

MINORS AS CONTENT CREATORS: A STUDY OF THE EFFECTIVENESS OF ADVERTISING REGULATION IN THE UNITED STATES, THE UNITED KINGDOM AND SPAIN

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PRELIMINARY REPORT / DOI: 10.20901/ms.13.26.3 / SUBMITTED: 15.6.2022.

ABSTRACT *This paper analyzes the degree of compliance with advertising regulation related to content created by or aimed at underage people on YouTube. Research was done using content analysis on a sample of 463 videos that were published on the YouTube platform in the period from 2016 to 2020. Videos were selected from the channels of the 15 most popular children's YouTubers, according to their position on the Social Blade ranking, which originated from the United States, the United Kingdom, or Spain. The main objective of the study was to determine whether the videos disclose that they are about commercial content and whether this is done in accordance with laws in force. In addition, it was researched whether personal data were requested for promotional purposes. The article shows how despite the existence of advertising regulation in all of the researched countries, compliance is minimal regarding the identification of advertising content as such.*

KEYWORDS

MINORS, YOUTUBE, COMMERCIAL CONTENT, LEGAL CRITERIA, PRIVACY

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CONTENT CREATED FOR MINORS: A CHANNEL FOR BRANDS

Children have always been both a resource and a commodity for the advertising ecosystem. However, children have also emerged as successful creators of that type of content approximately in the past five years. This phenomenon has seen a steady growth since at least 2017 (Ofcom, 2019, 2022). It started with EvanTubeHD in 2011 and continued to grow through many others that decided to follow suit, such as Ryan, that at the age of 7 managed his channel RyanTowsReview and made it to the Forbes list as the channel's revenue surpassed 22 million dollars (Bergen, 2019). These children fuel true money-making machines, something brands are aware of, thus making their channels serve as displays for products of all kinds. Ryan, for example, by 2020 had garnered 23 million followers and more than 33 billion visits since he and his parents launched the channel RyanToysReview (now called Ryan's World) in March of 2015 (Social Blade, 2020).

Brands invest more and more in these influencers in order to promote their products, a market that is booming. In 2019 the PriceWaterhouseCoopers study "Kids digital media report 2019" forecasted that the investment in these influencers would grow by 20% until 2021. This would mean the total investment of 1,700 million dollars in 2021 in advertising for these influencers, thus representing 37% of total investment in advertising directed at minors (PWC, 2019). According to an estimate by *Adweek*, in the United States, global investment in influencers will grow by 500% by 2020, rising from the current \$2 billion to \$10 billion in just two years. In Spain, advertising investment in influencers was €37 million in 2018 (Infoadex, 2019). Two Spanish studies by IAB (2019a, 2019b), "Advertising investment in digital media" and "Social networks", indicated that 25.6% of total advertising investment was directed to social media, accounting for €807.2 million, out of a total of €3.15 billion. In relation to digital advertising aimed at minors, it was expected to increase by 45% from 2018 to 2021. Furthermore, the study "Kids Digital Advertising Market" estimated the continuation of this trend: it will continue to grow by 21.8% from 2022 to 2031 and that it will exceed a value of 21.1 billion dollars at the end of 2031 (Transparency Market Research, 2022).

Obviously, in the face of this phenomenon, the number of children on the other side of the screen – those that consume the content created and uploaded by other children – is also experiencing growth (McRoberts, et al., 2016; Yarosh et al., 2016). Minors are attracted by the stories their peers act out using toys and follow their advice and recommendations, developing the desire to buy the products mentioned in the channels by imitation (Brown & Hayes, 2008). In the United States, the time minors over 8 years of age devote to online video consumption duplicated from 2005 to 2019, with an average of 25 to 56 minutes a day among preteens, and 35 to 59 minutes a day among teenagers (Common Sense, 2019). In the United Kingdom, 49% of children between the ages of 8 and 11 prefer to watch YouTube over television (14%) and those between 12 and 15 years of age prefer it 49% to 16% (Ofcom, 2019). Content consumption on YouTube increases with age, 15% of those 3 or 4 years old watch basic content and content related to games, compared to 35% of those aged 5 to 7, 40% of those aged 8 to 11, and 52% of those aged 12 to 15 (Ofcom, 2019).

The underage YouTuber business has generated new professional actors in the advertising ecosystem of YouTubers that are specifically involved in content aimed at minors, including: the video exchange platform itself (YouTube); professional influencer talent agencies specifically aimed at representing YouTuber children or that help brands get in touch with the most suitable influencers to promote their products; the children content creators and their managers (usually their parents), and specific talent agencies; trade associations and Public Administration.

New businesses, new actors and relationships among them have raised the alarm on the need to ensure compliance with the law and adherence with self-regulation codes in order to safeguard children and their rights. The fact that this is a different environment may induce some to error, but we must take into account that, regardless of the environment, advertising messages are still advertising messages and the existing ethical and legal guidelines must still be followed. Parents that help children create, produce and distribute their content, and to negotiate advertising deals, must be aware that they have to abide by the law. The laws impose specific obligations that include identifying their content as advertising, identifying themselves as advertisers, a duty to remain truthful and fair, as well as, particularly, adhere to certain values that must be present in their commercial communications (Lievens, 2010; Lievens et al., 2006; McLaughlin, 2013; Staksrud et al., 2013).

These obligations come from national laws (in the United States, Spain and the United Kingdom) and European Union and European regulations (in the case of the United Kingdom and Spain). The first initiatives to regulate this emerging online market come from the Federal Trade Commission (FTC) in the United States, reports from the Advertising Standards Authority (ASA) in the United Kingdom, the IAB reports in Spain (Martínez-Pastor & Vizcaíno-Laorga, 2016) as well as the European Advertising Standards Alliance (EASA).

PREVIOUS STUDIES

The reality is that minors, and young people in general, are increasing their consumption of digital media (Holloway et al., 2013), with those between 5 and 15 years of age devoting more than 15 hours a week to online media consumption (Ofcom, 2017; Pew Research Center, 2018). The fact that there are more and more children creating content and more and more children who consume it has led to an increase in the presence of brands in channels aimed at children, channels hosted by children, and managed, in most cases, by their parents.

Existing literature centers mainly on the state of the art in relation to regulation on advertising directed to minors and the identification of advertising formats (Martínez, 2019, Vanwesenbeeck et al., 2016; Verdoodt et al., 2016; Verdoodt et al., 2015). Other work focuses on the identification of advertising on videos through text or verbally (Committee on Advertising Practice - CAP, 2017; FFC, 2019; IAB, 2018, 2017; Martínez-Pastor et al., 2017).

There are associations such as “Truth in Advertising” that monitor compliance in that context. The association brought a complaint before the FTC against RyanToysReview (2019) and called on the need to differentiate entertainment content from advertising content in order to safeguard the innocence of children. They argued that if advertising messages are not properly differentiated from the rest, there is a risk that children may confuse them.

Another line of research deals with the regulatory framework related to liability from parents and industry in relation to minor YouTube channels in Europe and the United States, specifically in Spain (Vizcaíno et. al., 2019). This line of research addresses the presence of products or brands in videos and the presence of brands and the types of products advertising and investigates the regulatory framework and fair competition practices in the United States and Europe (Campaign for a Commercial - Free Childhood, 2016; Committee on Advertising Practice - CAP, 2017; Cunningham & Craig, 2017; IAB, 2018, 2019; Wa, 2016).

Other authors focus on data protection rights for minors online and have called the phenomenon the “datafication” of childhood (Lupton & Williamson, 2017). In relation to data privacy, some authors study data surveillance of minors (Lievens & Verdoordt, 2017), while others focus on the risks that data processing entails and on the liabilities of the processors (Van Alsenoy, 2016). Others engage in diachronic studies of data protection in Europe, from Directive 95/46 to the current General Data Protection Regulation (GDPR) (Van Alsenoy, 2017). Milkaite & Lievens (2020) deal with the privacy policies of some of the main platforms – Instagram, Snapchat and Tik Tok – to see if they are compliant with Articles 12, 13 and 14 of GDPR.

Furthermore, some research analyzes the rights and obligations of social networks regarding user data processing (Van Alsenoy, 2014) and how they include privacy rules in their company policies, as in the case of Facebook (Van Alsenoy, 2014; Van Alsenoy et al., 2015). Others focus on data collection on minors through mobile apps without parental consent (Reyes et al., 2018; Valentino-DeVries et al., 2018) and how users feel they have no control over it (Stoilova et al., 2019). In the meantime, other works are interested in finding out if advertising self-regulation applies to online behavioral advertising (OBA), or in relation to behavioral advertising and cookies and how this information is conveyed to users (Van der Hof, 2016), etc. Finally, Lambrecht et al. (2018) inquire into the liabilities of video exchange platforms that host user generated content and highlight the need of developing new tools that allow for enhanced compliance with advertising regulation since, while users are the ones that create the content, it is still hosted on those platforms.

The variety and breadth of the studies indicate that, on the one hand, there is clear preoccupation with the protection of minors that consume online videos, and, on the other, that there is a great deal of interest in determining the degree of compliance with advertising regulation, if it is sufficient or if it needs to be amended and completed in order to adapt to a new reality. This has inspired us to undertake the study as a part of the project supported by a 2018 Leonardo Grant for Researchers and Cultural Creators, BBVA

Foundation. Firstly, the study analyses the regulatory framework on minors and advertising of each country selected, the United States, Spain, and the United Kingdom. Secondly, after providing the regulatory analysis, we present the results of the content analysis of the selection of 463 videos from the 15 most popular children's YouTube channels according to Social Blade (2020) ranking in order to determine if they are in compliance with legal parameters in their territories and, finally, we analyze the data in order to get a picture on the current state of affairs and then point out what needs to be improved.

NORMATIVE CONTEXT IN THE UNITED STATES AND EUROPE

There is clear concern regarding the interactions between children and digital media both in the United States and Europe, as the analyzed laws and regulations reflect. One of those concerns is centered around the need of keeping children informed, at all times, about the types of messages they receive so they do not confuse the content they are watching, i.e., that they do not confuse entertainment content with advertising. For this reason, all advertising content must be clearly identified as such and it must be clearly differentiated from the rest of the content (McLaughlin, 2013; Lievens, 2010; Lievens et al., 2006; Staksrud et al., 2013). The goal is to prevent children from wanting a particular toy or product because they think their favorite YouTuber is enjoying that toy or product, when in fact he or she is merely displaying it in the channel as a result of a gift, endorsement arrangement or advertising contract with a brand.

Laws aimed at protecting children also refer to their privacy rights and prohibitions to collecting personal data related to the online behavior of children to fuel the behavioral advertising market, among other objectives. These laws, such as the EU Directives that seek to protect children in this emerging segment of the online market, or the Children's Online Privacy Protection Act of 1998 (COPPA) in the United States, are complemented by regulatory action by entities, such as the Advertising Standards Authority (ASA) in the UK, or the FTC in the US, as well as reports, such as the one from the IAB in Spain (2015).

FTC enforcement of the Children's Online Privacy Protection Act on YouTube channels – shifting the burden to content creators?

In the United States, telecommunications regulators took a hands-off approach to the regulation of online platforms. Most famously, Title V of the Telecommunications Act of 1996, through its intermediary liability rules established in Section 230 of the Communications Decency Act of 1996, grants broad immunity to Internet providers by not considering them publishers, just monitors of the content that appears on their platforms. Section 509 of Title V amends the Communications Act of 1934 to include Section 230 "Protection for Private Blocking and Screening of Offensive Material." It highlights the US Congress's perception that the Internet is a platform that can offer "a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity"¹ thanks to "minimum government regulation."² This led

¹ § 230 (a) (3) of Title II of the Communications Act of 1934 (47 U.S.C. 201).

² § 230 (a) (4) of Title II of the Communications Act of 1934 (47 U.S.C. 201).

Congress to codify as its policy for the development of the Internet and interactive media the preservation of a “vibrant and competitive free market that presently exists for the Internet... unfettered by Federal or State Regulation.”³

In the absence of any regulation, United States Congress instead sought to encourage the development of technology that maximizes “user control over what information is received by individuals, families, and schools who use the Internet...”⁴ Since, according to Congress, the Internet is a diverse platform that offers unlimited choices and where control over the consumption of content is the responsibility of the user. Thus, parents bear the responsibility of controlling the content their children can access online. Highlighting the dispositions of the Telecommunications Act of 1996 serves to set the tone for the way the United States chose to approach the Internet regulation that deals with children and parental decision and consent in regard to the content they access online, the interactions with online platforms and other users and the responsibilities, if any, of both platforms and the creators of content that seek children as their audience.

Misguided as these perceptions of what the Internet is today, and there are plenty of critiques that offer alternative views that are perhaps more rooted in the current realities of the Internet (Ghosh, 2020) – and as perceptions of the Internet and Internet companies have shifted since 1996 – we should certainly take into account calls to adopt regulations for Internet platforms and service providers, including Section 230 of the Communications Decency Act reforms, that come from academia (among many others see Citron, 2009, 2020; Citron & Wittes, 2017; Citron & Franks, 2020; Keller, 2018) and policymakers (See: Department of Justice, 2020 and for a summary of past legislative proposals, see: Reidenberg et al., 2012). Online platforms themselves claim that there was a need for more regulation in the past (Press Association, 2019). Nevertheless, the hands-off approach to online platform regulations persists as the Law of the Land to this day and gives context to the state of the art of regulation of the relationships between YouTube content creators, the Alphabet-owned platform itself and their audience of both children and their parents. In the American context, the Federal Trade Commission is the agency that has the most bearing on regulatory actions aimed at online privacy in general and YouTube content for children in particular. We must say, however, that in general, the Federal Trade Commission’s powers to regulate privacy are relatively weak which, critics argue leads to “stunning disparity between (FTC) guidelines and the consumer internet industry’s actual practices” (Ghosh, 2020, p. 69).

The Children’s Online Privacy Protection Act of 1998 (COPPA) is practically the only regulation in United States law that establishes any rules that govern interactions between platforms, channels, and their users which highlights the importance of protecting children online. It is aimed at protecting the privacy rights of children under the age of 13. COPPA itself requires the FTC to issue rules governing the online collection of data under the age of 13. These rules, published for the first time in 1999 and together with the Act itself, are known as the “COPPA Rule” (Zavaletta, 2001). The COPPA Rule applies to operators of websites and online servers – or those that act on their behalf – that collect

³ § 230 (b) (1) & (2) of Title II of the Communications Act of 1934 (47 U.S.C. 201).

⁴ § 230 (b) (3) of Title II of the Communications Act of 1934 (47 U.S.C. 201).

or maintain personal information (defined as individually identifiable information about an individual collected online including name, personal address, e-mail address, phone number or social security number⁵) about their users for commercial purposes.⁶ Personal information also includes any “information concerning the child and combines with an identifier described in section X(8).⁷” The law also sets rules for the disclosure of personal information collected from a child in identifiable form, for an operator for any purpose and for making a child’s personal information publicly available online.⁸

The COPPA Rule establishes that “verifiable parental consent” is necessary for the collection of the personal information of their children. This consent can be given by technological, or other “reasonable” means of obtaining it and must include “a request for authorization for future collection, use, and disclosure... to ensure that a parent or child receives notice of the operator’s personal information collection, use, and disclosure practices, and authorizes the collection, use, and disclosure, as applicable, of personal information and the subsequent use of that information before that information is collected from that child.⁹” Most importantly, COPPA regulates the collection and use of children’s personal information in websites and online services directed at children defining the term – “directed at children” as “a commercial website or online service that is targeted to children; or that portion of a commercial website or online service that is targeted to children¹⁰ that is, to “operators of general audience websites who have actual knowledge that a user is a child” (Zavaletta, 2001, p. 3) and the Rule establishes guidelines as to what the FTC will consider when classified a website as “directed to children.”¹¹

The COPPA Rule was amended in 2013, introducing several clarifications in terms of its definitions and adaptation to more recent technological developments. Among changes introduced in 2013, were amendments into what was to be considered as personal information – most notably, the inclusion of geolocation data – and what should be disclosed in a privacy policy and the direct notice to parents. Another is that the use of persistent identifiers by ad networks for behavioral advertising cannot be considered as “support for internal operations” and others related to photos, videos and audio recordings requiring parental consent for children-uploaded materials and establishing that blurred facial features of children exempts operators from notifying parents or obtaining their consent (Fitzpatrick & Winter, 2013). The COPPA rule was announced to be amended again sometime after January 2020 (Cohen, 2019), and according to announcements some of the proposed acts would drastically alter the landscape of online advertising aimed at children. The most recent example, is the proposition of the introduction of the Kids Internet Design and Safety (or KIDS) Act, proposed in September of 2021 (other versions of the same act had been introduced before). The Act would, among other things, expand protections to minors up to 16 years old and would prohibit the amplification of harmful content including through the use of algorithms. It would also ban “unboxing videos” or

⁵ Section X (8) of COPPA.

⁶ Section X (2) of COPPA.

⁷ Section X(8)(G).

⁸ Section X (4) of COPPA.

⁹ Section X (9) of COPPA. <https://www.ecfr.gov/cgi-bin/text-idx?SID=4939e77c77a1a1a08c1cbf905fc4b409&node=16%3A1.0.1.3.36&rgn=div5>

¹⁰ Section X (10) of COPPA.

¹¹ Title §312.2 of COPPA

marketing with interactive elements aimed at children and young teens, which the bill calls “manipulative marketing” (Markey Senate, 2021). At the time of writing this article, neither the KIDS Act nor any other bills aimed at amending COPPA have been passed.

While there are previous examples of the enforcement of the COPPA rule (FTC v. Toysmart.com, LLC, and Toysmart.com, Inc., 2000), the best example concerning the enforcement of COPPA by the Federal Trade Commission so far is the action against Google and YouTube by the FTC and the New York Attorney General (Federal Trade Commission, 2019). As it was considered that these channels did not correctly notify parents that they were using online trackers (cookies) and require their consent, YouTube and its parent company had to pay \$170 million as part of a settlement for the alleged illegal collection of the personal information of children viewers of child-directed YouTube channels without parental consent (Federal Trade Commission, 2019). As a consequence of the settlement, YouTube agreed to create a mechanism to allow channel owners to designate when their videos are “directed at children” as per the COPPA Rule requirements that began to be implemented in January 2020 (Kelly & Alexander, 2019). The FTC has also since issued guidelines aimed at YouTube Channel owners so they can assess if their content is directed to children and thus, are obligated to comply with the COPPA Rule (Cohen, 2019). At the time of writing, the YouTube-created mechanism required creators to label videos that may appeal to children and if this is the case, “data collection will be blocked for all viewers, resulting in lower ad revenue, and those videos will lose some of the platform’s most popular features, including comments and end screens,” prompting some to declare that this marks the end of the “golden age of Kid’s YouTube” (Jennings, 2019).

The Guidelines for YouTube Channel owners establish that COPPA “applies in the same way it would if the channel owner had its own website or app”. The COPPA Rule applies to channel owners that upload content to YouTube when that content is directed to children and if the channel owner, or someone on its behalf... collects personal information from viewers (for example, through a persistent identifier that tracks a user to serve interest-based ads) (Cohen, 2019). These guidelines also highlight that the YouTube case contains clear examples of what the FTC may consider as a channel directed to children, namely, when content creators explicitly state that their YouTube channel is directed at children under the age of 13 in the “About” section of the channel, if the channel “has made similar statements in communications with YouTube”, if the channel owners “enabled settings that made their content appear when users searched for the names of popular toys or animated characters.” The guidelines make it clear that it is the FTC’s criteria to consider that a channel is directed at children when channels feature “popular animated children’s programs or showed kids playing with toys or participating in other child-oriented activities” (Cohen, 2019).

While YouTube has always been clearly covered by COPPA, the new YouTube Content system is seen as yet another instance of an Internet platform shifting the legal burden to users and creators. One of the criticisms aimed at COPPA has always been that it fails to meaningfully protect minors from online advertisers and other third parties, serving instead as a protection from liability for online platforms (Zavaletta, 2001). On

the other hand, and given the limited scope of the Law, evaluations of COPPA's efficacy have been positive. However, more studies about its compliance are definitely needed (Casarosa, 2011). Some of the studies that do exist have in fact found that COPPA is easily circumvented by children and that their parents may be helping them do it (boyd et al., 2011). Furthermore, the fact that advocacy groups like Common Sense Media worry that "the rules don't go far enough, and that placing most of the burden on creators rather than YouTube itself won't do enough to protect kids online" (Kelly & Alexander, 2019), which serves to highlight that the worries remain the same twenty years after the appearance of COPPA. Others, like Simmons (2007) worry that COPPA infringes the First Amendment Rights of children to speak freely online and the Free Speech rights of the online platforms themselves due to the requirements it imposes on them, thus it is constitutionally suspect. We should remember that in the United States, the First Amendment of the Constitution precludes Congress to enact any laws that directly regulate private speakers, whether they are individual citizens or organizations. This means that online platforms, such as YouTube have a lot of power when deciding what content is allowed in their platforms and under what conditions, usually established in their own Community Standards that define what is and what is not acceptable speech, in alignment – for the most part – with their own business goals.

However, the fact of the matter is that COPPA remains the best example of online legislation that directly targets YouTube content creators and, as evidenced by the YouTube settlement, its implementation will have significant impact on the shape and form of YouTube channels aimed at children in the foreseeable future, not only in the United States, but perhaps worldwide. The effects of the settlement seem to be part of a trend, enabled by current US policy regarding the way the Internet is regulated, in which tech giants empowered by a Constitutional framework that demands little to no government interference and by-laws that tend to exempt them from liability, shift the burden of compliance to users and creators.

European Context: The United Kingdom and Spain

Europe has always protected consumers from misleading advertising both through the Unfair Commercial Practices Directive and the recently reviewed Audiovisual Media Services Directive. The Unfair Commercial Practices Directive establishes that

a commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise (Art. 6).

Misleading advertising is advertising that lacks proper information about an advertising goal, which can lead to error in the consumer regarding the nature and form of the message and that cannot be understood by the context. In this case, it could be

understood as those pieces of content in which the brand is hidden behind the content, it does not clearly appear, but has an obvious advertising intent (IAB, 2018). In this sense, the Audiovisual Media Services Directive (2018) prohibits covert advertising and mandates that any commercial communication must be easily recognizable by any consumer (Art. 9.a). This task is left in the hands of the "... Member States who shall ensure that video-sharing platform providers clearly inform users where programmes and user-generated videos contain audiovisual commercial communications" (Art. 28 *ter*) through regulation or self-regulation.¹² This Directive also prohibits audiovisual commercial communications that incite minors to buy products due to their inexperience or credulity and does not allow for direct encouragement to persuade their parents or others to buy them the goods or services advertised and forbids the exploitation of the special trust they have on their parents, teachers or other people and also forbids showing minors in dangerous situations (Art. 9g). The Directive bars advertising aimed at minors of products such as alcoholic beverages (Art. 9e), cigarettes and other tobacco products (including electronic cigarettes and refill containers) (Art. 9d) or medicinal products (Art. 9f). It is suggested that commercial advertising targeted to minors related to foods contained saturated fats should be reduced (Arts. 9.3 and 9.4). In relation to content creation, this Directive defines the different elements of this ecosystem, including the video-sharing platform providers, the video-sharing platform service itself and user-generated content as well as their corresponding responsibilities. Video-sharing platform services are defined as services:

where the principal purpose of the service or of a dissociable section thereof or an essential functionality of the service is devoted to providing programmes, user-generated videos, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate, by means of electronic communications networks... and the organisation of which is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing (Art 1.).

which means companies such as YouTube that provide a video-sharing service through their platform. The content created by users, i.e., "user-generated video" is defined as a set of moving images with or without sound constituting an individual item, irrespective of its length, that is created by a user and uploaded to a video-sharing platform by that user or any other user" (Art. 1). For the purposes of this paper, "user-generated content" refers to the content created and uploaded to the video-sharing platforms with the help of their parents.

Since we are dealing with a Directive, each Member State of the EU is tasked with adopting its own regulations in relation to video-sharing platforms and ensuring that these platforms, such as YouTube, comply with national norms. In the case of minors, compliance

¹² Countries such as the United Kingdom (Influencer's Guide to making clear that ads are ads), France (Part of Recommendation Communication publicitaire digitale), Italy (Ap Digital Chart), Belgium (Belgian Advertising Council Recommendations on Online Influencers), Germany (Leitfaden zur Kennzeichnung von Werbung auf Instagram), Ireland (Asai Guidance Note), Sweden (The Swedish Consumer Agency Guidance on marketing in blogs and other social media), the Netherlands (Part of SRC The Dutch Advertising Code) among others, have developed self-regulation codes for the advertising sector, making special mention of the protection of minors.

refers to prohibited content (such as gratuitous violence, hatred or pornography) as well as commercial content that may impair the physical, mental or moral development of minors (Arts 28.3 and 6).

On the one hand, the 2018 Audiovisual Media Services Directive does not impose great obligations on platforms that allow for the sharing of user-generated content, even if they are now required to include proprietary and third-party control measures and even if a video that is reported for a takedown is eliminated within a few hours when there is a justified cause for it. It is notable how permissible the norm still is. Even if we are dealing with a business model based on third-party content distributed through the platform, the provider should still bear most of the responsibility, as it happens in other media such as television (Lambrecht et al., 2018). On the other hand, the Directive impedes these platforms from collecting personal data related to the navigation habits of minors to be used for commercial purposes within the context of behavioral advertising (i.e., ads targeted at users based on their online activity).

Regarding European self-regulation practices, the European Advertising Standards Alliance (EASA), the organization that includes European national self-regulation entities and the main trade associations representing the interests of the advertising industry, has elaborated the “Best Practice Recommendation on Influencer Marketing” (2018) report which recommends self-regulation associations from Member State countries to regulate the commercial advertising activities of *influencers*. This code of best practices insists that all commercial advertising content should be identified as such, and that such identification should be instantaneous and done in a way that is evident for its target audience. The report suggests the use of tags or hashtags that indicate that it is an instance of commercial advertising; or the insertion of text expressly stating that “the products have been sent free of charge for the purpose of review” or that “the trip was paid for by X”) as long there is advertising intent (sponsorship contract, gifts in cash or in-kind). Compliance with these obligations falls upon both the influencer and the sponsoring brand.

In that sense, the United Kingdom protects minors through its Advertising Code (Section 5) (ASA) the Guidance on recognition of advertising online marketing to children under 12 (Committee of Advertising Practice, CAP, 2017) and, specifically, with the Advertising Guidance note on Child Brand Ambassadors (Committee of Advertising Practice, CAP, 2019). The two first codes alert that commercial communications aimed at minors should not contain any that may result in physical, mental or moral harm to them or in dangerous situations without proper adult supervision, nor should they encourage children to imitate practices that may be unsafe for a child, nor should they exploit their credulity, loyalty, vulnerability or lack of experience in the terms provided for by the Audiovisual Media Services Directive¹³.

The aforementioned Guidance on Recognition of Advertising Online Marketing to children under 12 (Committee of Advertising Practice, CAP, 2017) and the Advertising

¹³ It should be noted that this work was carried out before Brexit and is likely to take a different form now.

Guidance note on Child Brand Ambassadors (Committee of Advertising Practice, CAP, 2019) alert on the necessity of identifying and differentiating entertainment content from commercial advertising content and warns that “a “highly immersive” marketing communication features prolonged or in-depth interactivity, principally, game-play or narrative such as that of a story in audio-visual content (...). The usual separations between advertising and other content – spatial and/or thematic – are absent” (Guidance on Recognition of advertising online marketing to children under 12). In this case, advertisers are warned that their commercial advertising communications must be identifiable for minors through the use of text such as “#ad” or “#advertisement” and any confusion about the commercial advertising nature of any content must be avoided. The Spanish IAB has also issued a Guide for Influencer Minors (IAB, 2018) directed at advertising industry professionals and parents that act as content creators in order to provide support in terms of legal matters related to commercial advertising on sharing platforms.

RESEARCH QUESTIONS AND METHODOLOGY

In the previous chapter, we analyzed the existing regulation related to content created by or aimed at underage people in the US, the UK, and Spain. As the next step in our research, we wanted to see what is the degree of compliance with the said advertising regulation. The following research questions prompted our content analysis research:

1. Do videos by underage creators disclose, in any capacity, whether the video contains advertising content?
2. Do videos disclose that there is advertising content through any visual or verbal cues?
3. Do creators request personal data from minors for advertising purposes and (if yes) in which cases?

Thus, the primary goal of our research was to determine if, in the researched videos there is a visual or verbal means of identifying that they contain commercial advertising according to current legislation. The secondary objective is whether they request personal data for commercial advertising purposes.

The research methodology used was a content analysis of a selected sample of YouTube videos created by underage content creators. The selected sample was collected through the main *kidfluencer* channels on Youtube in three countries: Spain, the United Kingdom and the United States. To select the channels, we have followed the subsequent criteria:

1. Videos that feature people under 14 years of age;
2. Channels classified as A or B according to the Social Blade (2020) ranking (this ranking measures a channel’s influence based on a variety of metrics including average view counts and amount of “other channel” widgets listed in, where A is the most influential grade followed by B and C);

3. Channels that had a visualization median per video above 1.000 views and a rate of video publication over two videos per week. These data were obtained from YouTube channels themselves.

Thus, our sample included 15 YouTube channels aimed at children; 463 videos (published between 2016 and 2020) were selected randomly from those channels and were analyzed. This represented over 6.860 minutes of content viewed (with average duration of 15 minutes per video) that was analyzed by the authors of the article in 2020. As a reference point, we selected the most popular channels according to the first positions in the Social Blade ranking (See Table 1).

Table 1. The most popular channels according to the first positions in the Social Blade ranking

Channel name	Classification	Position in ranking (in their country)	Position in ranking (general)	Subscribers	Channel start date
Spain					
Las Ratitas 2016-2019	A	2	68	7,780,725	2015
TheCrazyHaacks	B+	62	3,034	2,606,544	2015
Jugando con Aby	B+	53	2,718	1,372,471	2015
Mikel Tube	A	61	390	2,398,017	2015
Los juguetes de Arantxa	B+	69	3,403	2,363,027	2015
United Kingdom					
NatyTubeFun	A	4	153	1,106,244	2011
Emily Tube	A	15	408	8,028,579	2014
ToysAndMe	A	61	2,215	9,631,930	2014
HitzhToys	B+	190	6,919	622,000	2014
LuckySurpriseToysReview	B	+250	11,512	2,599,417	2016
United States					
RyanToysReview	A+	10	30	17,004,486	2015
EvanTubeHD	B+	+250	3,757	5,919,552	2011
Naiah And Elli Toys Show	B	+250	5,009	1,719,468	2015
Hailey'sMagicalPlayhouse	B	+250	8,942	1,492,720	2015
Hulyan Maya	B	+250	6,210	1,660,008	2008

Source: *Social Blade* (2020) (from 2020 till today).

The selection of the three countries that appear in the table responds to the fact that they are points of reference among YouTube channels for minors. The United States was the pioneer with the channel EvanTube in 2011 and continues to have examples in excellent positions such as Kids Diana Show with 104 million followers and Like Nastya

with over 102 million followers in 2022. Spain is a country with some of the best positioned children's YouTubers in the world according to the Social Blade ranking. Examples include *Las Ratitas* with almost 25 million followers in 2022 and we also selected the United Kingdom because within the European space, British channels are the reference point for English language content not only for minors but in general.

This study used the coding sheet created by its authors and that was used to identify the following main categories:

- >Identifying data: Youtuber, Title, Link, Date, Video duration, Video typology
- >Advertised product
- >Type of representation: the way the product or brand appears on the video
- >Type of advertising format
- >Persuasive resources
- >Regulation
- >Tone of the message
- >Participant profile
- >Staging/narrative: the type of stage.

In the 'Regulation' category the following data on the types of laws and norms were collected: European directives, national legislation and self-regulation norms that mandate that all advertising content must be clearly identifiable and unequivocal for the recipient with visual or auditory cues as well as laws that regulate the collection of personal data.

These instruments included:

- >EU level: Audiovisual Media Services Directive, Directive concerning misleading and comparative advertising and the General Data Protection Regulation.
- >Spanish National laws: the General Law on Advertising, the Law on Unfair Competition and the Audiovisual Communications Law and the National Data Protection and Digital Rights Organic Law.
- >United States national laws: Children's Online Privacy Protection Act of 1998 (COPPA).
- >UK self-regulation: Advertising Standards Authority (ASA) code.
- >European self-regulation: the European Advertising Standards Alliance (EASA) code and the Advertising code.

In each video we identified if advertising was present and if this advertising content was identified through text or audio or if it was not identified as commercial content. We also identified if personal data was collected for commercial purposes.

RESULTS AND DISCUSSION

Degree of compliance in terms of properly identifying advertising content

As it can be observed, it is common that the video contains no indication that it is, or that it contains commercial advertising, which clearly is in breach of legislation in the three countries included in this study. Of all of the researched countries, Spain is the country where the commercial nature of the videos is disclosed at the highest rate, with 29.1% (11.2% was disclosed verbally and 17.9% was disclosed through text), followed by the United States with 15.4% (13.9% disclosed the information verbally and 1.5% was disclosed through text). United Kingdom is the country where the rate of disclosure is the lowest (8.3% and only verbally). We should especially highlight the fact that in videos from the UK sample we did not find any visual indication that the content was commercial advertising or contained commercial advertising.

The previous analysis shows that, while specific advertising regulation exists both in Europe and the United States, and that such regulation does indeed demand the identification of advertising messages as to what they are, and that such regulation also contains dispositions aimed at protecting minors, the law is not followed. Our analysis shows us that in more than 70% of cases in Spain, 84% in the United States and in 91% of cases in the United Kingdom, the proper information is not disclosed. In any of the three countries, only in a minority of cases we were able to observe a visual or verbal indication that the video analyzed contained or was commercial advertising. Even if we combine the rate of compliance in all three countries, we see that only 11.1% of videos came with a verbal indication that they contained or were commercial advertising and only 6.4% of videos included a visual indication disclosing that they contained or were commercial in nature. In the case of the UK, we saw no videos that contained any visual indication of commercial advertising (Table 2).

Table 2. Identifying advertising content in videos from underage content creators

	Is there any visual or auditory cue that identifies the video as containing advertising or if it is advertising?		
	Yes, verbally	Yes, through text	No
Spain	11.2%	17.9%	70.9%
United Kingdom	8.3%	0.0%	91.7%
United States	13.9%	1.5%	84.7%
Total	11.1%	6.4%	82.4%

Requesting personal data for promotional purposes

We detected only two cases (0.4% of the videos) in which data were collected without authorization and both cases were from Spanish channels. In both cases, data are requested to enter a raffle, one for a T-shirt related to the channel's self-promotional purposes and in the other case, for the possibility of winning a gift from a well-known brand.

According to our study, it is clear that greater efforts are needed to ensure compliance with existing laws and that regulatory and enforcement bodies need to keep a watchful eye and even make use of the means of the enforcement provided for by law in order for this situation to improve. Apart from regulation, other norms, such as self-regulation codes and ethics codes within the advertising trade should recommend advertisers to make better efforts to properly label content as commercial advertising aimed at minors to protect the interests and wellbeing of children who consume the types of online content described in this work. Online video sharing platforms, such as YouTube should also make efforts to ensure that both advertisers and content creators comply with existing regulation and recommendation from relevant associations. It is also imperative to ensure the protection of privacy and personal data for children who consume online media in order to prevent them from disclosing and giving away personal information without proper parental consent. For this, COPPA in the United States and the General Data Protection Regulation in the EU provide the necessary regulatory frameworks. In Europe, we also observe that self-regulation norms are followed together with the legal rules to regulate the market from the advertising agents themselves.

It is evident that digital media have opened many new opportunities for business. One of the most buoyant new forms of business is that of influencer minors that has consistently grown since 2017. In particular, children that create and are the stars of channels aimed at other children in which they show them toys, explain to them how to play with them, etc. are very popular. Brands are aware of the popularity of this phenomenon and have fully entered the market in order to get a piece of the pie. They contact YouTuber children and hire them or gift them their products so they can be featured in their channels.

It was expected for companies to spend almost US\$10 billion in “influencer marketing” in 2020, as compared to the US\$6.5 billion from 2019. In Europe, there was an increase of 45% in spending, from 2018 until 2021. In the specific case of advertising aimed at children, digital spending was supposed to reach US\$1.7 billion in 2021 (37% of total spending in advertising aimed at children). As this phenomenon grows, the amount of content created by minors grows as well as the number of minors that consume content created and uploaded by their peers, influencer children. We can see that these numbers have doubled in the United States since 2015 and how the amount of time children spend consuming these contents also grows.

This is an emerging reality that worries regulators, who have taken action, as we have reflected in our work. However, these actions remain incomplete. It is true that regulators understand there is an imperative necessity for the messages that these minors broadcast to be clear in order to avoid that other children are led to confusion and into thinking that the message they receive does not contain any form of commercial advertising and that it is purely entertainment. However, it is also true that there are specific laws related to advertising in both Europe and the United States that seek to ensure that messages disseminated by children YouTubers are, among other things, clear enough, to avoid confusion among other minors who might think that the message they receive is not advertising, and instead is entertainment or of another nature.

While laws in both Europe and the United States seek to ensure that advertising is properly identified as such, and even if such laws exist, and there is concern regarding the interactions between children and digital media both in the United States and Europe, our study shows that there is a number of irregularities in all countries studied, particularly in relation to advertising messages and compliance with the duty to disclose that these messages convey advertising content. Non-compliance is alarmingly frequent as our research shows. The required information is not provided in more than 70% of cases in Spain, it is not properly disclosed in over 84% of cases in the United States and is not provided in more than 91% of the cases studied in the United Kingdom.

CONCLUSION

The digital sphere has opened many doors for new types of business. One of the most prosperous of these new types of business are underage influencer channels, where the protagonists of videos are children who show other children their toys or explain how to play with them, among other content. These channels have shown steady growth since 2017. Brands did not ignore this phenomenon and were quick to engage and secure their share of the market. They often contact YouTuber kids and sign them into contracts or give them gifts in order for them to show their products on their channels. It is necessary that the messages minors convey on their channels are clear and must avoid that other children get confused and think that the message they are receiving is not advertising and instead is just entertainment. There is specific regulation that seeks to avoid any confusion of whether the content is advertising or not. There are national regulations in the United States, the United Kingdom, and Spain as well as European Union laws that regulate advertising messages and, together with self-regulation codes, among other things, contain obligations to identify as advertising content that has such a goal. The first initiatives to regulate this growing online market were proposed by: the Federal Trade Commission in the United States; reports by the European Commission in the EU; reports by the Advertising Standards Authority in the UK; and reports by the IAB in Spain. Despite the existence of these regulations, this study shows that compliance is minimal regarding the identification of advertising content as such. Compliance does not reach 70% in any of the studied countries while the rate of compliance with data protection regulation is greater. However, interest in regulating this market and protecting minors is evident, as shown by the recent entering into force of the Digital Services Act Regulation in the European Union which makes regulating advertising in the online space, particularly in very large online platforms a priority, as it is the protection of the digital rights of citizens, including minors.

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MALOLJETNICI KAO STVARATELJI SADRŽAJA: STUDIJA O UČINKOVITOSTI PROPISA O OGLAŠAVANJU U SJEDINJENIM AMERIČKIM DRŽAVAMA, UJEDINJENOM KRALJEVSTVU I ŠPANJOLSKOJ

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SAŽETAK Članak analizira stupanj usklađenosti s propisima o oglašavanju koji se odnose na sadržaje koje su izradile maloljetne osobe ili su namijenjene maloljetnim osobama na YouTubeu. Istraživanje je provedeno analizom sadržaja na uzorku od 463 videa koji su objavljeni na platformi YouTube u razdoblju od 2016. do 2020. godine. Videozapisi su odabrani s kanala 15 najpopularnijih dječjih youtubera, prema njihovoj poziciji na Social Bladeu, a koji potječu iz Sjedinjenih Američkih Država, Ujedinjenog Kraljevstva i Španjolske. Glavni cilj istraživanja bio je utvrditi otkrivaju li videozapisi da se radi o komercijalnom sadržaju i je li to učinjeno u skladu s važećim zakonodavstvom. Ujedno, istraživano je jesu li osobni podatci traženi u promotivne svrhe. Članak pokazuje kako je unatoč postojanju oglašivačke regulative u svim istraživanim zemljama usklađenost s regulativom minimalna u pogledu identifikacije reklamnog sadržaja kao takvog.

KLJUČNE RIJEČI

MALOLJETNICI, YOUTUBE, KOMERCIJALNI SADRŽAJ, PRIVATNOST

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