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Risks faced by Under-age Youtubers due to Legislative Gaps in Mexico

Youtubers menores de edad y sus riesgos frente a los vacíos legales en México

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Abstract

This research focuses on problems associated with the regulation governing the activity of under-age YouTubers; in particular, how this situation has developed in Mexico in recent years. Mexico is one of the most important markets for the consumption of digital media in Latin America. With a focus on case-study methodology, this work has three main objectives: a) to understand the potential risks to which under-age YouTubers are exposed, b) to analyse the case of Mexico: the consumer market of media, particularly among minors, as well as its regulatory framework. c) to find out the proposals that currently exist to fill this legal vacuum and how they could be adapted to the Mexican case. The analysis and conclusions in this work will demonstrate how the activity of minor creators represents a new field of activity, hence the regulations must be updated to cover these new forms of content production and consumption.

Resumen

La presente investigación busca abordar la problemática sobre la normativa que rige la actividad de menores de edad youtubers. Particularmente la forma en que se ha desarrollado esta situación en México en los últimos años. La razón de escoger este país tiene que ver con el hecho de que es uno de los mercados más importantes en el consumo de medios digitales en América Latina. Centrada en la metodología de estudio de caso, este trabajo busca dar cuenta de tres principales objetivos: a) entender los potenciales riesgos a los que se exponen quienes son youtubers menores de edad, b) analizar el caso de México: el mercado de consumo de medios, particularmente entre menores de edad, así como su marco regulatorio. Y c) ¿Qué propuestas existen actualmente para fortalecer este vacío legal y cómo pudieran adecuarse al caso mexicano? El análisis y las conclusiones en este trabajo demostrarán cómo la actividad de los menores creadores representa un nuevo campo de acción, de ahí que las normativas tienen que modernizarse para poder proteger estas nuevas formas de producción y consumo de contenidos.

Keywords

YouTubers; under-age; regulation; social media; Mexico; digital risk

Palabras clave

Youtubers; menores de edad; regulación; redes sociales; México; riesgos digitales

1. Introduction

In recent years, social networks have become one of the most important spaces for socialization and communication in the world. YouTube, for example, is the second-most visited Website on the Internet (Alexa, 2020). This predominance materializes particularly in the case of children and adolescents, since spending time watching videos, sharing images, and reacting to content published in spaces such as TikTok or YouTube has become one of the most popular activities among this sector (Anderson and Jiang, 2018; Statista, 2021a; 2021c). Children and juveniles in Latin America are not unfamiliar to this trend, but they are also avid followers of these platforms commonly known as social networks (Statista, 2020; 2021b). However, social networks do not only represent spaces for socialization and recreation where social relationships can be expanded, and people can learn about other cultures and ways of life. Rather, they can also lead to potential mental and even physical health risks. According to a report by the Raising Children organization (2020), these types of situations range from exposure to inappropriate materials for minors to virtual and physical harassment outside the Internet. However, there are other areas within the use of social networks, where the minor is potentially vulnerable to suffering media overexposure and labour exploitation (Wong, 2019). We see this in the case of minors who are dedicated to being content generators, either as professionals or amateurs, within spaces such as TikTok, YouTube or Instagram, commonly known as TikTokers, YouTubers or instangramers. One of the consequences of the great popularity of these platforms among children and adolescents is that they allow users to be more than passive consumers of information as they allow them to interact and create their own content. If their videos go viral, they become influencers, people who have a certain credibility within social networks and even the possibility of receiving financial compensation for their content (Gómez Nieto, 2018). Although in the case of the majority, the production of content is limited to the recreational and amateur field, the truth is that for other minors this activity has become very lucrative, with some people becoming influencers with thousands of followers and millions of dollars in earnings (Forbes Staff, 2019).

At first glance, the video content created by underage influencers shows an air of spontaneity and amateurism that conveys the idea that they record and produce the material alone. But in many cases, behind these channels there are professionals and media corporations that help to merchandize the content through paid ads, donations on *Patreon*, an online platform to make donations, or by selling products associated with the image of the minor. Despite criticism about the potential labour exploitation and the reporting of abuse and harassment cases (Holcombe, 2019; Moreno and Troya, 2019; Cezarita, 2021), the industry of underage influencers is booming, encompassing various social networks and digital formats. Among the most popular platforms for content creators is YouTube, which offers an accessible space where people can view and publish video content, allowing its followers to interact, share and comment on the audiovisual material; it also allows for the creation of channels to which they can subscribe. Virtual communities are built around these channels, while affective ties and communication with those who create the content are narrowed, through the figure of the channel's "follower" (Aparici and Osuna-Acedo, 2013). Young content creators on YouTube express their identity with videos that reflect their way of seeing life and personal tastes, influencing their community of followers at the same time (Susarla, Oh y Tans, 2012; Tur-Viñes, Núñez-Gómez and González-Río, 2018). The phenomenon of underage influencers on video platforms is experiencing significant growth in the digital consumer market. There are YouTubers like Ryan Kaji, who through his channel "Ryan's World", with 42 million followers, generated nearly 30 million dollars in earnings in 2019. The same phenomenon can be seen in Latin America where YouTubers such as TV Ana Emilia and La Bala in Mexico, Yael Danon in Panama and Jaden Michael in the Dominican Republic to mention a few, have very popular channels that attract thousands of followers. This proliferation of minor influencers in general, and minor YouTubers in particular, has grown under a regulatory framework with legal loopholes, which does not efficiently guarantee the protection of the minor against potential damage to their integrity, emotional health and pecuniary losses, thus leaving the weight of these decisions to the parents and guardians, who are sometimes not prepared to deal with the diverse legal issues related to the commercialization of the content generated by their children on the Internet and the potential damages derived from the public exposure of the minor on the Internet.

1.1. Research problem and objectives

This article addresses the problem of the norm that frames the activity of underage YouTubers, particularly in the case of Mexico. The reason for choosing this country has to do with the fact that it is one of the most important markets for digital media consumption in Latin America, with large audiences using streaming platforms like Netflix, Amazon Prime, and of course YouTube. This last platform boasts several Mexican YouTubers that exceed one million followers (Hernández, 2020). Based on the case study methodology, this work pursues three main objectives: a) to understand the potential risks to which underage YouTubers are exposed, b) to analyse the case of Mexico: the media consumer market, particularly among minors, as well as its normative framework, and c) to determine what proposals currently exist to strengthen this legal void and how they could be adapted to the Mexican case.

Regarding the problem of having an efficient regulation that protects underage creators of content on YouTube, our hypothesis suggests that these legal loopholes arise mainly because YouTube has traditionally considered minors as passive consumers, not as potential content creators, a principle that has been reflected in most state regulations. Hence, the activity of underage YouTubers does not have a special regulation that is congruent with the reality of the current consumer market and the production of digital content in social networks where minor influencers play a very important economic role. The total responsibility for decision-making falls on parents or guardians, who on many occasions are not well prepared to protect the interests of their children in the best way, and who, in some cases, even indiscriminately dispose of their children's income (Lambert, 2019). As there is no effective regulation or directive that protects them, the legal interest of the minor remains vulnerable.

1.2. Theoretical framework

The current prominence of underage YouTubers is also reflected in the vast academic production on the subject (Izci, Jones, Özdemir, Alktebi and Bakir, 2019). Thus, for example, Jiménez, García and Ayala (2016) make an extensive critical review of studies related to the use of social networks, particularly YouTube, among adolescents; amid the most important topics it is possible to find investigations related to user interactions and behaviours, types of consumption, the narratives developed by minors in cyberspace, the phenomenon of YouTubers, and the popularity and virality of information on social networks. Tur-Viñes. Núñez-Gómez and Martínez-Pastor (2019) complement this list by highlighting the academic works on the ethical and regulatory aspect of the phenomenon, where special emphasis is placed on those texts related to the potential risks to which minors are exposed to on YouTube: inappropriate content as advertisement to consume alcohol or pornographic material, virtual harassment, and/or aspects concerning the commercial and economic aspect. In this regard, Gewerc, Fraga and Rodés (2017) highlight the way in which these virtual spaces have grown as means of communication and entertainment among children, particularly regarding the making and consumption of content related to video games, such is the case of YouTube and Twitch. The outbreak of the pandemic in 2020, the establishment of forced quarantines and the closure of schools forced minors to stay at home, which made social networks the central element that has accompanied children and adolescents in the educational, social, and recreational environment during the confinement months (Feijoo and Fernández-Gómez, 2021).

Among the social networks on the Internet, YouTube stands out. It has become one of the most important virtual spaces for minors, not only with regard to consumption, but also to the production of content. However, this centrality is not exempt from problematics or questions regarding unequal access to digital media, particularly during the pandemic (Kardelis, Gómez and Ortí, 2021). It is also possible to mention the algorithmic system that distributes the recommendations of content to children, which focuses more on the popularity and duration of the videos than on the quality and relevance of the material (Smith, Toor and Van Kessel, 2018), the illicit use of personal data of minors, as well as the potential access to inappropriate content, among others (Rosés, 2019). That said, for many, social networks provide a ludic and recreational space, restricted to the consumption of content and the sporadic publication of videos. Many other users, with or without adequate guidance, have migrated their channels towards professionalization (Pastor, 2019; Feijoo and Fernández-Gómez, 2021). The channel marketing model on YouTube aids people in achieving the largest number of "followers" and "likes" possible, which in turn translates into more profits and monetization of the content, thus attracting sponsoring companies and increasing donations and subscriptions by followers. This growing market for content generated by minors develops without an appropriate legal framework that protects and advises the minor, focusing solely on the commodification of content and the establishment of marketing campaigns that aim to turn the minor into a trademark (Feijoo and Pavez, 2019). In this regard, López-Villafranca and Olmedo-Salar (2019) have rightly highlighted the absence of clear regulations that protect minors who create content, as well as the low awareness of parents and guardians regarding the potential problems and risks to which their children are susceptible. It is important to clarify that these risks are not only present when creating content, but also when browsing social networks where minors may be exposed to inappropriate content (Chaudron et al., 2018; Garlen and Hembruff, 2021). At the same time, it is important to mention current social problems caused by the growing impact that influencers have on the minors' content. Young people often put their physical or moral integrity at risk by following behaviours promoted on social networks. We see this clearly in the cases of so-called "viral challenges" (Arellano, 2020), many of which have led to emotional problems, injuries and even death (Crumley, 2021).

2. Methodology

This study was developed under the structure of the case study methodology. This approach allows deep and multifaceted explorations of complex issues in their real context (Crowe, Cresswell, Robertson, Huby, Avery, & Sheikh, 2011). The article will mainly follow the model proposed by Robert K. Yin (2017): a) define the case, b) collect the evidence and c) perform the analysis. That said, because it is a case related to a legal problem, we have decided to introduce a variant. A comparative study was chosen between three normative criteria, using the comparative method of legal analysis or comparative law

(Eberle, 2011; Paris, 2016; Durán, 2016), which aims to compare two or more legal realities through the study of regulations around a problem, legal figure, or regulation by explaining their differences and similarities. From there the researcher draws conclusions that clarify legal gaps or inconsistencies on the one hand and seek to improve the functioning of the legal framework and harmonize legal criteria both locally and internationally on the other (Hoecke, 2015; Bhaat, 2015). Although this article focuses on the study of regulation or, in this case, the absence of appropriate legal frameworks that protect minor YouTubers in Mexico, this legal reality will be compared with two other existing regulatory criteria:

a) The Mexican case, where, although no law exists to protect minor content creators, in recent years new legal proposals from the Mexican state and YouTube business directives have been introduced with the aim of imposing limitations and responsibilities on YouTubers while at the same time establishing some guidelines regarding minors, regardless of whether they are consumers or creators of content.

b) The protection framework for minor artists used in the United States, the so-called Coogan Law (California Child Actor's Bill) originally created in 1939 (with a last update in 2000).

c) A French law that was approved at the end of 2020 (LOI n° 2020-1266 of October 19, 2020, visant à encadrer l'exploitation commerciale de l'image d'enfants de moins de seize ans sur les plateformes en ligne).

The selection criteria of the normative cases is mainly due to the objective of reviewing a traditional model adopted for the case of child actors (Coogan Law), comparing it with a recently approved regulation that is directly focused on the problem in question (French Law). Finally, we compare the criteria adopted in these two regulatory frameworks with the Mexican case. Beyond gaining a deeper understanding of how the problem of minor YouTubers in Mexico is addressed, this study also proposes some guidelines that may aid in filling the existing legal gaps, not only in the case of Mexico, but throughout Latin America.

3. Results

3.1 The use of YouTube in Mexico

In the middle of 2021, the interactive virtual platforms, called social networks, from YouTube to Instagram and Snapchat, made up the most important informational and entertainment media in the world. With the emergence of the COVID-19 pandemic, this argument is even more categorical. In the case of Mexico, as the years have passed, the incorporation of these technologies in the daily life of Mexicans has been increasingly consolidated. Today it becomes imperative to have a profile or profiles on social networks and use applications such as WhatsApp to stay in contact with workplace, educative, and family environments. Regarding YouTube, there has been an accelerated growth in the use of the platform in the country since 2016. Some 79% of Internet users -around 63 million- used the video platform (Think with Google, 2017). By 2019, YouTube was consolidated as the largest video-consumption platform in Mexico with 19% of the market share (Riquelme, 2019). The Pandemic age, marked by forced quarantines and the use of virtual platforms and applications to continue studying and working remotely, has further cemented the importance of YouTube not only for entertainment but also in producing educational and commercial material. During 2020, the flow of content in Mexico had an increase of 130%, with 600 channels that exceeded one million subscribers (Hernández, 2020). This accelerated process of Internet adoption in general, and YouTube users in particular, has resulted in the consolidation of a very important digital content consumption market. In many cases, regular consuming users have been motivated to create their own videos, focused on becoming professional. Some of these channels have become very popular and have generated millions of dollars, making their creators famous on the Internet. Such is the case of influencers, and in the case of those who work mainly on the YouTube platform, YouTubers.

3.2. The new content consumption market in Mexico and the role of influencers

This popularity and growth in the consumption of content on social media has resulted in an important market where brands have found in those who are influencers a new, valuable way to promote their products to a potentially global spectrum of consumers. Generally, there are two systems of advertising on YouTube channels: a) through commercial breaks or banners that are displayed when the video is played; b) another very common way is for influencers to exhibit a product or service in their video, which in English is called "product placement" (Bermúdez, 2017). However, this new form of marketing is not exempt from questioning. On many occasions, some influencers have positioned themselves as figures whose actions and ideas have a great impact on the preferences and behaviour of their followers, especially children and adolescents. They are not only media celebrities but also public figures whose conduct has a great social impact. In recent years, the figure of the influencer has been in the public spotlight in Mexico due to some incidents of ethical, legal, and even electoral nature, where the role of influencers and their social impact have been scrutinized. For example, Germán Loera, a Mexican YouTuber who offered advice and routines on how to have a healthy life on his channel, was linked as a

participant in a gang of kidnappers (BBC News Mundo, 2020). In 2021, a group of influencers called “Las Chiquirucas” published a video where they appear denigrating and sexually abusing a migrant in the city of Guadalajara, Mexico (ADNPolítico, 2021). But without a doubt, there are two very relevant cases that are under public scrutiny in Mexico: a) the first refers to several influencers who received money to support a political party on their social networks on June 6, 2021, the federal election day in Mexico, something forbidden by the electoral law. They argued the use of freedom of expression to circumvent electoral regulations that prohibit political propaganda on Election Day (Alzaga, 2021). B) The second is the case of the YouTuber YosStop, who commented on her social media that she had seen a video of that rape of a minor. Now she is now imprisoned, accused of possession of child pornography (La Jornada, 2021). It is due to these cases, that there is a strong demand in the country for a legal framework that places limits on the activity of influencers and that requires a more responsible attitude from them as they create their content, especially when legal loopholes allow them to circumvent the law or negatively influence their followers, putting their physical and emotional integrity at risk (Bustos, 2021; De Dios, 2021).

In recent years, discussions about the regulation of various aspects related to the use of the Internet in general and social media in particular, has taken on greater urgency throughout the country. A primary theme is the debate surrounding the extent to which the laws should protect freedom of expression on the Internet when weighed against the responsibility of the platforms to remove controversial or harmful content and to eliminate user accounts that publish potentially offensive content (Calcaneo, 2019). Some legal initiatives advocate raising the age to use social networks to fifteen (Maritano, 2020), or improving controls on how these platforms operate in the country (Daen, 2021).

3.3. The figure of the underage influencer and the legal loopholes

The discussion about the regulation of the use of social media among minors is by no means new in Mexico. That said, the debate has traditionally focused on problems such as the protection of minors against sexual exploitation on the Internet (Trejo, Arámbula and Álvarez, 2006), harassment in social networks and exposure to unwanted content such as pornography, drug use and violence (García-Piña, 2008), and in recent years on the protection of privacy and personal data of minors on the Internet (Hernández, 2018). This problematic has also driven changes in social media platforms. In 2016, YouTube launched a space called YouTube For Kids, focused on providing safe and appropriate content for minors. It did this to alleviate, at least partially, the problem of minors—particularly young children—being exposed to inappropriate videos. Of course, it also did this with the purpose of commercially encompassing the accelerated growth of video consumption among minors. However, despite the efforts, these types of regulations and actions are limited since they start from considering the minor as a passive subject who only consumes information on social networks. The legal problem arises when the minor also becomes a content provider, and in many cases a valuable brand, which leads to many ethical and legal questions. In the first place, it remains necessary to elucidate the responsibility that parents or guardians have, as well as companies when using a minor’s YouTube channel to advertise goods and services that might not be suitable for most of the channel’s followers, who are predominately underage. Here a very common practice is called *unboxing*, where the minor demonstrates a new product, generally a toy or a video game, which has been provided by a company that wishes to promote its product among the channel’s followers. These types of business practices can have a negative impact on the followers, especially if they are underage. Either due to the type of product, which may not be suitable for all ages, or the handling of misleading or aggressive advertising that hides collateral health damages that may arise when using it, or when followers are motivated to practice a routine or challenge announced by the YouTuber when showing the product.

However, another significant point that receives little attention has to do with the management of the earnings that minors receive for their content or for their participation. On many occasions their labour is exploited, and the administration of the earnings obtained by monetizing sponsors’ content is at the discretion of parents and guardians, who in many cases have little or no financial preparation (Recio, 2019). An additional problem is related to the overexposure of the minor in social networks, who through the channel are susceptible of being the subject of verbal attacks and harassment from their followers (Moreno and Troya, 2019). It is precisely these cases that has prompted a series of reflections from the academia petitions on platforms such as change.org, and the establishment of regulations on the protection of the child not as a passive entity or a mere recipient of content, but as a professional committed to creating content.

4. Underage Youtubers and their regulation: normative approaches

4.1. The Mexican Case

Currently, the normative framework that regulates the use of YouTube among minors in Mexico is made up of a combination of Mexican federal laws—in some cases taking up international regulations such as the Convention on the Rights of the Child from 1989, which establishes the principle of privilege “the best interests of the minor” (Art.3)—and directives developed by the companies themselves, as is the

case of Google's policies for its YouTube users. Although the protection of minors on the Internet is an issue that concerns public opinion, the government and media companies, one of the first regulations on data protection does not explicitly mention them. Federal Law on Protection of Personal Data Held by Individuals (2010), whose objective is to ensure the information of individuals in the possession of companies and organizations for commercial purposes, does not mention the word minor, referring only to the legal representative of the subject. Already in the regulation of this law approved by the end of the following year (2011), this omission was corrected by making clarifications in this regard. As such, article 89 mentions that in the case of legal action of a minor, the ARCO rights (access, rectification, cancellation or opposition), the provisions of the Federal Civil Code (2021) will be followed with respect to the representation of minors, Art. 450 of the Federal Civil Code of Mexico. That is, the minor has the capacity to enjoy, but not to exercise until they reach the age of maturity or have been emancipated. It is precisely under this legal criterion that YouTube conducts itself when its service is used by the minor. For example, a user must be at least thirteen years old to use the service, although in the case of YouTube Kids it can be used by any user regardless of age. In various documents such as the case of "Terms of use" and "Resources for parents" YouTube leaves the weight of decisions and responsibility to legal guardians or parents, not only regarding the consumption of content, but also, on the video content that the minor can upload to the platform (YouTube MX, 2021; YouTube, 2021). Despite these principles being established both in Mexican legislation and on the video platform, most of the economic decisions related with the minor YouTuber falls exclusively on the holder of parental authority, which are the parents or legal guardians. Another recent regulation in Mexico has emphasized the importance of caring for the best interest of the minor, a right already enshrined in the Mexican constitution (art 4) and the international regulations already cited. Thus, for example, in the General Law on Protection of Personal Data Held by Obligated Subjects (2017) it is said that with regard to the protection of personal data of minors, "the best interest of the child and adolescent" must prevail. (Art. 17). In other matters, the criterion continues to rule the faculty of the holder of parental authority to make decisions of economic nature. As can be seen, most of the regulations approved in the last decade have to do with data protection, where minors are occasionally mentioned, leaving the weight of decisions to parents and guardians. The same criterion is applied in the case of the administration of the profits obtained by the minor when monetizing the content of their channel on YouTube, which preserves the right of guardians or parents who, in their case, make the decisions that they consider most convenient for the interest of their dependants. However, this principle established in Mexico is by no means an isolated case. On the contrary, it is very common in other countries, such as Spain (Moreno and Troya, 2019) and the United States (Lambert, 2019).

4.2. Coogan Law (1939)

In 1939 regulation 6750 was introduced in the State of California, where the city of Hollywood—home to major film studios recognized worldwide—is located. Officially called the Child Actor's Bill, it is commonly known as the Coogan Law in honour of the child actor Jackie Coogan, who prompted its passage after he lost much of his earnings as a film actor due to mismanagement by his family. The spirit of this rule is to protect the earnings of child actors from abuse and mismanagement by those who act as legal representatives since minors are too young to perform these legal acts for themselves. The law contemplates an important collection of jobs in which the minor can be hired in the entertainment industry from singer, double action, voiceover actor, etc. However, it was not until the reforms of the year 2000 (SB 1162 Senate Bill, 2000) that the Coogan Law was effective to protect the earnings obtained by the minor as an actor. Although the minor cannot dispose of this money directly, fiduciary instruments have been created between parents or legal guardians and the minor actor to manage the money. Likewise, the current regulations establish that the profits belong to the artist in its entirety, and that at least 15% of the total must be protected directly through a legal trust that can be accessed upon reaching adulthood. Although this norm currently offers a legal framework that helps to safeguard the minor in the patrimonial aspect, it falls short because it does not offer a mechanism in the case of labour exploitation. Perhaps the most important point is that this legal protection only covers minors who work for traditional training companies. The Coogan law has fallen short regarding the Internet and other new forms of digital entertainment, leaving the labour of children and adolescents who create content on social networks unprotected (Abidin, 2021).

As such, public opinion is currently requesting either the extension of this criterion so that it covers the work of YouTubers or a new exclusive regulation to solve this problem. However, it is precisely the flexible nature in which content is generated on social media that makes it difficult to extend the Coogan Law to the work of underage YouTubers. Traditional media generally deals with companies and a well-established legal apparatus with schedules and production phases, while production for social networks generally occurs in the private sphere of YouTubers, where the creator generally chooses when and where to produce the content. Consequently, some recent efforts have not been able to guarantee an efficient protection. We see this with the case of the so-called "Kidfluencer Bill" in California in 2018, which tried to update the Coogan Law, ordering parents or guardians to create a "Coogan" account to protect the earnings of their children. The final version approved of the bill left no effective safeguards to ensure this obligation (Lambert, 2019).

4.3. French normative Loi n° 2020-1266 (2020)

Approved in October 2020 in France, the LOI law No. 2020-1266 (2020), aims to offer a legal framework of protection for children under 16 whose image is broadcast on video platforms. Similar to the Coogan Law, one of the most important provisions (Art. 3. Fracc. III) states that part of the earnings of minors will be sent to a deposit and consignment fund (Caisse des dépôts et consignations). This cannot be accessed until the minor reaches adulthood or in case of emancipation of the minor, except for some exceptional cases indicated in the regulation. A novel aspect, not established in previous laws, is that it grants minors the full right to delete content, with or without the consent of parents or guardians (art. 4 and 6). Another point to highlight has to do with the fact that parents or guardians must obtain an administrative authorization so that the minor can engage in this activity (art 1). This is because child labor is prohibited in France, and only a few exceptions are allowed in the French labour code (Code du travail, 2021). These include child actors, and, as of 2020, those who are influencers on the Internet. It also introduces a series of observations with aims to ensure the child's safety (Art 3. Fracc. II). These include creating awareness of the possible legal and social repercussions when sharing content on social media: schedules, health and security when making the videos, psychological risks when disseminating content, etc. In terms of this new regulation, platforms such as YouTube will also have the obligation to adopt letters or directives that seek to raise awareness among minors about the dissemination of content with their image on social platforms. (Art. 4. Section II). Although this regulation provides very important elements to safeguard the physical and mental integrity of the minor, it also establishes guidelines to protect the profits derived from their activity as a YouTuber, the truth is that, because it so new, it remains to be seen how the various procedures mentioned in the law will be regulated, particularly as it relates to the mechanisms and sanctions to enforce the obligations of both parents and guardians and the companies behind the platforms.

5. Discussion

In many ways, the French legislation represents a great advance in protecting underage YouTubers by providing mechanisms to preserve their earnings, prevent labour exploitation and ensure the physical and mental health of the child and providing measures to guarantee the protection of their privacy (Bonnet, 2020; Derieux, 2020; Renaud, 2021). By now, the most accepted principle worldwide, with respect to the activity of YouTubers, is that the decision stands on the criteria of the minor's parents or guardians, as occurs in Mexico or the United States, though new regulations may arise in the forthcoming years (O'Neill, 2019). The Coogan Law was a great advance regarding the protection of child actors, but its approach has more to do with the traditional entertainment industry where, along with the interest of the minor and their parents or tutors, business and union objectives also come together, as well outlined labour conditions, with working hours in physical facilities. Trying to extend the criteria of the Coogan Law and other similar regulations to online activity is complicated given that working as a child actor is not necessarily the same as working as an influencer on social media where the content is generated in various spaces, among them the home, without a defined schedule and through various formats and virtual spaces. But there are also some pending questions to resolve regarding the new law approved in France. For example, how can the observance of the rule be assured? Will authorities review all YouTube channels created by children under 16 in France? How does it distinguish between YouTube channels that are created for ludic aims from others that are created expressly for commercial purposes? Another important point is to know what kind of legal and technical mechanisms can be established to monitor the channels created and exploited on social networks by minors in France, but hosted in other countries and platforms outside the jurisdiction of the country? In the next few years, after the rule comes in effect, it will be vital to know the exact scope of this French regulation, as well as the potential legal disputes and future procedural adjustments.

An important point to discuss when analysing the different criteria related to the protection of minors is precisely the legal concept of what constitutes a minor. Generally, this definition applies to all individuals under the age of 18. In Mexico, the General Law of Girls, Boys and Adolescents (2014) makes an important distinction with respect to ages that marks important divisions between children and adolescents: "girls and boys are those under twelve years of age, and adolescents, persons between the age of twelve and less than eighteen years of age" (Art 5). This difference allows for granting different rights when going from a child to an adolescent. In the country, for example, an adolescent can get a special permit to drive a car at the age of 15, and he/she must be 13 years according to YouTube guidelines to use its services. That said, there is a point, in general terms, that should be addressed in the regulations but that remains absent: to what extent the same criteria can be applied or not, according to the age of the minor (Pastor, 2019). Being three years old is not the same as being 14, although it seems that, seeking the generalization of the applicability of the norm, it becomes inequitable. We see this in the case of the French regulation, where the new statute applies equally to children from 1 year old to 15. It would therefore be important to propose, in the drafting of future regulations on the subject, a portfolio of decisions that could be accessed by the minor according to their age in a way that avoids establishing inflexible general guidelines that apply to all YouTubers in general.

When drafting regulations of this type, it is also important to consider the impact of factors like the speed with which technology evolves and the way that updates, new formats, and tools are introduced. It is also important to consider the role that countries like the United States, and very recently China, play in the global regulation of the Internet and digital technologies, as well as the growing concern that exists to guarantee the security of minors when they are online (IDB, 2020). At the end of 2020, for example, following an investigation by U.S. authorities into the inappropriate use of the personal data of underage users, YouTube implemented important changes on the platform. These were most visible, regarding the labelling of videos created for children, those that can be seen by children, and those that have age restrictions. Since the establishment of this regulation, it has become mandatory to check the option "created for children." Although it may appear to have little impact, this action will greatly affect the reach, advertising, and monetization of the publications, since it will limit the potential advertisers who want to appear in these videos (Sierra, 2019).

One of the most important lessons derived from the discussions in this study is that numerous factors contribute to the difficulties associated with regulating minors who are creators of content. These include: technology, economics, the legal idiosyncrasies of the country, and the commercial and political interests. We see this with the recent censorship of the TikTok platform in the United States (Pérez, 2020). But despite all these interests, what must prevail is the protection of the minor, who should be given all the support, and legal and psychological advice possible, regarding their exposure to various risks that can lead to permanent moral and physical damages.

6. Conclusions

After the consolidation of social media and streaming content platforms, such as YouTube and Netflix, a new content distribution model has been created where the user has more autonomy when choosing the content that they want to view. Although there is still a lot of work to be done to create a uniform and up-to-date legal framework, especially in the case of Latin America where unilateral legal approaches proliferate that lead the different countries that make up the region to disagree on the proper approach (Baladron and Rivero, 2019). This point can become an important problem if we consider the global nature of the Internet, where the video content can be accessed regardless of the jurisdiction. In the case of the YouTube platform, this commitment is even more complex given that consumers can also become content creators. This poses great challenges to those who must ensure that the videos on the platform comply with company policies and the legal requirements of the countries where they are viewed, particularly in the cases of privacy, the respect of intellectual property rights, and the payment of taxes. Of course, it is also important to ensure that the reproduction of a video does not constitute a crime, as in the case of the YouTuber YosStoP, currently accused of possession of child pornography for alluding in a video that she posted on YouTube about having reviewed a material where a minor is sexually assaulted (La Jornada, 2021).

The establishment of clear and uniform legal regulations and ethical principles is one of the most complex problems to solve when referring to Internet use, not only among minors, but for users in general. This difficulty is exacerbated by the fact that various state jurisdictions—and, therefore, criteria and legal principles—converge in this medium. What is strongly penalized in one country is permitted in another. The Internet, as well as all the platforms within it, like YouTube, have a global reach that transcends not only territories but also legal powers. The international nature of this communication media provides many advantages that are not worth mentioning since they are obvious, but it also has complex challenges to solve, such as legal harmonization and the construction of international regulatory mechanisms to prosecute and punish illicit acts (Rochefort, 2020), particularly those that affect minors: from child pornography, harassment, and labour exploitation, in the case of underage YouTubers (Cullen, Ernst, Dawes, Binford and Dimitropoulos, 2020; Russo and Parodi, 2021). This issue becomes more complex when analysing the legal framework and YouTube directives that regulate the activity of child and adolescent YouTubers (Pastor, 2019). The problematic of regulating these YouTubers continues to be a problem not only due to legal loopholes, but also because it requires very close cooperation between different countries. At the same time, an adequate criterion has not been found to regulate the figure of the creator of minor content. On many occasions, the law attempts to equate this work to that of children who act on television, theatre, or cinema. Child acting is, of course, regulated with well-defined guidelines on income and labour rights in many countries (Holcombe, 2019; Moreno and Troya, 2019; López-Villafranca and Olmedo-Salar, 2019), but as this study has shown, the activity of the YouTuber has its particularities that limit the ability to expand this legal criterion that emerged in the traditional entertainment industry. The new set of laws, such as the French one, represent an important advancement, but there are also questions regarding their applicability, as well as the creation of mechanisms and regulations to make it effective. Although in Mexico there are tax regulations, protection of user privacy, freedom of expression and electoral regulations that can cover part of the spectrum of the activity of influencers on social media, the fact is that many of those norms have not been updated to be more consistent with respect to the activity on these platforms.

Given that they represent a new space where regulations have to be modernized in order to protect new forms of content production and consumption, these gaps are especially prevalent regarding those who are minor YouTubers.

7. Specific contributions of each author

Contributions	Authors
Research design	1
Documentary search	3
Data collection	2
Critical data analysis and interpretation	1
Writing, review, and approval of versions	1 and 2

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