

## **Minors as Content Creators: A Study of United States, United Kingdom and Spanish Regulation**

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**ABSTRACT:** This work reflects the results of a study about the degree of compliance with advertising regulation in relation to content created by and/or aimed at minors on YouTube. Research has been done using a sample of 463 videos (over 6860 viewing minutes) that were available on the platform between 2016 and 2020. Those channels from children YouTubers that appeared on the top 15 positions of the Social Blade Ranking were selected. All of them are from the United States, the United Kingdom and Spain. The main objective of the study is to determine if videos disclose that they are about commercial content and if this is done in accordance with current law or if, on the contrary, that information is not present which can lead children to believe they are watching entertainment content instead. As a secondary objective, the work aims to find out if, when requesting personal data for promotional purposes this fact is disclosed. The main conclusion, in relation to the main objective, is that in these videos it is not a common practice to disclose that the contents are commercial in nature. Regarding the secondary objective, we found that relatively few personal data is requested from minors and that, when this is done, it is for the purpose of participating in sweepstakes, and that this is properly disclosed.

**Keywords:** Minors; YouTube; Vloggers; Commercial; Legal Criteria; Privacy; Consumer

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### **1. Content Created for Minors: A Channel for Brands Introduction**

Children have always been a resource and a commodity for the advertising ecosystem. However, beginning approximately five years ago, children have also emerged as successful creators of that type of content. This phenomenon has seen steady growth since at least 2017 (Ofcom, 2019). It started with EvanTubeHD in 2011 and it has continued to grow through many others that decided to follow suit, such as Ryan, that at age 7 managed for his channel, Ryan Toys Review to make the Forbes list as the channel's revenue surpassed 22 million dollars (Bert, 2018). These children fuel true money-making machines, something brands are aware

of. Their channels serve as displays for products of all kinds. Ryan, for example, has 23 million followers and more than 33 billion visits since he and his parents launched the channel Ryan Toys Review (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. As a matter of fact, the global advertising market for children, according to the PriceWaterhouseCoopers study "Kids digital media report 2019," will continue to experience growth of more than 20% until it reaches a total investment of US\$1.7 billion in 2021, which amounts to 37% of the total investment in advertising aimed at minors (PWC,

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2019). According to an estimation by Adweek, in the United States, global investment on influencers will grow 500% in 2020 and will grow from the current US\$2 billion to US\$10 billion in just two years. In Spain, advertising investment in influencers was €37 million in 2018 (Infoadex, 2019). Two Spanish studies from IAB (2019), “Inversión publicitaria en medios digitales” and “Redes sociales,” indicate that 25.6% of total advertising investments are directed towards social media, which amounts to €807.2 million, out of a total of €3,150 million. In relation to digital advertising aimed at minors, it is expected to increase 45% from 2018 to 2021.

Obviously, in the face of this phenomenon, the audience numbers 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, Bonsignore, Peyton and Yarosh, 2016; Yarosh, Bonsignore, McRoberts and Peyton, 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: 32). In the United States, the time minors over 8 years of age devote to online video consumption has duplicated since 2005: from 24% to 56% in those between 8-12 years old and from 34% to 69% in those between the ages of 13 and 18; 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 8 and 11 years old 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 in 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 ages 5 to 7, 40% of those aged 8 to 11, and 52% of those aged 12 to 15 (Ofcom, 2019).

The minor 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.

The new business, the new actors and the 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, no matter the environment, advertising messages are still advertising messages and that 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 follow the law. Those 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 (McLaughlin, 2013; Staksrud, 2013; Lievens, 2010; Lievens, Dumortier and Ryan, 2006).

Those obligations come from national laws (in the United States, Spain and the UK) and European Union and European rules (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 UK, the IAB reports in Spain (Martinez & Vizcaino, 2017) as well as the European Advertising Standards Alliance (EASA).

## 2. Previous Studies

The reality is that minors, and young people in general, are increasing their consumption of digital media (Holloway, Green Livingstone, 2013), with those between 5 and 15 years of age devoting more than 15 hours a week to online media consumption (Pew Research Center, 2018; Ofcom, 2017). 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, 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 (Vanwesenbeeck, et. Al.; Martínez, 2019, Verdoodt, Clifford, & Lievens, 2016; Verdoodt, Lievens & Hellemans, 2015; De Wolf, 2016). Other work focuses on the identification of advertising on videos through text or verbally (FFC, 2019; IAB 2018a, 2017; ASA, 2017; Martínez-Pastor, Serrano Maíllo, Vizcaino-Laorga & Nicolás, 2017). There are associations such as “Truth in Advertising” that monitor compliance in that context. The association started a complaint before the FTC against Ryan Toys Review (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 works on the regulatory framework related to liability from parents and industry in relation to minor YouTuber channels in Europe and the United States, specifically in Spain (Vizcaíno, Martínez & Serrano, 2019). Work done has addressed the presence of products or brands in videos and the presence of brands and the types of products advertising and has looked into the regulatory framework and fair competition practices in the United States and Europe (IAB, 2019, 2018; ASA, 2017; Craig & Cunningham, 2017; Wa, 2016; Campaign for a Commercial- Free Childhood, 2016).

Other authors have focused 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 have studied data surveillance of minors (Lievens and Verdoodt, 2017), others have focused on the risks that data processing entails and on the liabilities of the processors (Van Alsenoy, 2016). Others have engaged 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), have studied 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.

Other research has analyzed the rights and obligations of social networks regarding user data processing (Van Alsenoy & Brendan, 2014) and how they include privacy rules in their company policies, as in the case of Facebook (Van Alsenoy et. Al. 2015; Van Alsenoy, 2014). Others on data collection on minors through mobile apps without parental consent (Reyes et. Al., 2018; Valentino-DeVries, 2018) and how users feel they have no control over it (Stoilova, Livingstone & Nandagiri, 2019). Other work is 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.

Lambrecht, Verdoodt & Bellon (2018) have inquired into the liabilities of video exchange platforms that host user generated content and have highlighted 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. Because of this, this study approaches the regulatory framework on minors and advertising of each country selected, the United States, Spain and the United Kingdom. After this, we present the results obtained from watching a selection of videos in order to determine if they are in compliance with legal parameters in their territories and, finally, we analyze the data in order to compose a picture on the current state of affairs and then point out what needs to be improved.

### 3. 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; Staksrud, 2013; Lievens, 2010; Lievens, Dumortier and Ryan, 2006). The goal is to avoid children from wanting a particular toy or product because they think their favorite YouTuber is enjoying that toy or product, when in fact he 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 collect 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 FCT in the US, as well as reports such as the one from the IAB in Spain (2015).

#### 1. 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 have taken 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 the same Title V which amends the Communications Act of 1934 to include a Section 230 “Protection for Private Blocking and Screening of Offensive Material” that serves to highlight the United States Congress’ perception that the Internet has only managed to exist as a platform that offers

“a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity” thanks to “minimum government regulation.” This has led 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.”

Absent any regulation, the Congress of the United States seeks to instead encourage the development of technology that maximizes “user control over what information is received by individuals, families, and schools who use the Internet...” Since, according to Congress, the Internet is a diverse platform that offers unlimited choice, it has deemed as its best approach to focus on user control and responsibility, and, most relevant for the topic that this work covers, the role of the family in having a say of what their children can access online.

Highlighting these particular dispositions of the Telecommunications Act of 1996 serves to set the tone for the way the United States has chosen to approach 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 seeks 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; Citron and Wittes, 2017; Keller, 2018; Citron, 2020; Citron and Franks, 2020) and policymakers (See Department of Justice, 2020 and for a summary of past legislative proposals see Reidenberg et al, 2012). Online platforms themselves have expressed that there is 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 audiences 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 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 operators of websites and online servers -or those that act on their behalf- that collect or maintain personal information (defined as individually identifiable information about and individual collected online include name, personal address, e-mail address, phone number or social security number ) about their users for commercial purposes. Personal information also includes any “information concerning the child and combines with an identifier described (in section X(8). ”

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.

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.”

Most importantly, COPPA regulates the collection and use of children’s personal information in websites and online services directed at children defining this term – “directed as 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 children” 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.”

The COPPA Rule has since been amended in 2013, introducing several clarifications in terms of its definitions and adaptation to more recent technological developments. Among changes introduced in 2013, where 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 is likely to be amended again sometime after January 2020 (Cohen, 2019).

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 we have so far of enforcement of COPPA by the Federal Trade Commission is the action against Google and YouTube by the FTC and the New York Attorney General (Federal Trade Commission, 2019). Because 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 of 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).

The YouTube-created mechanism will now require 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 legal burden to Users and creators (Metafilter, 2019). 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 but certainly, more studies about its compliance are 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, Hargittai, Schultz & Palfrey, 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.

But 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 application 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.

## 2. European Context: The United Kingdom and Spain

Europe has always protected consumers from misleading advertising both through the Unfair Commercial Practices Directive and the recent 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 (article 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 programs and user-generated videos contain audiovisual commercial communications" (art. 28 ter) through regulation or self-regulation. 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, professors 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 programs, 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 organization 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 is in relation 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 (art. 28.3 and art. 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 take down 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 TV (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 (ASA, 2017) and, specifically, with the Advertising Guidance note on Child Brand Ambassadors (ASA, 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 Directive.

The aforementioned Guidance on Recognition of Advertising Online Marketing to children under 12 and the Advertising Guidance note on Child Brand Ambassadors 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 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.

#### 4. Methodology

This study seeks to determine the degree of compliance with American and European advertising regulation related to the most popular children

YouTube channels in Spain, the United Kingdom and the United States.

The main goal is to determine if in those videos there is visual or verbal means of identifying that they contain commercial advertising according to current laws, and as a secondary objective if they request personal data for commercial advertising purposes.

The sample used consists of 15 children YouTube channels and 463 videos from those channels that represent over 6,860 minutes of viewed content (with an average of 15 minutes per video) between 2016 and 2020. As a point of reference, the most popular channels have been selected according to the top spots in the Social Blade ranking.

The total sample are YouTube channels from the United States, England and Spain focused on topics related to toys and starring minors that are under 13 years of age. These countries were selected because they are the ones that appear on the top positions of the Social Blade ranking (classified as A or B+ with a local ranking no greater than 100). From this selection, a total of 15 channels (N=15) from each country were selected (See Table 1) according the recommended techniques for the selection of samples when designing experiments.

## 5. Discussion and conclusion

Results showed the degree of compliance in terms of properly identifying advertising content.

There is a visual or verbal indication that the video either contains or is commercial advertising. As it can be observed it is common that the video contains no indication that it is, or it contains commercial advertising which clearly is in breach of legislation in the three countries included in this study. Of all of them, Spain is the country where the commercial nature of the videos is indicated at the greatest rate (29%), and England is the country where the rate is the lowest (8.3%). We should especially highlight the fact that in no video within the sample taken from this country there was any visual indication that the content was or contained commercial advertising.

The previous analysis shows us 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 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 the minority of cases we were able to observe a visual or verbal indication that the video analyzed contained or was commercial advertising as 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.

From this we can gather that 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 in order 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.

Besides, this, it is also imperative to ensure the protection of privacy and personal data for children who consume online media in order to avoid that they disclose and give 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.

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 starts of channels aimed at other children in which they show them toys, explain them how to play with them, etc. are very popular. Brands are not unaware of the popularity of this phenomenon and have fully entered into 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 is expected for companies to spend almost US\$10 billion in "influencer marketing" this year, as compared



to the US\$6.5 billion from 2019. In Europe, there has been an increase of 45% in spending, from 2018 until 2021. In the specific case of advertising aimed at children, digital spending will reach US\$1.7 billion in 2021 (37% of total spending in advertising aimed at children). As this phenomenon grows, the number of contents created by minors grows as well as the number of minors that consume content created and uploaded by their peers, influencer children. We have seen how these numbers have doubled in the United States since 2015 and how the amount of time children spends 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, such actions are 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 are receiving does not contain any form of commercial advertising and that it is purely entertainment. 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, in order to avoid confusion in other minors who might think that the message they are receiving is not advertising, and instead is entertainment or of another nature.

However, while laws in both Europe and the United States seek to ensure that advertising is properly identified as such, but even if such laws exist, and there is concern regarding the interactions between children and digital media both in the United States and Europe, nevertheless, our study shows us that there is an elevated number of irregularities in all countries studied, particularly in relation to advertising messages and compliance with the duty to disclose that they are advertising content. Non-compliance is alarmingly frequent as our research shows and 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.

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 in order 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.

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