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Minors and contracts

Minori e contratti

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Abstract

Taking the Italian legal system into consideration, it is possible to see how it provides for a natural incapacity of the minor in the stipulation of contracts. However, this view turns out to be in some ways paternalistic and detached from factual reality. In some ways it seems almost contradictory to what are the possibilities envisaged by the legislature regarding the activities that the minor can carry out in his or her relationship life and that produce effects on his or her personal and patrimonial sphere.

Finally, by contextualizing the minor within the with the view that he or she is increasingly involved in commercial practices through neuro marketing campaigns, he or she assumes the figure of a real consumer in the market, so this proactive conduct cannot be overlooked.

Even more so, going to analyze the presence of the child online through reports and statistical surveys.

The main objective of the contribution is to illustrate the state of the art, emphasizing that dichotomy present between contractual incapacity and the contract entered into by the minor in the age of e-commerce.

Prendendo in considerazione l'ordinamento giuridico italiano è possibile notare come questo preveda un'incapacità naturale del minore nella stipula dei contratti. Tuttavia questa visione risulta essere per certi versi paternalistica e distaccata dalla realtà fattuale. Per certi versi sembra quasi contraddittoria rispetto a quelle che sono le possibilità previste dal legislatore in merito alle attività che il minore può svolgere nella vita di relazione e che producono effetti sulla sua sfera personale e patrimoniale.

Non da ultimo, contestualizzando il minore all'interno dell'ottica che lo vede sempre più coinvolto nelle pratiche commerciali mediante delle campagne di neuro marketing, egli assume la figura di vero e proprio consumatore nel mercato, per cui non si può non tener conto di questa condotta proattiva.

Ancor di più, andando ad analizzare la presenza del minore online attraverso i report e le indagini statistiche.

Il contributo ha come obiettivo principale quello di illustrare lo stato dell'arte, sottolineando quella dicotomia presente tra incapacità contrattuale e il contratto stipulato dal minore nell'era degli e-commerce.

1. The minor consumer: a weaker party in consumer affairs?

In light of what has emerged so far, we need to dwell on the status of the minor in the context of consumer law. This is because, although an inability to act exists, which would go to qualify the minor as an active subject, he or she almost certainly holds the position of a passive subject.

In fact, although there is no real definition of the child as a consumer[1], in recent years, this figure has become the target *audience* for many companies (from producers of goods to producers of services, such as *social networks*).

Minors already before reaching the legal age conclude contracts of different kinds and types (e.g., stationery, cosmetics, telephone recharges, games[2] , video games, etc.) and these contracts do not find a certain normative basis, which is why they must be considered within our legal system as limiting cases of the codictic discipline, also because if we were to consider these cases in the context of the so-called minute acts, we would have to understand whether and when the minute act can be valid even if repeated

[1] Regarding the figure of the consumer, in light of the latest debates, its evolution in modern times is emphasized. On the subject, G. ALPA, *Il contatto in generale, principi e problemi*, Giuffrè, 2021, pp. 389 - 393, states that «*In doctrine, on the basis of the rules introduced overall by the European Union, of the social policy programs outlined by the Union and progressively implemented, but also taking into account the evolution of national situations and comparison with non-European models, the debate on the current meaning of the notion of consumer and the remedies with which it can be more adequately protected has once again been accessed. Hans Micklitz pointed out the distance between the direction proper to the European model, centered on the limited freedom of the market in which the consumer operates as an informed actor, compared to the current U.S. model in which consumer protection is not pursued through information but, reflexively, through market efficiency. The extension of market entry of distribution sectors of goods and services offered on the Internet and thus open to access by all implies that the consumer is increasingly immersed in economic relations and is considered a pawn in the entire system - he is the so-called "marketized" consumer. What is more, as markets are fragmented-there is the market for goods, the market for services, the market for the provision of elementary energies such as water, gas, electricity, the market for banks and financial intermediaries-the consumer also appears "fragmented" because in each of these markets he receives differentiated protection. And, again, the consumer is disentangled from the neutral and unifying definition mentioned above when from time to time he or she is considered safe and assertive, or responsible, or "weak." To each graduation of ways of being and thus of situations corresponds a different apparatus of rules and remedies. One response to this has been the "constitutionalized" consumer, that is, the consumer understood as the bearer of fundamental values. Micklitz's judgment is very harsh: "[T]he consumer has been exhausted by the regulatory and political burden of behaving as the good and active market agent, as a circumspect and attentive customer"; in short, he doubts that the constitutionalization of his legal position is sufficient defense for the millions of people who turn to the market every day. This lucid analysis should alert us not only to the need to evaluate the consumer's position in the context of individual relationships on a case-by-case basis, but also to the need to see the potential of law and of consumer legal protection in general as not unlimited*».

[2] Consider, for example, *Smart toys*, which for the younger generation are certainly more stimulating games that capture the interest of children. In M.C. GAETA, *Smart toys and minors' protection in the context of the internet of everything*, a conference sponsored by Università degli studi Suor Orsola Benincasa and Jean Monnet Chair PROTECH on "*Social Networks and Multimedia habitats*," October 16, 2020, they are defined as «*devices with the appearance of traditional children's toys (e.g. dolls or cuddly toys) but they are capable of interacting with the surrounding environment, connecting to the Internet and using technological systems. They are robots, characterized by a more or less developed level of automation, to the point that the most recent models of connected toys are equipped with artificial intelligence. Although smart toys are fun and sometimes even educational games, they are still tools that collect, process and communicate data, with possible risks, especially for minors. Indeed, first of all it is very concrete and serious the risk of unlawful processing of minors' personal data, but also the risk of hacker attacks, issues related to possible emotional bonds between the minor and the toy, as well as psychical Manipulation*».

numerous times over time.

Precisely because the child is highly conditionable, those techniques discussed earlier have been developed, namely, of so-called *neuromarketing*, applied to what are the tools used most by young users.

The main tools through which children's or teenagers' tastes are tracked are commercials[3], found both on television and on one's *smartphone.*[4]

For this reason, the figure of the minor could well be framed in what is the definition of consumer.[5] Especially if one also considers the role of the consumer as the weaker party[6] in the asymmetrical contract, such as, precisely, that between the professional and the consumer himself.

In reference to minors, "weakness" deserves protection with respect to the parameter of age, which ideally relates to the discourse of vulnerability[7] . In the network, minors

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[3] V. ZANI., *La protezione dei minori nel diritto europeo dei consumatori*, in *dbHUB*, www.dbhub.it/la-protezione-dei-minori-nel-diritto-europeo-dei-consumatori/, 2021 points out that «*in 1989 the Television Without Frontiers directive was adopted, which deals with the position of minors with respect to television advertising and sponsorship of goods and services intended also for minors and others. This directive enshrines a discipline aimed at protecting children from the negative effects of advertising messages, which put their safety at risk, and is intended to prevent any form of abuse of their natural naiveté and inexperience. [...] The provisions of the 1989 directive is intended to regulate the phenomenon known as Teleshopping in order to protect consumers, particularly those of minor age from persuasions designed by experts in the field; what is said is reported by Article 16 of the TWF Directive: "Teleshopping shall meet the requirements of paragraph 1 and, in addition, shall not exhort minors to contract for the sale or rental of goods and services." In 2007, the TWF Directive was amended by the AVMSD (Audiovisual Media Services Directive) in which the new rules stipulate that there should be no advertising in children's programs when the duration of the program is less than 30 minutes*».

[4] Not infrequently, it is possible to display *banner* ads used as interludes between levels in free video games for download to one's phone. Quite often, the scenes depicted firstly require you to install the game, by *clicking* or *tapping* on the install or download button, depending on the platform; secondly, it happens that the same game requires you to purchase *in-app the* ability to eliminate advertising or elements necessary to enjoy the game experience "to the fullest."

[5] In this sense FRA, COUNCIL OF EUROPE, *Handbook on European law relating to the rights of the child*, 2015, p. 183 ff. it is reported that «*According to the CJEU, child consumers' best interests and the protection of their rights override requirements of public interest justifying limits to the free movement of goods, persons, services and capital. Children as consumers should be provided with relevant information so as to be able to consider all relevant facts and make an informed choice. Unfair commercial practices are those that do not comply with the principle of professional diligence and may influence adult and child consumers' transactional decisions. Children can be included in clinical trials only if the administered medicinal product is expected to be of direct benefit to them, thereby outweighing the risks. EU and CoE law limit the amount of marketing children may be exposed to, without banning it as such. Children are entitled to specific protection, which implies protection against any advertising as well as tele-shopping programs which could cause moral or physical harm to them. The placement of products advertisements in children's programs is forbidden*».

[6] In M. LOPINTO, *La figura del soggetto debole: istituti, rimedi e problematiche attuali,* in Diritto.it, www.diritto.it/la-figura-del-soggetto-debole-istituti-rimedi-e-problematiche-attuali/, 2019, the figure of the weak subject is defined as «*particularly variegated. It starts from the more classic figures of the subject deserving protection by the mere circumstance of being a minor, the interdict and the incapacitated or the administered, passing through the conception of the weak subject understood as a contractually weak party in asymmetrical contracts, as well as in subordinate labor relations with particular reference to the worker, as an economically less strong subject*».

[7] In I. A. CAGGIANO, *Privacy e minori nell'era digitale. Il consenso al trattamento dei dati dei minori all'indomani del Regolamento UE 2016/679, tra diritto e tecno-regolazione*, in *Familia*, Pacini Giuridica, 2017, «*The main international charters on child protection deal with the relationship between minors and information technology content having regard to the content of information disclosed by the mass media and prescribing that it must be beneficial to their health and social, spiritual and moral well-being.*" In

play this dual role of users as "passive surfers," since they can access a considerable amount of content and information, and at the same time as "consumers" *strictu sensu*.

However, defining the child as a consumer turns out to be problematic from a subjective point of view because consumer protection is grounded in the *status of* the subject, who in the asymmetrical contract is in a weak position at the time he or she enters into a contract with a professional subject. Thus, it can be said that this position for the consumer is "occasional" and dictated only at the moment when a B2C (*Business to Consumer)* contract is established.

The minor, on the other hand, turns out to be by nature a weak subject and deserving of protection by virtue of his or her incapacity. This is precisely why the contractual weakness of the minor is even more pronounced.[8]

Before it is such, however, it must be considered that, as a subject of law, he is guaranteed a series of rights that are interconnected and can be traced back to the fundamental principles of the constitutional charter *under* Articles 2 and 3 of the Constitution.

Accomplice also to the COVID-19 pandemic, the phenomenon of shopping by minors has grown significantly. Numerous studies, confirm that access to the Internet, today, occurs from a young age and minors thus become full-fledged consumers in a wide variety of fields. Just think of the purchase of clothing, games or food.[9]

Arguably, it is precisely through the free access they have had to digital platforms over the years that children and young people have been able to hone those skills that in themselves already appear to be present in the younger generation.[10] Already in 2019,

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footnote 12, he adds, "*They deal with the protection of the child, with attention to the information disseminated by the mass media, UN Convention on the Rights of the Child and Adolescent of November 20, 1989, ratified by Italy with Law No. 176 of May 27, 1991, which also receives implementation in Italy through the work of the Garante dell'infanzia. See, in particular, Article 17 concerning information disseminated by the mass media that is useful to the health and social well-being of children, of which it prescribes the finalization of the spiritual and moral well-being of the child*».

[8] Of this opinion, E. ANDREOLA*, Il regime degli acquisti on line del minore quale consumatore "debole"*, in *Familia*, Pacini Giuridica, 2017, pp. 686 - 688

[9] A. GAMBARO, *Il bambino consumatore: il suo diritto ad un'appropriata informazione*, in *Studi Sulla Formazione, Open Journal of Education*, Florence University Press, 2009, says that «*recent market studies show that children today are relevant consumers in traditional commodity sectors such as food, clothing, toys and entertainment. It also becomes clear that children, in addition to being significant consumers of food, clothing and toys, have gained extensive decision-making power over more demanding family spending chapters such as buying a car, a summer vacation, a computer, etc. The extraordinary and recent increase in marketing devoted to children has been fostered by a number of changes in our Western societies, chief among them the transformation of the concept of childhood and a new perception of the role of the child within society. Until the first half of the last century, the child was commonly defined as an individual who was not yet competent, lacking the skills, qualities and powers typical of the mature man, and therefore essentially separated from the adult world. With the advent of the liberationist thesis comes a new understanding of the child as a competent subject whose right to the same opportunities, safeguards and privileges as adults must be guaranteed. The child thus becomes a subject with rights finally enshrined in the Convention on the Rights of the Child (henceforth referred to as the CRC), which in 1989 recognized the child as capable of self-determination*».

[10] The MOVIMENTO DIFESA DEL CITTADINO conducted a survey in 2005 regarding Baby Consumers i.e., the report on children's consumption. This *report* analyzes children's choices in food, school, and clothing. Right from the introduction it is stressed that this work has led to the definition of what is a real *identikit of* the child consumer, as a subject who «*if paradoxically does not know the value of money presents, on the other hand, a "mature," selective and complex approach to consumption, highlighting a market dynamic that tends to transform children from small citizens into small consumers*». The study is available at the link: www.researchgate.net/publication/301626346.

statistical surveys have noted the increase in the percentage of young people connected as "frequent users of the net."[11] .

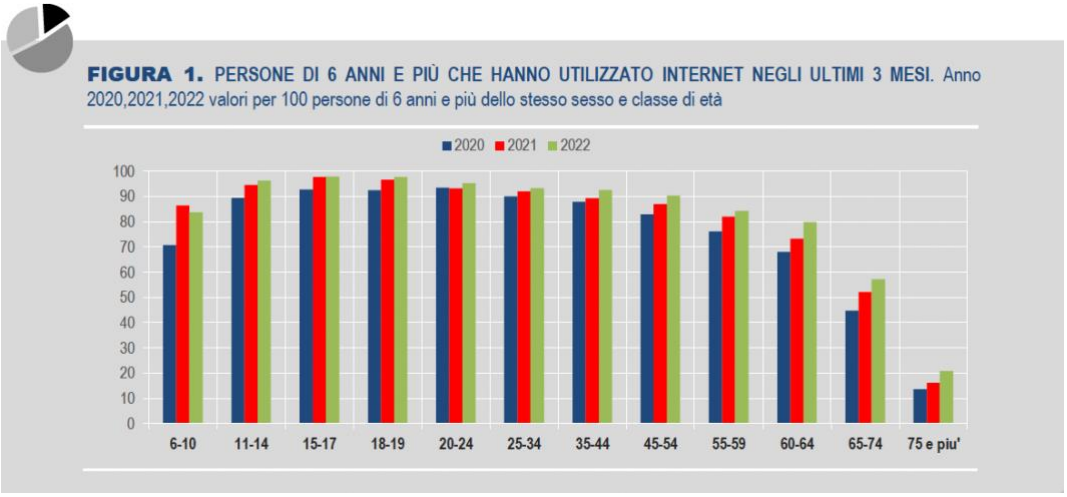


Figure 1: graph represents data from the 2023 ISTAT study in relation to the three-year period 2020-2022. As can be seen, between 2021 and 2022 Internet users between the ages of 6 and 18 increased

[11] According to the report of the ISTITUTO NAZIONALE DI STATISTICA, *Cittadini e ICT, anno 2019,* is available at the link www.istat.it/it/files//2019/12/Cittadini-e-ICT-2019.pdf, dated December 2019 regarding citizens, the percentage of young people stands at 90 percent in the age group of 15 to 24 years. In contrast, the age group of 6 years and up is 67.9 percent. These figures are justified by the fact that the percentages of households having a broadband connection is at 78.1 percent in the case of metropolitan areas, while it is 74.7 percent in other areas. In addition, «*Over the past few years, cell phones and smartphones have increasingly connoted themselves as a driving factor in web access. Among users aged 14 and older, 91.8 percent used smartphones, 43.3 percent access via desktop PCs, 27.2 percent use laptops or netbooks, followed by those using tablets (25.7 percent) while 6.1 percent use e-books, smart watches or other mobile devices*». The most interesting figure, however, is this, namely, «*More than half of Internet users aged 14 and older have purchased online (57.2%, or 20 million 403 thousand people); specifically, 36.1% have ordered or bought goods or services in the past 3 months, 12.1% during the year and 9.0% more than a year ago*». Considering that after December 2019, internet connections were the means for society to cope with everyday life in 2020, surely these percentages have increased. In comparison, the study conducted and published on March 17, 2023, ISTAT states that «*In 2022, 77.5 percent of the population aged 6 years and older used the Internet in the three months prior to the interview, and 65.1 percent connect daily. Internet use has reached near saturation levels for much of the population. More than 90 percent of people aged 11-54 have connected to the Net in the past three months, while it drops to 57.2 percent among people aged 65-74 and reaches 20.9 percent among people aged 75 and older. Between 2020 and 2022, Net usage increases by 7 percentage points. The greatest acceleration occurred between 2020 and 2021 (+4.4 percentage points) while in the last year the increase was smaller (+2.6 percentage points). This trend is justified by the end of the restriction period due to the pandemic, which, for example, results in a decrease of 2.7 percentage points for the 6-10 year old cohort, due in part to the reduction in the use of distance learning. In contrast, web use consolidates for the 15-19 year-old cohort. Significant increases continue to be recorded in all other age groups, particularly for the 60-64 year-old cohort where the largest increase is shown (+6.6 percentage points). The temporal analysis shows a clear trend toward a progressive narrowing of gender gaps even though the relationship with ICT still appears to be significantly different between the male and female population. In fact, in 2022, 80.4 percent of men aged 6 and older claim to access the Internet compared to 74.7 percent of women*». ISTITUTO NAZIONALE DI STATISTICA, *Cittadini e ICT, anno 2022*, is available at www.istat.it/it/files//2023/03/REPORT_CITTADINIEICT_2022.pdf

significantly.[12]

Certainly, the survey conducted by IPSOS Public Affairs for Save the Children[13] provides the right key as it clearly and linearly indicates why children are increasingly interconnected.



Figure 2: From this infographic it is possible to see that the percentages of minors having digital tools at their disposal are very high. In particular, it is possible to see that as early as 2013, 93% of minors owned a family computer, while 71% owned a smartphone and 79% owned a personal computer.[14]

[12] Istituto Nazionale di Statistica, *Cittadini e ICT, anno 2022*, is available at www.istat.it/it/files//2023/03/REPORT_CITTADINIEICT_2022.pdf

[13] SAVE THE CHILDREN, *Internet e minori: Save the Children, il bullismo - anche in rete - il pericolo maggiore per il 72% degli adolescenti e giovanissimi italiani*, www.savethechildren.it/press/internet-e-minori-save-children-il-bullismo-anche-rete-il-pericolo-maggiore-il-72-degli,

[14] The survey is published at the link: http://risorse.savethechildren.it/files/comunicazione/Report%20Indagine%20Safer%20Internet%202013%20ch.pptx

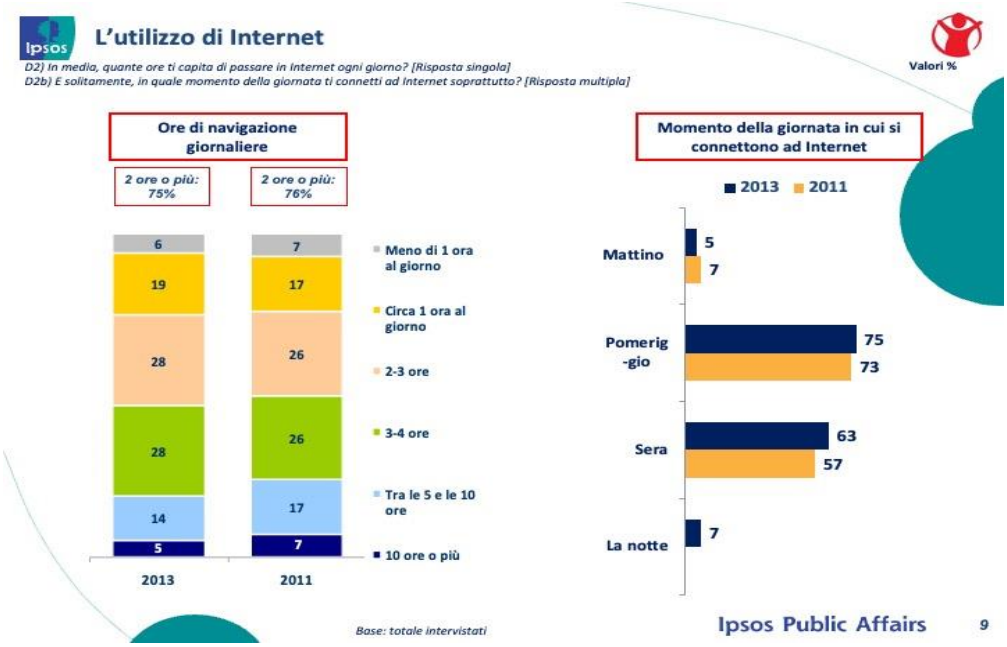


Figure 3: In the same 2013 study, the habits of minors are also analyzed, who much prefer the afternoon as the time of day to connect, so much so that they account for 75 percent of connections, and go from three to four hours on the Internet, this is the reference to 28 percent of minors.[15] Additional data are from the 2019 ISTAT survey[16] , to be compared with those from the 2022 study.[17] First, the percentage of households with broadband access is analyzed, and it is possible to find an increase in the percentages between the period 2018 - 2019 and 2020 - 2022.



FAMIGLIE, INDIVIDUI e ICT

Anni 2018 e 2019, valori per 100 famiglie e per 100 individui della stessa regione

		ABR	BAS	CAL	CAM	EMI	FVG	LAZ	LIG	LOM	MAR	MOL	PIE	PUG	SAR	SIC	TOS	TRE	UMB	VdA	VEN	ITA
Famiglie che dispongono di un accesso a banda larga	Anno 2018	71,4	68,4	64,3	69,7	77,9	74,1	75,8	73,1	78,0	75,2	63,8	72,8	69,1	77,3	64,8	76,6	79,0	72,8	72,8	76,4	**73,7**
	Anno 2019	75,2	67,5	66,9	72,2	77,3	77,2	79,2	74,0	77,4	75,6	66,7	71,4	68,4	75,6	67,9	76,4	79,4	76,5	75,9	79,2	**74,7**
Individui che hanno utilizzato Internet negli ultimi 3 mesi precedenti l'intervista	Anno 2018	63,4	61,5	57,8	58,5	71,2	71,0	68,4	69,2	71,9	67,2	58,5	67,6	60,6	67,7	58,0	70,1	72,5	64,0	67,4	68,9	**66,4**
	Anno 2019	66,1	61,1	60,1	62,0	72,6	71,8	70,9	68,0	71,3	67,8	61,5	68,7	59,7	65,2	64,6	71,1	73,2	66,4	67,4	70,4	**67,9**

Figure 4: It can be seen that the percentage of households with Internet access increased between 2018

[15] The survey is published at the link: http://risorse.savethechildren.it/files/comunicazione/Report%20Indagine%20Safer%20Internet%202013%20ch.pptx

[16] ISTITUTO NAZIONALE DI STATISTICA, *Cittadini e ICT, anno 2019*, is available at www.istat.it/it/files//2019/12/Cittadini-e-ICT-2019.pdf

[17] ISTITUTO NAZIONALE DI STATISTICA, *Cittadini e ICT, anno 2022*, is available at www.istat.it/it/files//2023/03/REPORT_CITTADINIEICT_2022.pdf

and 2019. Taking the Campania region as an example, it can be seen that in 2018, households with broadband access accounted for 69.7 percent; while in 2019, the percentage stands at 72.2 percent. Over the years, the percentage of individuals using the Internet tool in the three months prior to the study also increases. In fact, again taking the Campania region as a reference, in 2018 the percentage was around 58.5 percent and increases to 62 percent in 2019.[18]



FAMIGLIE E INDIVIDUI e ICT

Anni 2020 2021,2022, valori per 100 famiglie e per 100 individui della stessa regione.

		ABR	BAS	CAL	CAM	EMI	FVG	LAZ	LIG	LOM	MAR	MOL	PIE	PUG	SAR	SIC	TOS	TRE	UMB	VdA	VEN	ITA
Famiglie che dispongono di un accesso ad Internet	Anno 2020	77,1	69,2	67,7	77,9	84,1	82,4	84,4	78,3	82,6	78,8	71,4	77,0	72,2	79,2	71,4	80,0	84,3	76,3	78,0	80,7	**79,0**
	Anno 2021	79,0	75,0	73,9	81,1	84,5	81,0	85,5	83,1	84,1	80,6	76,3	80,0	75,9	83,1	74,7	83,5	83,8	80,6	82,5	82,8	**81,5**
	Anno 2022	82,3	77,5	73,6	82,0	83,8	84,7	84,6	82,9	86,1	84,2	80,5	83,3	78,2	81,6	80,2	84,3	88,9	82,7	79,4	83,8	**83,1**
Individui che hanno utilizzato Internet negli ultimi 3 mesi	Anno 2020	66,3	60,4	62,3	65,6	75,1	73,3	74,0	71,5	74,5	68,5	65,3	71,1	63,6	68,1	64,5	73,0	76,2	71,0	71,9	73,5	**70,5**
	Anno 2021	72,6	71,1	68,9	73,1	77,0	76,1	78,6	77,4	78,5	73,9	67,3	74,4	68,2	76,0	67,3	76,9	78,8	75,9	77,0	76,4	**74,9**
	Anno 2022	75,9	72,7	67,2	74,5	80,2	80,5	79,2	78,8	81,6	78,1	75,7	77,7	72,7	74,2	72,1	77,6	83,6	77,5	78,1	80,2	**77,5**

Figure 5: In the second study, from 2023, it is possible to see how the percentages have changed significantly. In fact, for example, regions such as Campania goes from 69.7 percent of households having an Internet box to 77.9 percent, in 2020, increasing to 82 percent in 2022. The data regarding usage in the last three months also increases significantly enough to bring the increase to 74.5 percent in 2022.[19]

Second, the study delves into the issue of access to digital platforms based on a breakdown by age group, and from this data, it also analyzes the modes and services in use by those under the age of eighteen.

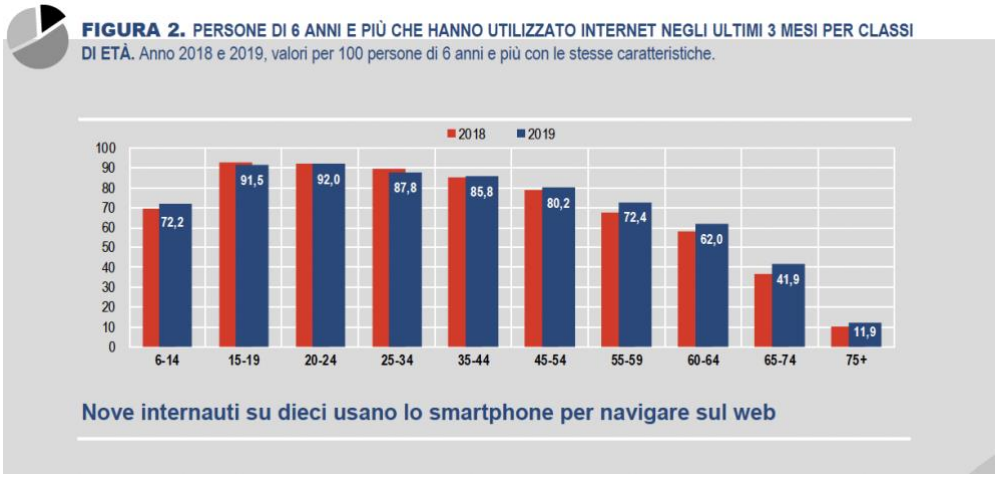


Figure 6: The graph shows the figure regarding people aged six and older who have used the Internet

[18] ISTITUTO NAZIONALE DI STATISTICA, *Cittadini e ICT, anno 2019,* is available at the link www.istat.it/it/files//2019/12/Cittadini-e-ICT-2019.pdf

[19] Istituto Nazionale di Statistica, *Cittadini e ICT, anno 2022*, is available at www.istat.it/it/files//2023/03/REPORT_CITTADINIEICT_2022.pdf

in the past three months broken down by age group. It can be seen that precisely with regard to the 6 - 14 age group, the percentage in 2019 increases by about 2 percent compared to the previous year. On the other hand, the situation in which those in the 15 - 19 age group fall is peculiar; in fact, the percentage in 2018 would seem to be around 92% and is declining in 2019 as it drops them by 0.5%.[20]

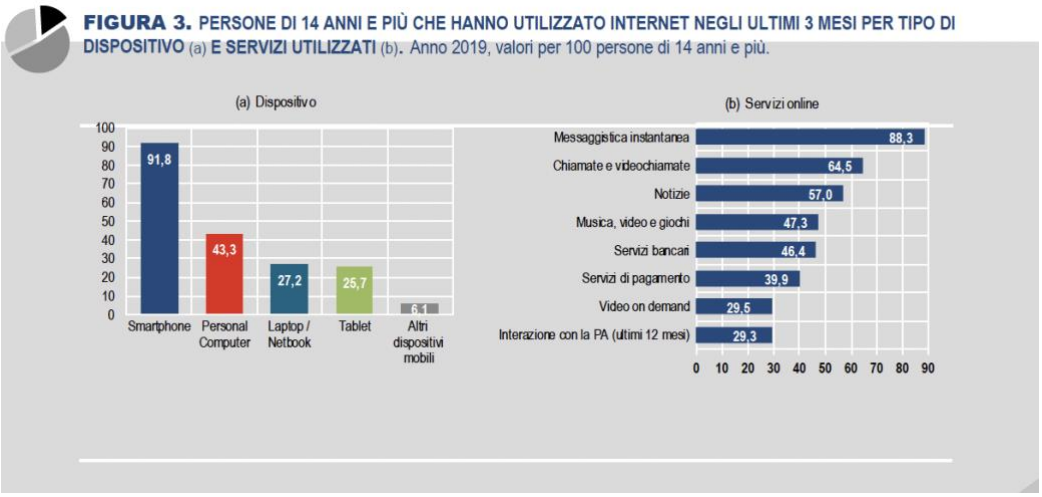


Figure 7: The graph covers people aged 14 who used the Internet in the last three months prior to the research by type of device and service used, according to the 2019 study. Thus, it can be seen that minors use about 92% their smartphones to access media content and only about 43% use their computers. Even lower percentages if we think about tools such as tablets. In fact, for the latter the percentage stands at 25.7 percent. It is possible to note that the main online service used is for instant messaging, which stands at around 88.3%, comes to calls and video calls at 64.5%. The most interesting figure is definitely the access to multimedia content such as music, videos and games which together with payment services reach the percentages of 47.3% and 39.9% respectively.[21]

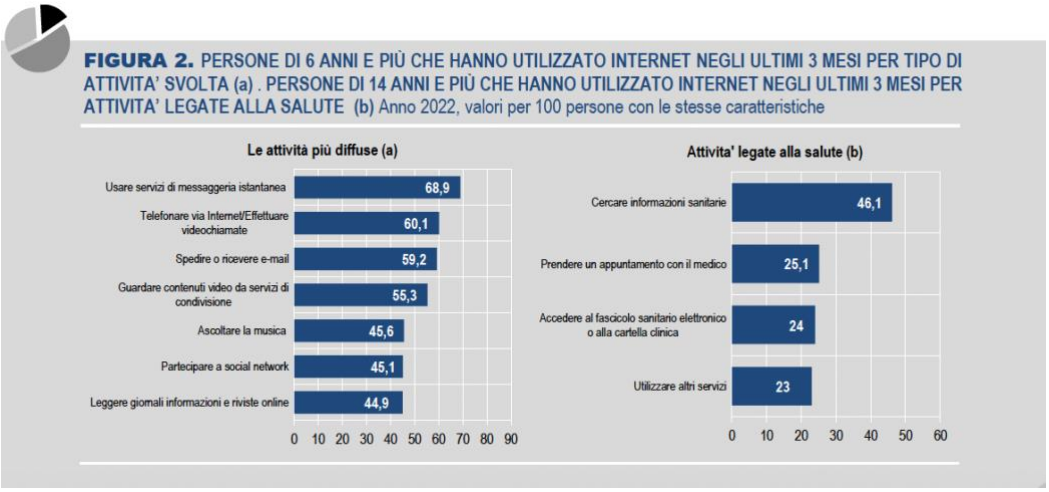


Figure 8: In the 2023 study we find more or less the same percentages regarding the most popular

[20] ISTITUTO NAZIONALE DI STATISTICA, *Cittadini e ICT, anno 2019,* is available at the link www.istat.it/it/files//2019/12/Cittadini-e-ICT-2019.pdf

[21] ISTITUTO NAZIONALE DI STATISTICA, *Cittadini e ICT, anno 2019,* is available at the link www.istat.it/it/files//2019/12/Cittadini-e-ICT-2019.pdf

activities among Internet users. What can certainly be highlighted, however, is that health-related activities, abetted by the Covid-19 pandemic, have increased significantly. In fact, seeking health information appears to be the preeminent activity among those who have used the Internet. Also new is the activity of making an appointment with a doctor or accessing the electronic health record.[22]

This has led institutions to wonder about, therefore, more protection, full and effective, to ensure the well-being[23] of young people in the digital world[24], a context in which they are fully immersed and in which they can both develop their personalities and could be involved in problematic situations[25] that can affect what is defined as the *empowerment of* the child.[26]

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[22] Istituto Nazionale di Statistica, *Cittadini e ICT, anno 2022*, is available at www.istat.it/it/files//2023/03/REPORT_CITTADINIEICT_2022.pdf

[23] It is precisely this aspect that falls under what is Article 24 of the Charter of Fundamental Rights of the European Union. In European Commission, *EU acquis and policy documents on the rights of the child*, 2020, «*Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration*».

[24] A. FERRERO, *Ambiente digitale e tutela dei minori online: la strategia europea y*, in *Familia*, Pacini Giuridica, 2020 whereby «*The European Commission responding to the parliamentary question E-005402/2020 recently reiterated that 'the well-being of children online is one of the Commission's priorities since the Internet has become widely available to them as well and is pursued through funding coordination with Member States and a legislative framework adapted to the digital age*».

[25] SAVE THE CHILDREN, *Internet e minori: Save the Children, il bullismo - anche in rete - il pericolo maggiore per il 72% degli adolescenti e giovanissimi italiani*, www.savethechildren.it/press/internet-e-minori-save-children-il-bullismo-anche-rete-il-pericolo-maggiore-il-72-degli, so, according to a survey conducted by IPSOS for Save the Children, for an analysis of what are the habits of Internet use by teens and «*on the increasingly frequent inclination among pre-teens , but even more so among teens, to experience through the use of new technologies an aggressive, disparaging, discriminatory and unfortunately often violent sociality*», it emerged that «*Several are the ways that teens recount that they can enact online once they identify the victim: e-mails, profiles, or private messages are stolen and then made public (48%), aggressive and threatening text messages/mms/e-mails are sent (52%, this is done especially by preteen females, whose percentage reaches 61%), "against" groups are purposely created on a social network to target someone (57%), or denigrating or intimate photos and images are spread without the victim's consent (59%, with peaks of 68% in the Northeast), or fake news about the person concerned via sms/mms/email (58%). The preferred mode of attack by young cyberbullies is persecution of the victim through his or her profile on a social network (61%)*». The survey is published at the link: http://risorse.savethechildren.it/files/comunicazione/Report%20Indagine%20Safer%20Internet%202013%20ch.pptx

[26] In this regard, see the Internet and Minors Self-Regulatory Code, November 19, 2003, in the presence of Minister of Communications Maurizio Gasparri and Minister of Innovation and Technology Lucio Stanca, signed by AIIP, ANFoV, Assoprovider and Federcomin. CODACONS, *Presented the Self-Regulatory Code "Internet and Minors,"* www.codacons.it/presentato-il-codice-di-autoregolamentazione-internet-e-minori/, reports that the code aims to «*protect against age-inappropriate content, such as pornography and violence. The protocol, the application of which will be supervised by a guarantee committee, on the one hand commits providers to make it safer for minors to surf the net, and on the other hand contributes to the fight against crimes such as online child pornography: in fact, providers commit themselves to guarding the information necessary to identify the authors of illicit content in order to collaborate, albeit with respect for privacy, with law enforcement agencies*». In particular, reference is made to lett. d, f of the preamble whereby «*Whereas: [...] d) the child is a citizen subject of rights and must be protected from illicit or harmful content that may harm his or her psychological and moral integrity; [...] f) it appears necessary to provide for the generalized protection of the child in the context of the safe use of information society technologies and electronic communications*».



Figure 9: again referring to the study carried out by IPSOS for Save the Children, it can be seen that problematic phenomena have been perceived by minors more and more. Phenomena such as bullying or harassment via cell phone or e-mail or through the Internet appear to have higher percentages in 2013 than in 2011. They are respectively 72 percent in 2013 versus 59 percent in 2011 for bullying and 44 percent in 2013 for harassment, compared to 32 percent in 2011.[27]

The doctrine, over the years, has tried to resolve some of the problems dictated by the evolution of the case, and the apparatus that has emerged is marked by many points of contact, but just as many contradictions.[28]

In the European context, a number of measures have been envisaged for families[29] of so-called digital natives.[30]

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[27] The survey is published at the link: http://risorse.savethechildren.it/files/comunicazione/Report%20Indagine%20Safer%20Internet%202013%20ch.pptx

[28] In this I feel G. ALPA, *Fonti, teorie, metodi, I,* in *Trattato di Diritto Civile*, CICU, MESSINEO (eds.), Giuffrè, Milan, 2014, pp. 732 ff., «*The distance of the world of law from everyday reality thus ends up becoming more and more accentuated and systems try to adapt in the most appropriate way to the need. The emerging rules sometimes converge toward points of contact, other times they diverge from each other giving rise to contrasts. And the problems arising appear in all their complexity, a complexity reinforced by certain primary needs: 1) the need to reconcile legal rules with the facts of real life; ii) the need to ensure certainty in commercial relationships; i) the need to prefigure harmonized rules in transnational relationships and concluded at a distance*».

[29] An example to refer to is Decision No. 1351/2008/EC of the European Parliament and of the Council, Dec. 16, 2008, *on a multi-year Community program on protecting children using the Internet and other communication technologies,* which *ex* art 1 «*establishes a Community program to promote safer use of the Internet and other communication technologies, particularly for the benefit of children, and to fight against illegal content and harmful conduct online. The program is entitled 'Safer Internet'*».

[30] For the definition of digital native, please refer to Encyclopedia Treccani Online, *Digital Native*, www.treccani.it/vocabolario/nativo-digitale%28Neologismi%29/, whereby digital native is defined as «*one who is accustomed from a young or very young age to using digital technologies, having been born in the network and Internet age*»

The latter, according to the definition coined in the early 2000s[31] , are the most vulnerable individuals because they are "less aware than adults of the risks associated with the use of new technologies".[32]

In the current national legislation, the Consumer Code also inevitably deals with minors, although it only provides a regulation regarding what are the areas of advertising

[31] The definition "digital natives" was born in the 2000s following the publication of M. PRENSKY's study, Digital *Natives, Digital Immigrants*, in *On the Horizon*, MCB University Press, 2001, who in reference to his students states that «*It is amazing to me how in all the hoopla and debate these days about the decline of education in the US we ignore the most fundamental of its causes. Our students have changed radically. Today "s students are no longer the people our educational system was designed to teach. Today "s students have not just changed incrementally from those of the past, nor simply changed their slang, clothes, body adornments, or styles, as has happened between generations previously. A really big discontinuity has taken place. One might even call it a "singularity"-an event which changes things so fundamentally that there is absolutely no going back. This so-called "singularity" is the arrival and rapid dissemination of digital technology in the last decades of the 20th century. Today "s students - K through college - represent the first generations to grow up with this new technology. They have spent their entire lives surrounded by and using computers, videogames, digital music players, video cams, cell phones, and all the other toys and tools of the digital age. Today "s average college grads have spent less than 5,000 hours of their lives reading, but over 10,000 hours playing video games (not to mention 20,000 hours watching TV). Computer games, email, the Internet, cell phones and instant messaging are integral parts of their lives. It is now clear that as a result of this ubiquitous environment and the sheer volume of their interaction with it, today "s students think and process information fundamentally differently from their predecessors. These differences go far further and deeper than most educators suspect or realize. "Different kinds of experiences lead to different brain structures, " says Dr. Bruce D. Perry of Baylor College of Medicine. As we shall see in the next installment, it is very likely that our students' brains have physically changed -- and are different from ours -- as a result of how they grew up. But whether or not this is literally true, we can say with certainty that their thinking patterns have changed. I will get to how they have changed in a minute. What should we call these "new" students of today? Some refer to them as the N-[for Net]-gen or D-[for digital]-gen. But the most useful designation I have found for them is Digital Natives. Our students today are all "native speakers" of the digital language of computers, video games and the Internet».*

[32] On this point, see I. GARACI, *Il "superiore interesse del minore" nel quadro di uno sviluppo sostenibile dell´ ambiente digitale*, in *Le Nuove Leggi Civili Commentate*, CEDAM, 2021, for whom «*minors of age , although considered technologically savvy, see in the digital environment their condition of vulnerability accentuated, as they are less aware (or heedless), compared to adults, of the risks connected to the use of new technologies, as well as of the norms provided for the protection of their rights. Confirming this fragility, there is, moreover, a growing consideration of the interest of the child in the digital context by domestic and European legislators, as well as in the field of soft law. Moreover, in the Internet, the minor (consciously or unconsciously) has become an earlier consumer than in the analog world, but remains a particularly vulnerable consumer, who, therefore, receives specific attention even within consumer legislation, now from the point of view of the safety and development of his or her personality, now from the point of view of the ability to self-determine in economic choices*». The author, moreover, makes a distinction for the infra-fourteen-year-old user who would seem to have greater capacity but is «*at the same time fragile, for the realization of whose (superior) interest the current instruments of private law do not seem sufficiently adequate: in fact, the instrument of consent (to the processing of personal data) does not prove suitable, both because of the technical difficulty of ascertaining the age of users, and because it does not in fact guarantee full informational self-determination; nor does the current remedial paradigm focused essentially on the repair of damage. Faced, moreover, with the widespread contractual activity, in both the digital and traditional worlds, enacted by individuals under 18 years of age, it appears, with reference to individuals capable of understanding, that the category of legal incapacity to act is increasingly anachronistic and inconsistent*».

and teleshopping[33], *ex* art. 31.[34] However, it is silent with regard to contracting.

2. The dichotomy between general incapacity to contract and the contract concluded by the minor.

It is well known that the attribution of capacity to act, in the Italian legal system, takes place upon reaching the age of 18 and the fact that this parameter is completely arbitrary and not dictated by certain scientific rules, so much so that it changes according to the different systems.

Although this happens, it is clear that cases are provided in which a kind of anticipated capacity is recognized with regard to the exercise of personality rights.

However, this is not the case with reference to the codictic regulation of contracts. In fact, this appears to be dictated by a paternalistic view, and for that reason, protective, so much so as to prevent the minor from performing acts legally without the prior consent of the parent or guardian.[35]

In fact, the Civil Code deals with the hypothesis of a "minor-contractor" only in a negative sense, while the positive profile deals with placing a protection against the adult who contracts in place of or for the benefit of the minor.

In addition, the contract concluded by the minor is to be placed under the general discipline of contract and not a separate normative category.[36]

This then leads to define Article 2 c.c. as the basic rule for defining the validity or otherwise of the act performed by the minor. On closer inspection, therefore, the discipline does not go beyond Articles 2, 1425, 1426 and 1441 ff. c.c.[37]

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[33] In the European context, recall Council Directive 89/552/EEC of October 3, 1989, on the *coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activitiesì.* In fact, this in Art. 16 states that «*television advertising must not cause moral or physical harm to minors and must therefore comply with the following criteria for their protection: (a) not to directly exhort minors to purchase a product or service by exploiting their inexperience or credulity; (b) not to directly exhort minors to persuade parents or other persons to purchase such products or services; (c) not to exploit the special trust that minors place in parents, teachers or other persons; and (d) not to show, without reason, minors in dangerous situations*».

[34] Art. 31 of the Cons. Code establishes protection for minors by stating that «*Teleshopping shall not exhort minors to enter into contracts for the purchase or rental of products and services. Teleshopping shall not cause moral or physical harm to minors and shall comply with the following criteria for their protection: a) not to exhort minors to purchase a product or service by exploiting their inexperience or credulity; b) not to exhort minors to persuade parents or others to purchase such products or services; c) not to exploit the special trust that minors place in parents, teachers or others; d) not to show minors in dangerous situations*».

[35] On this point, see G. ALPA, *I contratti del minore. Appunti di diritto comparato, in Contratti (I)*, IPSOA, 2004, for whom «*in the world of private law, if we make an exception for emancipation, marriage, abortion and labor, civil codes-with the sole exception of the B.G.B. - special laws and jurisprudential rules, beyond statements of principle, do not fully address the subject of the minor's bargaining contacts and contracts, from time to time entrusting the interpreter with the application of the rules concerning in general consent, the administration of assets, and remedies so that they are adapted to the cases in which a party is connoted by the particular status that is accorded to (or in which the) minor is incapsulated. In other words, the focus is shifted from the minor-contractor to the adult who contracts in place of or for the benefit of the minor*».

[36] G. ALPA, *Fonti, teorie, metodi, I*, in *Trattato di Diritto Civile*, pp. 731 ff.

[37] Of this opinion, M. CINQUE, *Il minore contraente, contesti e limiti della capacità*, who states that «*the norms of the Civil Code that specifically deal with the hypothesis of a contracting minor show a discipline*

Hinting at the issue discussed in §1, it could thus be indirectly stated that the child becomes a consumer within the limits of what the choices of the parent or the one exercising parental responsibility are.

In fact, if the act was performed without the representation of the parent or guardian, it is voidable[38] *under* Articles 2 and 1425 of the Civil Code[39].

This therefore implies that there is no total preclusion for the minor to perform legal acts, which, however, may cease to take effect if an action for annulment is brought.

According to the normative dictate *under* Article 1425 of the Civil Code, an action for annulment can be brought by the minor himself, his heirs or parents exercising parental responsibility.

However, it must be considered that there is a part of the doctrine strongly leaning toward considering the contract made by the minor "radically void or non-existent contract".[40]

In the contractual sphere, therefore, two needs are contrasted: on the one hand, the interest in protecting the minor who does not appear to have that experience which would enable him or her to have a clear definition of the value of goods or services-and which might make him or her more prone to conditioning from the outside world-or, in any case, of the effects arising from the obligations assumed; on the other hand, the interest of the contractor with capacity who trusts in the proper execution of the contract.[41]

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that is very little articulated and according to different readings and strongly protective or paternalistic. The case, in fact is seen only in a negative sense, providing for the sanction to which any contracts entered into by a minor directly are subject; on the positive side, on the other hand, the attention of the 1942 legislature is entirely shifted from the contracting minor to the adult who contracts the minor's place or in his favor [...] it was traditionally held that Art. 2 c.c. - given the wording in absolutely general terms to the beautiful placement at the opening of the code - contained the rule on the subject of capacity to act, common to both the patrimonial and personal spheres: absolute incapacity to perform legal acts until reaching the age of majority [...] the codictic discipline of contracts concluded by the minor is therefore substantially exhausted in the combination of article two with the rules on the subject of the annulability of the contract due to the legal incapacity of one of the two contracting parties (articles 1425 f. and 1441 ff. c.c.). Any contract concluded directly to the unemancipated minor [...] for the code is in fact voidable without distinction».

[38] Prior to the 1942 code, the penalty provided for a contract put in place by the minor was nullity. In fact, the Civil Code of 1865, in Art. 227, placed in Title VIII with reference to parental authority, stated that «*the nullity of acts done in contravention of the preceding articles can only be opposed by the father or by the son and his heirs or successors in title*," and in Art. 322, placed in Title IX with reference to majority, interdiction and 'emancipation, reported that "*the nullity of acts done in contravention of the provisions of this title concerning the interest of the minor cannot be opposed except by the guardian, the minor and his heirs or assigns*».

[39] Article 1425 of the Civil Code, placed in Book IV, Title II, Chapter XII, Section I, headed "Incapacity of the Parties," states that «*the contract is voidable if one of the parties was legally incapable of contracting. A contract entered into by a person who is incapacitated is likewise voidable when the conditions set forth in Article 428 are met*».

[40] In. G. CAPILLI, *La capacità negoziale dei minori. Analisi comparata e prospettive di riforma,* p. 44, the author cites authoritative doctrine on the point. In fact, the following appear to be inclined to this definition of the contract entered into by the minor: V. PIETROBON, *Gli atti e i contratti dell'incapace naturale*, in *Contr. e impresa*, 1987, p. 767; V. ROPPO, *Il contratto*, nel *Trattato di diritto privato*, edited by Ludica-Zatti, Giuffrè, 2011, p. 777.

[41] On the interests to be protected, see the article by a G. ALPA, *I contratti del minore. Appunti di diritto comparato*, pp. 518 - 519, in which it is stated that «*the interest of the minor - today a basic principle of the regulation of personal relationships established within the family - is also dominant in the regulation of property relationships. Although a full capacity for negotiation is not normally recognized in the minor's head, nevertheless the acts performed by the minor are in most systems affected by an invalidity which,*

In addition, part of the doctrine points out that prohibiting the possibility of adolescents being able to conclude contracts would be a fruitless choice since this would risk delaying their empowerment process even longer.[42] Reason why some authors even go so far as to say that no benefit can be found from this "ineffectiveness *tout* court".[43]

3. The "cunning" minor: deceptions under Article 1426 of the Civil Code.

One of the peculiar aspects of the contract regulations regarding contracts entered into by minors is certainly the provision *under* Article 1426 of the Civil Code, in fact, this states a singular rule.

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under certain conditions, tends to preserve advantageous purchases. The intertwining of status rules and rules on freedom (and awareness) of consent cannot but affect the negotiation bond. This intent, so to speak, to protect, indirectly also protects the interests of the parents, and in any case of the parties who administer the child's property or who assume responsibility for it, its upbringing, and its maintenance. It is understandable that the aim is pursued to protect those who lack experience, discernment, and thoughtful evaluation of the quality and price of goods and services; it is understandable to protect those accountable for the child's acts from unwanted and unwanted debt exposure. But this aspect, which emerges where protection wanes when the minor appears so cunning as to employ deception to conceal his or her minority, deserves revisiting nowadays. In fact, with the interest of the minor other interests, also deserving of protection, albeit of a lower rank, collide: the interest in the circulation of goods and services - the whole market dedicated to the minor, considered in and of itself, and the whole market in which the minor is considered as a miniature adult - and the interest in business stability and the protection of custody. Also from the educational point of view, it is pointed out that it is desirable to grant the child a relative space of freedom and self-determination, in the different stages of his childhood and adolescence: in the course of childhood, the allocation of a peculary is suggested, so that he is taught savings, and given suggestions and guidance for purchases, in anticipation of his maturity; and in the course of adolescence, when the fateful moment of majority is approaching, that is, the age at which the minor acquires by law maturity and awareness, capacity for discernment and administration of his own assets, the temporal discrimen reveals all its (albeit necessary) artificiality».

[42] H. KÖTZ, S. PATTI, *Diritto europeo dei contratti*, Giuffrè, Milan, 2006, pp. 183 ff.

[43] On this point, reference is made to a passage in ANDREOLA, *Il regime degli acquisti on line del minore quale consumatore "debole".* In addition, G. ALPA, *I contratti del minore. Appunti di diritto comparato,* p. 526, states that in reference to the minor's incapacity to negotiate rules are provided, so he reports hypotheses to obviate the problem of a hypothetical annulment, in fact, «*In the jusformalist perspective, an attempt has been made to obviate this rigidity by proposing to circumscribe annulment only to acts having patrimonial content, thus not correlated with the consent possibly expressed for health interventions, with the exercise of fundamental rights (such as the right of association), with the expression of participation in the life of relationships. It was proposed that acts of simple administration be excluded from the application of the sanction. And, taking into account the fact that the law considers contracts concluded in a state of natural capacity to be valid, it was proposed to disapply the rules on incapacity to act to "minute acts of daily life." According to another thesis, which does not consider this theory to be well-founded, it has been proposed that contracts concluded by the minor should be considered valid as if they had been concluded by his legal representative: the minor capable of acting would be acting in the name and on behalf of the legal representative; a construction that is facilitated by the rule that the spending of the name can be tacit or presumed. However, it is necessary to resort to artifice, and any solution may appear reductive: making distinctions that are based on fundamental rights would end up greatly circumscribing the minor's freedom of negotiation; resorting to representation would impute to the parents contracts that they would not only never have concluded but would even have disapproved. In the realistic perspective, it is easy to see how minors every day enter into exchange contracts that are not invalidated. In the facts of real life, the minor chooses, contracts, and concludes many bargaining relationships that, since they are not invalidated or can no longer be invalidated for reasons of statute of limitations, produce effects. Hence, then, the alternative of whether to continue as if nothing had happened, or to initiate a discussion on whether the discipline should be changed».*

A contract entered by a minor who conceals his or her age is not voidable, this is because the fraudulent conduct put in place negates the need for the protections placed in reference to minors. By merely having operated and carried out the contract through deception, it is assumed that the minor has attained a higher mental development than his or her registry age, and for that reason he or she cannot enforce his or her *status.*[44]

What is expressed falls under the principle *malitia supplet aetatem*.

However, in order for the discipline to operate and be applicable, case law and part of the doctrine agree on the fact that deception does not fall within the mere declaration of being of age. This is also confirmed by the rule itself[45] which, through its application, places a protection against the capable contractor.[46]

It is precisely the protection of the latter that has been the subject of profound and careful study in recent years, since the annulment of the contract is a not insignificant risk in which the individual or entrepreneur who decides to contract with the minor could incur.[47]

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[44] Court of Cassation, Section 2, Civil, Judgment July 4, 2012 No. 11191 states «*Article 1426 of the Civil Code, establishes that a contract concluded by a minor who by deception has concealed his or her age is not voidable. This provision, establishing the derogation to the annulability due to legal incapacity exclusively with reference to the minor who has fraudulently concealed his age, is a rule of exceptional character and is therefore of strict application, so that it cannot be extended to other hypotheses not provided by the rule; on the other hand, the condition of the minor is certainly not comparable to that of the interdict or incapacitated, since the minor may be naturally capable of understanding to will so much so that 'it is true that Article 98 cod. pen. subordinates the imputability of the minor who has reached the age of fourteen years to the verification of this condition. Moreover, the malicious concealment of the state of incapacity on the part of the interdict or incapacitated appears difficult to reconcile with the state in which they find themselves, given that such conduct postulates the lucid representation of their state and the conscious will directed to disguise it, behaviors that, on the one hand, appear at odds with the incapacity from which the aforementioned are affected and which, on the other hand, are fully configurable in the minor who, due to his precocity, demonstrates a particular malice».*

[45] In E. ANDREOLA, *Il regime degli acquisti on line del minore quale consumatore "debole"*, p. 694, «the *doctrine and case law, however, have clarified that, in order for the exception to the annulability regime to operate, deception consisting of a real and efficient activity or conduct and not a mere declaration of being of age is required. In other words, it is not enough for the minor to keep silent about his or her age, but it is required, for example, that he or she alter his or her identity document, or give a variety of information to mislead the other party about his or her status».*

[46] In. G. CAPILLI, *La capacità negoziale dei minori. Analisi comparata e prospettive di riforma*, p. 47.

[47] F. ROSSI, *Contratti del minore e responsabilità per i danni prodotti alla controparte*, in *Familia*, Pacini Giuridica, 2021, p. 11, states that «*In this matter emerges the contrast between instances of protection of the subject considered weak because he is not yet in possession of the mental faculties suitable for him to understand the meaning and effects of the settlement of interests put in place, and the interest of the capable contractor, who trusts in the validity of the commitment. It is necessary to determine, therefore, between the interests of the incapacitated person and those of the market which should be considered preeminent, or whether a balance between them can be configured. That the community may consider the contracts of minors to be effective, because their participation in the commercial traffic nurtures the adolescents' sense of responsibility within society, and because the speedy circulation of goods must be ensured, does not mean that the interpreter can free himself from the codictic rules, which establish the invalidity of the aforementioned contracts, regardless of the existence of harm to the incapacitated person, and of the knowledge or cognizability of the state of minor age on the part of the other contracting party. An exception to this rule occurs when the minor by deception has deceived the other party about his or her age, and requires the interpreter, on the one hand, to determine the precise meaning of the term "deception" in Article 1426 of the Civil Code, and, on the other hand, to solve the evidentiary problems that arise when telematic contracts are concluded, in which it is often not easy to identify who - capable of acting or under age - has perfected the contract. Indeed, it seems logical to consider that the balancing of the different interests of the incapacitated person and the market has been carried out by the legislator by establishing*

To avoid this injury, the same Supreme Court has ruled that in cases where the minor causes injury to the able-bodied contractor, it is the parents who are liable for the damage produced, as it refers to the principle of *culpa in educando.*[48]

In the era of *point-and-click* contracts, which will be discussed later, we need to understand what constitutes the possibility of not incurring the deception *ex* 1426 Civil Code.

In fact, part of the doctrine agrees that *e-commerce* sites lack a requirement at the time of the stipulation to specify the age of the contracting party, so the conduct of the minor does not constitute a statement about the age of majority, so it will certainly be voidable.[49]

In contracts made by the minor *online,* an effective system of recognition is lacking, so the problem arises of identifying the party to whom the manifestation of contractual will is attributable.

Taking into account also the fact that generally this type of contracts do not require the so-called digital signature[50] , and we find ourselves in two hypotheses that are, first, that

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the nullity of contracts of the incapacitated person, thus also of the minor, and not their nullity. The noted protection arranged for the benefit of the minor is justified on the basis of the needs the legislature intended to meet. Nor could it be argued to the contrary that the able-bodied contractor lacks the means to come to the knowledge of the other's minor and, according to some of the literature, to assert the damages suffered from the annulment of the contract. Granted that the able-bodied contracting party could ask the minor to produce an identification document-although this seems unlikely, if not unrealistic, in light of the celerity that connotes daily exchanges-or, in the event that the minor himself is acting in the name and on behalf of the legal representative, to justify his powers, the doctrine does not fail to note that the former can ascertain the other party's legal incapacity, if any, by inspection of the civil status records».

[48] Court of Cassation, Section 3, Civil, Judgment February 19, 2014 No. 3964 regarding parental responsibility and states *«As a matter of principle, it is recalled that the responsibility of parents for the wrongful acts committed by the minor cohabiting with them, provided for in Article 2048 of the Civil Code, is related to the mandatory duties placed on them in Article 147 of the Civil Code and the consequent need for constant educational work, aimed at correcting incorrect behavior and achieving a balanced personality, aware of the relationality of their existence and the protection of their own and others' persons from any consciously wrongful occurrence. To escape this responsibility, they must therefore prove that they have imparted to the child an education normally sufficient to set up a correct relational life in relation to his environment, habits and personality, assuming no importance, for this purpose, proof of circumstances (such as the age now attained by the child and the work experience he or she may have had) suitable to exclude the obligation to supervise the child, since this obligation may coexist with the educational one, but it may also not exist, and in any case it becomes relevant only once the existence of culpa in educando has been found, on the basis of the wrongful act determined».*

[49] On this point E. GROSSI, *La tutela minore nel commercio elettronico e nella rete Internet,* in *Liuc Papers, Impresa e Istituzioni Series*, December 2003, summarizes as follows «*On this basis, the online purchase having as its object goods that are not of modest value or in any case different from those necessary to daily life, for example that of a hi-tech device by the 14-year-old or an expensive item of clothing by the 16-year-old, must be reconstructed in relation to the specific factual circumstances with the following corollaries of discipline: 1) the minor fills out the form indicating the real date of birth and cash on delivery payment: the contract is voidable. If he or she does not fill out any form but merely answers in the affirmative to the seller's question about age, the contract is likewise invalid (art. 1426, second part, Civil Code). 2) the minor indicates a false date of birth in the form to appear to be of age (or sends an altered ID), indicating a mode of payment other than credit card: the contract is valid (art. 1426, first part, Civil Code). 3) the minor is silent about his age because the e-commerce site requires no registration: the contract is voidable. If he uses the parent's credit card, without prejudice to the invalidity of the negotiation act, it is necessary to distinguish whether the use of the means of payment was previously authorized (and therefore the cardholder has an interest in validation) or whether the credit card was used without the parent's consent».*

[50] Decreto Del Presidente Della Repubblica 28 December 2000, n. 445, *Testo unico delle disposizioni legislative e regolamentari in materia di documentazione amministrativa. (Text A)*, defines *ex* art. 1, letter

in which the minor performs acts by substituting himself for another person (not voidable because it falls under the discipline *ex* 1426 c.c.); second, that in which the minor uses his own data to conclude that contracting (definitely voidable).

Furthermore, in the event that the minor comes into possession of the keys for the use of an adult's digital signature and uses it to conclude the contract, this will lead to the case being framed under Article 1426 of the Civil Code[51].

4. The contract in the age of e-commerce.

The protection posed *under* Article 1426 of the Civil Code turns out to be especially applicable in reference to what are direct contracts or otherwise include a physical exchange of the object of the contract.

Referring instead to new technologies and the increasingly frequent occurrence of cases, minors, to date, purchase tangible -and intangible- goods through *e-commerce* through *computers* or *smartphones*. To date, the rates of use of digital tools are the subject of numerous social studies[52] precisely because of the importance of the phenomenon, so much so that we can define a list of what are the most interesting sites in the eyes of

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n, what is meant by a digital signature, i.e., «*a particular type of qualified electronic signature based on a system of asymmetrical key pairs, one public and one private, which enables the holder by means of the private key and the recipient by means of the public key, respectively, to make manifest and verify the provenance and integrity of a computer document or set of computer documents*».

[51] In E. GROSSI, *La tutela minore nel commercio elettronico e nella rete Internet*, p. 14, «*Thus, beyond doubt that telematic tools allow minors to conceal their age even without using 'deception,' it is equally possible for them to use credit card numbers to enter into online contracts without the counterparty having the possibility of recognizing the contracting party. Quid iuris in such cases? Granted that minors must be protected and that their welfare is, first and foremost, the responsibility of their parents, one cannot overlook the good faith of the other contracting party who, through no fault of his own, has relied on what he has received online. Thus, the 'wilful' use of a credit card by a minor must be framed in the case provided for by Article 1426 of the Civil Code, with the consequent impossibility for the minor's representative to request the annulment of the contract. Moreover, as far as the parent's liability on the minor is concerned, the latter is released "only if he proves that he could not have prevented the fact" (Article 2048, last paragraph, Civil Code). A similar argument applies to the case where the minor uses an adult's digital signature to conclude a contract. A 'diabolical' test is envisaged in this case in the hands of the holder of the 'key' for the digital signature. The latter, in fact, will not only have to provide 'negative' proof that he did not use the key of which he is the owner, but will also have to confront the presumption of good faith of the contracting party (Art. 1147 Civil Code), who could not have known the discrepancy between the owner and the user of the signature, the identification of the subject carried out by the digital device being valid as sufficient guarantee (Art. 10 Presidential Decree No. 513 of 1997)*».

[52] In E. GROSSI, *La tutela minore nel commercio elettronico e nella rete Internet*, p. 2, it is stated «*A study commissioned by the Department of Innovation and Technology to Nielsen/NetRatings5 shows that, out of a sample of 4,800 minors between the ages of 2 and 13 from Italy, France, Germany and the United Kingdom, in the period January-March 2002, 'baby surfers' in our country are 35% of kids, a percentage higher only than France (25%), compared to 54% and 55% of German and British peers. The research found that as many as 41% of the very young 'surf' from home and that 70% of the youngest 'surf' at a speed of 56k, while 12% do so at a higher speed. It turns out that schools play a primary role in the spread of the net, considering that it has reached 60 percent of middle schoolers. In fact, 12-year-olds surf for three times as long as 7-year-olds and visit up to 47 different sites compared to 10 for younger children. A reading of this data reveals that almost all of those children try to interact with the Web pages they visit, most of them achieve their intended purpose, and only a few remain passive users in cyberspace; while for the very young, who without difficulty access the Net, it can be assumed that they 'surf' precisely with the intent to browse among the most tempting sites-but often the most dangerous for those who, with naiveté and credulity, adhere with total willingness to what they find online*»

children, such as *Amazon, iTunes, Google Play Store*, etc.

With regard to the payment of goods or services, the issue is extremely delicate, as there may be permutations, the use of digital *wallets*[53] , or one's own payment cards. In our days, in fact, the minor may be the holder of payment instruments such as so-called prepaid cards.[54].

Electronic commerce is defined as "any type of transaction tending to sell or buy a product or service, in which actors interact electronically rather than by physical exchange and direct contact".[55]

[53] M. CINQUE, *Il minore contraente, contesti e limiti della capacità*, p. 203, «*Another danger associated with minors' Web surfing is related to the possibility that they enter into contracts -maybe using a parent's credit card for payment- facilitated by the personalization of the contracting arrangements.*" In addition, he adds in footnote 447, "*Less risky from an economic point of view, but perhaps equally "devious," is the contractual activity of minors on websites dedicated to them. EUROPEAN RESEARCH INTO CONSUMER AFFAIRS (ERICA), Commercial practices targeting children on the Internet, cit., p. 3, speaks of this phenomenon, probably not yet widespread in Italy. It is reported that sites intending to sell directly to minors are already very common on the Internet; in these cases the problem of payment methods is solved in several ways: by allowing permutations, by creating a sort of digital wallet (digital wallet) containing the sums deposited by the parents by means of a credit card in an online account of the minor, or even just by using money substitutes to familiarize minors with telematic shopping*».

[54] In. G. CAPILLI, *La capacità negoziale dei minori. Analisi comparata e prospettive di riforma*, pp. 51 - 52, the example of *Postepay is given*, in fact it says «*First of all, it is necessary to consider that the minor can conclude the online contract either by using his own name and his own payment card (think of a postepay or a rechargeable bank card) or by using the data of his parents and their card, credit. The minor, in fact, can be a current account holder as well as a holder of means of payment such as prepaid cards. Among the so-called "plastic coins" we can consider, for example, the "Postepay junior"; this is the minors' version of the standard Postepay, it is issued by Poste Italiane and can be applied for by minors between the ages of 10 and 18. In order to obtain the card, it is necessary for the minor to present himself accompanied by one of both parents, who by their presence attest to it. The authorization to own a payment card so that he is able to freely make purchases of the amount allowed by his plafond and, of course, by his funds. The plafond is 1,000 euros: the card allows him to make purchases in stores affiliated with the visa electron circuit in Italy, abroad and on the Internet; in addition, with the card it is possible to recharge his cell phone and the daily limit is 150 euros*». In the footnote no.53 continues with other examples, «*Among the types we can mention (data taken from the website www.monetadiplastica.com): Carige Easypay, the ceiling is €2000 and the validity 5 years; Cart@perta teen is issued by Creval, Credito Valtellinese, it is a reloadable prepaid card intended for children aged 12 to 17 years. It is possible to apply for the card by going to one of Creval's branches accompanied by parents; the ceiling is €2000, the validity of the prepaid card is 3 years, you can use the card only in Italy in affiliated stores, to recharge your 1 cell phone and to withdraw money from ATMs, the maximum daily withdrawal limit from ATMs of the group and other banks is €1000, for each individual transaction you can withdraw €250; the 0OM+ Rechargeable Prepaid Card is issued by Cassa Centrale Banca, distributed by Credito Cooperativo banks, it is a prepaid card for young people from 11 to 20 who can also open a current account called as the oomt prepaid card, at Credito Cooperativo banks; CartaSi My is a prepaid card for young people from 14 to 30 years old, placed by Banche Marche, the card circuit is Mastercard, the card ceiling is €5000.The card can also be applied for by those who are not customers of Banca Marche.Disposable prepaid cards should also be noted. These are anonymous prepaid cards, no documents are needed to purchase them, except if it is requested, a repayment of €1000 or more in that case the customer must be identified*».

[55] E. GROSSI, *La tutela minore nel commercio elettronico e nella rete Internet*, p. 1

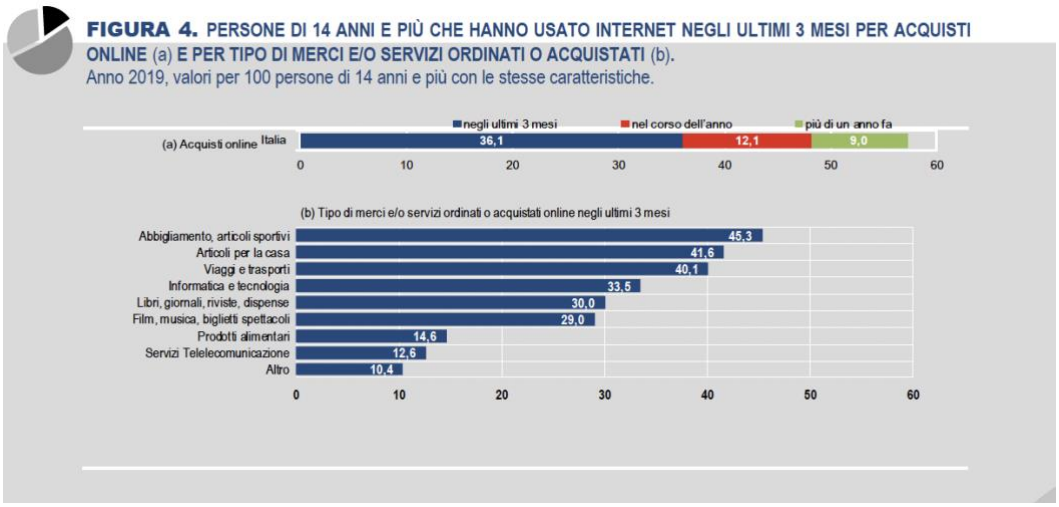


Figure 10: precisely with regard to purchases made on digital platforms by minors under the age of 18, ISTAT's 2019 study highlights how high the percentages of contracts made on e-commerce by minors are. Based on the graph, it is possible to see that in the last three months, prior to the interview, 36.1 percent of minors between the ages of 14 and 18 made purchases online. And also a fact highlighted by this report is regarding the type of goods or services ordered or purchased; in fact, purchases related to clothing or sporting goods appear to be preponderant as they stand at 45.3%. Slightly lower percentages in reference, however, to household items and travel and transportation, at 41.6 percent and 40.1 percent, respectively.[56]

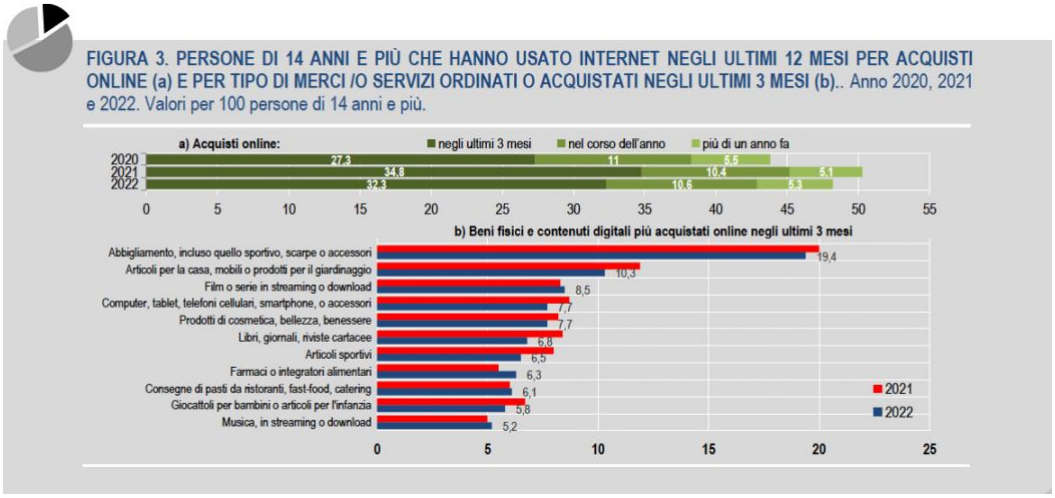


Figure 11: 2023 study in the analysis shows that online shopping peaks in 2021 with the percentage standing at 34.8 percent, and mainly involves clothing, sportswear, shoes or accessories, with a percentage of about 20 percent in 2021.[57]

The telematic contract[58] is the most popular way to conclude a contract because it

[56] ISTITUTO NAZIONALE DI STATISTICA, *Cittadini e ICT, anno 2019*, is available at the link www.istat.it/it/files//2019/12/Cittadini-e-ICT-2019.pdf

[57] Istituto Nazionale di Statistica, *Cittadini e ICT, anno 2022*, is available at www.istat.it/it/files//2023/03/REPORT_CITTADINIEICT_2022.pdf

[58] The nature of this contractual modality was incorporated within our legal system through Law No. 59 of March 15, 1997, *Delegation to the Government for the conferral of functions and tasks to the regions and*

involves the use of the computer tool[59] , which is becoming increasingly popular even among younger age groups.

Undoubtedly, the general rules of obligations and contracts, combined with European and international law, seem to be applicable to the case of the telematic contract in the national context.

The peculiarity of these contracts is that the contract is finalized by *clicking* on a virtual button, so much so that this system is called *point and click.*

Think of the purchases made on *Amazon* with the "Buy Now" box or the countless instances of *video games* containing *in-app* payment features.[60]

Precisely in order to protect minors online, the Council of Ministers approved Recommendation No. 560 of September 24, 1998, on the development of the competitiveness of the European audiovisual and information services industry through the promotion of national structures aimed at achieving a comparable and effective level

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local authorities, for the reform of public administration and for administrative simplification, which in Article 15, co. 2, establishes the validity and legal relevance of «*acts, data and documents formed by the public administration and private parties by means of computer or telematic instruments, contracts stipulated in the same forms, as well as their storage and transmission by computer instruments*». Consequent to the 1997 law, Presidential Decree No. 513 of November 10, 1997, *Regulation on criteria and procedures for the formation, storage and transmission of documents by computer and telematic means, pursuant to Article 15, paragraph 2, of Law No. 59 of March 15, 1997,* was issued.
As for the legal requirements of the telematic contract, these, are specified in the Digital Administration Code, through Legislative Decree No. 82 of March 7, 2005, revised by Legislative Decree No. 159 of April 4, 2006, *Supplementary and Corrective Provisions to Legislative Decree No. 82 of March 7, 2005, on the Digital Administration Code.*

[59] In G. ALPA, G. BONILINI, U. CARNEVALI, A. DI MAJO, *La disciplina generale dei contratti*, from *Istituzioni di diritto privato*, M. BRESSONE (ed.), Giappichelli, Turin, 1999, p. 567, «*Among the ways of concluding a contract must now also include those connoted by the use of computer and telematic systems, the use of which can vary from the mere transmission of the will of the contracting parties (already previously formed), up to the automatic "conversation" between computers about the content of the contractual agreement, such as, for example, that put in place between (the terminals of) two companies about the quantity and/or quality of the goods*».

[60] It is precisely these cases that are the most problematic, because often minors lack the ability to discern the effects arising from the contract. Very often they are also unaware that they are a party to the contract. Think of the "In Re Apple in-App Purchase Litigation," Case No. 5-11-CV-1758 EJD (N.D. Cal.; Mar. 31, 2012) concerning the request for a declaration of extinction of the class action brought by numerous parents against it for the absence of passwords in so-called in-app applications. On this point we refer to D. MULA, *Disciplina a tutela dei consumatori e dei minori per le applicazioni cd. in-app*, in *DIMIT,* www.dimt.it/la-rivista/pratiche-commerciali-e-tutela-dei-consumatori/32disciplina-a-tutela-dei-consumatori-e-dei-minori-per-le-applicazioni-cd-in-app/, 2012, «*In particular, the dispute takes its cue from numerous parents who were letting their children use their I-pad or I-phone safe in the knowledge that the latter could not access paid applications because Apple requires a password in order to make any purchase. Parents did not know, however, that certain applications-namely, in-apps, the use of which is initially free, offer the possibility of purchasing additional program features, or levels in the case of video games, without requiring any kind of authorization. Such purchases are then normally charged to the credit card linked to the App Store. The application most under indictment is the game "Smurfs' Village," which uses a system of virtual credits, called "smurfberries," whose value is $4.99 for 50 smurfberries, through which it is possible to have advantages in the game or buy new items to beautify the village. Apple's justification for the dismissal of the class action was to point out how they had made changes to the purchasing system with the introduction of version 4.3 of the iOS operating system, released in March 2011. However, it was pointed out that the new system has a default setting, which is clearly modifiable, allowing within 15 minutes of a purchase to make additional purchases without re-entering the password*».

of protection of minors and human dignity.[61]

Even before that, in 1997, Directive 97/7/EC of the European Parliament and of the Council of May 20, 1997, on the protection of consumers in respect of distance contracts, amended in 2002 by Directive 2002/65/EC of the European Parliament and of the Council of September 23, 2002, concerning the distance marketing of consumer financial services, posed protection with respect to the person under the age of 18.[62]

Other protection at the European level for minors is dictated by Directive 2000/31/EC of the European Parliament and of the Council of June 8, 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market ("Electronic Commerce Directive").[63] This, was transposed into Italian law in 2003, through Legislative Decree No. 70 of April 9, 2003, Implementation of Directive 2000/31/EC on certain legal aspects of information society services in the internal market, with particular reference to electronic commerce.

However, this discipline, according to some authoritative doctrine authors is not enough[64] especially considering the sudden and relentless development of the digital

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[61] With reference to the guardianship of minors, Section 2.2.1 mentions as an objective «*to educate minors in the responsible use of online services and to prevent them from accessing without the consent of their parents or educators legally permitted content harmful to their physical, mental, or moral development. This should cover, in addition to coordinated actions for the education and awareness of minors, the development of complementary regulations in the following areas*».

[62] Indeed, Directive 97/7/EC in Article 4(2) states that «*the information referred to in paragraph 1, the commercial purpose of which must be unambiguous, must be provided in a clear and comprehensible manner, by any means appropriate to the means of distance communication technique used, observing in particular the principles of fairness in commercial transactions and the protection of those who according to the legal provisions of the Member States are incapable of expressing their consent, such as minors*».

[63] Directive 200/31/EC requires in several places an effective protection of the child by the state, in fact, a first reference is in recital 10, for which «*In accordance with the principle of proportionality, the measures provided for in this Directive are limited to the minimum necessary to achieve the objective of the proper functioning of the internal market. This Directive, where action is to be taken at the Community level in order to make the internal space truly border-free for electronic commerce, must ensure a high level of protection of general interest objectives, such as the protection of minors and human dignity, consumer protection and public health. According to Article 152 of the Treaty, health protection is an essential component of the Community's other policies*». *Formerly* Art. 3(4), regarding the internal market, it is stated that «*Member States may take measures by way of derogation from paragraph 2, with respect to a given information society service, if the following conditions are met: [...] (a) the measures are: (i) necessary for one of the following reasons: public order, in particular for the work of prevention, investigation detection and prosecution in criminal matters, such as the protection of minors and the fight against incitement to racial, sexual, religious or ethnic hatred, as well as violations of human dignity of the person* [...]». Formerly Art. 16(1)(e), the development of codes of conduct ensuring the protection of the child and human dignity is required.

[64] G. ALPA, *I contratti del minore. Appunti di diritto comparato,* p. 526, affirms that «*these are measures of a generic nature, useful certainly, but not fully usable for the defense of the interests of the minor, nor for the defense of the interests of those who come into contact with the minor and intend to proceed to the conclusion of economic transactions. Compared with the experiences outlined above, the Italian regulation of the minor's contracts appears very rigid, and must therefore be ascribed to the traditional model. Moreover, it has given rise to conflicting interpretations. The prevailing orientation - to use the categories of some scholars of English culture - is certainly paternalistic: the minor being affected by incapacity to act and therefore by incapacity to negotiate, puts in place voidable acts (ex art. 1425 Civil Code unless he has deceived the other party by making him believe that he is of age (art. 1426). This is a relative voidability, because the action can be brought only by the legal representative of the minor or by the person concerned upon reaching the age of majority. In any case, the court cannot assess whether the act resulted in benefits for the minor: this assessment is reserved only for the court's authorization to bring the annulment action*».

world.

Through European and international legislation, Internet service *providers* are required to adopt codes of conduct so that protection of minors against messages that may have dangerous or illegal content is guaranteed.

The U.N. Convention on the Rights of the Child[65] , confirms the inviolability of the right to education to participation in the media, asking, however, that states, yes, recognize the function of the *mass media*[66] but also recognize protection for the child that promotes his or her social and moral well-being.

In 1995, the Ministry of Posts and Telecommunications issued Decree No. 385 of July 13, 1995, Regulations on the modalities for the performance of audiotex and videotex services, stipulating in Article 4 that audio and video information and services were intended for those over the age of 18. This regulation was later repealed by Decree No. 145, March 2, 2006, Regulation on the rules governing premium rate services.[67] The content of the 1995 Decree, however, remains an extremely innovative regulation, in fact, this provided for a peculiar procedure in identifying the age of the minor so that it could not happen to certain services.[68]

In May 2022, the European Commission adopted the "New EU Strategy to Protect and Empower Children Online," in which it notes that over the past 10 years the use of new technologies and the Internet has changed significantly.[69]

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[65] 1989 New York Convention on the Rights of the Child, ratified by Italy through Law No. 176 of May 27, 1991.

[66] In 1996, the Green Paper on the Protection of Minors and Human Dignity in Audiovisual and Information Services was issued, Brussels, 16.10.1996 COM(96)483 final, which aims to place a safeguard on the human dignity of the child, going on to enunciate what are the applicable principles and protection regimes.

[67] The new framework confirms in Art. 4, para. 1, the general principles, whereby «*Information or services provided by means of surcharge services are as a rule intended for persons of full age, except as provided in Article 5*». In fact, *ex* art. 5, «*Without prejudice to the provisions of Article 4, information or services intended for minors or individuals who are in a state, albeit temporary, of mental vulnerability: (a) shall not pose a threat, even indirectly, to their health, safety and growth; (b) shall not abuse their natural credulity or lack of experience and their sense of loyalty; (c) shall not appeal to their needs for affection and protection; (d) shall not induce them to violate generally accepted norms of social behavior; and (e) shall not induce them to perform actions, or expose themselves to dangerous situations. Notwithstanding the provisions of paragraph 1, mobile operators shall ensure compliance with the commitments entered into with the code of conduct for the provision of premium services and the protection of minors mentioned in the preface as well as' the self-regulatory codes referred to in Article 26 below*».

[68] In E. GROSSI, *La tutela minore nel commercio elettronico e nella rete Internet*, p.3, «*In the procedures for the operation of the services in question dictated by the regulation, it is stipulated that "operators must make every effort to prevent minors of age from accessing the services," and if an operator has a suspicion that the user is a minor, it must adopt the following methodology: "(a) ask the user his or her age and date of birth; (b) ask the user other questions, the answer to which could, in the operator's opinion, reveal the user's actual age or provide useful indications of the user's age; (c) if the answers are found to be indicative of the user's minor age or if the user hesitates without valid justification to answer, the user should be considered a minor and be excluded from services, unless the service is provided for in Art. 6*».

[69] In EUROPEAN COMMISSION, *New EU Strategy to Protect and Empower Children Online,* in *European Commission*, www.ec.europa.eu/commission/presscorner/detail/it/ip_22_2825 , 2022, the EU Kids Online 2020 studies on children's use of the Web, D. SMAHEL, H. MACHACKOVA, G. MASCHERONI, L. DEDKOVA, E. STAKSRUD, K. ÓLAFSSON, S. LIVINGSTONE AND U. HASEBRINK, *Survey results from 19 countries*, EU Kids Online. doi: 10.21953/lse.47fdeqj01ofo, 2020 available at the link www.lse.ac.uk/media-and-communications/assets/documents/research/eu-kids-online/reports/EU-Kids-Online-2020-10Feb2020.pdf , and the JRC study on online bullying, B. LOBE, A.VELICU, E. STAKSRUD, S. CHAUDRON AND R. DI GIOIA, *How children (10-18) experienced online risks during the Covid-19 lockdown - Spring 2020*, EUR 30584 EN, Publications Office of the European Union, Luxembourg, 2021, ISBN 978-92-76-29762-8,

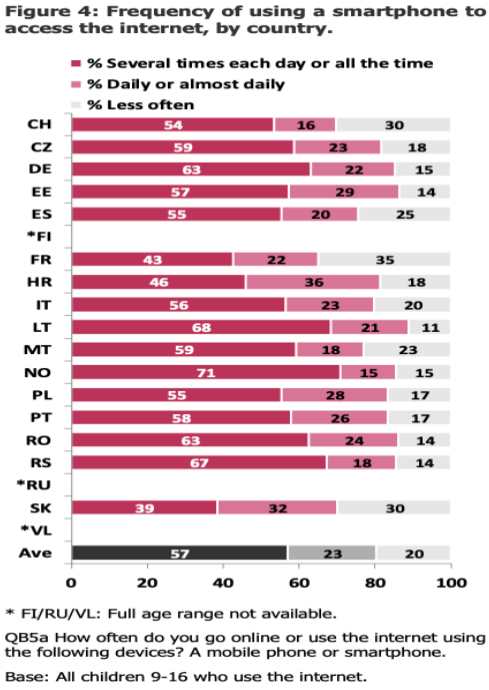


Figure 12: The graph from the EU Kids Online 2020 study on children's net use shows a very interesting figure. In fact, it analyzes the frequency of smartphone use by minors in a range of nine to 16 years old. From this, it is clear that in states such as Germany, Lithuania, Norway, and Serbia, the percentages are very high of use during the day, because they are around 63 percent, 68 percent, 71 percent, 67 percent, respectively. Italy, on the other hand, stands at 56% with usage comprising most of the day.[70]

This dictates three key pillars to implement the strategy. In fact, this first provides for "safe digital experiences" aimed at protecting the child from that harmful content and conduct, the risks and the need to ensure well-being through child-friendly digital environments. The second aims to acquire the skills and abilities to perform properly online and to guide them in making informed choices. Finally, the third pillar requires active participation with respect for the child, who must be put in a position to be able to give expression to his or her personality. In this way, his or her right to freedom of expression is guaranteed.

Although some parents have managed to keep up with technological advancement, it is also true that many others do not have this option, so children could always escape the limitations imposed by the household.[71]

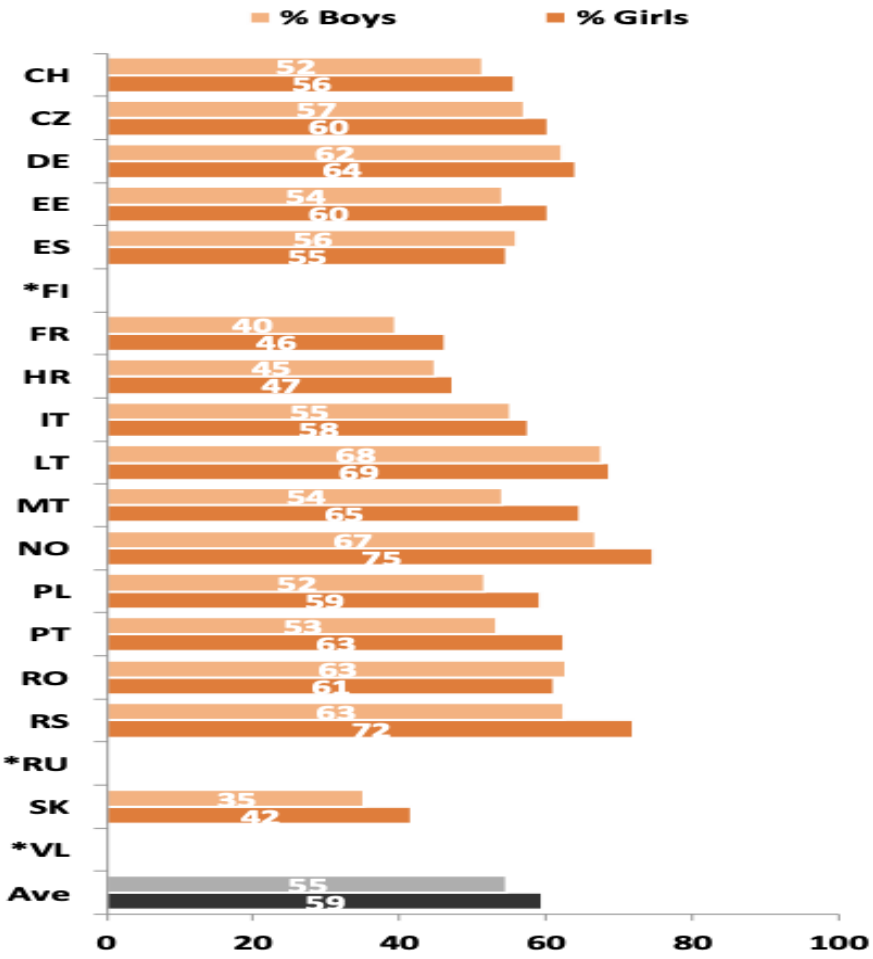
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doi:10.2760/066196, JRC124034. at link www.publications.jrc.ec.europa.eu/repository/handle/JRC124034. The strategy is a follow-up to the April 23, 2022, agreement on the proposed Digital Services Act, for which the Commission welcomed the political agreement on standards that ensure a safe and responsible online environment for users and place special protections in charge of minors.

[70] D. SMAHEL, H. MACHACKOVA, G. MASCHERONI, L. DEDKOVA, E. STAKSRUD, K. ÓLAFSSON, S. LIVINGSTONE AND U. HASEBRINK, *Survey results from 19 countries*, EU Kids Online. doi: 10.21953/lse.47fdeqj01ofo, 2020 available at the link www.lse.ac.uk/media-and-communications/assets/documents/research/eu-kids-online/reports/EU-Kids-Online-2020-10Feb2020.pdf

[71] This strategy, which follows the 2012 strategy, was developed following a series of consultations, surveys that took place in 2021 with children, youth, parents, teachers, researchers and other child safety experts

Figure 5: Using a smartphone several times each day or all the time to access the internet, by gender.



* FI/RU/VL: Full age range not available.

QB5a How often do you go online or use the internet using the following devices? A mobile phone or smartphone. Percentage of children who answered *daily or almost daily, several times a day* or *all the time.*

Base: All children 9-16 who use the internet.

Figure 13: Another very interesting graph related to the same study previously exposed the percentage of smartphone use by gender. From a general view, the figure is evident and why an increasing percentage of users belong to the female gender. This figure is constant among all the states covered by the study, but it is very evident in states such as Norway, where the percentage of boys is at 67 percent and against 75 percent of girls, and Serbia where there is a clear gap as the male percentage is at 63 percent against 72

who spoke on safety, content and skills. The results, according to the committee, «*show that children and youth often have a good understanding of online risks (such as harmful content, online bullying or misinformation) as well as opportunities. They also want to make their voices heard in issues that affect them. However, there are still many children and youth in Europe, especially those in vulnerable situations, who are not yet fully included in the digital world. Factors behind this exclusion include poverty, lack of connection, lack of appropriate devices as well as digital skills and mastery*».

percent of the female percentage.[72]

Table 4: Measurements of digital skills (% who say *very true* or *somewhat true*), by country

	Operational		Information / navigation		Social		Creative		Mobile		
	I know how to save a photo that I find online	I know how to change my privacy settings	I find it easy to check if the information I find online is true	I find it easy to choose the best keywords for online searches	I know which information I should and shouldn't share	I know how to remove people from my contact lists	I know how to create and post online video or music	I know how to edit or make basic changes to online content	I know how to install apps on a mobile device	I know how to keep track of the costs of mobile app use	I know how to make an in-app purchase
CH	77	81	46	71	89	92	55	38	96	62	71
CZ	89	83	58	69	91	94	65	27	96	49	69
DE	85	73	41	86	80	85	65	43	86	62	69
EE	91	84	66	77	91	94	58	39	90	68	66
ES	71	77	36	52	85	88	66	28	94	48	60
***FI**	84	81	71	71	90	90	69	49	88	56	74
FR	77	61	47	68	74	71	64	36	83	51	62
***HR**	84	81	65	80	86	83	63	n.a.	83	70	67
IT	87	75	49	73	86	88	72	53	90	67	65
LT	91	83	73	89	86	89	86	59	84	72	63
MT	76	82	61	72	87	87	61	44	89	57	61
NO	83	78	61	68	95	92	61	34	98	84	77
PL	83	80	67	73	86	87	62	43	87	70	71
PT	83	87	56	68	88	91	64	39	93	67	67
RO	84	70	69	66	78	88	76	55	88	74	74
RS	92	90	75	78	93	96	75	44	98	62	74
***RU**	88	78	55	62	82	91	65	38	91	67	75
SK	86	80	67	82	79	86	71	57	82	64	70
***VL**	88	85	56	60	88	92	65	45	93	67	71
Ave	84	79	59	72	86	89	66	43	90	64	69

* FI/RU/VL: Data not weighted. HR: QE1h not asked (I know how to edit or make basic changes to online content).

QE1 On a scale from 1 to 5 where 1 is 'Not at all true of me' and 5 is 'Very true of me', how true are these of you? Percentage of children who answered *very true or somewhat true*.

Base: All children aged 12-16 who use the internet.

Figure 14: During the study, the skills acquired by children in the age group of 12 to 16 years are also analyzed. With reference to operations such as buying goods through applications on the smartphone, it becomes apparent how developed this is. In Switzerland, for example, the percentage stands at 71 percent, while in Norway it reaches 77 percent. In Romania and Serbia the percentage stands at 74 percent. In Italy the percentage is definitely lower because it stands at 63%.[73]

Through self-regulatory codes, the Parliamentary Commission for Children has encouraged and raised awareness among families on the issue of controlling and monitoring the activities of minors.[74]

However, over the years, doubts have arisen that such activities could infringe on the boundary between the protection of the child and the right to freedom of expression, which as part of personality rights, are attributed to the legal subject from his or her birth.

Precisely to remedy the problem, a number of *software* have been developed and ensure safe access to the digital world by children and adolescents. These, combined with

[72] D. SMAHEL, H. MACHACKOVA, G. MASCHERONI, L. DEDKOVA, E. STAKSRUD, K. ÓLAFSSON, S. LIVINGSTONE AND U. HASEBRINK, *Survey results from 19 countries*, EU Kids Online. doi: 10.21953/lse.47fdeqj01ofo, 2020 available at the link www.lse.ac.uk/media-and-communications/assets/documents/research/eu-kids-online/reports/EU-Kids-Online-2020-10Feb2020.pdf

[73] D. SMAHEL, H. MACHACKOVA, G. MASCHERONI, L. DEDKOVA, E. STAKSRUD, K. ÓLAFSSON, S. LIVINGSTONE AND U. HASEBRINK, *Survey results from 19 countries*, EU Kids Online. doi: 10.21953/lse.47fdeqj01ofo, 2020 available at the link www.lse.ac.uk/media-and-communications/assets/documents/research/eu-kids-online/reports/EU-Kids-Online-2020-10Feb2020.pdf

[74] Here reference is made to Resolution No. 7-00024 De Luca: TV and Children's Relations approved by the Parliamentary Committee on Children on July 19, 2000

education in the use of resources, makes it possible to reduce exposure to possible risks.[75]

These programs make it possible to create a filter that performs the task of preventing the child from reaching a certain category of sites. In addition to these are the so-called *firewalls,* which totally censor the Internet.[76]

The filter system, therefore, allows the parent to decide upstream which site can be accessed by the child and which cannot.

Inevitably, software of this kind enjoys wide public support because it precisely turns out to be the most effective method of obviating the problem of access to that part of the Internet that could be a risk to the development of the child.[77]

The development of these tools is based on three possible models: *blacklisting*, *whitelisting*, and "*neutral labeling*." Each of these models has its own characteristics and differences; in fact, while the first one prohibits access to sites that are *blacklisted*, the second one serves to create a list of what are the only sites for which access is granted. Finally, the last one serves to classify the site but still leaves it up to the user how to classify it.

This is coupled with the possibility of taking measures such as the so-called. *Parental Control.*

In 2020, the Communications Guarantee Authority-AGCOM reiterated the importance of the tool following the adoption of Decree-Law No. 28 of April 30, 2020, on urgent measures for the functionality of systems for the interception of conversations and communications, further urgent measures on the penitentiary system, as well as' supplementary and coordinating provisions on civil, administrative and accounting justice and urgent measures for the introduction of the Covid-19 alert system and the subsequent conversion into law through Law No. 70 of June 25, 2020. In fact, in Art. 7 *bis*, para. 1, it is stipulated that "supply contracts in electronic communication services governed by the Electronic Communications Code (referred to in Legislative Decree No. 259 of August 1, 2003), must provide among the pre-activated services systems of parental control or filtering of inappropriate content for minors and blocking of content reserved for an audience over the age of eighteen years."

The Authority itself has adopted guidelines to indicate how protection systems should be implemented, how they should be configured, and how usage information should be

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[75] In E. GROSSI, *La tutela minore nel commercio elettronico e nella rete Internet*, p. 10 explains «*There are online commercial services that provide, for minimal fees, the activation of controls that are always up-to-date and adapted to different age groups: America Online (www.aol.com/info/parentcontrol.html), Compuserve (www.compuserve.com/content/default.asp) , Prodigy (www.prodigy.com), Microsoft Network*».

[76] In E. GROSSI, *La tutela minore nel commercio elettronico e nella rete Internet*, p.10, he gives some examples of *firewalls* and its use, in fact, «*The "firewall" technology, which allows total censorship of the Internet, has been employed to isolate Internet users in China from the rest of the Internet. Singapore and Saudi Arabia filter and censor Internet content; South Korea has banned access to gambling Web sites; and in Iran Internet use is prohibited for minors and ISPs are required to prevent access to immoral or anti-Iranian content. In countries where such "upstream selection" systems are in place, savvy users can still circumvent such technologies by accessing websites that have slipped through the cracks, but those accessed by the vast majority of 'surfers' can easily be restricted by individual governments through the application of 'firewall' technologies*».

[77] Support for these tools was also stressed in the Communication From the Commission to the Council, the European Parliament, the Economic a Social Committee and the Committee of the Regions, *A European Initiative in Electronic Commerce*, European Commission, Brussels, 16/10/96, COM (96) - 487.

given.[78]

In short, regarding how content can be accessed, there would seem to be ample choice on the part of the parent, who has a range of software at his or her disposal to ensure a safe environment for the child, in which he or she can express himself or herself freely without incurring the multitude of risks of the Web.

Table 8: Specific types of data misuse, by country

	Somebody used my personal information in a way I didn't like	The device (e.g., phone, tablet, computer) I use got a virus or spyware	I lost money by being cheated on the internet	Somebody used my password to access my information or to pretend to be me	Somebody created a page or image about me that was hostile or hurtful	I spent too much money on in-app purchases or in online games	Someone found out where I was because they tracked my phone or device
*CH	-	-	-	-	-	-	-
CZ	7	21	4	9	4	9	4
DE	5	7	1	2	4	6	4
EE	4	15	2	5	3	5	3
ES	8	15	3	9	3	8	3
*FI	-	-	-	-	-	-	-
FR	3	7	1	4	2	3	2
HR	2	10	1	3	1	4	1
IT	4	10	5	2	2	4	2
LT	3	11	2	4	2	2	2
MT	9	23	6	11	7	14	9
NO	3	7	3	4	2	9	8
PL	11	22	6	10	5	6	5
PT	7	17	5	8	3	7	4
RO	12	22	8	14	9	13	8
RS	6	17	4	11	5	5	3
*RU	-	-	-	-	-	-	-
SK	6	9	2	5	3	4	2
*VL	-	-	-	-	-	-	-
Ave	7	14	4	7	4	7	5

*FI/RU/VL/CH: Full age range not available.

QF60 In the PAST YEAR, has any of the following happened to you on the internet? Percentage of children who answered *yes*.

[78] DE CONNO A., *Parental control come strumento di tutela dei minori online*, in *Altalex*, www.altalex.com/documents/news/2022/08/25/parental-control-strumento-tutela-minori-online?utm_source=Eloqua&utm_content=WKIT_NSL_Altalex-00045917&utm_campaign=WKIT_NSL_AltalexFreeEngagedOnly28.08.2022_LFM&utm_econtactid=CWOLT000019601789&utm_medium=email_newsletter&utm_crmid=, 2022 states «*These guidelines concern both the concrete ways in which the tool operates, paying specific attention also to some technical aspects, and the ways in which users use it. First and foremost, the minimum level of protection that the instrument must offer is established. Specifically, it is stated that, as a minimum functionality, the ability to prevent minors from accessing websites or applications that contain material inappropriate for their age should be provided by operators. However, the guidelines also refer to the possibility, for the contract holder alone, to customize the content subject to the filter, With reference to the way the tool works as such, AGCOM specified, in particular, that in cases where it is not possible to filter at the level of individual content, either for technical reasons or because of the quantity of content, the filter is applied to the entire website or application, generally following the most restrictive criterion based on the content present. On the other hand, for websites and applications that provide a registration mechanism with user age verification and subsequent filtering of accessible content, the restriction corresponding to the minimum age required for access is applied. Therefore, the restrictive approach was chosen, which can guarantee the highest possible level of protection for minors in cases where a restriction of access limited to a single content is not possible. Particular attention was then paid to the need to avoid misuse of the tool by unauthorized parties, which would cause it to lose all effectiveness in terms of protection. According to AGCOM, there is in fact a need to identify the contract holder (or, if a minor, whoever exercises parental authority) as the only person who can carry out the operations in question. Consequently, ways will have to be identified to ensure secure access to the activation or deactivation features made available by the operator, for example through the use of a PIN code provided to the contract holder at the time of user activation, communicated confidentially, an OTP sent via SMS or e-mail, access via SPID, or authentication in the reserved area of the operator's website*».

Figure 15: very interesting figure in reference to the awareness of how much the purchase made in-app is particularly burdensome. In fact, based on the data collected, the study points out that, for example, in the Republic of Malta, 14% of teens are aware that they have spent a large amount of money through in-app purchases. Very similar percentage in reference to Romania in which 13% of teens agree on this aspect. The lowest percentage can be found in Lithuania, where only 2% give confirmation of this hypothesis. In Italy the percentage stands at 4%.[79]

[79] D. SMAHEL, H. MACHACKOVA, G. MASCHERONI, L. DEDKOVA, E. STAKSRUD, K. ÓLAFSSON, S. LIVINGSTONE AND U. HASEBRINK, *Survey results from 19 countries*, EU Kids Online. doi: 10.21953/lse.47fdeqj01ofo, 2020 available at the link www.lse.ac.uk/media-and-communications/assets/documents/research/eu-kids-online/reports/EU-Kids-Online-2020-10Feb2020.pdf