



REGULATION DIGITAL ADVERTISING PERCEIVED BY MINORS: THE CASE OF SPILLOVER Comparative Analysis Spain - Chile

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*Children
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ABSTRACT

Children are highly exposed to digital advertising due to their use of the Internet, behavioural data collection and privacy policies. Through interviews and analysis of doctrine, data and regulations, the research aimed to identify issues related to the protection of children's rights in the Spanish and Chilean legal systems.

One of the main conclusions is that both legislations lack regulation of spillover, which refers to advertising received by children but not specifically targeted at them. As a result, ongoing research is therefore being carried out to further investigate this phenomenon.

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1. Introduction

In the western world, advertising occupies a central place in our daily lives. We cannot imagine a day when we are not aware of it, trying to persuade us to buy goods or services. Because we are in our homes, advertising has infiltrated them, not only through traditional media such as television, radio or newspapers, but also through devices with some form of digital attribute that allows them to connect to the Internet. This has not been trivial for business owners and their advertising teams, as digital advertising has taken on the most diverse forms, styles and sophistication. Already in 2019, digital advertising investment in Spain will become the main investment, overtaking television advertising, and by 2021 it will account for almost half of the total investment¹.

Today's digital advertising can only be understood in the context of Web 3.0. The way people consume the web allows software to learn about their tastes and then create native advertising that is personalised to the target audience. In this example, we see how prosumption, shared agency, use of data, native and personalised advertising all have greater potential on the web, constantly trying to stimulate consumers to buy products or services.

Children and teenagers are recipients of digital advertising. In the current web context, they contribute to its creation through the collection of behavioural data. Given that their early development places them in a state of particular vulnerability, it is necessary to analyse the state of regulation of the digital advertising they perceive. The subject of regulation may be the advertising itself, the platforms on which it is carried out and/or the economic activity carried out by operators. In any case, since children and teenagers are a particularly vulnerable group, regulation should protect their rights and ensure healthier consumer relations. Weak legislation that is unable to cover a large part of the digital advertising formulas perceived and/or targeted at minors, while safeguarding the rights, obligations and privacy of the actors involved, opens the door to infringements, operational and transactional costs, in the face of faulty or unsustainable consumption and the creation of a seed of future adult consumers who do not critically analyse what is presented to them at the moment of consumption.

This research is the result of a Master's Dissertation in Consumer Affairs and Commerce at the Complutense University of Madrid, which is being developed as part of a doctoral research project in the Audiovisual Communication, Advertising and Public Relations programme at the same university. In a first stage of analysis, which will be the focus of this article, the legislation regulating digital advertising perceived by children and teenagers in Spain and Chile has been compared, as there is a cultural, historical and consumer link between the two countries. In particular, the legislation regulating digital advertising aimed at and/or perceived by minors has been examined in detail, either by establishing measures in favour of minors or by imposing obligations on those who create, disseminate or support it. Although the conclusions of the first phase are varied, one of the most important is the phenomenon of advertising spillover: advertising that is perceived by minors but not directed at them. Consequently, the second phase of research, which is currently underway, aims to examine the quantitative and qualitative impact on children and teenagers of the phenomenon of spillover and how it is regulated in both legislations in order to prevent it. This is unusual, as no specific comparative studies have been found on the subject, using multidisciplinary issues and methods from the fields of law, consumerism, advertising and sociology. The aim is to contribute to the discussion of a particularly agile subject such as digital advertising, with a highly vulnerable and susceptible group corresponding to children and teenagers, and the legal methods used comparatively to protect privacy and rights, trying to see where there are opportunities for improvement in order to strengthen such consumer relationships.

2. Design and Method

Considering that advertising is part of the consumer relationship, which is asymmetrical, it is worth asking what happens to those people who are in an increased state of vulnerability, such as minors, due to their early stage of education and credulity (Gramunt Fombuena, 2017).

Considering that children and teenagers in developed and developing countries have extensive access to and use of the Internet, this leads to a high exposure to digital advertising, especially when

¹ Since 2019, digital advertising investment by controlled media has consistently ranked first in terms of investment volume. In 2021, it accounted for 45.6% of controlled media investment (Infoadex, 2022).

considering the mining of compartmentalised data that, with or without consent, intrudes into the most intimate sphere of privacy. In the case of Spain, recent reports from the sectoral authority indicate that there are 17.12 million fixed broadband lines (corresponding to 36.1 lines per 100 inhabitants) and 52.7 million mobile lines that access the Internet (Comisión Nacional de los Mercados y la Competencia, 2023). In this context, the question arises as to the status of the current legislation applicable to advertising seen by minors in order to protect their rights.

Beyond the historical and cultural link between Spain and Chile, they share paradigmatic cases in terms of rates of Internet access and use by children and teenagers. In the case of Spain, 98% of children and teenagers aged between 10 and 15 use the Internet regularly after the pandemic (Observatorio Nacional de Tecnología y Sociedad, 2022). The situation in Chile has not reached this percentage, although it is close. The latest available figures show that 71% of children and teenagers between 8 and 17 years of age have access to the Internet from home or mobile phones. However, after the pandemic, the connection time between Mondays and Fridays decreased, but the connection time between Saturdays and Sundays increased (Criteria and VTR, 2023).

Similarly, Spanish consumer legislation has often been used as a reference for Chilean legislation. For example, Spanish consumer legislation was constantly used as a reference in the legislative discussion of the recent Law No. 21.398, which extensively reformed Law No. 19.496 Establishing Rules for the Protection of Consumer Rights (hereinafter "LPDC") (Comisión de Economía del Senado de Chile, 2020).

Consequently, the historical and cultural link, the similarities in Internet access rates and the fact that Spanish consumer legislation is a reference point for Chilean legislation are evident. For this reason, the research has had a comparative cut between the reality of Spain and Chile.

The general objective of the first phase of the research was to analyse the legislation in force in both countries that regulates advertising carried out through digital media and perceived by minors or children, whether the regulated object is the advertising itself, the platforms through which it is carried out, the economic sector or the content creators. The specific objectives of this first phase were to (i) to study the current state of digital media advertising aimed at children and teenagers; (ii) to identify the possible risk behaviours of those involved in the aforementioned consumer relationships; and (iii) to verify whether or not the Spanish and Chilean legislation regulating advertising carried out by digital media and perceived or targeted at children and teenagers is capable of satisfactorily protecting children and teenagers; (iv) in the event that the legislation does not satisfactorily protect the consumer relationships under analysis, to propose improvements in order to avoid abuses and/or strengthen these relationships.

However, the hypothesis is that the two legal systems analysed do not satisfactorily cover the consumer risks to which minors are exposed by digital advertising. For this reason, coverage should be sought on the basis of general educational principles applicable to this type of advertising.

Given the main and secondary objectives, the hypothesis and the structure of the analysis in two stages, the first stage, which is the focus of this article, is eminently theoretical and exploratory. Theoretical because of the analysis of: (i) doctrine and data on the current state of digital advertising perceived by minors, rates of use of digital devices and the impact of digital advertising on their browsing, and (ii) Spanish and Chilean legislation regulating digital advertising perceived by children and teenagers. Exploratory, because the aim was to provide a general overview of the state of the art, to be followed by a more in-depth analysis of a specific phenomenon: advertising spillover.

In addition to the aforementioned points, it is also worth noting the use of the semi-structured interview method with members of the only advertising regulatory bodies in Spain² and Chile³. It should be noted that, with the exception of their members, these bodies are not binding. The interviews sought to gather the assessments of the state of the art of people intimately linked to the advertising industry and its regulation in both countries. This was done in order to contrast their results with those of the other methods already described. It is noteworthy that, given the existence of a self-regulatory body for advertising in each of the countries under consideration, it was possible to interview all relevant parties.

² Association for the Self-Regulation of Commercial Communication: AUTOCONTROL.

³ Council for Self-Regulation and Advertising Ethics: CONAR.

3. Fieldwork and Data Analysis

3.1. Methodology Employed in the Analysis of the Current State of Digital Advertising in Spain and Chile, as Perceived by Minors

A review of scientific literature and field analysis has been carried out to reflect the current state of digital advertising as perceived by minors, with a special focus on exposure times and the impact of advertising on consumption times. The results are based on the review of Andrade et al. (2021), Association for Media Research (Asociación para la Investigación de Medios de Comunicación. 2019), Feijoo-Fernández et al. (2020), Feijoo-Fernández et al. (2021), Liberos et al. (2013), Mansilla (2000), National Observatory of Technology and Society (Observatorio Nacional de Tecnología y Sociedad. 2022) and YouTube (2023).

3.2. Methodology Employed in the Analysis of the Spanish and Chilean Regulations Applicable to the Object of Study.

In line with the primary and secondary objectives and the research hypothesis, a comprehensive examination of the regulations of the selected countries in force between March and September 2023 has been conducted. The focus has been on those regulations that could potentially impact the regulation of digital advertising directed at minors.

In the case of the applicable regulations in Spain, the following have been analysed: General Regulations on Digital Services; Spanish Constitution; Civil Code; Organic Law on Comprehensive Protection Measures against Gender Violence; Organic Law on the Legal Protection of Minors; General Law on Audiovisual Communication; General Law on Advertising; General Law for the Defence of Consumers and User; Law on Health Measures against Smoking and Regulating the Sale, Supply, Consumption and Advertising of Tobacco Products; Royal Decree on Commercial Communications of Gambling Activities; Royal Decree Regulating the Advertising of Medicines for Human Use and Royal Decree for the Regulation of Certain Activities Inconvenient or Dangerous for Youth and Children.

The Chilean regulations and interpretative circulars analysed were as follows: the Civil Code, the Law Establishing Norms on the Protection of Consumer Rights, the Law on Nutritional Composition of Food and its Advertising, the Law on the Statute on the Guarantee and Integral Protection of the Rights of Children and Teenagers, and the Interpretative Circulars of the National Consumer Service on Native Advertising and Influencers and on the Notion of Hyper Vulnerable Consumers.

Finally, in the case of international normative bodies, the Convention on the Rights of the Child – UNICEF has been reviewed.

3.3 Methodology Employed in the Analysis of Interview Data

The methodology employed in the selection of interviewees and its development in a semi-directed format was based on the search for members of the two advertising self-regulation bodies in Spain and Chile: AUTOCONTROL and CONAR, respectively. While the selection is limited, the scope of the results is determined by the importance and level of involvement of the institutions with the subject matter.

This work and the role played by each of the interviewees within their institution are also discussed.

The interviews were conducted in June and August 2023 via videoconferencing platforms. Audiovisual recording was permitted only for CONAR, but not for AUTOCONTROL, so data was collected through notetaking in the latter case. Otherwise, both interviewees accepted the personal data processing policy. Videoconferencing was used to facilitate the holding and capture of the interviews. Each interview lasted between 40 and 70 minutes. Given the institutional aims of AUTOCONTROL, it was not possible to ask the questions originally envisaged in one of the thematic areas. However, as the script was semi-flexible, questions arose during the course of the interview that were not included in the preliminary outline and whose answers are of relevance to the object of this research.

4. Results

4.1. On the Current State of Digital Advertising in Spain and Chile, as Perceived by Minors

Both sets of legislation define minors or children and teenagers as persons under the age of 18. However, there are important subcategories within this group, as the behaviours and attitudes of minors vary at different ages.

Psychology distinguishes between childhood, which is divided into two main stages: (i) Early Childhood, between the ages of 0 and 5, is characterised by a high level of dependence and risk that decreases with age. (ii) Second Childhood, between the ages of 6 and 11, is notable for its openness to the external world and the development of skills for interaction. After childhood, teenage is the period between 12 and 17 years of age.

The physical and psychological distinctions that we find in the large group of children and teenagers are not reflected in the legislation studied. The legislation does not include forms of progression or adaptability of the norm to what children and teenagers experience, given that their needs vary over time. However, the exception is found in the general statutes on childhood, on the occasion of the Principle of the Best Interest of the Child and the Principle of Progressive Autonomy.

In terms of the current state of digital advertising perceived by these groups, we find ourselves in a scenario with a high rate of Internet use, mainly through computers and mobile phones. This is an eminently relational or recreational activity, and it is personally associated by children with positive emotions. A cross-check of figures based on the literature analysed indicates that children are exposed to digital advertising in the order of 14 minutes per hour of browsing (equivalent to 42 advertisements in such an interval). Approximately 3 to 4 minutes of this time is spent viewing digital advertising whose target audience is not minors (equivalent to between 9 and 12 advertisements). This highlights the need for greater awareness among children of the impact of digital advertising. Our research indicates that between 77% and 51.9% of children are not identifying the presence of digital advertising when browsing YouTube or Instagram, varying according to whether or not the piece is more evident in the ecosystem where it is found.

4.2. Spanish and Chilean Legislation Applicable to the Object of Study

The principal findings resulting from the review of the legislation pertaining to digital advertising directed towards minors, both in Spain and Chile, are presented below.

Table 1. Analysis of European legislation applicable in Spain, or Spanish legislation, concerning digital advertising perceived by minors.

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| General Regulation on Digital Services. | Results: Video-sharing platform services have no editorial responsibility for the content of audiovisual commercial communications made available by audiovisual media service providers that host content on their portal. However, they do have a duty of care for what is made available on their platform. Among these diligence mechanisms, we find one strictly linked to privacy policies, consisting of the obligation to apply age control methods, such as start-up barriers where the age of the user is consulted. In the case of users who are minors, digital advertising may not be made available based on their personal data profiling or any content that has been reasonably classified as potentially vexatious to minors. |
| Organic Law on Comprehensive Protection Measures against Gender Violence. | Results: Advertising that uses women in a vexatious or discriminatory manner is considered illegal advertising. This is another way of showing how these kinds of prohibitions and safeguards are in line with the General Law on Advertising and the catalogue of regulations set out in this research, seeking to outlaw all forms of digital advertising that could be perceived by minors and that show forms of gender-based violence. |

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| Organic Law on the Legal Protection of Minors. | Results: The statute clearly defines its scope and purpose of protecting children and teenagers. It acknowledges that advertising, the messages broadcast to them and the programmes directed at them, may contain content that is physically or morally harmful to them. Without addressing this aspect specifically, and in a referral exercise, there is a possibility that there may be regulations that specifically regulate this. |
| General Law on Audiovisual Communication. | Results: The legislation contemplates digital aspects, which allows regulating video sharing services through platforms such as YouTube. It also addresses the issue of "users of special relevance" – popularly known as influencers – who must comply with the provisions for audiovisual communication service providers. The legislation does not apply to video sharing services via platforms where the influencer has no editorial responsibility. For example, it does not apply to YouTube for the content of a video made available by an influencer. The situation is different for content outside the video for which YouTube has editorial responsibility, such as an animated pop-up. All of the above are obliged to comply with the special protection measures that exist for minors in the field of audiovisual commercial communications, which order that they do not cause physical, mental or moral harm. Furthermore, a list of prohibited behaviours is established, including exploiting the inexperience of children and teenagers, portraying them in risky, violent or stereotypical situations, encouraging inappropriate conduct, and so forth. |
| General Advertising Law. | Results: Its purpose is to regulate advertising by considering as its addressees all those to whom it is addressed and whom it may reach. This is not a trivial matter, since digital advertising may be aimed at minors or, without having such a purpose, it may also reach them. It should be noted that it follows a harmonious line with the rest of the Spanish legislation in order to protect minors in general from digital advertising that may be harmful to their physical and mental health. In line with this general objective, it seeks to ensure that the recipient of digital advertising is able to recognise when he or she is confronted with such advertising, as opposed to the content or medium in which it is inserted. However, as it does not provide ways or examples of how this should be implemented, it can be very open-ended and subject to the discretion of the person applying it. |
| General Law for the Defence of Consumers and Users. | Results: It gives priority to protecting the rights of the most vulnerable consumers. As a consequence, sectoral legislation will have to be created to comply with the above. Lastly, the regulation is a counterpart to the rest of the legislation and obliges it to establish positive discrimination in favour of minors, from which the digital advertising that they may perceive is no exception. |
| Sectoral regulations⁴ | Results: They are all regulations that regulate specific activities or industries that can be classified as risky. Each regulation prohibits, to a greater or lesser extent, the advertising of its products or services to children in various forms, including advertising through digital media. |

Source: Own Elaboration, 2024.

⁴ Law on Health Measures against Smoking and Regulating the Sale, Supply, Consumption and Advertising of Tobacco Products; R.D. Commercial Communications of Gambling Activities; R.D. Regulating the Advertising of Medicines for Human Use and R.D. Regulating Certain Inconvenient or Dangerous Activities for Youth and Children.

Table 2. Analysis of Chilean regulations applicable to digital advertising as perceived by minors.

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| <p>Law Establishing Rules on the Protection of Consumers' Rights.</p> | <p>Results: Unlike the General Law for the Protection of the Rights of Consumers and Users, this law does not explicitly refer to consumers in a situation of increased vulnerability or hyper vulnerability, as in the case of children and teenagers. This construction of the hyper vulnerable consumer has been addressed in other bodies, most notably by the Chilean consumer authority, the National Consumer Service.</p> <p>The regulation defines what is meant by advertising, stressing that it is understood from the point of view of the communication addressed by the supplier to the public by any appropriate means - which undoubtedly includes digital media - with the aim of informing and motivating the contracting of goods or services. The justification of the relationship that may exist between the advertiser and the supplier is disregarded, which makes it irrelevant whether or not there is any burden or consideration. What matters is the purpose of the communication.</p> |
| <p>Law on Nutritional Composition of Foodstuffs and their Advertising.</p> | <p>Results: Hand in hand with the Law on Food Advertising, this law has regulated the advertising of foods classified as harmful to children under the age of 14, with the aim of combating the undesirable effects of their consumption. A similar fate has befallen the tobacco and alcohol industries in Chile, as in the case of Spain. Using a very broad definition of advertising, digital advertising directed at children and teenagers is banned. Even if it is not directed at them, if it exploits their credulity, it is also subject to control and sanctions. Finally, the regulation also has an educational purpose and should reach children and teenagers, since the introduction of the message promoting the consumption of healthy food is likely to reach the age group under analysis, even if digital advertising does not have them as a target group.</p> |
| <p>Law on the Statute of Guarantee and Integral Protection of the Rights of Children and Teenagers.</p> | <p>Results: The approach is very similar to that developed in the Spanish Ley Orgánica de Protección Jurídica del Menor (Organic Law on the Legal Protection of Minors). Both seek to establish a general legal framework of protection, with the difference that in the case of this law, the requirements and precautions to be taken in advertising aimed at children and teenagers are more specific. However, these requirements are more specific in the case of minors and could have been overridden by the general principles to which all advertising must conform.</p> |
| <p>Interpretative Circular on Native Advertising and Influencers of the National Consumer Service.</p> | <p>Results: It should be noted that such circulars are binding only on the officials of the service and not on the rest of the population. However, they do provide a benchmark for behaviour, as the auditor will act on the basis of this criterion.</p> <p>In theory, this circular is quite robust in terms of safeguarding the rights of children and teenagers in their perception of digital advertising directed at them. It integrates various positive rules, links them to the Interpretative Circular on the concept of hyper vulnerable consumers and recognises children and teenagers as consumer actors and their vulnerability in their developmental stage. It also addresses the phenomenon of native advertising in digital media, imposing obligations on operators in its development and recognising the complexity of the use of compartmentalised data. However, it should be noted that it only identifies and does not propose or guide solutions to the global phenomenon of digital advertising and the fact that much of it is not targeted at this age group but is perceived by them: spillover.</p> |

**Interpretative
Circular on the
Notion of the
Hyper
vulnerable
Consumer of the
National
Consumer
Service.**

Results: This report outlines the constitutional and positive consumer regulations in Chile to regulate how they should deal with the phenomenon of consumers with increased vulnerability, such as children and teenagers. Although it does not deal specifically with digital advertising perceived by minors, it recognises them as a group requiring special attention, and advertising must be adapted to avoid harmful effects. When applying this circular, it could be said that - in theory - operators should take the necessary measures to adapt digital advertising aimed at children and teenagers or potentially perceived by them, in order to avoid deepening inequalities and affecting their bodies or psyche, on pain of committing acts of arbitrary discrimination and lack of professionalism, which are punishable by law.

Source: Own Elaboration, 2024.

4.3. Findings from the Interviews

Below are the main findings of the interviews with members of advertising self-regulatory bodies in Spain and Chile, in relation to the phenomenon of digital advertising perceived by minors.

Table 3. Results of the interview with the Director of the Data Protection and Digital Regulation Department AUTOCONTROL

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| Work of the institution to which it belongs. | <p>Institutional work: Non-profit and independent body dedicated to the self-regulation of advertising. They are the only ones with this function in Spain. They ensure that the advertising ecosystem is maintained with guarantees of loyalty, truthfulness, honesty and legality. They use their own codes of conduct or those of third parties, they have an advertising jury to resolve conflicts, they check advertising before it is broadcast through the so-called Copy Advice. In their department, they ensure compliance with data protection regulations and any other regulations that go beyond this and may have an impact on advertising law.</p> <p>Work on digital media: There is none, as the subject of analysis is advertising, regardless of the medium in which it is carried out. However, the digital sector is very fast moving and additional tools are being used, such as the recently launched Code of Conduct for Influencers.</p> |
| Current state of digital advertising. | <p>What is digital advertising? They don't have a definition, they stick to what is legally defined, they don't make interpretations, they just apply what already exists.</p> <p>Frequency: There is no change in the trend or frequency of digital advertising. The most important advertising investment is still in television, through traditional media. However, there are elements that are gaining weight, such as advertising on social networks.</p> <p>Challenges in rights and obligations: The rights and obligations are the same. However, traditional advertising is more expensive, so those who used to do it had more commitment and knowledge. In social networks it is harder to control, it is faster and there is more creative freedom. The challenge is to match the requirements and guarantees of traditional media in practice.</p> |
| Digital advertising targeting children and teenagers. | <p>Quantity, data, motives, industry: There is no increase, although it is a particularly sensitive public, so AUTOCONTROL is even more vigilant in ensuring compliance with its rules. There are sectoral codes of conduct (dietetic food for children, children's food, video games, toys) which show a particular sensitivity or focus on these areas.</p> <p>Challenges in advertising to children: The data do not indicate any additional issues or challenges.</p> <p>Challenges for digital advertising to children and teenagers: In the world of data, this group is particularly protected, as they must have the consent of their legal guardians if they are to be collected and profiled. In their experience, it is rare for minors to be targeted and profiled, and they do not ask for their data to be processed. If they do, it is done with full guarantees. With regard to spillover, the effective verification of the age of the person behind the screen is a major challenge, given the complexity of doing so beyond the form at the beginning of the website. Hardly any authority in the world has tackled this, but work is being done to improve it and make it more secure. As AUTOCONTROL, they ensure that the rules are followed, with the AEPD being the one that should set the standard.</p> <p>Suggestions: No comments.</p> |

Source: Own Elaboration, 2024.

Table 4. Results of the interview with the President of CONAR

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| Work of the institution to which it belongs. | <p>Institutional work: (i) Receiving and resolving complaints from individuals, the State and NGOs when they consider that there is a violation of rights in an advertisement; (ii) Administering the Chilean Code of Advertising Ethics; and (iii) Providing preventive advice to advertisers when it is noticed that an advertisement may have an ethical problem.</p> <p>Work on digital media: Same as above, using the General Ethical Principles for Advertising, but with a different approach, since knowledge is acquired in a different way (including cross-border advertising) and responses must be procedurally quicker, since this type of advertising is easily erased. For this reason, work is underway to update the Chilean Code of Advertising Ethics.</p> |
| Current state of digital advertising. | <p>What is digital advertising? Any interaction that a brand, advertiser or organisation has from an advertising perspective that is designed to influence or attract members of the public to consume, rent or purchase a particular service. It does not matter what platform or from where it is delivered.</p> <p>Frequency: Nearly 50% of advertising investment is made on digital platforms. This includes both traditional and non-traditional digital advertising. The former are commissioned to agencies, executed through traditional digital media (e.g. pop-up, email campaign) and are a replica of those executed in the analogue world. The latter are more private in nature as they are targeted on a consumer-by-consumer basis and are therefore more difficult to research.</p> <p>Challenges in terms of rights and obligations: (i) Difficulty for consumers to distinguish between what is advertising and what is an experience, as there are people who create content from home (influencers, youtubers, streamers) and are sometimes used by a brand. (ii) Advertising that reaches the telephone through social media platforms, with CONAR trying to carry out preventive work to ensure its caution. (iii) Agility in response, given the transient and transnational nature of this type of advertising. (iv) Artificial intelligence, although the principles for dealing with it remain the same as those for advertising ethics.</p> |
| Digital advertising targeting children and teenagers. | <p>Quantity, data, motives, industry: In Chile, children and teenagers should not have access to digital platforms because they are minors. However, the platform is subject to different legislation due to its cross-border component. That is why there is digital advertising aimed at children, and what CONAR is looking for is that the advertising principles are not violated from the beginning. No specific industry has been identified, as their experience is that advertising has moved to the point of sale.</p> <p>Challenges in advertising to children and teenagers: Use of minors in advertising, spillover or rebound advertising and that the message is always appropriate, avoiding behaviour that seeks imitation, creates fear or exacerbates behaviour. From a regulatory point of view, differentiation by age could be desirable, but it runs the risk of being arbitrary, as the behaviour of the minor does not necessarily correspond to his or her age. CONAR is working to update its code and is considering whether an age classification or a general decalogue is the right approach.</p> <p>Challenges of digital advertising to children and teenagers: What was pointed out in the previous paragraph, together with the fact that what was discussed before has evolved. For example, we used to think about the challenges of consumption on a desktop computer, now there are 3-year-old children who have a mobile phone, and parents are the ones who have to decide whether or not to allow their children to use it.</p> |

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| Coverage of current and future legislation / risks. | <p>Adequacy of the protection of rights: He is in favour of self-regulation, as regulation is a starting point and therefore over-compliant. He is not in favour of an advertising or media law.</p> <p>Current risks: While complying with the legal standard, there is a space between it and self-regulation. The regulated party chooses in which space it wants to operate (below the rule, above self-regulation or in between).</p> <p>Possible improvements: Further self-regulation and education of those involved in advertising.</p> <p>Future digital advertising to children and teenagers: Whether targeted at children and teenagers or not, mass advertising (which aims to reach many people) will continue to occupy traditional or general digital media. Targeted advertising (based on data provided by consumers) will become deeper and more personalised.</p> <p>Future risks / pending regulation: As mentioned in the response to the challenges of advertising to children and teenagers. We should move towards self-regulation.</p> <p>Suggestions: No comments.</p> |
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Source: Own Elaboration, 2024.

5. Conclusions and Discussion

Returning to the hypothesis of this research, it has been postulated that the Spanish and Chilean legislation does not satisfactorily cover the consumer risks that minors are exposed to through digital advertising. In line with what has been developed, it is the case that the figures reflect the existence of a problem in terms of the perception of digital advertising by minors, whether it is targeted at them or not.

Given that the universe of children and teenagers is extremely heterogeneous, there is a high level of mass use of the Internet and devices with such capabilities. As can be seen from the figures, around 26.5% of the time spent exposed to digital advertising corresponds to advertising that is not targeted at children and teenagers, a problem known as spillover. This situation is confirmed by the two advertising self-regulatory organisations.

In view of the current situation, the question arises as to whether the legislation analysed is able to cover satisfactorily the risks to which minors are exposed in relation to the consumption of digital advertising. From the legislation analysed and according to the results of the interviews, it is necessary to distinguish between advertising aimed at minors and advertising defined as spillover.

With regard to the former, the analysis shows that both legislations follow two paths. One is the creation of general statutes aimed at regulating advertising and protecting the rights of minors, always bearing in mind their best interests and the principle of progressive autonomy. This is in line with the impossibility of speaking of a single childhood or teenager and allows solutions to be adapted to each case. In the case of Spain, a member of the European Union, the regulation of audiovisual content, privacy policy and the processing of personal data is much more robust than in the case of Chile, adopting formulas for block action to safeguard rights. Notwithstanding this, it must be recognised that the Chilean legal system has given the Consumer Protection Agency - SERNAC - the power to interpret the regulations in this area and has referred to the need to protect the rights of children and teenagers in the world of digital consumption.

The second path is the protection of rights in relation to more sensitive industries or sectors, which has led the legislator to establish prohibitions for specific cases. It is noteworthy that, in the case of Chile, sectoral regulations have not subjected the nature of advertising to the burden or economic activity between the entrepreneur and the person making the communication, giving priority to the persuasive effect to encourage the purchase of goods or services. This is relevant and could be an aspect to be studied in the case of Spanish legislation, since there are digital advertising formulas that do not imply an economic activity for the person making the communication, as occurs in global behaviours of fan culture.

We can conclude that, in theory, the legal instruments exist to adequately protect the rights of minors when it comes to advertising aimed at them. This, together with the necessary work on education for digital consumption (e.g. improving children's ability to recognise what is advertising and what is not), could reasonably cover the gaps where positive legislation is not sufficient. An extremely rigid

regulation that does not adapt to the casuistry does not seem advisable, a problem that theoretically seems to be well overcome by adopting formulas of general principles or precautions that can go hand in hand with the high speed and transience with which digital advertising, including that aimed at minors, develops.

As mentioned above, another key issue that emerged from this first phase of research is that of digital advertising perceived by minors that is not targeted at them: spillover. Important measures may be taken to ensure that all digital advertising complies with the law, including self-regulatory codes, but this phenomenon is not addressed by legislation or, failing that, the measures taken are insufficient. An age verification wall, where the minor has to provide his or her date of birth, seems to be easily breached. If we add to this the fact that the use of the devices is for socialisation and in individual format - one screen - one minor, analogue control by a responsible adult becomes more difficult. Add to this the fact that the digital device is not necessarily for the child's exclusive use (e.g. a parent gives the child their own device) and the digital footprint, data and privacy - or lack of it - that the child faces is not effective. As the interviews showed, while care is taken not to profile children's data without parental consent, the problem arises when age controls are breached or when the child is using someone else's device. In such circumstances, their browsing will be bombarded with ads based on a mix of data unrelated to them, increasing the risk. Given the relevance and contingency of this conclusion, it was decided to undertake a second phase of research, which is ongoing at the time of publication. As a preview, it aims to: (i) deepen our understanding of the regulatory status of the mechanisms that make it possible to control spillover; (ii) examine quantitatively and qualitatively the spillover experienced by minors: exposure time, frequency, content and concurrence of age control mechanisms; (iii) verify whether there are future lines of regulatory action aimed at preventing the occurrence of the digital advertising spillover effect. If so, what are they and; (iv) in the light of the state of the art, identify regulatory gaps and propose legal and technical measures to reduce the digital advertising spillover effect on minors.

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