

Dr. Isabel SERRANO-MAILLO

Universidad Complutense de Madrid. Spain. miserran@ucm.es. <https://orcid.org/0000-0003-4919-9834>

Minors and digital content. Rights and obligations

Menores y contenidos digitales. Derechos y obligaciones

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Abstract

In considering children and the advertising message directed at them, we face three very different realities: the child facing the message, the child as an advertising actor and the child as the creator of advertising content. Herein, we address these three situations from the perspective of the rights and obligations of minors. We start from the approach to basic concepts such as the definition of a child, sufficient maturity, the best interests of the minor, advertising principles, limitations on advertising by sector, age or product. Later, we try to answer questions such as: what can and cannot be done in advertising addressed to children? What rights and obligations do children have as recipients of advertising or as advertising actors? Is anything of worth to an influencer? What to do when the rule is violated? Questions that need to be answered. This paper refers to all the rules that regulate these issues in our country, the legal and self-regulatory standards that co-exist with European, regional, sectoral standards, etc. A major conclusion is drawn from the exposition: there are too many rules to regulate a single reality, which makes it difficult to distinguish lawful from illicit behaviours, especially in the field of childhood. Clear and unequivocal legislation regulating all aspects relating to children and also, of course, the advertising phenomenon would be desirable - and necessary.

Keywords

Digital contents; rights; children influencers; digital media.

Resumen

Quando hablamos de niños y mensaje publicitario, nos enfrentamos a tres realidades muy distintas: el niño frente al mensaje, el niño como actor publicitario y el niño como creador de contenidos publicitarios. En este artículo abordamos estas tres situaciones desde la perspectiva de los derechos y obligaciones de los menores. Partimos del acercamiento a conceptos básicos como la definición de niño, madurez suficiente, el mejor interés del menor, principios publicitarios, limitaciones a la publicidad por sector, edad o producto. Posteriormente, tratamos de dar respuesta a preguntas como como: ¿Qué se puede y qué no se puede hacer en la publicidad dirigida a los niños? ¿Qué derechos y obligaciones tienen los niños en el entorno publicitario? ¿Vale todo para un influencer? Preguntas que requieren respuesta. En este trabajo se hace referencia a todas las normas que regulan estos temas en nuestro país. Normas jurídicas y de autorregulación que conviven con normas europeas, autonómicas, sectoriales... Como conclusión principal: hay demasiadas normas para regular una única realidad, lo que dificulta distinguir las conductas lícitas de las ilícitas, sobre todo en el campo de la infancia. Sería deseable -y necesaria- una legislación clara y unívoca que regulara todos los aspectos referidos a la infancia y la publicidad.

Palabras clave

Contenidos digitales; derechos; menores influencers; medios digitales.

1. Addressing the subject. The notion of 'minor' and other legal concepts

When considering children and their relationship with the media, the traditional concern from the legal perspective was how to protect them from the messages they receive. Nowadays, the range is widening since children have gone from being simple recipients (Marta, 2005) ^[1] to being active subjects of the media phenomenon. Child receivers, child actors, child communicators ... different roles that the Law must consider from different perspectives.

Before assessing the relationship between children and the media, it is necessary to make a series of general considerations on certain legal issues that must be taken into account when dealing with the topic of minors and their rights.

The first step entails identifying the subject to which we are referring, that is, determining what we understand by the term 'child'. According to the Convention on the Rights of the Child (1989) "a child is understood to be any human being under eighteen years of age" (Art. 1), according to our Constitution "Spaniards are of legal age at eighteen years of age" (art. 12), the same age established by Organic Law 1/1996, of January 15, on the Legal Protection of Minors (art. 1). Therefore, according to current legislation the limit is at 18 years of age, however, it is evident that - from a legal standpoint - the treatment given to children must differ when dealing with a 5-year old or a 17-year old, since their level of maturity and development is different.

Thus, broadly speaking, we will consider children (infants) as those under 12 years of age (for up to 3 would be babies and up to 5 preschoolers); pre-teens as those over 12 and under 14 and teens as those over 14 and under 18 (and not emancipated). This generic classification will only serve as an aid to help determine (or rather to approximate the determination of) the maturity of the minor in relation to responsibility for their actions and the autonomy to exercise their rights, since other classifications with more specific ranges already exist for alternative issues (publicity, cinema, video games, growth...).

The second issue to consider is whether children are legal subjects. A turbulent matter since, although there seems to be a certain degree of consensus after the approval of the Convention on the Rights of the Child of 1989 that "children will go from being considered objects of protection, to being considered legal subjects" (Cardona, 2016: 39), some authors, among which Santiago Sánchez González^[2] stands out, maintain that coming of age is essential in order to hold fundamental rights. Luis Acebal Monfort, on the other hand, asserts that children are not only entitled to human rights -which is beyond question-, but also to personal, civil and political freedom rights (Acebal, 2010), which implies granting them ownership and the ability to exercise rights. These different standpoints respond to the two main theories that have addressed this question: the theory of will or choice, represented by Hart^[3] which would not grant them any right "as they lack autonomy or independent capacity to act as a moral agent." (Lozano, 2016: 3) and the theory of interest or benefit, whose best example is McCormick^[4] and which acknowledges the ability of children to hold rights, by considering such an entitlement to be dependent on "the existence of a basic need or a superior interest in favor of the subject" (Lozano, 2016: 4). Our stance involves the recognition that children can hold rights as well as the fact that the possibility of exercising them will depend on the type of right and the maturity of the minor. No one would dare to deny that every child has the right to life, however, it would be difficult to defend the plausibility of infants (under 12 years of age) fully exercising political rights, since doing so requires a certain maturity and moral autonomy. Similarly, when referring to the right to one's own image Ana M^a Gil Antón says: "entitlement to human rights is given by our human condition, while age does not influence their ownership, it does have an effect on the way they are exercised" (Gil, 2015: 19). Accordingly, as described earlier, we consider it essential to establish an age (and right)-based classification, something that the legislation does not do.

In any case, the discrepancy arises around theoretical-legal issues. In practice, all the authors agree on the need to grant children rights, but from a special protection, given their vulnerability. Thus, parents, guardians and Administration must guarantee a suitable environment so that children can develop their personality in a normal way. This implies granting them a special protection ^[5] that is adequate and fitting to their age; care ^[6] which must coexist and be coupled with, on the one hand, the ability for children to exercise certain rights to which they are entitled and, on the other, to participate in decision-making on matters that affect their their own life and they are capable of understanding by virtue of their greater or lesser maturity.

As a general rule, maturity will be the criterion used to determine children's degree of autonomy: they will be granted greater autonomy to exercise their rights the higher their degree of maturity.

But how is a child's degree of maturity measured? That poses a somewhat subjective question that should be determined on a case-by-case basis, but which is generally determined based on age, with the understanding that the older the child, the greater his degree of maturity and the more areas of autonomy he will be able to take on.

The legislation does not provide a clear age classification of children in this sense, but we do find certain references to it. Thus, in this regard, the Organic Law for the Legal Protection of Minors establishes that "maturity will have to be assessed by specialised personnel, taking into account both the minor's progressive development and their ability to understand and evaluate the specific matter to be dealt with in each case. In any case, the minor is considered sufficiently mature at twelve years old" (art. 9.2). On the other hand, Organic Law 5/2000, of January 12, Regulating the Criminal Responsibility of Minors establishes: "This Law will be applied to demand accountability from individuals over fourteen and under eighteen years of age for the commission of acts classified as crimes or misdemeanors in the Penal Code or special criminal laws" (Art. 1.1) and Organic Law 3/2018, of December 5, on the Protection of Personal Data and Guarantee of Digital Rights" 1. The processing of a minor's personal information may only be based on their consent when they are over fourteen years of age" (Art. 7).

Thus, although the ideal scenario would be "to observe the specific person and their psychological and physical situation and circumstances to discern or clarify the legal application of the particular case" (Rocha, 2014: 51), the Law has resolved the issue of maturity by appealing only to the criterion of age given the difficulty (if not impossibility in certain cases) of attending to each specific case. Nevertheless, it is obvious that the age criterion may be insufficient, since each individual's circumstances can be very different (Sillero, 2017).

Along with the maturity criterion, the minor's best interest must be addressed with the objectives of: On the one hand, ensuring the protection of children's rights and, on the other, guaranteeing their involvement - to the extent that their maturity allows - in matters that concern them. This means that any action or measure to be adopted that affects them (of whatever kind and regardless of who it comes from) must be governed by this principle (Fernández, 2017: 228). Whenever several options are available, the one that benefits the child the most should be chosen and if a legal provision can be interpreted in more than one way, it will be done in the one that best meets their interests ^[7].

Indisputably, one of the difficulties we face is the indeterminate nature of this principle, which makes it necessary to establish its own content on a case-by-case basis; which is positive in the sense that it makes it easier to adapt each resolution to the specific situation, but also negative since the judge's scope of action is so wide that it can give rise to a certain degree of arbitrariness (Martínez, 2015: 201). The truth is that the minor's best interest "has exceeded the margins of the family sphere and been elevated to the rank of general principle informant of the current legal system" (Rocha, 2014: 54) and, therefore, it is not only included in the norms referring to minors, but also obliges the others. A minor's best interest also acts as a limit to the exercise of their own rights, that is, although the child has the right, for example, to privacy, their parents (or guardian) may intervene if they suspect that they are in danger (for instance, by logging into their social network accounts if they believe they are being stalked by a pedophile).

This principle must be applied proportionally and cannot become an excuse to nullify the autonomy of minors. Children must be protected due to their special vulnerability, but their best interest is to acquire autonomy as they mature.

It should be noted, however, that the exercise of rights implies assuming responsibilities for the actions carried out, especially when they affect third parties. As John D. Rockefeller said "Every right implies a responsibility; every opportunity, an obligation, every possession, a duty".

According to our legislation, minors are criminally liable from the age of 14 ^[8] and are accountable for any action classified as a crime in the Penal Code. The list of crimes that can be committed on social networks is very varied (against privacy, against honour, against intellectual property, hate crimes, etc.). On the other hand, children do not have full civil responsibility, their parents or legal guardians being jointly liable. Article 1903 of the Civil Code establishes this ^[9] based on the guardianship and surveillance obligation held by parents with respect to their children. Said obligation to repair the damage caused by children only ceases if the parent proves that he or she acted diligently and did everything possible to prevent the damage. In this same sense, the Law of Legal Responsibility of Minors declares, in its art. 61, that "when the person responsible for the acts committed is a minor under the age of eighteen, his parents or guardians will be jointly liable with him for the damages caused (...)".

With that said, we are going to focus on three specific situations in which children come into contact with the media and advertising in order to determine what their rights and obligations should be.

2. Children in front of television: "How they are taken for a ride"

Children hold the right to freedom of expression and the right to information ^[10], which includes the freedoms to seek, receive and impart information and ideas of all kinds through any means, as long as they are appropriate for their age. When a child sits in front of the television, he receives messages that

inform, advertise, or entertain him, none of them being free of harm. While there are legal limitations on content to which minors are likely to be exposed, parents (or legal guardians) must be aware that they are the main guarantors of the well-being of their children. Moreover, we ought to bear in mind that when a child is in front of television or other similar media source, he is not only exposed to informational and/or entertainment messages, but also receives a large amount of advertising content.

The only media outlet that establishes a specific time to broadcast minor-appropriate content is television, which does so in accordance with Law 7/2010, of March 31, General Audiovisual Communication (GACL) and the Self-Regulation Code on Television Content and Childhood. Thus, a minor-protecting legal schedule is established from 06:00 to 22:00 in relation to content and advertising. In addition, there is a time slot for reinforced protection: Monday to Friday: from 08:00 to 9:00 and from 17:00 to 20:00; Saturdays and Sundays: between 9:00 and 12:00. Moreover, Saturdays and Sundays' protective time slots are also applied on the following days: January 1 and 6; Holy Friday; May 1; October 12^o; November 1st; December 6, 8 and 25. During the summer, the reinforced protection time slots normally established in the previous sections for the whole of the year are applied. Any content that is not objectively suitable for minors must be broadcast from 22:00 pm to 6:00 am. In the event that a minor accesses this content, they will do so under the responsibility of an adult.

2.1. Advertising principles

In addition to these generic limitations, advertising messages directed at children must comply with a series of premises to prevent confusing minors. Thus, in general terms, advertising, in accordance with legal norms and self-regulation codes must: be identified as such (principle of authenticity or honesty) ^[11], clearly differentiate itself from entertainment content (principle of identity) ^[12], be loyal to its competitors so as not to confuse consumers (loyalty principle) ^[13], be truthful (truthfulness principle) ^[14] and respect the law ^[15], as well as the values and rights recognised by the Constitution. Obviously, the legal requirements related to these premises must be adapted to the audience to whom the specific message is directed.

2.2. Message

The content consumed by minors should favor their assimilation and growth, and should therefore preferably include messages that promote tolerance, equality, etc. and not those that promote discrimination, are of a violent nature, include messages against the environment, can lead minors to put themselves in risky situations or generate certain expectations of success or friendship through the purchase of a specific product or service.

a) Discriminatory messages.- Information or advertising directed at minors must never include messages that are discriminatory towards other people because of their race, nationality, religion, sex or sexual orientation, or that violate the dignity of the person (art. 10 Code of Advertising Behavior (CCP). Special emphasis is placed on avoiding messages that discriminate against women, those that give them a role of inferiority or servility, as well as those that present the image of an objectified woman without there being a direct relationship with the advertised product (Art. 73. LGCA). This premise intends to prevent minors from creating an image of society that is far from reality ^[16].

b) Violent Messages.- Messages directed at minors should not incite children to act violently, nor should they suggest that doing so could lead to any advantage (art. 6 CCP). They must not encourage the minor to cause physical or moral damage to himself or to third parties (art. 3b) General Advertising Law (LGP).

c) Against the environment.- The display of any conduct that could encourage behaviors that harm the environment should be avoided (art. 12 CCP). What's more, as a component of social learning, messages should demonstrate the need to be respectful of the environment.

d) Dangerous messages.- Minors should not be presented in dangerous situations or encouraged to see them as normal due to the risk posed by emulative behavior (art. 7.3 LGCA) ^[17]. Nevertheless, the fear resource will be legitimate when used -as a strategy- to prevent dangerous behavior in minors (art. 5 CCP).

e) Do not generate false expectations.- Advertisements must not generate expectations of success, love, friendship or triumph by the mere fact of acquiring a certain product. Messages should not create false expectations regarding the acquisition of strength, status, popularity, growth, ability and intelligence. Nor "should they overestimate children's degree of ability or age limit required to enjoy or use products" (Art. 28 CCP).

Similarly, advertising messages that "promote body worship and the rejection of self-image, such as slimming products, surgical interventions or aesthetic treatments, which appeal to social rejection due to physical condition, or to success as a result of weight or aesthetic factors, may not be broadcast"

(art. 7 LGCA). Nor should this message be disseminated by series or entertainment programs aimed at young audiences.

f) Do not directly incite the purchase.- Advertising must not directly incite the minor to purchase a good or service by exploiting their inexperience or disbelief, or by persuading the minor's parents or guardians (Art. 3.b) LGP and Art. 7.3 LGCA). It will also be considered unfair, due to its aggressiveness, to urge children to acquire goods or use services or to convince their parents or other adults to invest in the advertised goods or services (Article 30 Unfair Competition Law (LCD)).

It should be considered that minors, due to their lack of experience and their credulity, should be exceptionally protected. An average consumer is understood to be someone who is "generally informed and reasonably attentive and insightful" (article 3.5 CCP), but a child lacks these characteristics, so "advertising directed at children must be extremely careful. It must not exploit the naivete, immaturity, inexperience or natural credulity of children or adolescents, nor abuse their sense of loyalty" (Article 28 CCP)

g) Do not lie or exaggerate about the product's characteristics. - In order to avoid disappointing children in relation to the product they are interested in buying, it is important that advertising does not mislead them regarding its characteristics. This principle must be applied in accordance with the age of the child to whom the product is directed, but, in any case, the advertisements must clearly indicate "real size, value, nature, durability and performance of the advertised product" (Art. 28 CCP and Art. 7.3 LGCA). It is also necessary to clearly indicate whether the product needs elements that are not included, either for its operation (such as batteries), or to achieve a result equal to that seen by the child (for instance, painting) (art. 28 CCP).

It is paramount to clearly show exactly what will be obtained when buying the product, what the advertised product is actually like and what is required for its use.

h) Messages against health.- Minors should never be encouraged to engage in behaviors that may be harmful to their health (article 29 CCP). In this sense, messages and/or advertisements that promote the idealization of extreme thinness are not admissible.

i) Messages that promote illegal behavior.- Messages that promote illegal behavior such as the consumption of narcotics or alcohol, as well as other minor-inappropriate conducts may not be broadcast (article 7 CCP).

j) Sex.- As stated in the Self-regulation Codes on television content and children (article 9.2 CCP), advertising and programs aimed at children must not include sex-explicit messages or images, or display conducts of a sexual nature.

k) Language.- The type of language used in the media conditions the messaging of minors, therefore it must be clear and avoid being technical, obscene, exaggerated, warlike or ambiguous (Art. 9.2 Self-Regulation Code on Content Television and Children).

2.3. Rights of children as consumers of advertising

As we have already pointed out above, children have the right to truthful information. It is therefore their right to have the advertising shown to them be truthful, depict the real products and describe relevant information. It is also their right to have rules regarding protective broadcast schedules and forbidden messages to be enforced.

As for the governing bodies in charge of protecting the rights of minors against advertising, there are many both public and private. Thus, if a violation has to do with advertising content, it can be reported to the Secretary of State for Telecommunications and the Information Society (SETSI), the National Consumer Institute, regional consumer protection organizations, consumer and user associations, courts and tribunals, the Children's Ombudsman (in the regions in which it exists), the Ombudsman (in regions where there is no Children's Ombudsman).

As we have seen, in case of non-compliance, the accuser can opt either for the judicial or the self-control route, the judicial route is usually reserved for the most severe cases, such as those referring to non-compliance with the special rules that regulate the advertising of products, goods, activities and services related to alcoholic beverages, dangerous health products, gambling ... (art. 5.6 LGP) or for actions that imply the commission of a crime, such as those that involve illicit advertising due to misleading (article 282 Penal Code (CP): "Manufacturers or merchants who, in their offers or advertising of products or services, make false allegations or show uncertain characteristics about them in a way that can cause serious and manifest damage to consumers, will be imposed a six-month to one-year sentence or 12 to 24-month fine, without prejudice to the penalty imposed for the commission of other

crimes "). In any case, in the absence of a crime or serious rights violation, the most common way to resolve advertising-related conflicts is to resort to the advertising self-control bodies .

If there is a breach of these self-regulation rules, the citizen can appeal to the Advertising Self-regulation Association via email.

In the case of TV and minors, complaints regarding inappropriate content, including advertising content, can also be made through the completion of an online form at the Code of TV and childhood content Self-regulation site <http://tvinfancia.es/tvinfancia/content/reclamaciones>. Filed complaints are directly sent to the Advertising Self-control Association, where the Jury will reach a verdict regarding the matter at hand.

2.4. The child as a consumer of advertised products and services

Here we would like to allude to situations in which children are not simply observers of advertising, but become consumers of advertised services. It is important to keep in mind that data from children under 14 cannot be collected (nor processed) without the (direct and expressed) consent of parents or legal guardians. Nor can those of minors over 14 be collected or processed without their (direct, express and informed) consent. When dealing with the traditional analogue medium, everything is more controllable, but if we find ourselves in the digital medium, the verification and assurance of children's rights sometimes becomes difficult. That is why true technical means of verification, such as the introduction of a valid ID (mandatory in Spain from the age of 14) and / or other effective control mechanisms, should be required,

In the event of a violation of the right to data protection, the competent body responsible for its resolution will be the Spanish Agency for Data Protection.

Any other issue related to minors as consumers of advertised services (honour, privacy, identity, etc ...), will be resolved by the ordinary courts.

2.5. Age as a limiting criterion in advertising

Considering what has been revealed so far, it is clear that that age is established as a limiting criterion of the advertising message. And this limit, of course, varies depending on the different evolutionary stages of the minors and will affect products in different ways.

A) Children.- There is no clear consensus in advertising law regarding which subjects are considered children (for some, those under 12 years of age will be considered children ^[18], while others take 14 as the age threshold ^[19]). For its part, the Self-Regulation Code for Children's Toy Advertising shows three different age ranges up to 7, between 7 and 14 and between 15 and 18 years of age, of which the first two require special attention and caution in relation to the advertising product, the message design and the circumstances in which the message is distributed. Thus, agreement does exist regarding the understanding that children must be specially protected against advertising messages, given "their immaturity, credulity, ease of persuasion and suggestion, which is especially vulnerable." Nevertheless, control will be greater the lower the age of the target audience, while greater permissibility will be granted to messages aimed at pre-adolescents and adolescents since they are understood to have greater discernment ability.

Some very specific sectors consider everyone under 18 years of age as children, without distinguishing any other age groups. These sectors are those that sell products or services that are specifically aimed at adults, such as alcohol companies ^[20], those dedicated to gambling, etc.

In this sense, the beer sector is especially striking because it provides excellent protection for minors, given that the latter is not limited to advertising messages, but even stretches to the regulation of who may or may not appear in its advertisements (with or without alcohol). Its code indicates that "they may only use actors who are at least 21 years old", allowing representation to denote that it is a product aimed at adults (Art. 4).

B) Pre-adolescents.- Pre-adolescents (12-14 years old) as an age group of interest for the dissemination of advertising, are included in the LGCA to differentiate them from minors, who are susceptible to the reinforced protection time slots. They are understood to be over 13 years old. Article 7 of the LGCA states "content classified as recommended for those over 13 years of age must be broadcast outside of those time slots, maintaining the visual indication of their age rating throughout the broadcast of the program that includes them."

The PAOS Code (for the co-regulation of advertising of food and beverages aimed at minors, prevention of obesity and health), for its part, indicates that individuals will be considered minors up to 12 years of

age in the audiovisual and print media, and up to 15 years of age on the Internet, given their lack of experience and greater credulity and naivety.

The Self-Regulation Code on television content and childhood's age rating system for audiovisual products places preadolescence between 12 and 15 years of age, identifying as adolescence the age range between 16-18.

C) Adolescents.- The Age Rating System for audiovisual products of the Self-Regulation Code on television content and childhood clearly identifies adolescents to be those over 16 and up to 18 years of age.

D) Adults.- Certain advertising content can only be broadcast during unprotected hours, in order to protect minors from typically adult behaviors or from content that includes violence, sex, etc.

Therefore, it will not be allowed to broadcast beer and spirits advertisements on TV until the afternoon/evening news start and, in no case, before 8:30 p.m. Beer advertising may only be inserted in time slots, programs or sections whose audiences are at least 70% made up of people over 18 years of age -or so can be reasonably expected- (art. 10 Advertising Self-Regulation Code of FEBE (Spanish Federation of Spirit Drinks) and Advertising Self-Regulation Code of Brewers of Spain).

In the case of video games, those "recommended for people over 18" will be broadcast outside the hours of protection for minors, that is, between 10 p.m. and 6 a.m. (Guidelines for Good Advertising Practices for Interactive Software Products) and those "recommended for those over 16 years old" may not be distributed during reinforced protection hours. During the reinforced protection strip, the advertising of interactive software products classified as "recommended for over 12 years old" will be prevented from including images, sounds or content that may be inappropriate for that age (art. 14 Guidelines of Good Advertising Practices of Interactive Software Products).

With regard to gambling advertising, rules are very strict concerning advertising and self-promotions of roulette, point and bank, black Jack or poker, which can only be broadcast between 1:00 and 5:00: 00 am, while bingo advertisements and self-promotions, pool betting and other bets may be aired during normal hours as long as it is outside the reinforced protection bands. Advertisements and self-promotions of contests included in a program whose age rating is not "not recommended for children under eighteen", of lotteries with delayed effect, of complementary games and of raffles will not have time restrictions as long as they are not broadcast together with or inserted in programs specifically or primarily aimed at children (Code of Conduct on Commercial Communications of Gaming Activities, art. 8).

Special restrictions apply to contents related to esotericism and para-sciences, which may only be broadcasted between 10 p.m. and 7 a.m. (Self-regulatory Codes on Television Contents and Children).

2.6. Limitations to Specific Sectors

Having seen the importance of protecting children from certain advertising content, we will focus on particularly significant products.

a) Medicine: Medicine may never be directed exclusively or mainly to children (Article 6 of Royal Decree 1416/1994, of June 25, 1994, regulating the Advertising of Medicines for Human Use).

b) Shows: "Publicity of cinematographic, theatrical or shows of any other nature, containing obscene images or expressions contrary to the moral and good customs, will only be allowed to be carried out inside the premises in which these shows are celebrated legally. This publicity is consequently prohibited in the exterior of the premises, billboards, newspapers' informative or advertising banners and other means of social communication, although it will be able to be shown in publications whose sale takes place outside the establishments to which the third article refers" (art. 1, Royal Decree 1189/1982, of June 4, on Regulation of Certain Inconvenient or Dangerous Activities for the Youth and the Childhood).

c) Gambling - All gambling advertising aimed at minors is prohibited in order to prevent addictive behaviors (article 1, Law 13/2011, of May 27, on the Regulation of Gambling). Advertisements in which (Code of Conduct on Commercial Communications of Gambling Activities) minors appear, incite minors to gamble or attribute values to gambling to maturity are not allowed.

It is not permitted: to feature children in gambling advertisements, to target minors under 18 years of age, to suggest that minors can gamble or place bets, to introduce gambling as a gift that a child can give or receive, etc. Nor to directly or indirectly incite minors to gamble, or use figures with whom the minor has a special relationship of trust such as parents, teachers or other persons. Neither shall the practice of the game be shown as a sign of maturity or a sign of having reached adulthood.

d) Toys: Two aspects of toys should be differentiated, on the one hand, toy safety and, on the other hand, toy advertising.

Regarding toy safety, it must be clearly indicated for what age it is recommended and specify that it must be kept out of the reach of minors (Art.3 of the Royal Decree 1205/2011, of August 26, on Toy Safety). In particular, toys containing hazardous substances or mixtures shall warn of their dangerousness and indicate the precautions to be taken by users to avoid the hazards involved, which must be specified in a concise manner depending on the type of toy.

As for advertising itself, anything that might confuse them about the commercial nature of the message should be avoided (ethical standard 21 and 16). To this end, legends or sound messages understandable to children should be included (adapted language, appropriate speed of letters to their reading level, and appropriate size of overprinted letters; ethical rule 14). In addition, the toy's characteristics and everything related to its assembly (ethical rules 8 and 9), operation (ethical rule 7), whether or not it needs batteries, whether they are included, information on accessories (ethical rule 11), etc., should be explained to the child and, in short, everything necessary to avoid the child's disappointment when purchasing the toy must be clarified.

They should not generate gender stereotypes, nor should prescribers [21] or opinion leaders appear to create in children a sense of confidence and security in the product (20 Self-Regulatory Code for Children's Advertising of Toys (CAPIJ), nor should they positively exalt concepts such as racism, violence, aggressiveness, danger, etc. (Art. 33 CAPIJ). (Art. 33 CAPIJ), they must not create false expectations in the child in relation to the fact that the acquisition of the product or toy will provide him/her with greater strength, status, popularity, ability, intelligence... (Art. 4 and 8 CAPIJ), must not incite consumption since the minor is not mature enough to make purchase decisions and words such as "now" or "only" can induce them to purchase (17 and 18 CAPIJ) as can expressions such as "free" or "for free" (23 CAPIJ).

e) Tobacco - Tobacco advertising is prohibited in our country. It can only be advertised inside tobacco shops and in specialised magazines for adults [22].

f) Alcoholic beverages: Advertising of these products to minors or the appearance of minors in advertisements is prohibited (in fact, it is necessary to be 21 years old to appear in beer advertisements or 25 years old to star in an advertisement for high alcohol content beverages). It is emphasised that advertisements of this type of products should not imply that their consumption is a sign of maturity and that not drinking is a symptom of immaturity. Moreover, neither designs nor fictional characters linked to the underage public may be used to attract their attention. Promotional material designed for children and minors may not be distributed (Advertising Self-Regulation Code of Spanish Brewers, Art. 4 Wine Self-Regulation Code and Art. 10 FEBE).

g) Food: The regulation of food advertising is very strict in order to encourage healthy eating or healthy habits or, at least, not to encourage the opposite (PAOS Code).

The PAOS Code is particularly careful or demanding in relation to messages aimed at minors. Thus, this type of advertising may not mislead by suggesting that the food product being promoted has particular characteristics -if, in fact, all similar products have such characteristics- (art. 6). Nor may it incite minors up to 12 years of age to purchase/consume the product, or incite them to ask or persuade their parents or others to buy the advertised products (art. 10). Nor evoke a feeling of immediacy or exclusivity (art.11). Nor indicate "only" or "nothing else" (art. 13). In addition, all the advertising principles referred to in the second section of this paper must be observed, such as the need for the language implemented to be understandable for this public (art. 9), not to imply that consuming a product will mean that the child will become stronger, more popular, more skillful or more intelligent (art. 5 and 12), or that the parent -or other adult- who buys that product for a child is a better parent or better person, more intelligent or more generous than the one who does not (art. 10).

Real or fictional persons of great popularity among minors may only appear if it is to promote health or educational campaigns.

h) Video games: The Guidelines for Good Advertising Practices for Interactive Software Products deal with the dissemination and exhibition of video game advertising. Exhaustive regulation exists in relation to the means of diffusion. Thus, when broadcasting takes place on television, those that are "recommended for persons over 18" will be broadcast outside the hours of protection of minors, i.e. between 6:00am and 22:00pm (Guidelines of Good Advertising Practices for Interactive Software Products) and those that are "recommended for persons over 16" may not be broadcast during reinforced protection hours. During the enhanced protection slot, advertising of interactive software products classified as "recommended for those over 12 years of age" shall be prevented from including images, sounds or content that may be inappropriate for that age group (art. 14 Guidelines of Good Advertising Practices

for Interactive Software Products). If the medium is radio, video games "recommended for persons over 18" on radio during, immediately before or immediately after programs specifically targeted at or whose audience consists mainly of minors (art. 15). And in the print media, advertising of video games "recommended for persons over 18" may not be broadcast, nor on printed pages containing articles, reports or information specifically aimed at an audience over the age of 18 (art. 16).

Neither may there be advertising of video games "recommended for those over 18" in portals, sites, areas or sections directed to minors or whose majority audience is composed of minors (art. 18); nor "recommended for those over 16" or "recommended for those over 12" in portals, sites, areas or sections directed to minors under 16 or 12 respectively or whose majority audience is composed of minors of said ages (art. 18). In the cinema (art. 18), video games "recommended for persons over 16 years of age" or "recommended for persons over 18 years of age" may not be advertised, but may only accompany feature films or movies for persons over 18 years of age -i.e., movies classified as "not recommended for persons under 18 years of age"- (art. 18).

Video games "recommended for persons over 18 years of age" may not be advertised in outdoor advertising, nor may they be displayed on posters, billboards and other advertising media, which are less than 100 linear meters from the access door/s of the educational centers of infant, primary and secondary education (art. 20). Direct advertising, as well as the sending of brochures, graphic advertising and other advertising media of interactive software products classified as "recommended for persons over 18 years of age" to a specific consumer or group of consumers shall be addressed in any case to persons of legal age and, for such purpose, the external presentation shall state the name of the person of legal age to whom it is addressed and shall include the legend "Not valid for minors".

The legend may be "recommended for persons over 18 years of age", "recommended for persons over 16 years of age", "recommended for persons over 12 years of age", "recommended for persons over 7 years of age" or "recommended for persons over 3 years of age". 3. Brochures or similar interactive software products classified as "recommended for ages 18 and over" or "recommended for ages 16 and over" shall not be distributed inside or in the vicinity of educational institutions for children, primary and secondary education.

3. Children as advertising actors

In addition to the situations described above, when talking about children and advertising, it may be the case that they are on the other side of the camera. In this case, attention must be paid to: regulations on child labor and recruitment; regulations against the appearance of minors in certain types of advertisements (when appearing alongside certain brands or products may have negative consequences for the image of the minor, possibly even violating his or her right to honour). In other words, when we talk about protecting children in the advertising field, we must not only refer to their rights in the work environment, but also to their personality rights (honour, privacy and image).

Labor: As a general rule, minors under 16 years of age are prohibited from working (Art. 6.1 of the Workers' Statute (ET)), although a loophole is left to justify the hiring of children for advertising work: "The intervention of minors under sixteen years of age in public performances shall only be authorised in exceptional cases by the labor authority, provided that it does not pose a danger to their physical health or to their professional and human training; the permission must be in writing and for specific acts" (Art. 6.4 ET).

Although the exceptionality is not usually taken into account, a series of strict rules are generally required in defense of the rights of minors (these may vary depending on the region, as they are included in the collective bargaining agreements of actors). Some of them are: The authorization of parents or guardians (minors over 7 years of age with sufficient maturity) is required. It must be prior, express and in writing; a specific labor contract must be signed; authorization from the Department of Labor of the corresponding region is required; the job may not involve physical danger to the minor; the job may not involve danger to the moral integrity of the minor; minors must be registered with the Social Security.

In addition to these rules, there are other more specific ones regarding the work of children. Ideally, they should be included in the Collective Bargaining Agreement regulating Labor Relations between Producers of Audiovisual Works and Actors who render their services in them (in this case, in the Community of Madrid), but the fact is that there is no reference to children in it. However, it does not seem erratic to consider that, by analogy, the rules contained in the V Collective Bargaining Agreement for Theater Actors of the Community of Madrid, a sector which does regulate the working conditions of children, could be applied. Among the requirements it contains, some of the most important are that the minor must be accompanied by a member of his family or by an adult who looks after his interests and attends to his needs during the filming, that the work of the minor may not interfere with his school schedule, that the maximum working day of a child is 5 hours, with a 30-minute break being mandatory,

that minors may only participate in one performance a day, that they may not appear in violent or pornographic scenes or in shows unsuitable for minors, or that their salary is that which corresponds to them, without any differences being made on the basis of age, otherwise it would be considered discriminatory.

The competent authorities that must ensure compliance with these rules and the protection of minors are the corresponding bodies of the Autonomous Communities, being the General Directorate of Labor and the Labor Inspection, the ones in charge of verifying that the minors' activities are carried out within the legality. If this is not the case, fines can be imposed - on parents or companies, depending on who is considered to have caused the abuse - ranging from €3,000 to €90,000.

Personality rights: Serious issues arise when the child's personality rights (honour, privacy and/or personal image) are affected. Thus, to prevent this from happening, it is necessary to take certain precautions, such as: to know in advance the takes, types of images, clothes that the child will wear, look, real information that will be given about him, etc. In addition, it must be clear that consent is given for each specific campaign and must be renewed each time, and it cannot be extended to different campaigns. And this is because we are in the field of fundamental rights.

As a means of reinforced protection, the Law for the Legal Protection of Minors requires that the Public Prosecutor's Office be informed when the image of a minor is to be broadcast through the media and there is a danger of violating any of these rights. In case of conflict, the competent authorities to resolve the claims will be the ordinary courts.

3.1. Age

The law does not contain any reference to the minimum age required to be hired for advertising. However, the consent of the minor's parents or legal representatives shall be required, as well as the minor's consent if he/she is sufficiently mature and, in any case, provided that he/she is over 7 years old. However, the Collective Bargaining Agreement for theater actors of the Community of Madrid applies only to children from 4 years of age.

3.2. Obligations

As in any other labor/contractual relationship, the minor (age permitting) and his/her parents or legal representatives are responsible for the fulfillment of the contract and must respond in case of non-compliance.

In addition, it is important to bear in mind that a double consent is mandatory: that of the parents (who must look after their children's welfare) and that of the minors (over 7 years of age), who may decide whether or not they want to participate in an advertisement. This is to avoid that their participation responds more to the interests of their parents or guardians than to their own. In the event of a conflict of interest, the Public Prosecutor's Office will be in charge of looking after the interests of the minor.

3.3. Contracts

The common rules governing advertising contracts are based on the principles of speed and good faith. The principle of freedom of form prevails, but the most common one is that they are made in writing (in the case of minors, the permission must be in writing, so we understand that the contract must acquire this form).

Things to keep in mind: Before signing an advertising contract, it is essential to read it well and ask any questions. It is necessary to avoid signing general or too generic clauses. Thus, it must be made clear: what the advertisement will consist of, to whom it is addressed, what the product being advertised is, how the child will be dressed or styled.... In addition, it must be clear that the parent or guardian of the child will be present at the shootings.

If the child is going to participate in several campaigns, it is best to sign a different contract for each of the child's performances.

4. The minor as a content creator

In recent times we have been witnessing a new media phenomenon: influencers, bloggers and other people who gain notoriety through their appearances on the Internet.

Their pages are visited by thousands of people and they have a large number of followers. They are people with credibility for Internet users and brands have noticed them because of the influence they can have on consumers. Brands have realized that through these people, they have more possibilities

of accessing certain consumer niches. They are called influencers because of the influence they have on the public in general and on potential consumers in particular. Many of them are minors, a group that is of particular interest to us.

Sometimes these people talk about certain products (positively or negatively) of their own free will, but other times it is the brands that provoke this content. Sometimes through a contract and many others by sending them their products as a gift in the hope that they will appear on their blogs, YouTube videos or websites.

The legal treatment is different in both cases, although we must warn that if the product was sent with the intention of advertising it, it could be considered as a contractual relationship, although it is normal that in this case there is a written contract.

In the case at hand, the protection must be bi-directional: on the one hand, the protection of the rights of the child influencer and on the other hand, the protection of the minors to whom he/she addresses his advertising messages. In relation to the latter, everything said in section 2. "Children in front of television: "how they are taken for a ride" will be applicable, paying special attention to the fact that since the message comes from a peer and can therefore give them more credibility, the utmost care must be taken to protect their rights. To this end, the influencer's obligation to inform that he/she is advertising, when this is the case, must be taken as a starting point. It must be clear that the message is advertising and what product is being advertised (the brand). We reiterate the idea that children are less able to identify the different types of content, so it must be very clear that it is advertising. In addition, it must be taken into account that the responsibility for non-compliance with this rule will fall on the influencer.

Thus, both on television and in videos broadcast on social networks, it must be clearly identified that it is advertising and that it is different from informative or entertainment content. To this end, the advertising message must include distinctly identifiable images and sounds so that the consumer or user identifies unequivocally that it is advertising content. It must include a change in the typeface, titles, subtitles and the advertiser's trademark. (See art. 5 of the Code of Trust online). In fact, if this is not done, it will be understood that it is disguised advertising, since "it is considered unfair for misleading to include as information in the media, communications to promote a good or service, paying the entrepreneur or professional for such promotion, without it being clearly specified in the content or through images and sounds clearly identifiable to the consumer or user that it is advertising content" (Art. 26 LCD). This is relevant because if the correct action is not taken, minors may not be able to differentiate the advertising message from an informative or entertainment message. If this were to happen, the child could attribute to the former the objectivity and neutrality that informative or entertainment messages have but that advertising messages do not have.

4.1. Rights of the child influencer

We must start from the idea that the situation of minors varies according to their age and, consequently, their maturity. Thus, those over 14 years of age have greater autonomy since they can already authorise the processing of their personal information and, therefore, register on social networks. Although it is true that certain networks do not require a specific age or the age is lower, Spanish legislation does not allow data processing to be authorised by children under 14, so that, in this case, the authorization of the parents or legal guardians is required.

There must be a written contract specifying everything related to the advertising activity of the minor and the brand (type of messages, time, repetitions, environment, etc...). The contract is usually a commercial contract (of the work or service lease type) without the existence of an employment relationship. Therefore, the minor is bound by the terms of the contract and is legally liable (together with his/her parents, guardians...) for the breach of any of the clauses.

The minor has the right to a remuneration that will be the agreed one and that can be in money or in gifts. It is important to bear in mind that gifts also have an economic valuation and, therefore, do not necessarily have to be exempt from tax obligations. It is also relevant to take into account the fact that the money obtained by the minor must be for him, although the parents can dispose of an amount, but not all of it. This is stated in the Civil Code, when it says: "The fruits of his goods always belong to the unemancipated child, as well as all that he acquires with his work or industry. Nevertheless, the parents can destine those of the minor who lives with both or with only one of them, in the part that corresponds to him, to the raising of family burdens, and they will not be obliged to render accounts of what they have consumed in such attentions" (art. 165 of the Civil Code).

In the event of non-compliance or violation of the rights of the minor, the competent Administration will act in the matter of labor inspection, or the ordinary courts and tribunals if the violations are of another type.

4.2. Obligations of the child influencer

As a general rule, it should be kept in mind that persons over 14 years of age are criminally liable for their actions and parents or guardians are jointly and severally liable in the civil sphere for the actions of their children.

It is convenient to provide this reminder because when a child gets in front of a camera he/she runs the risk of violating the rights of others knowingly or unknowingly (although ignorance does not exclude guilt):

He/she is responsible for complying with the conditions agreed in the contract.

He/she is responsible for compliance with the basic rules on the advertising message (identification of the message, truthfulness, not degrading other brands...).

He/she is obliged to comply with the tax obligations arising from its remuneration.

He/she is responsible for the infringement of the honour of others: Whether it concerns other brands or third parties, the minor will be responsible for the insults that he/she makes against them. In this case he/she will be able to respond on the basis of the LO 1/82 of May 5, of Civil Protection of the Right to Honour, to Personal and Family Intimacy and to Personal Image, or in the penal scope if his/her conduct was constitutive of crimes of slander or calumny.

He/she is responsible for the violation of the privacy of others: The minor may not disclose information referring to the intimate life of other people without their consent. Doing so could be a violation of their right to privacy. If, in addition, the data disclosed refers to a minor, the conduct will be considered more serious, given the extreme protection afforded to children.

He/she is responsible for the infringement of the right to personal image of others: He/she may not disseminate images of third parties without their consent. Doing so could involve the violation of their right to their own image. If, in addition, the images disseminated are of a minor, the conduct will be considered more serious, given the extreme protection afforded to children.

He/she is responsible for the hate crimes typified in art. 510 of the Penal Code [23].

He/she is responsible for infringement of the intellectual property rights of others. He/she may not use content (videos, photos, phrases, music...) created by another without their consent. He/she must use original content or get permission to use it. At this point it is worth making a few brief notes: not everything that seems to be free actually is so (thus you have to make sure) and what is free for certain uses (private, teaching, etc...) is not usually free for advertising and/or lucrative purposes. Even if the content is free, if the author is known, his authorship must be acknowledged, since it is one thing to use someone else's work and quite another to appropriate it. Moral rights remain with the author, even if the economic rights are transferred.

It should also be borne in mind that unlawful conduct (especially the dissemination of insults, images, personal data or messages of hatred and xenophobia) carried out over the Internet is particularly serious (which will result in an aggravation of the penalty) due to the wide dissemination of these offenses in a short period of time.

It would be desirable to include a means to facilitate the reporting of illicit contents in the channel or page of the minor. This, fundamentally, has the objective of trying to keep the damage as low as possible (although once something is spread through the network it is uncontrollable).

5. Applicable regulations

As we have seen, the applicable regulations are wide-ranging and complex. Furthermore, which one should be applied depends on the situation (role) of the child. Within the scope of the advertising message, the following will apply: General Law of Advertising, Law of Unfair Competition, Law of Defense of Consumers and Users, Law 34/2002, of Services of the Information Society and Electronic Commerce, General Law of Audiovisual Communication, etc. In the case of contractual relations, we will have to abide by the provisions of the Workers' Statute, Code of Commerce, Civil Code, Commercial Code, etc.; if we refer to the infringement of copyright: Intellectual Property Law or Industrial Property Law and, if it is a question of resolving a conflict with personality rights, then the content of the Organic Law 1/82, on Civil Protection of the Right to Honour, Personal and Family Privacy and Personal Image, the Law on Criminal Liability of Minors, the Law on Legal Protection of Minors, the Criminal Code, the Civil Code, etc., will be applied.

In addition, the Self-Regulatory Codes shall apply. In case of a possible breach of advertising rules, the citizen can appeal to Self-regulation of Advertising by sending an e-mail to this Association free of charge.

6. Conclusions

As we have shown throughout this paper, the rules that regulate advertising when minors come into play are many and varied. Legal norms and sectorial norms, national norms, autonomous norms, norms that regulate rights, norms that allege obligations, self-control codes... A large number of laws, principles and prescriptions make it almost herculean to be able to determine which should be applied in each specific situation, as it is very complicated to cover a subject as complex as the one we are dealing with. Therefore, we believe that it is essential to work towards a unified regulation of advertising and minors. It is necessary to have a specific regulation on all the issues that affect children in the advertising sphere and, consequently, solve the special situation of child influencers... The objective of the existence of a unitary and specific regulation is none other than to adequately protect the rights of minors in the different roles they may occupy in the advertising phenomenon. (Martínez-Pastor, Vizcaíno-Laorga, Serrano-Maillo, & Nicolás, 2017) It is necessary to simplify the regulation in order to facilitate its knowledge. And this because knowing the law facilitates its compliance and, above all, allows for greater efficiency in the defense of the rights of our children.

7. Acknowledgement

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Notas

1. MARTA LAZO, Carmen: La televisión en la mirada de los niños. Alaguara, 2005. In this work, the author exposes the process that children undergo in front of television. "The child goes from receiving to critical perceiver and participant perceiver".

2. SÁNCHEZ GONZÁLEZ, S.: "Los derechos fundamentales en la Constitución Española de 1978", en SÁNCHEZ GONZÁLEZ, S. (COORD.) Dogmática y práctica de los derechos fundamentales, Tirant lo Blanch, 2006, p. 3. The author does not even consider the option that minors can be right holders, when he asks: "Who are the holders of fundamental rights in Spain, apart from Spaniards of legal age?"

3. HART, HL A: Essays on Bentham: Jurisprudence and Political Philosophy, Oxford, 1982.

4. MacCormick: "Los derechos de los niños: una prueba de fuego para las teorías de los derechos", en Anuario de filosofía del derecho, N° 5, 1988, p. 294 says "An exhaustive list of the rights that children have, but I feel no difficulty in affirming that they have rights"

5. Convention on the Rights of the Child (1989) (preamble, paragraph 9): "Bearing in mind that the need to provide the child with special protection has been stated in the Geneva Declaration of 1924 on the Rights of the Child and in the Declaration of the Rights of the Child adopted by the General Assembly on November 20, 1959, and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular, in articles 23 and 24), in the International Covenant of Economic, Social and Cultural Rights (in particular, in article 10) and in the relevant statutes and instruments of specialized agencies and international organizations that are interested in the welfare of the child, Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, due to his lack of physical and mental maturity, needs special protection and care, including due legal protection, both before and after birth...".

6. VV.AA. Tratado del Menor, la protección jurídica a la infancia y la adolescencia, Thomson Reuters Aranzadi, 2016, en p. 74 y 75 says: "the sole and exclusive foundation of the minor resides in the immaturity in all orders (...) of the minor, which prevents him from fending for himself and makes him in need of the help and protection of others".

7. Parágrafo II del preámbulo de la LO 8/2015, de 22 of July, de Modificación del Sistema de Protección a la Infancia y la Adolescencia.

8. Art. 1 de la LO 5/2000, de 12 of January, reguladora de la responsabilidad penal de los menores: "This Law will be applied to demand the responsibility of people over fourteen years of age and under eighteen for the commission of acts classified as crimes or misdemeanors in the Penal Code or special penal laws".

9. Art. 1903 Cc: "The obligation imposed by the previous article is enforceable, not only by the own acts or omissions, but by those of those who must be liable. Parents are responsible for damages caused by children who are under their care. Guardians are guardians of the damages caused by minors or disabled persons who are under their authority and live in their company.

They are also the owners or directors of an establishment or company with respect to the damages caused by their dependents in the service of the branches in which they were employed, or on the occasion of their functions. The persons or entities that are holders of a non-higher education teaching Center will be liable for the damages caused by their underage students during the periods of time in which they are under the control or supervision of the teachers of the Center, developing school or extracurricular and complementary activities. The responsibility referred to in this article will cease when the persons mentioned in it prove that they used all the diligence of a good parent to prevent the damage".

10. Art. 13 Of the Convention on the Rights of the Child: "1. The child shall have the right to freedom of expression; This right will include the freedom to seek, receive and impart information and ideas of all kinds, regardless of borders, whether orally, in writing or in print, in artistic form or by any other means chosen by the child. 2. The exercise of such right may be subject to certain restrictions, which will only be those that the law provides and are necessary: a) To respect the rights or reputation of others; or b) For the protection of national security or public order or to protect public health or morals".

11, Art. 9 General Advertising Law: Identify themselves as such: "Advertisers must (...) unequivocally disclose the advertising nature of their advertisements." This principle is also included in the Advertising Code of Conduct when it says "Advertising will be identifiable as such regardless of its form or the medium used" (art. 13), as well as the Online Confidence Code of Ethics: "In advertising in electronic means of remote communication, the advertiser must be clearly identifiable through the name of the

company or the advertised brand, in such a way that it is clearly identifiable through the name of the company or the advertised brand, so that its recipients can recognize him and get in touch with him without difficulties". (Art. 4).

12. Art. 9 General Advertising Law: The media will significantly delimit the statements made within their informative function from those they make as simple advertising vehicles". Art. 26 of the LCD and art.

13 General Audiovisual Communication Law: "Television advertising and teleshopping must be easily identifiable as such and distinguished from editorial content".

13. Art. 20 Unfair Competition Law: "In relations with consumers and users, those commercial practices, including comparative advertising, which, in their factual context and taking into account all their characteristics and circumstances, create confusion, including risk, are considered unfair, of association, with any goods or services, registered trademarks, trade names or other distinctive marks of a competitor, provided that they are likely to affect the economic behavior of consumers and users ".

14. Art. 7.3 General Audiovisual Communication Law: "Advertising" must not mislead about the characteristics of the products, or their safety, nor about the ability and skills necessary for the child to use them without causing harm to himself or to third parties ". Along the same lines, the Advertising Code of Conduct is pronounced when it says that "advertising should not be misleading. Misleading advertising is understood to be that which in any way induces or may mislead its recipients ". (Art. 14.1)

15. Art. 3.a) General Advertising Law: "It is illegal" Advertising that violates the dignity of the person or violates the values and rights recognized in the Constitution, especially those referred to in articles 14, 18 and 20, section 4". This same principle and in the same terms is included in the Advertising Code of Conduct, which says: "advertising must necessarily respect the rights to honor, privacy and self-image" (Art. 11)

16. Are illegal "advertisements that present women in a humiliating or discriminatory way, either using their body or parts of it in particular and directly as a mere object unrelated to the product to be promoted, or their image associated with stereotyped behaviors that violate the foundations of our legal system helping to generate the violence referred to in Organic Law 1/2004, of December 28, on Comprehensive Protection Measures against Gender Violence ".

17. Art. 3 b) LGP: "It will not be possible, without a justified reason, to present children in dangerous situations".

18. PAOS Codes

19. Real Decreto 1205/2011, 26 of august, on the safety of toys and the Code of Ethics of online trust.

20. See, for example, Code of advertising self-regulation of brewers in Spain, the Code of advertising self-regulation of the Spanish Federation of Spirits (FEBE).

21. Prescribers should be understood as parents, teachers, presenters of children's programs or real or fictional characters recognized by minors, as well as films or fiction series.

22. Art. 18.3 LGCA.

23. Article 510 CP: 1. The following shall be punished with a prison sentence of one to four years and a fine of six to twelve months: a) Those who publicly encourage, promote or incite directly or indirectly to hatred, hostility, discrimination or violence against a group, a part of it or against a person determined by reason of their membership of it, for racist, anti-Semitic or other reasons related to ideology, religion or beliefs, family situation, the membership of its members to an ethnic group, race or nation, their national origin, their sex, orientation or sexual identity, for reasons of gender, illness or disability. (...) C) Publicly deny, seriously trivialize or praise the crimes of genocide, crimes against humanity or against persons (...). 2. The following shall be punished with a prison sentence of six months to two years and a fine of six to twelve months: a) Those who harm the dignity of persons through actions that involve humiliation, contempt or discredit of any of the groups to which it refers the previous section, or a part of them, or any (...) b) Those who praise or justify by any means of public expression or dissemination the crimes that have been committed against a group, a part of it, or against a person (...). 3. The penalties provided for in the preceding paragraphs will be imposed in the upper half when the events have been carried out through a social communication medium, through the Internet or through the use of information technologies, so that, that was made accessible to a large number of people. (...). 5. In all cases, the penalty of special disqualification for an educational profession or trade will also be imposed, in the field of education, sports and free time, for a time greater between three and ten years than the duration of the deprivation penalty. of freedom imposed in his case in the sentence, taking care of proportionally

to the seriousness of the crime, the number of the committed and the circumstances that concur in the delinquent. 6. (...). In cases in which, through an Internet access portal or information society service, the contents referred to in the previous section are disseminated exclusively or predominantly, the blocking of access or the interruption of access will be ordered. the provision of the same.