiguity created by commercial sites around these issues. In the current climate, the task of educating youth about important subjects like privacy, legal contracts and authorship is often left to commercial websites run by toy companies and marketing researchers. Documents such as privacy policies and TOS contracts are difficult for children to understand and often omit important information about the business and legal relationships they seek to establish. By giving special consideration to child-generated content, we can reconfigure our approach to public domain and copyright issues to be more inclusive of children's special needs and vulnerabilities, while concurrently supporting their participation in this important realm of cultural life.

A good starting point has already been formulated within the *AoIR Ethical Guidelines*, which challenges the appropriateness of approaching child-generated content, such as websites, weblogs, and other online contributions, as part of the public domain. The questions raised by the AoIR (Ess & AoIR, 2002) document include:

> [A]re web pages created by minors—but often without much understanding of the possible harms some kinds of posted information might bring either to the author and/or others—to be treated as the same sort of document as authored by adults, who (presumably) are better informed about and sensitive to the dangers of posting personal information on the Web? Or are researchers rather required to exercise greater care in protecting the identity of minors - perhaps even to inform them when their materials may pose risks to themselves and/or others. (n.p.)

These considerations have led the AoIR to recommend that researchers apply the broad consideration that "[T]he greater the vulnerability of the author/subject—the greater the obligation of the researcher to protect the author/subject" in research involving documents and content created by minors[12] (Ess & AoIR 2002, n.p.).

[12] It is important to note, however, that it is also within commercialized websites that we find many of the best tools and richest opportunities for cultural participation currently available to children online. It is also one of the only areas where children's cultural contributions are valued, even while viewed in primarily proprietary terms. Conversely, regulation that restricts and excludes children's online access, as seen in the recent *Deleting Online Predators Act* (DOPA) in the US, takes away their rights instead of expanding them. It is important that opportunities for contribution are not eliminated, but that instead focus is placed on enhancing recognition and protection of children's participation in various spheres of social life.

The sweeping yet vague terms of the TOS contracts reviewed in the study do not provide sufficient details for the consent given by parents or children to truly qualify as "informed." Yet they nonetheless appear to comply with current regulatory and legal standards. It is clear from the CRTC's 1999 decision not to regulate the Internet that the Canadian regulatory system is out of touch with new technologies and the online practices of both industries and users. Meanwhile, the public domain resolution to the questions raised by Weinberg and the REB failed to address the underlying ethical issues involved. Upholding the websites' claims that children and their parents legally transfer ownership of their potential intellectual property to the sites by agreeing to the terms of service supports the misrepresentation that these minors' contracts are valid to begin with. While establishing the validity of TOS contracts is in the interests of marketing researchers attempting to package and sell data that is not legitimately theirs, it is not in the interest of child producers who may or may not understand the right of transfer (Cram et al., 1996). Until the regulatory and legal systems catch up to new digital realities, the responsibility for creating higher standards for online research rests in the hands of academic researchers.

Conclusion

The rise in prominence of digital technologies has in many ways aggravated the existing disjuncture between policy and practice, particularly where children are concerned. Ongoing debates about children and the internet focus on risks and opportunities that are defined primarily by adult concerns. Yet children have their own agendas when it comes to internet technologies, as well as their own thoughts and opinions about how the emerging digital culture should take shape. These aspects of children's technology use are causing deep transformations within contemporary childhood, including a move towards child-generated content and children's online communities. More than any other group of adults, the children's industries and marketing researchers have taken note of this shift, creating important online venues and opportunities that support children's increased cultural participation. Within these sites, the children's industries have created an ongoing dialogue with child users, much of which operates outside of existing regulatory frameworks. At the same time, however, marketing research practices have

now become more available for academic and public scrutiny than ever before. As seen in the case study and discussion above, the widening disconnect between industry and academic ethical standards can greatly complicate studies into online marketing research practices. Yet, rather than view this as an obstacle, academics with an interest in research ethics can also approach this disjuncture as a unique opportunity to enhance ethical standards and promote the rights of child participants within the online environment.

Researchers' obligations to child subjects must not end with mere compliance to existing standards and regulations. Oftentimes these do not adequately consider the growing relationship between children and commercial entities, nor do they support children's burgeoning rights as cultural producers. For this reason, the issues raised during this and future ethical clearance processes—of research projects involving both children's online communication as well as published texts and artefacts—should be systematically reviewed and incorporated into a new and evolving set of ethical guidelines and professional standards. Internet research and other forms of new media research are especially important to this process, as these studies often introduce new and unanticipated dimensions to emerging ethical questions. Accordingly, academics must find ways to study and critique unethical commercial research practices without conforming to the problematic norms they seek to establish. In so doing, academics can begin to construct a coordinated challenge to the lax commercial standards which currently set the status quo for the vast amount of online research that is secretly conducted on children.

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