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Media-Marketing and Branded Content Policy Analysis: UK and Spain

The Branded Content Governance Project

Edited by Jonathan Hardy

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1. Introduction

This report presents a comparative study of policy processes and branded content governance in Spain and the United Kingdom. It compares the regulatory frameworks governing branded content practices and their implementation in Spain and the United Kingdom, with particular emphasis on the legal, institutional, and self-regulatory mechanisms that shape their governance. It also examines policy developments and processes, including the Online Advertising Programme consultation and action in the UK, and recent developments in influencer law and regulation in Spain. This report presents a summary of research involving interviews, meetings and discussion with policy actors and stakeholders. This forms part of the Branded Content Governance Project (BCGP)and our analysis of governance across 32 countries (Hardy et al. 2025a) as well as more detailed comparative analysis of the UK and Spain (MacRury et al. 2025, Hardy 2025c).

The relationships between media and advertising are changing profoundly as they converge. Brands are increasingly involved in the production of publisher-hosted content. Branded content is content that is funded or produced by marketers. This includes brands' own media content but also forms of paid advertising that are 'native', blending into the non-advertising communications environment in which they appear, such as editorial-like sponsored content, and influencer marketing: paid promotions by social media communicators. Such non-traditional advertising has grown at a faster rate than advertising spending overall. For instance, the global product placement market experienced double-digit growth between 2010-2023, excepting Covid in 2020 (PQ Media 2024). The native advertising market alone had a compound annual growth rate of 14.6% between 2020 and 2024, with 21.7% CAGR between 2025 and 2035 forecast (Future Market Insights 2025).

1.1 The Branded Content Governance Project

As media and marketing merge and new forms of marketing communications proliferate, are regulations, guidance, and best practice keeping pace? That is the focus of the Branded Content Governance Project (BCGP) 2022–2025. The project investigates how branded content is treated in regulation and across all forms of governance, including how issues are reported, discussed and acted on. We seek to develop recommendations for governance out of our collaborative research and do so in a way that is context sensitive. What kinds of 'problems' arise in branded content practices and in how these are addressed in current governance? What kinds of actions ('mitigations') can be identified that could guide effective responses in different media systems and contexts?

The BCGP is led by the University of the Arts London (Branded Content Research Hub), University of Stirling, and Complutense University of Madrid, supported by a 90+ international academic network, and industry, legal, policy and civil society partners. Our reports include *Branded Content Governance: 32-country comparative analysis* (Hardy al. 2025a)

which accompanies our 32 individual country reports on the laws and regulation affecting branded content across North America, the UK, all EU countries and Australia. Other publications include *Mapping the Media-Marketing Ecology* (Hardy et al. 2024), with an interim version published in 2024 and the final version to be published as an open access book by Routledge in 2026. The project also examines practices, policy networks and trade/general media discussions in more detail in the UK and Spain, with research publications on these topics. These include *Governance-in-Practice* (MacRury al. 2025) which draws on interviews with practitioners and this Policy Analysis report, which examines and compares the law and regulations affecting branded content in the UK and Spain and examines relevant policy processes and actors including through interviews, roundtables and other research activities. Other published reports examine advertising policy and regulation in the UK (Hardy et al. 2023; Hardy 2024) as well as submissions to consultations, event presentations and the BCGP newsletter. All publications can be accessed at https://figshare.arts.ac.uk/BCG_Project.

1.2 Acknowledgements

This report has been produced by the lead researchers for the Branded Content Governance Project with support from the project team researchers. The Branded Content Governance (BCG) project is led by academics at three Universities. Prof Jonathan Hardy, University of the Arts London, is Principal Investigator (PI), working with two Co- Investigators (Co-Is), Prof. Iain MacRury, University of Stirling, and Prof. Patricia Núñez Gómez, Complutense University of Madrid. Our project research team comprises Dr. Celia Rangel, Complutense University, Dr Beatriz Carmen Martínez Isidoro, Complutense University, Dr. Maria Establés, University of Castilla-La Mancha, Dr. Lucia Gloria Vázquez Rodríguez, University College London and the work of postdoctoral research fellows, Dr Hanna Kubicka, University of the Arts London, and Dr Maciej Wysokinski, Complutense University.

We wish to thank everyone who have contributed to the BCGP. In particular, we wish to thank all those who have acted as advisers for our 32 country reports (see our report, Hardy et al. (2025a) *Branded Content Governance: 32-country comparative analysis*). The BCGP is jointly funded by two research councils within UK Research and Innovation, the Economic and Social Research Council (ESRC) and the Arts and Humanities Research Council (AHRC), (ES/W007991/1). We gratefully acknowledge their support without which this project, and all the wider collaboration achieved, would not have been possible. We also wish to give a special thanks to our project partners who have supported this project from its initial planning to completion. They are the Branded Content Marketing Association, the Content Marketing Association and the law firm Lewis Silkin.

1.3 BCGP Project Objectives

The overarching objective of the BCGP has been to provide a detailed, cross-national, comparative mapping of the emerging regulation and industry practices of branded content across Europe and selected other countries to inform the assessment and development of governance arrangements. The project set six research objectives to achieve this. These are set out below, together with references to the relevant project reports ('outputs') that address them. Appendix B provides a summary of BCGP outputs.

Objectives

- O1. Determine the current regulation and governance arrangements for branded content through systematic cross-national comparison and identify and assess indicators of governance effectiveness and industry and stakeholder support. See Hardy et al. (2025a) *Branded Content Governance: 32-Country Comparative Analysis* and individual vountry reports.

- O2. Assess the key agencies and processes involved in the new media-marketing ecology, including automation and artificial intelligence, and their implications for governance of the relationships between marketers, marketing agencies, media and communication users. See Hardy et al. (2024) *Mapping the Media Marketing Ecology.*

- O3. Identify how industry practitioners and policy actors assess the suitability, ethics and governance of branded content practices to inform recommendations for governance action. See MacRury et al. (2025) *Governance-in-Practice*.

- O4. Report on media coverage and public mediated discussion of branded content governance in selected general and specialist ('trade') media and online communications, and assess the implications for stakeholder and public understanding. See Hardy (ed) (2025b) *Media Analysis.*

- O5. Drawing on project research data and wider literature review, produce and disseminate governance recommendations on branded content, including digital/media literacy, online safety, marketing communications and media governance, to inform governance practices for communications in the UK, Spain and other media systems. See Hardy et al. (2025b) *Branded Content Governance; Problems and Mitigations* and this report.

- O6. Facilitate networking and exchange between academics, industry practitioners, policy actors, civil society groups and other stakeholders to support project outputs.

1.4 Policy Analysis Report Objectives

This Policy Analysis report contributes to answering Research Question 3 for the project:

RQ3: **What are the perceptions and attitudes of media and marketing practitioners and policy stakeholders towards governance arrangements and processes?**

Specific objectives include:

- To identify and contrast key differences in branded content regulation through a direct comparison between the two countries, UK and Spain.
- To contribute to regulatory transparency by facilitating the understanding and interpretation of existing legal provisions.
- To analyse the role played by self-regulatory advertising organisations within the respective systems.
- To assess the degree to which legal frameworks have adapted to new technological, business and market challenges and trends, including branded content, media-marketing integration and the rise of influencers.
- To examine the factors that have driven changes in branded content governance in the United Kingdom, following Brexit, and Spain as a major EU member state.
- To apply and develop a comparative media systems analysis for media-marketing that builds on the work and critical debates concerning Hallin and Mancini's (2004) media systems analysis.

1.5 BCGP Governance Analysis

By 'governance', the BCGP refers to the full range of rules and rulemaking processes, that extend from formal law and regulation, through forms of industry self-regulation, to practical-ethical reflection and action, and include the influence of reporting and discussion in professional ('trade') and 'general' public media (Bevir 2012; Hardy 2022a, 2025a; MacRury 2025). The BCGP adopts an expansive conception of governance that includes what we call *governance-in-practice*, the processes by which governance is managed and negotiated, within and across enterprises, supply chains and networks, by those producing content and services. Our *Governance-in-Practice* report (MacRury et al. 2025) complements this *Policy Analysis* report by drawing on interviews with practitioners across the UK and Spain about how they identify and assess rules. Our third, connected, report, *Media Analysis* (Hardy 2025b) examines the reporting and discussion of branded content and advertising regulation in selected general and trade media in the UK and Spain.

Governance refers to all processes of governing and rule wherever they occur (Bevir 2012). One attraction of governance as a concept is that it encompasses the range of informal as well as formal processes by which practices are ordered, enabled, and constrained. Such a mix of laws, regulatory agencies, industry, and professional self-regulation, evolving standards, and looser 'rulemaking' is a general feature of contemporary media-marketing industries, situated within dynamic, adaptive digital communications systems. Governance is analytically encompassing, inviting attention to the multiple sites and processes of rulemaking and ordering across production, circulation, consumption, and use (Hardy 2021c, 2022). The study of governance includes examining how professional attitudes change, how norms are formed and challenged. Governance analysis must also address the influence of AI and automated processes on rule-shaping, for instance across the buying, selling, assembling, and displaying of programmatic advertising (MacRury 2025). Governance offers a means to integrate political economic, policy, and cultural analysis, by addressing connections across macro-meso-micro levels, including: state–capital–market relations; industrial and market organisation and arrangements; regulatory institutions and processes; socio-cultural practices; norms and attitudes across producers, users, and other actors; and discursive interaction across all relevant stakeholders and media. Our approach to critical governance analysis is described more fully in Hardy et al. (2025a) *Branded Content Governance: 32-Country Comparative Analysis*

Our analytical focus in this Policy Analysis report is on *formal* governance: legal and regulatory arrangements involving powers to require compliance and impose sanctions. Our *32-Country Comparative Analysis* (Hardy et al. 2025a) sets out the framework through which we examine and compare 'formal' governance across media systems. The main 'domains' for the assessment of 'formal' regulatory/governance of advertising are:

- Executive/Government
- Legislature/Legislation
- Courts of law
- Statutory regulatory authorities
- Advertising self-regulatory organisations (SROs; inc. co-regulation)
- Media/Communications and other SROs

We created another category, Industry Regulatory Organisations (IROs), for any trade/professional body that produces guidance and good practice that is applicable to its membership, such as the Interactive Advertising Bureau (IAB) and its global affiliates, including the UK Internet Advertising Bureau (IAB). IROs are located along the border between formal and informal regulation. Where self-regulatory organisations generally oversee compliance and undertake enforcement activities, IROs tend to focus on promoting standards and best practice, with limited, if any, enforcement activity. IROs are important elements in governance ecosystems overall, and interact with the formal agencies in various ways, including in co-regulatory arrangements.

1.6 Legacies of Regulation

Branded content sits at the junction of two main regulatory domains: (1) media/communications law: historically sectoral (press, broadcasting, on-demand) with platform/format-specific rules; and (2) marketing/consumer law: cross-sector duties on unfair and misleading practices, plus product-specific restrictions (e.g., medicines, gambling). There are tensions between these two main domains when broad consumer-law disclosure duties intersect with narrower, medium-specific media rules.

In Western European democracies, media have historically had divergent regulatory treatment, between a voluntary (self-regulatory) 'free press' model for print publishing (no prior governmental control over content) and a statutory model (governmental agency or statutory regulator) for broadcast radio and television. Advertising has tended to be regulated along self-regulatory lines (with the 'right to advertise' sharing 'free press' arguments) but, like news publishing, subject to laws, with a range of legal and regulatory measures affecting what can be marketed, how, where, when and to whom. Because media were regulated sector by sector, we inherited different rulebooks for print, broadcasting and online services; some state-run, some statutory, some self-regulated. Those legacies still drive today's inconsistencies at the media–advertising boundary, for example stricter disclosure requirements for product placement on broadcast TV than for similar integrations on streaming services, or in news websites (Hardy 2025b).

We can certainly trace 'convergence' in regulation back to the extension of rules to new media forms, such as from radio to television broadcasting from the 1940s, but it was from the 1980s, with the expansion of cable and satellite television and, into the 1990s with digitalisation and the 'information superhighway', that policymakers took steps to answer the question: do converging media need converging regulation?

Advertising and branded content regulation

There are three main types of advertising regulation: statutory regulation (derived from legislation); industry self-regulation (with varying degrees of 'independent', non-industry oversight); and a blend of both (co-regulation). In most countries (including all those in our 32-country study), advertising is regulated by a mixture of legislation, enforced by government ministries, statutory agencies and courts depending on the system, and by self-regulatory bodies applying codes of practice (Ikonen et al. 2017; Hardy et al. 2025a).

The BCGP identifies the following as the main categories for branded content: Publishing, Audiovisual, Audio, Digital advertising ('native' ad fomats), Social media marketing (influencer marketing), Out-of-home (OOH), Experiential, and Other. Some, like OOH, have been subject to advertising regulation principally, but others are rooted in long histories of media and communications regulation, from the 17th century (publishing) to early 20th (audiovisual, audio) to late 20th/early 21st (social media and digital

advertising). Within formal law, branded content tends to be addressed, if at all, within advertising law (including laws affecting marketing communications, advertising sites and placement), competition law, laws affecting enterprise and trading, consumer law, and communications law (including digital/ electronic communications, press and publishing, broadcasting and audiovisual content), and laws on local authorities' control. Around this common pattern, notable outliers are countries with negligible or limited laws affecting advertising, and also countries where branded content is explicitly addressed and incorporated into laws, usually in advertising, communications or consumer law.

Within self-regulation, branded content may be subject to general rules only (such as a requirement that all marketing communications must be recognisable as such) or addressed in more specific rules and guidance, such as for advertorials, or influencer marketing. Since 1966, the International Chamber of Commerce's (ICC) globally influential advertising code has set explicit standards for identifying advertisements. Absent from the earliest versions (1937, 1949, 1955), the 1966 Code required that 'advertisements should be clearly distinguishable as such, whatever their form and whatever the medium used' (ICC 1966: 8). The 1966 Code also included a clause that was semantically 'redundant' but whose inclusion indicates the special importance afforded to editorial integrity: 'when published in a medium also containing news and editorial opinion, an advertisement should be so presented that the consumer can readily distinguish it from editorial matter' (ICC 1966: 8).

The most recent version of the Code (ICC 2024: 26) states (Article 7):

> Marketing communications, regardless of format or medium, should be easily identifiable, allowing consumers to clearly distinguish between commercial and non-commercial content. Identification disclosures should be prominent, clear, easily legible and appear in close proximity to the commercial message where they are unlikely to be overlooked by consumers. […] In the case of mixed content, such as with news or editorial matter or social media, the marketing communication element should be made clearly distinguishable as such...readily and immediately recognisable as a marketing communication and where appropriate, labelled as such.

The new phrasing is significant. It is recognised that 'mixed content', combining marketing communications with other communications (news, editorial, social), is permissible. The tension and contradiction is that what is 'mixed', must also accord with a longstanding principle of being unmixed, separated. That is 'resolved' by the requirement to distinguish the 'marketing communication element' within the mixed content. The rules do strive to uphold the identification principle introduced into the 1966 Code, but the language reveals the challenges: what must be made 'clearly distinguishable' is no longer an advertisement but something inherently less distinct, a 'marketing communication element'. The ICC code also

sets out transparency and identification requirements for sponsorship and requires (Article 18) that: 'All influencer marketing communications (including promotions of an influencer's own products) should be designed and presented in such a way that it is immediately identifiable as such. Identification should be appropriate to the medium and message, particularly in the context of social media' (ICC 2024: 30).

The ICC code is an example of industry self-regulation; it is a voluntary code with no direct powers of enforcement, although it may be enforced at national level through self-regulatory organisations (SROs). It is 'an aspirational code that aims at complementing existing frameworks of national and international law' (OECD 2015: 51) and an influential source for national and sectoral codes worldwide. Its place within the broader arrangements of regulation and governance is considered further below.

If branded content falls within media and advertising regulation, a key motivation for the BCGP is that it also falls between the two main domains, i.e., media/communications regulation and marketing-communications (consumer/competition) law, occupying a liminal space that can be less defined and less stable than adjacent ones (MacRury 2018). Just as the integration of media and marketing have been disruptive for some settled industry practices, so too it has been disruptive for previously settled regulatory arrangements.

The contemporary media-marketing ecology also involves a much greater and more diverse range of actors than were involved in the period of professional mass media during the 20th century, when many of the key institutional arrangements for advertising governance were first formed. We examine this as a shift from a dominant triad of institutionally interlinked professionals (marketers, marketing agencies and media) to a sextet. This comprises the triad, in their contemporary expanded form, joined by platforms, adtech and creators. These added groupings comprise the greater range of actors, some of whom, across the pro-am spectrum of 'creators', are less embedded in, and less supported by institutional and professional governance systems (Hardy et al. 2024).

In contemporary branded content, many compliance choices have shifted to platform-run ad tools and creator workflows that now control disclosure and placement involving market actors beyond the membership reach of legacy self-regulatory systems. The self-regulation of advertising has been based upon formal and informal mechanisms to secure compliance amongst closely interacting market actors. Those conditions have come under increasing strain amid increasing business challenges for marketing agencies, and the expansion of transnational digital media platforms and services, the adtech system, automation and socio-technological innovation aiding marketers' direct access to marketing tools. These changes have also influenced policy deliberation on whether existing governance arrangements need to be revised and updated. For instance, the UK government's Online Advertising Programme consultation asked whether

the existing self-regulation should be retained, revised with a strengthened 'backstop', or replaced by statutory regulation (Hardy et al. 2023, Hardy 2024).

The BCGP argues that, overall, the governance architecture needs to be overhauled. There are gaps and anomalies in governance. Regulatory convergence has been partial and incomplete in addressing media-marketing convergence. The present phase can be characterised as 'deconvergence'. This will be discussed in various contexts below and in section seven.

1.7 Problems and Mitigations in Branded Content Practices and Governance

This report concludes by setting out key findings and recommendations for branded content governance. This work, and our theory of change analysis, is set out more fully in our report *Branded Content Governance: Problems and Mitigations* (Hardy et al. 2025b). Here, though, we summarise the four key 'problem' areas, identified in the BCGP analysis, which inform our evaluation of policy and regulation. Our project identifies four key problem areas in branded content practices: first, consumer identification of advertising (advertising transparency and disclosure); second, the impact of integrated advertising on media quality and integrity (editorial and aesthetic independence); third, limits on marketers' power to dominate communications, and fourth, the capacity of creative workers to act ethically.

The **lead problem** concerns the disclosure, labelling and identification of marketing communications. Consumer responses to the European Commission's (2024: 170, 130) public consultation on consumer law show a high level of experience, and concern, about insufficient disclosure of commercial intent: '74% of consumers reported a lack of transparency about the paid promotions of products by social media influencers'. The **second problem** concerns the consequences of brand voice/influence on media integrity, including editorial independence and creative autonomy. This is strongly articulated in some 20th century regulations but is arguably weakening and becoming 'residual' in contemporary policymaking. The **third problem**, marketers' power and share of voice, is articulated in more radical critiques that demand systemic reform. The **fourth problem** focuses on the capacity of those involved in cultural production to apply and exercise good governance. This seeks to address issues of power, precarity, training, support and more that affect practitioner-creator capacities to influence ethical outcomes. These problems within branded content practices provide the context, but our focus in this chapter is on how these problems are addressed in formal governance and on problems of governance processes.

Providing a general 'overview' of formal governance trends across our 32 countries, we argue that the first problem (advertising transparency) is the 'dominant' focus of formal governance. We argue that the second problem (media integrity) is recognised but is becoming 'residual', to adapt the language of Raymond Williams (1977). We argue that the third problem area (marketers' power and share of voice) is largely 'external', meaning that the problem is articulated by critical positions outside of the interaction of industry, regulatory and legal actors within policy networks.

1.8 Methods and Data Sources: Summary

This study combines documentation analysis and qualitative interviews. First, an extensive literature review was conducted alongside a detailed analysis of the regulatory frameworks in both countries, with particular attention paid to key legislative texts. This approach enabled the identification of the main areas of convergence and divergence within the regulatory structures governing commercial communication. This documentation analysis informs the individual country reports on UK and Spain, our *32-Country Comparative Analysis* (Hardy et al. 2025a) and this Policy Analysis report.

To ensure methodological triangulation and enrich the interpretation of findings, in-depth interviews were carried out with key policy actors and stakeholders from both public institutional and media-marketing industry professional spheres. These interviews addressed essential issues related to self-regulation, legal adaptation, technological challenges, and market evolution. The interviewees included legal experts, public officials, and representatives from relevant industry associations.

These contributions proved essential not only for contextualising the legal analysis with practical industry insight but also for verifying the actual effectiveness of the regulatory frameworks under examination. The direct engagement with professionals from the legal and communications fields allowed for the identification of strengths and weaknesses in the implementation of existing regulations, as well as key challenges arising from the emergence of new advertising formats and digital platforms. Consequently, this empirical phase not only validated the documentary findings but also provided a critical perspective on the practical functionality of the current system and highlighted potential areas for improvement in the governance of branded content. For further details see appendix A.

1.9 EU Regulation

Until Brexit was implemented in 2020, both the UK and Spain incorporated EU law and regulation into domestic law and governance. The remainder of this report focuses on that national level but this section offers a summary of the relevant supranational governance provided by the EU. Although the UK has now left the EU it remains a member of the Council of Europe which provides an important framework for communications governance. However, the EU provides the legal and regulatory framework most relevant for branded content and so that is the focus for this section.

EU law and regulation set out requirements for advertising transparency across different media and within consumer protection measures. Taken together, these provide quasi-comprehensive requirements for the identification and disclosure of commercial communications. However, there is no general, principles-led requirement for advertising transparency such as the BCGP recommends. This section summarises key EU laws and regulations that variously apply within or otherwise influence branded content governance in Spain and the UK.

Advertising and media communications are regulated through a combination of transposed and directly enforceable EU regulations. In the advertising sector, this includes the following key EU directives:

- The Unfair Commercial Practices Directive (Directive 2005/29/EC)
- The Misleading and Comparative Advertising Directive (Directive 2006/114/EC)
- The eCommerce Directive (2000/31/EC)
- The amended Audiovisual Media Services Directive (Directive 2018/1808/EU)
- The ePrivacy Directive (2009/136/EC)
- General Data Protection Regulation (the GDPR, EU Regulation 2016/679)
- Data Governance Act (2022/868)
- The Digital Services Act (the DSA, EU Regulation 2022/2065)
- The Digital Markets Act (2022/1925)

In the EU, the Unfair Commercial Practices Directive (Directive 2005/29/EC) and the Misleading and Comparative Advertising Directive (Directive 2006/114/EC) contain relevant consumer protection and advertising regulations and set rules demanding the identification of commercial content. Under the Unfair Commercial Practices Directive (Directive 2005/29/EC) undisclosed commercial communication may constitute a misleading omission, which is a prohibited practice. A material omission occurs where information is omitted that would be material to the consumer making an informed transactional decision (recital 14). The Directive, article 7(2), states it is misleading omission if a trader:

> fails to identify the commercial intent of the commercial practice if not already apparent from the context, and where, in either case, this causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

However, this is not a general requirement for disclosure, but circumscribed. As recital 4 states, 'Such information [that consumers require to make an informed transactional decision] will not have to be disclosed in all advertisements, but only where the trader makes an invitation to purchase, which is a concept clearly defined in this Directive'. While delimited in this way, the European Commission (2021:50) has confirmed that Article 7(2) is not medium-specific: 'Article 7(2) has a general and broader scope and addresses any commercial practice'. More definitive is the inclusion in the list of commercial practices prohibited in all circumstances (Directive 2005/29/EC, Annex 1, 11)

> Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial). This is without prejudice to Council Directive 89/552/EEC.

The reference to the then Television Without Frontiers Directive (revised as the Audiovisual Media Services Directive) is significant, as it is the latter's rules on product placement and brands involvement in audiovisual content that prevail in most instances, and the UCPD in recital 6 specifies that 'this Directive does not affect accepted advertising and marketing practices, such as legitimate product placement, brand differentiation or the offering of incentives which may legitimately affect consumers' perceptions of products and influence their behaviour without impairing the consumer's ability to make an informed decision'.

The Unfair Commercial Practices Directive (Directive 2005/29/EC) includes commercial practices prohibited in all circumstances ('blacklist'). The Amending Directive (EU) 2019/2161 (The Omnibus Directive) has added several additional prohibited practices t, with hidden advertising in search results listed amongst them (Annex I to Directive 2005/29/EC contains a list of 35 commercial practices that are considered unfair in all circumstances).

The UCDP also requires the Member States to have appropriate enforcement powers so that consumers can act when affected by breaches of these rules, including through legal routes, regulatory authorities, and/or complaint systems. The Misleading and Comparative Advertising Directive (Directive 2006/114/EC) applies the meaning of misleading advertising, and the rules affecting it, from the Unfair Commercial Practices Directive (Directive 2005/29/EC) to business-to-business (B2B) relations, giving competitors the right to act when undisclosed commercial content puts them at a disadvantage (Directive 2006/114/EC, Article 4 (a)). Together, the Unfair Commercial Practices Directive (Directive 2005/29/EC) and the Misleading and Comparative Advertising Directive (Directive 2006/114/EC) contain relevant consumer protection and advertising regulations and set rules demanding the identification of commercial content affecting B2C (business to consumer) and B2B (business to business) relations.

Influencer marketing has been of special interest to the European Commission in recent years. A 'sweep' study of compliance found that the number of influencers who disclose commercial content as advertising is very low, at 20%, despite 97% engaging in promotional activities (European Commission 2024). According to the Commission, the provisions of the UCDP adequately cover influencer marketing. The Commission has rejected various efforts by MEPs for the Directive to be revised to specify disclosure requirements for influencer/creator marketing. The Commission argues that the existing provisions are sufficient, a view endorsed by some legal experts and industry bodies. As summarised by the Society for Computers and Law (2024), 'any promotion of the products or services of a brand in a post that earns its influencer revenues or other types of benefits must be disclosed as an advertising activity'. However, while such call-to-action promotion is the most common form of influencer marketing, it is less clear whether *any* economic consideration by a brand requires disclosure, and indeed how far the prohibition on undisclosed payment for editorial (Annex 1, 11) covers the full range of contemporary branded content.

So, EU consumer law bans hidden selling where the sales intent isn't obvious (UCPD Art. 7(2)) and absolutely bans undisclosed paid-for editorial (Annex I, 11). But audiovisual integrations are governed separately under the AVMSD, which permits product placement and sponsorship subject to clear identification and editorial independence. The net effect is powerful in places yet not a general, cross-media disclosure duty, leaving mixed, non-audiovisual formats under-specified, precisely the gap our BCGP reform targets.

The Misleading and Comparative Advertising Directive 2006 harmonises EU countries' rules on comparative advertising. It contains the main EU definition of advertising as: 'the making of a representation in any form in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations' (Directive 2006/114/EC), Article 2 (a)). The Directive also defines 'misleading advertising', which 'means any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, injures or is likely to injure a competitor' (Directive 2006/114/EC, Article 2 (b)).

The eCommerce Directive (2000/31/EC) contains transparency and identification rules regulating certain online services. Article 6 states:

> Information to be provided In addition to other information requirements established by Community law, Member States shall ensure that commercial communications which are part of, or constitute, an information society service comply at least with the following conditions: (a) the commercial communication shall be clearly identifiable as such; (b) the natural or legal person on whose behalf the commercial communication is made shall be clearly identifiable.

While broad in scope, this 'general' requirement applies specifically to 'information society services' (defined as 'any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services'). It covers commercial communication, defined as 'any form of communication designed to promote, directly or indirectly, the goods, services or image of a company, organisation or person pursuing a commercial, industrial or craft activity or exercising a regulated profession' (Article 2 (f)). However, this does not cover all branded content. It excludes 'independently compiled content', though disputes arise where publisher-hosted branded material blurs the line between sponsorship and editorial independence, such as in the London *Evening Standard newspaper's* partnerships with Uber, Google and others, revealed by OpenDemocracy investigations (Hardy 2022a: 215-217; Hardy et al. 2023). The eCommerce Directive requires Member State to establish laws, regulations and administrative provisions necessary to comply, but encourages voluntary codes of conduct.

The establishes the sector-specific framework covering audiovisual broadcasting, on-demand broadcasting platforms and user-generated audiovisual content, including influencers. It contains the transparency rule stating that 'audiovisual commercial communications shall be readily recognisable as such' (Article 9, 1(a)), and regulates sponsorship and product placement. Both are allowed under strict conditions, including being clearly identified as such, and not affecting editorial independence of the broadcaster (Article 10, 1(a) and (c); Article 11, 3(a) and (d)).

The Audiovisual Media Services Directive (Directive 2018/1808) covers many forms of audiovisual communication, including user-generated content, which means that the AVMSD transparency rules and rules affecting sponsorship and product placement also apply to influencers who provide audiovisual content where they also meet the criteria to be considered audiovisual media service providers (Society for Computers and Law 2024).

The AVMSD provisions, incorporated into EU states' domestic law (Wukovitz 2022) mandatetransparency in sponsored content and product placements. Where the rules are applicable, programmes must display the sponsor's name, logo, or other identifiers at the beginning, during, and/ or end to inform viewers of any commercial involvement. However, the AVMSD covers television broadcasting and on-demand programme services (ODPS), but not radio broadcasting, podcasting or other media. In addition, the AVMSD establishes similar but divergence regulation for television services and streaming (ODPS). A key example is that the requirement to show a P sign for programmes carrying product placement applies to television only. There is a disclosure requirement for ODPS but no mandated P sign. This anomaly indicates the effectiveness of commercial marketing-media lobbying. The case for a clear, consistent system of notification achieved by extending the P sign from television across ODPS has been rejected in EU policymaking.
The Digital Services Act 2022 (the DSA, EU Regulation 2022/2065) serves

as the framework for the sector-specific legislation and primarily focuses on digital services, such as online platforms, social media networks, and other intermediary services, and address issues related to advertising transparency and certain types of advertising practices in the digital space. For instance, the DSA prohibits presenting advertising based on profiling using special categories of personal data or the personal data of minors. It also requires clear identification of advertisements and disclosure of the main parameters used for determining the recipients of targeted advertising. The EU Digital Services Act (Digital Services Act, 2022) requires that online platforms clearly communicate whether content is advertising and who paid for the communication (Article 26 Digital Services Act). Very large platforms must meet even stricter transparency requirements: 'for each distributed advertisement, they must archive information about the content, who commissioned it and who was reached based on which parameters for one year' (Article 26 of the Digital Services Act) (von Rimscha 2024: 8). These requirements were contested by Amazon who filed a lawsuit with the Court of the European Union in a case that has not yet been litigated by spring 2024 (Krempl, 2024; von Rimscha 2024: 8). The Digital Services Act (the DSA, EU Regulation 2022/2065), the General Data Protection Regulation (the GDPR, EU Regulation 2016/679), the Data Governance Act (2022/868), are directly enforceable in EU member states and along with The ePrivacy Directive (2009/136/EC) contain rules which set limitations on the AdTech industry by requiring user consent whenever data processing, and mechanisms underlying targeted advertising, including cookies, have the potential to infringe upon consumer privacy.

The EU Digital Markets Act includes advertising transparency requirements that include provision for users although they are focused on the requirement for platforms to provide advertisers and publishers the information to verify advertisements (Broughton Micova 2022). The Digital Services Act "Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act)". sets out advertising transparency requirements. Article 26 of the DSA outlines specific obligations for online platforms in digital advertising including:

- Clearly labelling advertisements.
- Disclosing the advertiser's identity.
- Identifying the ad's funding source.
- Explaining why an ad is served to a consumer.
- Providing users with options regarding ad preferences.

Article 26 states

> Providers of online platforms that present advertisements on their online interfaces shall ensure that, for each specific advertisement presented to each individual recipient, the recipients of the service are able to identify, in a clear, concise and unambiguous manner and in real time, the following:
>
> (a) that the information is an advertisement, including through prominent markings, which might follow standards pursuant to Article 44;
>
> (b) the natural or legal person on whose behalf the advertisement is presented;
> (c) the natural or legal person who paid for the advertisement if that person is different from the natural or legal person referred to in point (b);
>
> (d) meaningful information directly and easily accessible from the advertisement about the main parameters used to determine the recipient to whom the advertisement is presented and, where applicable, about how to change those parameters.

Additionally, Article 39 requires large online platforms and search engines to maintain an ad repository, impacting how advertisers organize campaigns and relay audience-targeting information to publishers.

The Digital Services Act, which came into force in 2024, requires influencers to declare whether content they upload contains commercial communications. In addition, influencers qualifying as traders now need to provide information to ensure their traceability before they use an online platform to promote or offer their products or services. These obligations already apply to the very large online platforms (e.g., Instagram, TikTok, YouTube, Facebook, X and Snapchat).

The EU legislation discussed above shows the mix of 'general' and media sectoral regulation described in section 1.6. According to the European Commission, in response to a parliamentary question on hidden marketing (European Parliament 2016), there is already a 'high level of consumer protection in this area…which require[s] commercial communications to be clearly identifiable as such, in information society services and audiovisual media services respectively'. The EU's web of rules has the combined effect of requiring disclosure for most call-to-action and some broader forms of commercial communications. However, the scope of rules in the UCPD and AVMSD are circumscribed, and the EU does not have a comprehensive, unambiguous requirement for the identification and disclosure of marketing communications that would cover commercial branded content. Current EU governance falls short of a general legal requirement for all content that is funded or produced by marketers to be recognisable as marketing communications, a point we return to below.

2. Comparable Analysis of UK and Spain

Our overall approach to comparative analysis of media systems is set out in the *32-Country Comparative Analysis* (Hardy et al. 2025a). This Policy Analysis report summarises and complements but does not reproduce all material in the individual country reports for UK and Spain. The latter provide more general country data and more details on specific regulations, but the main features of communications, advertising and branded content regulations are set out below.

It is important to acknowledge that the rationale for comparing the UK and Spain has intrinsic merit, as described below, but also results from the exigencies of preparing a successful bid for research funding with an achievable and cost-effective research design and plan. Our research proposal set out the rationale for our 32-country study of formal governance arrangements, and for a deeper-level investigation of aspects of governance limited to two countries built around the resources on which the core researchers could draw. To attempt such a deeper-level investigation across more countries would have required much greater resources than we bid for. Instead, we set out our wish to encourage researchers in the other 32 countries to collaborate in joint projects, as well as to draw on our work for independent research. We have developed such joint proposal with academic colleagues involved as advisers in our 32-Country study, although none have yet received funding to proceed. We will continue to promote this beyond the current phase of UKRI funding that ends in November 2025.

The BCGP was designed to ensure the delivery of consistent comparable analysis for our 32-country analysis and more complex, multidimensional analysis for UK-Spain. For UK-Spain, the purposes included providing empirical data but also in developing and applying research design instruments, in mapping the range of actor-types and processes in more detail, in developing theoretical and analytical frameworks through analysis of actors and processes involved in governance, in feasible and contextual ethnographic studies of practitioner (organisation/ networked) practices and governance, in multi-method analysis (documentation, interviews, computational text analysis) of policy processes and public media reporting, and research insights from stakeholder engagement (industry, policy-actors, civil society). The project did not propose to carry out this range of analysis across all countries studied but does provide systematic comparative analysis of formal regulation and governance arrangements across the full range of countries.

The BCGP's decision to compare Spain and the United Kingdom in greater depth was grounded in them sharing market, demographic and socio-economic similarities, yet divergences within their respective regulatory systems. This mix provided a valuable opportunity to better understand and compare the production and interaction of a broad range of governance processes. The choice of comparative focus also built on researchers' prior links across academia, industry, policy actors and civil society in both the UK and Spain. Our UK-Spain analysis is empirical but also develops theories of branded content governance and practices, analytical and

methodological research design, tested models for engagement with stakeholders and research subjects that is intended to support wider collaborative research design and activity.

2.1 Comparing UK and Spain: General Features

The departure of the United Kingdom from the European Union in January 2020 ('Brexit') constitutes a key contextual factor, offering a unique opportunity to examine how regulatory approaches differ between a country that is no longer bound by EU legal frameworks and another that remains fully integrated within the Union's institutional architecture. Spain, which joined the European Union in 1986, continues to adopt and implement the EU's legal instruments, either through transposition or direct incorporation of key directives into national law (EU, n.d.). In contrast, while the United Kingdom's current legislation was originally derived from EU law, it now forms part of its autonomous domestic legal framework.

Both countries are parliamentary monarchies; however, Spain stands out as the fourth-largest economy within the European bloc (following Germany, France, and Italy), and the most prominent among the EU's parliamentary monarchies. Despite this institutional similarity, the two nations follow distinct legal traditions: Spain is governed by a civil law system with regional variations (CIA, 2024b), whereas the United Kingdom adheres to a common law tradition, which includes a non-binding judicial review of parliamentary legislation under the Human Rights Act of 1998 (CIA, 2024a). This legal distinction is particularly relevant in relation to media and advertising regulation, as well as in the legal treatment of disputes concerning branded content practices.

Media Systems

The BCGP (Hardy et al. 2025a) develops a media systems analysis that engages critically with the influential work of Hallin and Mancini (2004) but their classification of the UK and Spain under distinct models, based on the historical development and regulation of press and broadcast media, serves as a general outline of salient differences. They place the UK within a North Atlantic or Liberal Model, characterised by 'early' historical development of commercial media markets and limited direct state intervention in media regulation. Spain is identified with a Mediterranean or Polarised Pluralist Model, marked by low, 'late' media market development and significant state interventionism. These structural differences reflect divergent institutional traditions that have a direct impact on the regulatory frameworks for advertising legislation and the practical dynamics of media communication in each country.

From a demographic standpoint, Spain has a total surface area of 505,370 km^2, approximately twice the size of the United Kingdom, which covers 243,610 km^2 (CIA 2024a; CIA 2024b). However, this territorial difference contrasts with population distribution: the United Kingdom is more densely populated, with 68,138,484 inhabitants compared to Spain's 47,222,613.

While this asymmetry is evident, the two countries still represent the closest demographic and territorial balance among European nations with comparable institutional systems. Cultural and linguistic diversity is also a relevant factor in both contexts. Each country has one predominant official language, Spanish in Spain and English in the United Kingdom, but both also recognise several regional languages. In the UK (CIA 2024a), these include Scots (spoken by approximately 30% of the Scottish population), Scottish Gaelic (around 60,000 speakers), Welsh (spoken by about 20% of the population in Wales), Irish (around 10% of the population in Northern Ireland), and Cornish (between 2,000 and 3,000 speakers in Cornwall). In Spain, alongside Castilian Spanish (spoken by 74% of the population), there are several co-official languages: Catalan (spoken in Catalonia, the Balearic Islands, and the Valencian Community – 17%), Galician (in Galicia – 7%), Basque (in the Basque Country and Navarre – 2%), and Aranese (spoken in a small part of Catalonia – under 5,000 speakers) (CIA 2024b). This cultural and linguistic diversity has a direct impact on audience segmentation and advertising regulation and is essential for understanding how communication strategies are tailored to different regions within each country.

Both countries are classified as high-income economies (CIA 2024a, 2024b). Spain has an estimated GDP per capita of approximately $47,100 (CIA 2023), while the United Kingdom reports a figure close to $54,500. This level of purchasing power supports strong domestic markets for audiovisual, digital and advertising content in both countries. Such economic comparability supports a deeper, more precise analysis of public policies and commercial strategies implemented in the respective media and advertising sectors.

2.2 Media and Advertising Markets

Considering the broader sociocultural factors, it is pertinent to highlight the social and communicative profiles of both countries in relation to current trends in the media and advertising landscape, particularly the emergence of new communication formats and professional roles, such as influencers. In this context, widespread internet access plays a central role, shaping both content consumption and production across traditional and digital platforms. Spain reports a 94.5% rate of frequent internet use among individuals aged 16 to 74, reaching nearly universal levels among those aged 16 to 24 (99.9% for men and 99.7% for women) (INE 2023b). The United Kingdom presents similar figures, with an internet penetration rate of approximately 97% and 93% of households connected in 2022 (Ofcom 2023b). Despite these high levels of digitalisation, both countries continue to experience digital divides, particularly along age and socio-economic lines. In Spain, internet use drops significantly among those aged 65 and older (INE 2023b), whereas in the United Kingdom, the lowest levels of access are found among those over 75 and within the DE socio-economic group (Ofcom 2023b).

The structure and behaviour of media markets in both countries have been significantly shaped by growing digitalisation and changing consumption patterns. In Spain, various reports point to a sustained decline in linear television viewership, an increase in subscriptions to streaming platforms, and the continued relevance of traditional radio, which remains popular despite increasing competition from podcast formats (Kreab 2023). The Spanish media market was projected to reach a value of USD 17.46 billion in 2024, with digital media expected to contribute around 40% of total revenue (Statista 2024a). This shift is also evident in the press industry, where print newspaper readership has dropped to a historic low of 13%. The growing adoption of paid content and digital subscription models, led by media groups such as Prisa, Vocento, and Unidad Editorial, represents a strategic response to advertising volatility and the need to retain audiences in the digital environment.

The United Kingdom has recently become the largest entertainment and media market in Europe, and the fourth largest globally, behind only Japan, China, and the United States (Consultancy 2023). Projections estimate a market value of USD 67.11 billion by 2024, with television and video as the leading segment (Statista 2024b). As in the Spanish case, digital consumption is on the rise, although the UK's longstanding tradition of innovation in television content and online formats has accelerated the adoption of new media consumption habits. The press sector shows a comparable trend to Spain: total revenues, combining print and digital editions, reached GBP 6.9 billion in 2022 (Publishers Association 2023), while print and digital newspaper reach fell from 47% in 2020 to 38% in 2022 (Ofcom 2022b). This decline aligns with the drop in overall newspaper expenditure, which decreased from GBP 9.9 billion in 2005 to GBP 2.9 billion in 2022 (Statista 2024b), confirming the structural adjustment in the sector.

One of the most relevant differences lies in the level of press freedom, which serves as a key indicator in assessing the strength and functionality of media systems, especially in the context of evolving communication models. According to Reporters Without Borders (RSF 2023), both countries are categorised as 'Satisfactory', though with notable variation: the United Kingdom ranks 26th, while Spain ranks 36th. While this gap is not critical, it does reflect a range of political, legal and historical factors that influence journalistic practices and informational transparency. These conditions directly shape the design and execution of communication and advertising strategies, further underscoring the relevance of regulatory environments in both nations.

According to the 2023 Media Plurality Monitor (MPM) (Suau et al. 2023), Spain exhibits medium to high risk in terms of fundamental rights protection and political independence of the media, and a high risk concerning media market plurality. The report highlights ongoing restrictions on freedom of expression, the economic vulnerability of journalists, and a lack of transparency regarding media ownership, including digital media.

Furthermore, gender pay gaps, limited minority representation, and weak regulation of community media also negatively affect social inclusion. Prior to the UK's exit from the European Union, the 2020 MPM generally reported low risk in protecting fundamental freedoms and ensuring universal access to media. Nonetheless, media ownership concentration was identified as one of the most critical issues, with a high-risk level (70%), underscoring the significant influence of large media conglomerates and the associated pressures on diversity in news offerings.

Media markets in both countries are undergoing major transformations driven by the rise of digital platforms, audience fragmentation, and shifts in advertising business models. Audiovisual, press, radio, and publishing sectors are adapting to these new dynamics, in a context where viability and pluralism indicators highlight shared structural challenges, while also reflecting national particularities. In Spain, the audiovisual sector is among the fastest growing in Europe, with a compound annual growth rate of 5.7% in revenue between 2016 and 2021, and a 7.2% increase in content investment over the same period (Spain Audiovisual Hub 2023). Although Spain holds an intermediate position in feature film production within the EU, its short film segment grew by 59.1% between 2017 and 2021, and its film industry ranks 12th globally in revenue (Spain Audiovisual Hub 2023).

In the UK, data from Ofcom show that total audiovisual revenues reached GBP 20 billion in 2022, a 5.3% increase from the previous year. Subscription video-on-demand services and online video advertising were the main growth drivers (Ofcom 2023a). After a strong post-pandemic rebound in 2021, the sector's expansion has begun to moderate, although investment in public service broadcasting has reached its highest level since 2010 (Ofcom 2023a). In terms of public service media, Spain has seen a gradual decline in traditional television viewership (78.5% in 2022) and in print newspaper readership (14%), while online news consumption has risen to 65%, according to the Reuters Institute for the Study of Journalism (2022) and AIMC (Suau et al. 2023). In the United Kingdom, investment in original programming by the BBC and other public service broadcasters increased, even as commercial broadcasters saw a 5.9% decline in advertising revenue (Ofcom, 2022a, 2023a). Other media sectors display similar trends of digitalisation and revenue restructuring. In Spain, the publishing market grew by 5% in 2021, generating EUR 2.576 billion, with significant growth in digital book sales (Asociación de Editores de Madrid 2023). Radio remains stable, while the press continues to experience audience migration to online formats (Suau et al. 2023). In the UK, commercial radio generated over GBP 656 million in 2022, although audience reach declined from 90% to 88% between 2021 and 2022 (Ofcom 2022a; 2023a).

Regarding media viability, the 2023 Media Plurality Monitor places Spain at medium risk (46%), citing the decline of free-to-air television, the rise of pay platforms, and the transition of print media to digital models (Suau et al. 2023). In the UK, the 2020 Media Pluralism Monitor also identified a medium risk (65%), highlighting ownership concentration and the vulnerability of traditional media in the face of expanding digital advertising.

Advertising investment in Spain reached EUR 12.7 billion in 2023, a 4% increase compared to the previous year (InfoAdex 2024). Digital media led this growth, with EUR 4.97 billion invested, up 9.8% from 2022 (IAB Spain 2023). Although branded content still accounts for only 1.9% of total advertising spending, its 19.3% year-on-year growth reflects growing interest in non-traditional formats (IAB Spain 2023). In the UK, total advertising spend in 2022 was estimated at GBP 35 billion, consolidating its position as Europe's largest advertising market (Statista Research Department 2023; Ofcom 2023b). Digital advertising, GBP 26.1 billion, accounts for the largest share of the total, while influencer marketing has become one of the fastest-growing segments, with projections suggesting it will exceed GBP 1 billion by 2025 (Statista Research Department 2024).

The UK is the largest national market in Europe and is one of the largest advertising markets worldwide. In 2022, total advertising spending was £35 billion (Statista Research Department 2023; Ofcom 2023b). 2022 was the second year of healthy growth following a slump in advertising revenue during the Covid-19 pandemic. However, growth has been uneven, with digital advertising taking an increasing share of total revenue. According to Ofcom, advertising spending in 2022 was distributed amongst various sectors as follows: Online (26.1 billion), TV (£4.4 billion), Out of Home (£1.2 billion), direct mail (£1.1 billion), Newspapers (print) (£697 million), Radio (£663 million), Magazines (print) (£250 million), Cinema (£229 million) (Ofcom 2023b). The rise of digital media comes at a cost to other sectors, with traditional media experiencing a fall in advertising revenue: TV, news brands, and magazines recorded a lower value in 2022 than 2021 (Statista Research Department 2023). However, direct mail, the radio, out-of-home (OOH), and the cinema, all recorded growth during the post-pandemic recovery period, without reaching the pre-pandemic levels of revenue (Statista Research Department 2023). Audiovisual advertising (TV and online) grew by 3.1% in 2022 (up to £6.4 billion), a slow-down after the drastic post-pandemic recovery increase of 39.1% between 2020 and 2021 (Ofcom 2023a: 3).

This initial contextualisation demonstrates that Spain and the United Kingdom share advanced socio-economic structures and high levels of digitalisation, factors that support the growth of increasingly sophisticated marketing communication strategies, with branded content playing an increasingly prominent role. Nevertheless, their contrasting legal traditions, civil law in Spain and common law in the UK, alongside demographic and geographical specificities, give rise to different governance models. A detailed analysis of these elements makes it possible to identify both the strengths and potential challenges associated with each regulatory system.

2.3 Comparing Media and Advertising Regulation

This section summarises and compares key features of the legal and regulatory arrangements for communications and advertising in the UK and Spain. These governance arrangements affect the treatment of branded content but the specific regulatory arrangements for the latter are discussed in section 3.

The legal and regulatory framework governing communications in Spain and the United Kingdom reflects substantial differences in their respective supranational alignments, legislative structures, and institutional oversight mechanisms. These factors are key to understanding how branded content practices operate within each jurisdiction. Although both systems face common challenges related to the regulation of digital platforms, intellectual property, and market fairness, their regulatory trajectories respond to different relationships with the European Union, and distinct legal traditions. The comparison between a country fully integrated within the European Union and another that has recently exited the bloc offers a valuable regulatory contrast.

Spain joined what is now the EU 'late' in 1986, following its history of civil war followed, like its neighbour Portugal, by extended authoritarian rule, before a shift to democratisation in the 1970s. The UK joined the EU relatively 'early in 1973, although nearly two decades after founding members formed the EEC in 1957, and formally left the EU in January 2020, following the Brexit referendum in 2016. The departure of the UK from the European Union in 2020 constitutes a key contextual factor, although for branded content there has been no significant deviation from EU rules. Instead, the key differences are located in their respective national legal-regulatory systems

The case of Spain serves as a significant point of reference for evaluating public policies that, while originating from common supranational structures, are implemented with specific national characteristics. It allows for a clearer understanding of the differential impact that EU membership, or its absence, has on advertising legislation and media governance. In Spain, adherence to the European Union's regulatory framework forms a fundamental basis for its legislative strategy. Since joining the EU, Spain has systematically transposed key directives into national legislation, creating a multi-level regulatory system that integrates European instruments such as the Audiovisual Media Services Directive 2018/1808/EU (Eur-Lex, 2018), the Digital Services Act under Regulation 2022/2065 (Eur-Lex, 2022a), and the Digital Markets Act under Regulation 2022/1925 (Eur-Lex, 2022b).

2.4 Communications Regulation

Spain

The transposition of the revised Audiovisual Media Services Directive of 2018 into national law was completed in 2022 through the General Law on Audiovisual Communication (13/2022) (BOE 2022a; Wukovits, 2022). This marked a significant renewal of national regulation, introducing specific provisions for streaming platforms and strengthening the multi-level regulatory framework that encompasses state, regional, and local scopes. Other foundational laws for Spanish communiucations regulation include the Data Governance Act under Regulation 2022/868 (Eur-Lex, 2022c), Directive 2006/114/EC on misleading and comparative advertising (Eur-Lex, 2006), Directive 2002/58/EC on electronic communications privacy (Eur-Lex, 2002a), and Directive 2001/29/EC on copyright in the information society (Eur-Lex, 2001b). This legislative orientation towards the EU reflects Spain's commitment to supranational coordination in audiovisual regulation, digital markets, and electronic communications.

Currently, the Spanish system is complemented by specific regulations such as Organic Law 3/2018 on Personal Data Protection and Digital Rights Guarantee (BOE, 2018), Law 34/2002 on Information Society Services and Electronic Commerce (BOE, 2002), and Law 3/1991 on Unfair Competition (BOE, 1991). Additionally, Royal Decree-Law 24/2021 (BOE, 2021a), known as the 'Iceta Law,' has expanded the responsibility of online content exchange platforms, which are now accountable for unauthorized acts of public communication. According to the Media Plurality Monitor, this legislation redefines platforms' responsibility from a previous intermediary model to one of direct responsibility, with potential sanctions (Suau et al., 2022).

Institutionally, Spain's regulatory framework for communications is managed by multiple bodies. At the state level, the Ministry of Economy, Trade, and Enterprise, through the Secretary of State for Telecommunications and Digital Infrastructure, oversees the implementation of these regulations. Its functions include the promotion and regulation of telecommunications and audiovisual services, mediation between professional, industrial, and academic sectors, coordination with regional and local public bodies, and the implementation of necessary infrastructure to guarantee audiovisual services. The National Commission on Markets and Competition (CNMC), an independent public body, plays a key role in market supervision, conflict resolution, and the enforcement of audiovisual regulations (as indicated in BOE). Established by Law 3/2013, of June 4**,** the CNMC has independent legal authority as a statutory regulator.

The Spanish government also promotes co-regulation in the audiovisual sector through the ‘Spain, Audiovisual Hub of Europe’ plan (Spain AVS Hub), as part of the Digital Agenda 2025 (Ministry of Economic Affairs and Digital Transformation, 2025), aiming to improve the sector through regulatory reforms and administrative simplification. According to Articles 14 and 15 of the General Law on Audiovisual Communication (BOE, 2022a),

the creation of an audiovisual authority responsible for promoting co-regulation through agreements with sector stakeholders is planned, with the CNMC provisionally overseeing its implementation.

UK

There were no major domestic changes to media legislation since the 2003 Communications Act, until the Media Act (2024). The UK, before Brexit, incorporated EU directives, including the Audiovisual Media Services Directive (2010/13/EU), revised in 2018 (2018/1808/EU). The Audiovisual Media Services (Product Placement) Regulations 2010 set out UK rules on product placement following the 2008 Audiovisual Media Services Directive. In 2022, the government introduced a draft Media Bill which led to the Media Act (2024) and on platform governance introduced the Online Safety Bill (Woodhouse 2022), enacted in 2023 as the Online Safety Act.

In the United Kingdom, Ofcom (2022c) is the principal UK statutory regulator and competition authority for UK communications services. It regulates broadband, home phone and mobile services, as well as TV and radio, and the universal postal service (Ofcom 2022c). This wide remit encompasses most UK communications services, excluding (until 2025) premium-rate telephone services , and newspapers and magazines, which are subject to self-regulation (Ofcom 2022c). Ofcom also shares responsibility for the regulation of the British Broadcasting Corporation (the BBC) with the BBC Board, which sets 'strategy and governance arrangements' including for the BBC's commercial activities (BBC 2025; Hardy and MacRury 2024).

Formerly, the UK television regulator (ITA, IBA and then ITC) was responsible for all broadcast output including advertising and sponsorship. Ofcom created a co-regulatory arrangement whereby the advertising self-regulator, the Advertising Standards Authority (ASA) took on responsibility for broadcast advertisements, with Ofcom retaining powers over the amount and scheduling of advertising, teleshopping, sponsorship, cross-promotion and commercial communications within programmes. Ofcom is also responsible for on-demand programme services (ODPS).

The pieces of legislation underpinning Ofcom's rules regulating broadcasters are the Audiovisual Media Services Regulations, which implemented the EU Audiovisual Media Services Directive (2010/13/EU), and came into force in December 2009 and April 2010 respectively. The Audiovisual Media Services Regulations 2009 dealt with on-demand programme services amongst others, and the Audiovisual Media Services Regulations 2010 with product placement. The current version of the legislation, The Audiovisual Media Services Regulations 2020, represents an amendment motivated by the UK's exit from the EU and governs how on-demand programming and video-sharing platforms are to be regulated after the Brexit transition period ends (Goddard 2020).

Ofcom has been given additional powers and responsibilities for platforms and social media following the Online Safety Act 2023. Ofcom is a member of the Digital Regulation Cooperation Forum (DRCF), which brings together four regulators with responsibilities for digital regulation: the Competition and Markets Authority, the Financial Conduct Authority, the Information Commissioner's Office and Ofcom. Schlesinger (2022) examines the DRCF as part of the UK's new platform-regulatory model, which he describes as 'neo-regulation'. Ofcom is also a member of the European Platform of Regulatory Authorities (EPRA) (Ofcom, 2024a).

Following the Leveson Inquiry (Leveson 2012), the UK established the Press Recognition Panel (PRP), with powers to accredit independent press regulators according to Royal Charter criteria. Currently, Impress, is PRP's sole accredited body (Impress n.d.), supervising ethical press standards with corrective, apology, and financial penalty powers. Major UK publishing groups, however, established the Independent Press Standards Organisation (IPSO) in 2014 (The Transparency Project 2023), succeeding the Press Complaints Commission (PCC). Though not PRP-accredited, IPSO enforces the Editors' Code of Practice and can order corrections, public apologies, and significant fines up to £1 million (IPSO 2025) however it is also heavily criticised as ineffective (Hacked Off 2025). Only Impress's code includes requirements for advertising disclosure, The Impress Code 10. Transparency, requires that 'Publishers must clearly identify content that appears to be editorial but has been paid for, financially or through a reciprocal arrangement, by a third party' (10.1) (Impress 2023).

2.5 Advertising Regulation in Spain and UK

Spain

The General Advertising Law (Ley General de Publicidad) and the Unfair Competition Law (Ley de Competencia Desleal) both prohibit misleading advertising and set requirements that commercial communications be clearly identifiable as such. Law 34/1988, the General Advertising Law (BOE 2023a), serves as the cornerstone of Spain's legal framework on advertising, providing a comprehensive definition of advertising as any communication by natural or legal persons, public or private, within an economic activity to directly or indirectly promote goods, services, or rights.

Although still in force, the General Advertising Law's structural relevance within the legal system has gradually been superseded by more recent legislation, including Law 3/1991 on Unfair Competition (BOE 1991), Law 34/2002 on Information Society Services and Electronic Commerce (BOE 2002), the General Law for Consumer and User Protection (BOE 2025b), Organic Law 3/2018 on Personal Data Protection (BOE 2018), and Law 13/2022, General Law on Audiovisual Communication (BOE 2022a). Additionally, Spain has extensive sector-specific regulation covering products such as tobacco, alcoholic beverages, food, and toys, whose specific provisions are compiled in the Advertising Law Code (BOE 2025a).

The General Advertising Law has particular significance for the BCGP because it includes a general requirement to identify advertising. Article 9 of the General Law requires that advertising is recognisable as such, and that editorial and advertising are distinguished. Spain is an example of a system that has established a comprehensive requirement, under article 9 of the General Advertising Law 34/1988 (BOE 2023a), that marketers must unequivocally disclose the advertising character of promotional communications, and that media outlets clearly distinguish between informational (editorial, journalistic) content and advertising. The BCGP recommends that such a legal duty to identify marketing communications is established (or enhanced) within both national and relevant supranational law, such as the EU (see section 7).

The Unfair Competition Law (Law 3/1991) was amended through Royal Decree-Law 24/2021. Article 26 of UCL on disguised commercial practices was extended to include deceptive advertising carried out on social networks, information society services, and paid search, requiring that 'any advertising action is specified in the published content – or through images and sounds that are identifiable to the consumer' (Osborne Clarke 2022). The General Law on Audiovisual Communication (Ley General de la Comunicación Audiovisual, BOA 2022a) aligns with the EU's Audiovisual Media Services Directive, setting standards for audiovisual commercial communications, including product placement and sponsorship disclosures.

In Spain, there is no single statutory authority exclusively dedicated to advertising. The Ministry of Economy, Trade, and Enterprise is the primary government ministry which proposes the regulations for the sector, and the National Commission on Markets and Competition (CNMC) is responsible for technical enforcement of the regulations. The CNMC monitors audiovisual media services and enforces regulations related to commercial communications. The CNMC can issue fines, and in 2025, fined sports streaming platform DAZN €182,531 for showing an advert without including the tag publicidad ('advertising') (Del Valle 2025). Regionally, autonomous communities have exclusive competencies to regulate communication and advertising within their territories.

Spain maintains a consolidated self-regulatory system led by AUTOCONTROL, an SRO composed of industry representatives which provides a code of conduct that applies across all advertising content, including influencer marketing (AUTOCONTROL 2024b, Autocontrol, AEA and IAB Spain 2020, 2025). AUTOCONTROL is a non-legal body that handles complaints and can recommend corrective action for non-compliant advertisements. AUTOCONTROL is the established route to resolving advertising disputes, against that of a potentially lengthy court process, so 'the number of cases brought before civil courts is notably low' (Canales and Temiño 2024). Advertising complaints fall under the scope of the Unfair Competition Act, and so come before commercial courts, 'which are often heavily burdened' (Canales and Temiño 2024). A 2023 judgement

by the Provincial Appeal Court of Madrid, found that a campaign carried out by a group of dental clinics via influencers on social networks and their website constituted 'surreptitious advertising' and was unfair. The court found that 'the defendant failed to inform consumers that the content had advertising intent'; against the defendants' claim that the influencers' testimonies were protected by freedom of expression, the court held that 'this right is limited by consumers' right to know the nature of the messages they receive so they can make informed decisions when purchasing goods or services' (Canales and Temiño 2024).

UK

In both Spain and the UK, public authorities delegate some of their responsibilities, such as consumer protection, to self-regulatory bodies: AUTOCONTROL in Spain and the CAP-ASA in the UK. The United Kingdom employs a mixed regulatory system characterized by a strong tradition of self-regulation alongside statutory (and increasing co-) regulation. Advertising in the UK is governed by over 200 parliamentary statutes and regulations, including consumer protection, intellectual property and sector-specific rules (ASA n.d.a). Self-regulation plays a prominent role, particularly through the Advertising Standards Authority (ASA), which applies advertising codes (for broadcast and non-broadcast media) drawn up by its co-located sister organisation, the Committee of Advertising Practice (CAP) an industry body. The UK, then, is a mixed system, but the advertising self-regulator is the 'one-stop shop' for complaints about advertising content across broadcasting and non-broadcast media. The ASA is the principal body responsible for ensuring compliance with advertising codes established by CAP, representing advertisers, media, and agencies (ASA, 2025a, 2025b). In addition, specific regulatory bodies operate in targeted sectors, such as the Gambling Commission, the Financial Conduct Authority (FCA), the Electoral Commission, the Medicines and Healthcare Products Regulatory Agency (MHRA) and the Information Commissioner's Office (ICO). The main agencies with statutory powers relevant to branded content regulation are the Competition and Markets Authority (CMA), a non-Ministerial government department, and the communications regulator, Ofcom, a statutory body (GALA 2024).

In the UK, regulation of audiovisual advertising content operates under a co-regulatory system between Ofcom and the ASA. The ASA is given responsibility for regulating the content of broadcast advertising under contract from Ofcom. Ofcom can sanction broadcast advertisers who breach ASA rulings and retains direct regulatory control in areas including sponsorship and commercial references in programmes, the quantity and scheduling of ads, political advertising and on-demand services (Ofcom and ASA 2021).

The UK has two main agencies for consumer protection, the Competition and Markets Authority and Trading Standards. The latter is usually involved in enforcement at local level but also provides the national 'legal

backstop' powers for referrals from the ASA. The ASA is recognised as the 'established means by which compliance with the Consumer Protection from Unfair Trading Practices Regulations 2008…in relation to misleading, aggressive or unfair advertising is enforced' (National Trading Standards 2023: 71). However, there has been no such referral relating to branded content in the five years 2019-2024 (Hardy 2024).

Regarding regulatory enforcement, Spain grants sanctioning powers to both central and regional administrations under Royal Legislative Decree 1/2007 on Consumer and User Protection (BOE 2025b). Penalties for violations can range from €150 to €1,000,000, potentially multiplied by the illicit profit gained. Affected consumers may also pursue civil action if satisfactory remediation is not provided. Advertising governed by sector-specific regulations, such as pharmaceuticals, food, or gambling, is supervised by relevant authorities at both national and regional levels (BOE 2023a). In the UK, direct state enforcement is less frequent, typically limited to instances where self-regulation fails or does not cover specific categories. In these cases, government agencies such as Ofcom, MHRA, , local government Trading Standards departments, or the ICO may intervene. The Digital Markets, Competition and Consumers Act 2024 strengthened the CMA's sanctioning powers, including the capacity to impose fines without court orders (CMA 2025a).

Conceptually, both countries share common elements in the legal definition of advertising, originally derived from European Directive 2006/114/EC on Misleading and Comparative Advertising (Eur-Lex 2006). Both Spain and the UK define advertising as any representation in any form related to commercial or professional activity intended to promote goods, services, rights, or obligations. This definition has been fully adopted by Spain, clearly integrated into national legislation through the General Advertising Act. In the UK, although post-Brexit European legislation is no longer binding, the European Union definition continues to be applied internally through derived national legislation, such as the Business Protection from Misleading Marketing Regulations (UK Government 2008). Furthermore, the specific regulation of certain types of advertising exhibits distinct characteristics in both contexts. In Spain, a special category known as institutional advertising is regulated under Law 29/2005 on Institutional Advertising and Communication (BOE 2005), managed by the Commission for Institutional Advertising and Communication, performing functions related to planning, evaluation, and coordination of official state communication in accordance with Royal Decree 947/2006 (BOE 2006).

Advertising regulation is an area in which both Spain and the United Kingdom employ multiple regulatory levels, including national legislation, self-regulatory codes, and prior or ongoing incorporation of European legislation (Lloyd-Taylor and Dresden 2023). However, each country presents particularities derived from their respective legal traditions, regulatory structures, and relationships with the European supranational framework, resulting in notable differences in their regulatory models.

A significant feature in both systems is the collaboration between statutory and self-regulation. Our analysis of UK policy (Hardy et al. 2023; Hardy 2024) and Media Analysis (Hardy 2025b) highlights how a framing of self-regulation vs statutory has structured policy discussion, particularly in the UK. The regulatory arrangements have always been more complexly configured than that binarism indicated, but self-regulation vs statutory served to protect and defend the pre-eminence of advertising self-regulation by the media-marketing industries against risks from 'stronger' statutory regulation, as discussed further in section 4 below. In this context, it is notable that there has been increasing statutory and self-regulatory collaboration in both the UK and Spain. AUTOCONTROL's influencer code in 2020, updated 2025, is supported by the statutory governmental agency, the NCMA (AUTOCONTROL, AEA and IAB Spain 2025; European Audiovisual Observatory 2025). As one interviewee states:

> Then, in turn, there is a very well-known self-regulatory influencer code, co-signed by the National Commission on Markets and AUTOCONTROL for advertising; all this has great importance, many cases have been judged under it.

In the UK, the CMA took up as an issue of concern transparency and disclosure in digital marketing and influencer marketing. This work contributed to the development of guidance for influencers and on advertising disclosure in general issued jointly by the CMA and CAP-ASA (GALA 2024: 1190). CAP-ASA has produced guidance on influencer marketing in September 2018 updated in February 2020 and again in March 2023 (CAP and CMA 2023).

The CMA describes branded content as 'hidden advertising' (CMA 2025b, 2025c). The category encompasses incentivised advertorials and endorsements, and affiliate links. Because, as mentioned above, influencers, marketing, bands, and platforms can meet the definition of 'traders' as per the CPRs, the CMA makes them jointly responsible for assuring that commercial content is distinguishable from editorial content, properly labelled and easily recognisable.

… Both the ASA and the CMA put emphasis on labelling with adverting needing to be 'obviously' identifiable as such according to the CAP code, and 'clearly' identifiable according to CMA's advice (CAP 2018). Both institutions recommend that the identification should be visible regardless of the platform and medium used, and encourage using clear, descriptive words such as 'Ad', 'Advert', 'Advertising', 'Advertisement', or 'Advertisement Feature' rather than any more complex and, as a result, confusing labels (CAP and CMA 2020)

2.6 Advertising Self-Regulation

Advertising self-regulation systems in Spain and the United Kingdom are structured around specialized bodies tasked with ensuring ethical, legal, transparent, and truthful commercial communications. Both countries feature institutions of significant relevance but exhibit notable differences in internal structure, funding, and operational mechanisms.

In Spain, the Asociación para la Autorregulación de la Comunicación Comercial (AUTOCONTROL), formally established in 1995 with origins tracing back to 1977 (Lema Devesa 2018), serves as the main advertising self-regulatory body. This non-profit entity had approximately 600 members in 2024, including advertisers, advertising agencies, media outlets, and professional associations (AUTOCONTROL 2024a). Its operations rely on three core instruments: the Advertising Conduct Code (AUTOCONTROL 2020), the Advertising Jury (AUTOCONTROL 2024b), and a specialized legal and technical team providing prior consultation known as Copy Advice (AUTOCONTROL 2025), along with mediation in digital matters, data protection, cookie management, and web domains (AUTOCONTROL 2024c).

Key activities include out-of-court resolution of advertising claims (AUTOCONTROL 2024d). AUTOCONTROL's Advertising Jury, composed of independent experts, issues binding resolutions for members and third parties accepting its jurisdiction. Jury decisions are recognized and usually respected by Spanish civil courts, strengthening its role within the national advertising regulatory framework. AUTOCONTROL has also introduced specific digital initiatives like the Online Trust Seal, certifying ethical and secure online business practices (AUTOCONTROL 2024e). AUTOCONTROL's financing comes from ordinary and extraordinary membership fees, income from provided services, donations, public and private grants, and other economic resources generated by association activities. The budget specifically covers expenses related to the Advertising Jury, including administrative costs, technical fees, and jury member compensations (AUTOCONTROL 2023a; 2024b).

In contrast, the UK's Advertising Standards Authority (ASA) has been the main advertising self-regulatory body since 1962 (ICAS 2021). The ASA is responsible for overseeing and enforcing rules contained in two advertising codes developed by the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) (ASA 2025a). The ASA's organisational structure comprises approximately 110 employees (ASA 2020). Governance involves a council of twelve members plus a chairperson, along with various sectoral committees, including specialized panels supervised by CAP, addressing promotional marketing, direct marketing, digital publications, and technical advice on advertising content (ASA n.d.b).

Furthermore, ASA employs a specialized Copy Advice Team offering voluntary, non-binding compliance guidance for advertisers, agencies, and media before campaign dissemination (ASA, n.d.c). This preventive

tool reinforces the collaborative and educational approach of the UK self-regulation model. ASA's funding primarily comes from levies on non-audiovisual advertising and direct mail, managed by the Advertising Standards Board of Finance (ASA 2016b). According to 2022 figures, ASA's levy income resulted in approximately £8,847,000, with total expenditures near £9,384,000, resulting in an operational deficit offset by additional income, ultimately yielding a small annual pre-tax profit (ASA and CAP 2022).

The ASA is the main advertising SRO but the UK has also other statutory and self-regulatory bodies governing specific industries and sectors (GALA 2024: 1173). Statutory bodies exercising some controls on marketing communications include the Gambling Commission, Financial Conduct Authority, the Electoral Commission, and the Medicines and Healthcare products Regulatory Agency (MHRA), together with the Information Commissioner's Office, the Competition and Markets Authority and Ofcom. Other SROs include regulators of premium rate telephone lines (Phone-paid Services Authority), alcohol (Portman Group) and direct marketing (Data & Marketing Association). There are also other organizations which are involved in the application of the CAP Code, such as the Cinema Advertising Association. (GALA 2024: 1179).

2.7 Self-regulation Codes

Spain and the UK both feature structured advertising self-regulation systems based on specific ethical codes requiring transparent, honest, and responsible commercial communication. However, significant differences exist concerning the number, scope, and specificity of these codes. Spain's AUTOCONTROL offers extensive sectoral diversification with multiple codes and guidelines, whereas the UK's ASA concentrates its regulation within two comprehensive and cross-sectoral primary codes for broadcast and non-broadcast advertising, supported by clear and consistent principles directly adapted from ICC.

In Spain, AUTOCONTROL primarily uses a general Advertising Conduct Code (AUTOCONTROL 2020), initially approved in December 1996 and last updated in 2020. This code establishes general principles mandating legal, fair, and truthful advertising, respecting current legislation, not abusing consumer trust, and avoiding misleading statements. AUTOCONTROL also manages the Online Trust Ethical Code, developed in 2003 with the Spanish Digital Economy Association (ADIGITAL), aimed at enhancing security and confidence in interactive advertising and e-commerce, granting a distinctive seal to compliant organizations (AUTOCONTROL & ADIGITAL 2025).

Spain also features extensive sector-specific codes addressing personal data treatment, influencer marketing, pharmaceuticals, alcoholic beverages, foods, cosmetics, toys, gambling, and child-oriented products. These sectoral codes, developed in collaboration with sector associations, regularly update to reflect regulatory and social changes. Notable examples include the PAOS Code on advertising foods and beverages to children

(AESAN, FIAB & AUTOCONTROL 2012), the self-regulation code for spirits advertising (FEBE & AUTOCONTROL 2023), the Ethical Code for Health Technology (Fenin & AUTOCONTROL 2023), the Code of Conduct on Data Treatment in Advertising Activities (AUTOCONTROL 2023b), and the Influencer Code, launched in 2020 and updated in 2025 (AUTOCONTROL & AEA 2020, 2025).

AUTOCONTROL's general codes draw directly from the International Chamber of Commerce's (ICC) Code, tailored to the Spanish legal and cultural context. AUTOCONTROL actively participates in supranational advertising self-regulation associations like the European Advertising Standards Alliance (EASA) and the International Council for Advertising Self-Regulation (ICAS), enhancing international cooperation and cross-border advertising dispute resolution (ICAS 2021).

In the UK, two clearly defined primary codes exist: The UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (CAP 2018), known as the CAP Code, and The UK Code of Broadcast Advertising (CAP 2024), or BCAP Code. Both codes adhere to ICC-derived general principles: legality, decency, honesty, truthfulness, social responsibility, and privacy respect (ICAS 2021; ICC 2024). The Codes cover a wide range of product, marketing claims and marketing audiences, with sections including children, privacy, misleading advertising, harm and office designed to ensure socially responsible marketing communications (Hardy 2018). They aim to ensure transparent, clearly identifiable commercial communications; section 2 of the CAP code titled 'Recognition of marketing communications' requires (2.1) that 'Marketing communications must be obviously identifiable as such'. The ASA is also a leading participant in EASA, contributing significantly since its inception to cross-border complaint resolution and establishing common international advertising self-regulation standards.

2.8 Enforcement Mechanisms and Effectiveness

AUTOCONTROL incorporates a formal mechanism for out-of-court dispute resolution. Integrated into the European Consumer Centres Network (ECC-Net) by the European Commission, this mechanism is designed to provide agile and effective handling of complaints regarding commercial communications. AUTOCONTROL's Advertising Jury (2024a) assesses and decides on potential breaches of the applicable ethical code, issuing binding resolutions for its association members. This jury operates under strict procedural rules and includes partial independence from the advertising sector, with 25% of its members appointed by the Public Administration (Directorate-General for Consumer Affairs), and the remaining 75% composed of independent experts and consumer association representatives, ensuring a balance between industry and public interests.

In regard to effectiveness, AUTOCONTROL reports resolving over 4,681 cases between 1996 and 2020, many through rapid mediation. On average, complaints are resolved within approximately 14 days, significantly

quicker than traditional judicial proceedings. Additionally, the creation of the Data Protection Mediation Unit in 2018, in collaboration with the Spanish Data Protection Agency, has proven highly effective, according to (AUTOCONTROL 2020), successfully resolving over 73% of mediations in under 20 days.

The UK's Advertising Standards Authority adjudicates complaints regarding breaches of CAP and BCAP codes. Its process involves assessing consumer or competitor complaints, allowing advertisers to voluntarily correct or withdraw the contested material before formal rulings. Only a small proportion of complaints go before the ASA council for formal adjudication. In 2024 the ASA received nearly 40,000 complaints in total (38,749) concerning 24,015 specific cases. 32,156 complaints were not investigated, 5,128 were investigated. The majority of these led to an informal investigation, with the vast majority of complaints being upheld or otherwise resulting in action taken in 3,102 cases (5128 complaints) against 63 cases (82 complaints) where complaints were not upheld and no action was taken (ASA 2025b; ASA 2025c). Of the 20,913 cases complained about, only 354 were formally investigated (1.7%), with 259 cases upheld, 22 not upheld and 77 withdrawn so that a formal adjudication was not made.

The ASA lacks direct legal powers, but can impose sanctions such as the withdrawal of advertising space, and generate adverse publicity and reputational damage through rulings. The ASA can also, in specific circumstances of non-compliance, refer those responsible to Trading Standards authorities, potentially resulting in unlimited fines or criminal proceedings (ASA 2025b).

The ASA was created in 1962 following political pressure to establish independent oversight of the industry. In 1959, the Labour Party established an Advertising Enquiry Committee to investigate ‘socially harmful ads’, and supported recommendations for a statutory National Consumer Board (Brierley, 2002: 215). Responding to mounting criticism, the Advertising Association launched the British Code of Advertising Practice in 1961, drawing on both its existing codes, such as those for medicines and treatments drawn up in 1948, and the ICC Code. In 1962, the Advertising Standards Authority (ASA) was created to administer the code. This new ‘watchdog’ of the self-regulatory system, saw off the immediate threat of government legislation.

The Committee of Advertising Practice is co-located with the Advertising Standards Authority, the independent self-regulator that enforces the CAP codes. The ASA's council comprises 12 members, two-thirds of whom are formally independent from the advertising industry, while the remainder have recent or ongoing industry connections (ASA n.d.d).

Regarding effectiveness and public trust, the ASA is extensively used, managing 40,533 complaints in 2023 alone (ASA 2024). However, public perception of the UK advertising sector remains mixed; despite

awareness of ASA's regulatory role, public trust in advertising executives and advertising, particularly digital advertising, remains low (Lu 2021; Ipsos 2023). The UK system also includes mechanisms to challenge ASA decisions through independent reviews, rarely resulting in reversals but occasionally leading to reopened investigations (ASA 2023).

As we report in our *Media Analysis* (Hardy 2025b), Valentine (2024a), in the UK trade journal *Marketing Week*, reports that trust in the advertising industry, and individual ads were more than twice as high amongst consumers who saw or heard the ASA's most recent awareness campaign. However, beneath that positive result the results of the ASA's trust measurement were relatively poor. The article states that trust in online ads 'hit 36% among those who had seen the regulator's campaign, compared to 15% among those who had not seen the creative'. Despite the positive reference to achievement ('hit), this reports that only a fifth of consumers (not exposed to the ASA campaign) trust online ads. An article on the ASA's annual report (Innes 2024) revealed that online ads were the most complained about in 2023 (20,944 for 17,174 ads), a 14% increase on 2022. Television was the second most complained about medium, followed by email. The article reports the ASAs Active Ad Monitoring system, which processed around 3 million ads in 2023, with more that 10 million expected for 2024.

Table 1: Resolution mechanisms of the main SRO systems (AUTOCONTROL and ASA)

Category	Spain	UK
EXTRAJUDICIAL DISPUTE RESOLUTION	AUTOCONTROL Jury (part of ECC-Net).	ASA rules on complaints with multiple levels of sanction and co-regulation with Ofcom.
INDEPENDENCE OF THE JURY	Partial (25% public members and 75% independent experts).	Partial (2/3 independent, 1/3 linked to the advertising industry).
COMPLIANCE WITH DECISIONS	Very high (95% compliance, no judicial contradictions).	High, with additional mechanisms available (referral to Trading Standards).
USE OF THE SYSTEM	Moderate (over 4,681 cases since 1996, rapid resolution).	High (40,533 complaints in 2023), although public trust is moderate.
REVIEW OF DECISIONS	No formal external reviews or judicial contradictions recorded.	Independent review possible, although rarely overturns decisions.
ADDITIONAL BODIES	Few; mainly IROs, no other formal SROs.	Broad network (IPSO, Impress, IWF, PSA, DMA, Portman Group).
EFFECTIVENESS INDICATORS	Not public, but high satisfaction with mediation.	Public; high volume of monitored advertising through advanced systems (AI).
BASED ON ICC CODE	Yes, codes directly modelled on the ICC.	Yes, codes adapted from the ICC Code.
MULTIPLE SPECIFIC CODES	Yes (food, alcohol, gambling, medicines, influencers, children, cosmetics, etc.).	No, regulation concentrated in two main codes.
ADVERTISING IDENTIFICATION	Requires clarity and explicit identification in all formats.	General requirement for marketing communications to be recognisable as such. Applies ‘dual test’ of payment and editorial control for brand sponsored content (see Hardy 2022a, Hardy et al. 2023)
CHILD PROTECTION	Specific and highly detailed (e.g. PAOS Code, toys, baby food).	Child protection integrated into the two general codes.
SUPRANATIONAL	Member of EASA and ICAS.	Founding and active member of EASA.

2.9 Industry Regulatory Organisations

Regarding other self-regulatory organisations (SROs) impacting commercial communication, Spain and the UK notably differ. AUTOCONTROL remains Spain's sole dedicated advertising self-regulation entity, with no parallel SROs. As reported above, the UK has other SROs dealing with specific sectors such as the Portman Group (2019), resolving alcohol advertising complaints via independent panels; Data & Marketing Association (DMA n.d.), enforcing its direct marketing ethical code; and the Cinema Advertising Association (CAA n.d.), conducting mandatory preventive control of cinema advertisements for CAP and BCAP compliance. The Spanish system does involve important sectoral industry regulatory organisations (IROs) like the Interactive Advertising Bureau Spain (IAB Spain), part of the global Internet Advertising Bureau, develop and promote guidelines and best practices in digital advertising, influencer marketing, branded content, and sensitive audiences such as minors and child influencers. These regulatory guidelines complement AUTOCONTROL's functions, providing industry standards within highly dynamic digital contexts.

The BCGP define industry regulatory organisations as *any trade/ professional body that produces guidance and good practice that is applicable to its membership*. The aim is to describe industry professional associations and trade bodies that produce codes of practice, best practice guidance and other communications that seek to influence the conduct, activities and attitudes of members. Such rule-making and rule-adherence activities may also seek to influence actors across supply chains and also stakeholders associated with the activities of the professional trade association and its members. We do not include IROs in 'formal' regulation. However, IROs are important elements in governance ecosystems overall, and interact with the formal agencies in various ways including in co-regulatory arrangements.

The UK features a more complex and diversified self-regulatory structure, with multiple additional IRO entities influencing commercial communications. Sectoral UK IROs, include the Internet Advertising Bureau (IAB 2018) on behavioural advertising, and the Branded Content Marketing Association (BCMA n.d.) and Content Marketing Association for brand sponsored content with the BCMA producing best practice guides on influencer marketing, Artificial Intelligence amongst other topics. Other IROs include the Incorporated Society of British Advertisers (ISBA) and Influencer Marketing Trade Body, who jointly developed influencer marketing best practice codes (ISBA & IMTB 2024).

3. Comparing Branded Content Governance in the UK and Spain

3.1 Spain and UK

The analysis of the general legal and regulatory framework for branded content practices in Spain and the United Kingdom reveals fundamental similarities in transparency objectives, advertising identification, and consumer protection. However, significant differences exist in the specific articulation of national regulations and their implementation mechanisms.

In Spain, the identification of advertising content is explicitly mandated by various laws. Law 34/1988, the General Advertising Law (BOE 2023a), includes a general rule on the requirement to identify advertising. Article 9 of the General Law requires that advertising is recognisable as such and that editorial and advertising are distinguished. The General Law on Audiovisual Communication (Law 13/2022) requires optical, acoustic, or spatial mechanisms to clearly distinguish commercial communications from editorial content and covers both traditional linear television and a range of streaming/on-demand services, including video-sharing platforms and, in some cases, influencers (BOE 2022a). Additionally, where there is a risk of confusion, visible written disclosure with the indication 'advertising' is mandatory. Although branded content is not expressly mentioned in Spanish legislation, it is implicitly covered by the broad definition of advertising in the General Advertising Law 34/1988 (LGP). This states that advertising as any communication aimed directly or indirectly at promoting goods or services (BOE 2023a). For most practitioners and legal experts interviewed, the reference to 'indirect' as well as 'direct' promotion includes branded content in the scope of the General Advertising law.

By contrast, there is no comprehensive, general rule on advertising transparency set out in UK law. However, the advertising self-regulatory system stands on the principle that 'marketing communications must be obviously identifiable as such' (Rule 2.1 CAP Code) (CAP 2018). Both the CAP code and the BCAP code 'reflect the principle that advertising, and editorial must generally be kept separate, and that advertising should be readily recognizable as such, whether by visual or aural representations, or through the use of the appropriate disclosures' (GALA 2024: 1178; CAP 2018). The Committee of Advertising Practice (CAP), the body producing the codes for the ASA, recognises the ICC's Advertising and Marketing Communications Code (ASA n.d.a), including Article 7 on Identification and Transparency, discussed in section 1.6 above, although enforcement action applies the CAP codes not the ICC.

The UK, like Spain was subject to the EU Unfair Commercial Practices Directive (Eur-Lex 2005), incorporated into the Consumer Protection from Unfair Trading Regulations 2008 (UK Government 2008). This has been repealed and replaced, post-Brexit, by the Digital Markets, Competition and Consumers (DMCC) Act 2024, enacted on 24 May 2024. However, the relevant measures are unchanged. Schedule 20, rule 12 incorporates the UCPD (Annex I, 11) requirement unamended, as follows:

> Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer.

3.2 Publishing

Branded content regulation in publishing differs significantly between Spain and the UK, despite common European guidelines. Spain formally requires strict identification of sponsored content in editorial publications through explicit, mandatory labelling as 'advertising' (BOE 2022a), reinforced by journalistic ethical codes (FAPE 2017). However, studies of Spanish news publishing indicate that 'news organisations do not boldly push for transparency and instead remain ambiguous' (Carvajal and Barinagarrementeria 2023: 40; Ferrer-Conill et al. 2020).

In the UK, CAP-ASA does not apply the UCPD/DMCC requirement for disclosure whenever a trader pays for promotion, but applies its own dual test, requiring disclosure where the marketer pays and exercises editorial control. The DMCC requirement is technically enforceable by Trading Standards, either directly or via referral from the ASA, but to date there has been no such referral or action. This gap in enforcement is examined in BCGP reports (Hardy et al. 2023; Hardy 2024). We argue this anomaly reflects the power of commercial news publishing interests who have resisted the application of disclosure for all brand-funded content. This is also evident in the anomalous approach taken by the ASA towards influencer marketing where rulings have reinforced the view that any evidence of brand payment (or economic consideration) indicates brand control so that disclosure is required for both paid promotions and gifting or other transactions involving an economic consideration.

3.3 Audiovisual

Both countries require high regulatory standards in the audiovisual sector, primarily implementing the Audiovisual Media Services Directive (Eur-Lex 2018). Spain enforces strict rules requiring permanent visual identification of advertising content on television under Article 136 of the General Audiovisual Communication Law (BOE 2022a), completely banning advertising on national public channels since 2010.

In the UK, Ofcom applies specific rules for commercial communications in audiovisual television and on-demand services, including those derived from the application of EU law, and rules for radio and audio services not covered by the EU Audiovisual Media Services Directive. Ofcom licenses all commercial television and radio services, and its Broadcasting Code (Ofcom 2020) sets out the rules that television and radio broadcasters must follow in order to retain their licence to broadcast (Jordan and Butcher 2021). Ofcom also regulates non-broadcast audiovisual including licenced video-on-demand (VOD) services.

Ofcom exercised its power under the 2003 Act to establish a co-regulatory arrangement with the ASA for advertising content. Ofcom acts as the legal 'backstop' for broadcast advertising. If a marketer fails to adhere to an ASA ruling, the ASA can refer them to Ofcom, which has the power to take legal action (ASA 2016b). Ofcom retains direct control over the amount and scheduling of advertising, commercial references in programme content (including product placement), sponsorship, cross-promotion and

other matters including rules on the advertising of HFSS food and drink to children.

The ASA has responsibility for day-to-day regulation of the content of broadcast (TV and radio) adverts under contract from Ofcom. Broadcast advertising includes 'radio and television advertising in the UK, teleshopping, television text, interactive television advertisements, and the content on self-promotional television channels' (Conway 2020: 5). Television and radio broadcasters must ensure the ads they transmit comply with the BCAP Code (CAP 2024). In contrast to non-broadcast advertising, all broadcast advertising must go through a clearance process before it is aired (Jordan and Butcher 2021: 578). Television advertising by UK broadcasters requires clearance from Clearcast. Clearcast is not a regulator, does not contribute to rule creation, and cannot 'ban' ads, but rather provides clearance advice and helps to ensure the ad complies with the Code (Clearcast n.d.a).

VOD advertising does not require Clearcast approval but must meet the same advertising regulations and standards as broadcast ads. VOD advertising is under the remit of the ASA (Clearcast n.d.b). The rules about advertising in On-Demand Programme Services (ODPS) are set out in in the Communications Act 2003 (as amended), the Ofcom code and the Appendix 2 of the CAP code (classified within the non-broadcasting category. CAP specifies that Appendix 2 only applies if advertising appears as a result of the viewer selecting a programme) (CAP 2014; Ofcom 2020). Ofcom published rules and guidelines for ODPS providers in December 2021, updated in 2025. There are two relevant documents: Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services (ODPS) (Ofcom 2025c), and Guidance for ODPS Providers on Measures to Protect Users from Harmful Material (Ofcom 2021). The first guidance document includes rules about product placement and sponsorship. On 25 July 2025, the UK's Video-Sharing Platforms (VSP) regime was repealed, and all notified services came under Ofcom's powers under the Online Safety regime established by the Online Safety Act (Ofcom 2025b).

3.4 Audio

Regulation of branded content in the audio sector reveals notable differences between Spain and the UK, although both maintain foundational norms from European directives. Generally, the audio sector, comprising traditional radio, podcasts, and multiplatform services, is governed by regulatory regimes combining the European Unfair Commercial Practices Directive 2005/29/EC (Eur-Lex 2005) with specific national regulations.

In Spain, the General Audiovisual Communication Law (BOE 2022a) mandates explicit identification of commercial radio content through visual and acoustic mechanisms preventing confusion between editorial and advertising content. Article 129 specifically limits product placements, mandating clear commercial references in radio programs. Coupled with

specific regulations on electoral advertising and digitalisation (Secretary of State Resolution, 2011), Spain demonstrates an interventionist and ex post regulatory approach.

In contrast, the UK adopts a regulatory model emphasizing co-regulation. Audio sector regulation involves direct participation by Ofcom and ASA (CAP 2024), alongside a pre-approval process managed by Radiocentre, ensuring advertising content compliance. Section 10 of the Ofcom Broadcasting code focuses on regulating radio programming (Ofcom 2020). The general rules (10.1 – 10.4) require clear identification of commercial content and the protection of editorial independence. Radio advertising requires clearance from Radiocentre which ensures 'advertising messages on commercial radio stations comply with the necessary content rules and standards laid out in the BCAP Code of Broadcast Advertising and the Ofcom Broadcasting Code' (Radiocentre n.d). ASA might still disagree with an assessment coming from Radiocast and judge the pre-cleared ad has broken the rules of its code. According to Ofcom (2016) this preventive, ex ante, regulatory system emphasises early conflict anticipation and minimisation, designed to provide greater flexibility in commercial communications provided transparency and editorial independence remain intact (Ofcom 2016). The comparative analysis highlights a fundamental regulatory approach distinction: Spain employs a corrective, rigorous system for explicit, continuous advertising identification, whereas the UK system prioritizes preventive, collaborative self-regulation and co-regulation mechanisms.

3.5 Digital Advertising

For BCGP analysis, the category 'digital advertising' includes all forms of paid for branded content marketing in online advertising formats, notably 'native advertising' formats. We distinguish influencer marketing and other 'publisher-hosted' editorial-advertising forms as 'social media marketing' examined in the next section.

Although the Spanish *Law 34/1988 of 11 November 1988, General Advertising*, is in force, there is no specific regulation on digital advertising in Spain, but it is affected by a set of national and European regulations. In this regard, the most relevant regulations for digital advertising in Spain are those relating to digital services, data protection and consumer protection. In the digital media sphere, regulations become particularly complex due to the interplay between European data protection and privacy regulations, such as the General Data Protection Regulation 2016/679 (Eur-Lex 2016) and the Digital Services Act 2022/2065 (Eur-Lex 2022a), and specific rules on online advertising, digital behaviour, and transparency on digital platforms.

In relation to current legislation on digital services, the *Directive 2000/31/EC on Electronic Commerce* stands out, the regulation of which is the general regulatory framework for all activities carried out on the Internet and which, according to Article 2, are 'normally provided for remuneration, at a

distance, by electronic means and at the individual request of a recipient of services'. Commercial communications are also included in this Directive as they are defined as 'all forms of communication intended to directly or indirectly provide goods, services or the image of a company, organisation or person engaged in commercial, industrial, craft or regulated professions'. Furthermore, Article 6 requires such commercial communications to be clearly and unambiguously identifiable, as well as games, competitions, or commercial offers. This directive has been transposed into Spanish law in *Law 34/2002, of 11 July, on Information Society Services and Electronic Commerce* (LSSI).

Spain operates under a regulatory system primarily derived from Law 34/2002 on Information Society Services and Electronic Commerce (BOE 2002), explicitly requiring clear identification of advertising content in digital environments. Furthermore, Spain rigorously implements European requirements stemming from the DSA (Eur-Lex 2022a), GDPR (Eur-Lex 2016a), and the ePrivacy Directive (Eur-Lex 2009), emphasizing user protection against covert advertising and advertising practices based on personal profiling, especially when involving sensitive data or minors. Explicit consent and clear revocation options for digital advertising underscore a strongly consumer-protective regulatory approach. Spain operates under a comparatively more rigid framework than the UK with clearly defined transparency and user consent obligations.

In the UK, the ASA applies the CAP code which requires that marketing communications be recognisable as such. The Advertising Standards Authority (ASA) proactively regulates digital advertising practices, including programmatic and behavioural advertising, combining GDPR principles (Eur-Lex 2016) and local Consumer Protection from Unfair Trading Regulations (UK Government 2008). The UK self-regulatory system may be regarded as more flexible and adaptable to new forms of online branded content, such as native and programmatic advertising. On the other hand, the BCGP highlights a range of problems in the realisation and enforcement of the principle of advertising transparency, the lack of clear and consistent rules for the labelling and disclosure of marketing communications and the erosion of requirements to separate advertising and non-advertising content (Hardy et al. 2023; Hardy 2024).

3.6 Social Media Marketing

Social media represents one of the most dynamic and complex areas for branded content regulation, due to rapidly evolving advertising formats, direct user involvement as content producers, and challenges distinguishing editorial from commercial communication. While Spain and the UK share regulatory principles inspired by European directives like the Unfair Commercial Practices Directive 2005/29/EC (Eur-Lex 2005) and the Audiovisual Media Services Directive 2018/1808 (Eur-Lex 2018), they have adopted notably different approaches regarding implementation, formalization levels, and responsibility regimes.

In Spain, current legislation, particularly the General Audiovisual Communication Law (BOE 2022a), explicitly institutionalizes influencers as regulated actors. It identifies the 'relevant influencer' as an audiovisual service provider obligated to comply with legal duties, including registration as a service provider, labelling all advertising content, and adhering to general child and consumer protection frameworks. Spain is among the few EU countries to have addressed influencer marketing in law in Royal Decree 444/2024 (BOE 2024), the other being France (2023) (González-Díaz, Quiles-Soler and Quintas-Froufe 2024).

Such formalized regulatory standards do not have a direct parallel in the UK, where influencers are not subject to mandatory registration but must comply with criteria set by the Competition and Markets Authority (CMA) and the ASA, especially regarding clear promotional content identification. CMA guidelines from 2022 require discloses for payment, or any economic consideration (CMA 2022, 2025b). The CMA requires that any commercial relationship or incentive for an influencer's social media post must be clearly and prominently disclosed as an 'ad' or 'advert; and broadly interprets incentives to include payments, gifts, discounts, ambassador contracts, and other benefits, reflecting a more comprehensive yet contextual approach.

Both jurisdictions require influencers receiving economic compensation for product promotion to label their content as advertising. However, while in Spain this obligation directly stems from the LSSI (BOE 2002) and the LGCA (BOE 2022a), the main enforcement mechanism in the UK is the CAP-ASA self-regulatory system. There are formal enforcement powers in statutory regulation by the CMA and Trading Standards. However, the CMA does not pursue individual cases, although it can initiate investigations into companies or market sectors. Trading Standards usually intervenes on advertising content matters through referral from the ASA but, as noted, there have been no such referrals concerning branded content in the five years to 2024.

User-generated content (UGC) management also diverges significantly. In Spain, responsibility typically falls directly upon the content provider, with specific exceptions (hosting, caching) under LSSI (BOE 2002) and the "actual knowledge" doctrine from the E-Commerce Directive (Eur-Lex 2022a). Conversely, in the UK, liability attribution depends on advertiser activity regarding the content, editing, moderating, or significantly highlighting it, deeming active adoption. This flexible approach allows greater flexibility but creates broader regulatory grey areas compared to Spain.

Child protection and transparency are central elements in both systems. In Spain, articles 88 and 89 of the LGCA (BOE 2022a) explicitly mandate age verification mechanisms, parental control, and harmful content signalling. Platforms must offer tools enabling users to disclose commercial content. In the UK, despite lacking statutory definitions, the CMA obligates platforms

to proactively implement measures like algorithmic hidden-advertising detection and user reporting mechanisms. This "shared responsibility" approach significantly delegates compliance to platforms, reinforcing the technology ecosystem's role in advertising governance.

Both countries have developed relevant case law on social media advertising. Spain's more formal approach includes landmark rulings, such as the decision against Groupon Spain, affirming shared platform liability for third-party infringements. In the UK, CMA and ASA investigations (e.g., Social Chain, WoolOvers, Flat Tummy Tea) reinforce the principle that content must be ‘obviously identifiable’ as advertising, with transparency breaches constituting violations (CMA 2016).

In summary, Spain exhibits a centralized, normative, and preventive regulatory framework featuring official registrations, formal requirements, and direct influencer accountability. The UK employs a more contextual approach combining sector-specific self-regulation with selective public agency enforcement. Both strategies aim to ensure digital advertising transparency but represent distinct regulatory models: Spain emphasizing anticipatory normative intervention, and the UK prioritizing ‘industry-led’ self-regulation and institutional adaptability to evolving media environments.

This section has considered differences in the regulatory treatment of branded content in the UK and Spain. These highlight the importance of a historical institutionalist approach to examine how established governmental and legal-regulatory arrangements continue to influence contemporary governance, although it is beyond scope to do so here. Spain has established a more developed and explicit legal framework (i.e., cross-media duty to distinguish paid content; statutory AV disclosures; influencer statute) than the UK (single-door SRO coverage, strong guidance), although both systems rely principally on self-regulation, with limited direct legal enforcement. We examine this further in 32-country Comparative Analysis (Hardy et al. 2025a).

Table 2

Sector	Spain	UK	Comparative
Publishing (Editorial)	Explicit mandatory requirements clearly labelled as "advertising".	Interpretative flexibility, editorial control, variable labelling.	Spain more protective, UK liberal with potential gaps.
Audiovisual	Strict permanent visual labelling; restricted advertising on public TV since 2010.	Strong co-regulation; pre-approval by Clearcast; relative flexibility in commercial integration.	UK preventive; Spain corrective regulatory.
Audio	Explicit requirement for acoustic and visual identification; ex-post control.	Pre-approval by Radiocentre; co-regulation with Ofcom and ASA; emphasis on prevention.	Spain explicit control; UK effective preventative
Digital media	Strict personal data protection; explicit revocable consent; mandatory labelling.	Flexible self-regulation; proactive ASA oversight; emphasis on behavioural and native advertising.	Spain rigid user protection; UK adaptable and proactive.
SRO Approach	Centralized (AUTOCONTROL), high regulatory cohesion.	Fragmented (ASA, IPSO, Impress), broad sectoral interpretive flexibility.	UK broad self-regulation, Spain cohesive sectoral regulation.
State and institutional control	High state intervention; content regulation.	Moderate state intervention; self-regulatory supervision.	Spain strong state intervention; UK public-private regulatory balance.
Compliance and effectiveness level	Mixed. High compliance with rulings (AUTOCONTROL 95%), effective post-publication control.	Mixed. High compliance in broadcasting through strong preventive systems (Clearcast, Radiocentre, ASA).	Spain greater reliance on ex-post control; UK greater reliance on prevention.
Transparency and conflict of interest	Explicit transparency required across all sectors.	Transparency conditional on editorial/advertising control; some regulatory anomalies and ambiguities.	Spain explicit transparency; UK greater reliance on interpretation and industry self-regulation.

4. UK Policy

4.1 Timeline: UK, Spain and EU Policy and Regulation

The EU has established the Digital Services Act (DS) and Digital Markets Act (DMA) which together 'aim to create a safer digital space where the fundamental rights of users are protected and to establish a level playing field for businesses' (European Commission 2023). Together, the Acts are intended to 'set a European Union standard in the governance of issues emerging on online platforms, both in relation to measures to mitigate risks and ensure online safety, and the protection of fundamental rights in the evolving online space' (European Commission 2020: 58). Online safety is listed as the first 'social impact' of the new measures, focused on 'illegal content, goods and services' (European Commission 2020: 59). 'Member States are increasingly introducing, or are considering introducing, national laws on the matters covered by this Regulation, imposing, in particular, diligence requirements for providers of intermediary services as regards the way they should tackle illegal content, online disinformation or other societal risks' (European Commission 2020: 17).

Table 3: Timeline of UK, Spain and EU policy and regulation

	UK	**Spain**	**European Union**
2022	Online Safety Bill	Ley General de Comunicación Audiovisual (Ley 13/2022, de 7 de julio -LGCA New Audiovisual law implementing the 2018 EU Audiovisual Media Services Directive	Omnibus Directive EU Consumer protection laws
	Online Advertising Programme (0AP) consultation		Digital Markets Act (entered into force November)
	Influencer Culture UK Parliamentary inquiry. Report (May), special reports and government responses (Jan-Sept)		Digital Services Act (entered into force November)
	CMA updated guidance *Hidden ads: Being clear with your audience* (CMA 2022, 2025b) and advice to businesses (CMA 2025c)		

2023	Government response to Online Advertising Programme consultation (July)		
	Online Safety Act (enacted October)		
	CAP updated guidance on influencer marketing (March)		
2024	Digital Markets, Competition and Consumer Reform	Royal Decree 444/2024 regulating influencers (published May)	Digital Markets Act compliance deadline March 2024
	Media Act		Artificial Intelligence Act (entered into force August)
			European Media Freedom Act (entered into force May)
2025		**AUTOCONTROL updated Influencer Code comes in effect (October)**	Artificial Intelligence Act (obligations for providers August)
			European Media Freedom Act (fully applicable August)

Statutory Regulation
Self-regulation

4.2 UK Policy

This section outlines the broader UK policy context relevant to advertising governance and discusses key policy initiatives relevant to branded content and advertising regulation, notably the Online Advertising Programme, Influencer Culture enquiry and Online Safety Act.

The UK Government's ambition in 2022 was to be the 'best regulated economy in the world' creating 'an improved regulatory system' that balances the needs for regulation and the promotion of economic success. The government stated (UK Government 2022):

> Poorly designed regulations can stifle economic growth and innovation, limit market competition and disproportionately harm small businesses. But when done well and in collaboration with business, regulation can catalyse economic growth and the co -creation of new markets. The steps we are taking, including through improved regulatory scrutiny and evaluation of impacts, will help ensure that where regulation is used it is a force for good for the UK economy

The UK Government, under the Conservative-led administration 2010-2024, described its overall aims as maintaining a pro-innovation and proportionate approach to digital regulation. It sought to reassure a range of interests across business and civil society by acknowledging both the benefits of paid-for advertising and risks and potential harms. It identified risks across advertising content, ad placement and targeting and potential harms including misleading and fraudulent ads, ads promoting illegal activities and so-called 'legal but harmful' ads (such as those targeting vulnerable groups).

4.3 The Online Advertising Programme

The Online Advertising Programme (OAP), is a UK Government programme to 'review the regulatory framework of paid-for online advertising', launched on 9 March 2022 by the then Department for Digital, Culture, Media and Sport. The Conservative government announced a consultation process that ran to June 2022. In July 2023 the Government published its response to the consultation and plans for advertising regulation. including the creation of an industry Taskforce in 2023 to oversee implementation which continues in place under the Labour Government that came to power in July 2024.

The BCGP has produced two detailed reports on the OAP, Hardy et al. (2023 *Online Advertising Regulation Policy Briefing* in July 2023, and an updated report in 2024, *Don't make advertising the next sewage scandal: accountability and oversight in UK online advertising regulation* (Hardy 2024). The account of the OAP below draws upon and summarises material from both earlier reports, with updated information on developments in 2024-5. In January 2023, the Branded Content Governance Project hosted a policy symposium on Online Advertising Regulation, followed by a public event to consider the options and their implications for the regulation of online advertising. Both events considered the wider framework and options for regulation but focused on the identification and disclosure of advertising across news publishing and influencer marketing. The symposium and public event involved key policy actors, academics, legal experts and industry, and addressed issues and policy/ regulatory proposals affecting the relationships between media and marketing communications.

Announcing the Online Advertising Programme, the then Minister of State for Media, Data and Digital Infrastructure**,** Julia Lopez stated 'market participants across the advertising ecosystem (from advertisers to publishers and all those in between) have a collective responsibility to tackle the harms created to society' (DCMS 2022b). The OAP aimed to review the regulatory framework and assess whether and how the existing self-regulatory framework should be built upon. The Government aimed to 'equip our regulators to meet the challenges of the online sphere'. The OAP put forward proposals that were intended to address both illegal and legal harms created by online advertising and includes proposals for measures aimed at advertisers, intermediaries, platforms and publishers.

The OAP addressed the increasing range of actors in the digital advertising supply chain and aims 'to bring more of the major players under regulation' (Conway 2022: 5).

Online Advertising Programme Consultation

Three options:

1. **Self-regulatory approach**
   Maintain Advertising Standards Authority (ASA) regulation; new requirements for intermediaries, publishers and platforms.

2. **Statutory regulator to backstop more fully the self-regulatory approach**
   ASA as frontline regulator but **'**backstopped more fully by a newly-appointed statutory regulator, to provide stronger powers of enforcement where needed'.

3. **Full statutory approach**
   'appointing a statutory regulator to introduce measures designed to increase transparency and accountability across the ecosystem'.

The OAP, together with the Online Safety Bill and other measures addressing consumer protection, competition and data protection, comprised the Government's response to the 'challenges of the online sphere' which include rapid development outpacing regulations, various legal and illegal harms, and the 'evident lack of transparency and accountability' across the online advertising sector (DCMS 2022b). Outside the scope of the OAP are user-generated content (addressed in the Online Safety Bill/Act) and issues including privacy, data policy, political advertising, and competition issues.

The 2022 OAP (DCMS 2022b) reaffirmed the Government's positioning as balancing the strengthening of regulatory mechanisms while being 'pro-innovation' and 'proportionate':

> It will consider how we can build on the existing self-regulatory framework, by strengthening the mechanisms currently in place and those being developed, to equip our regulators to meet the challenges of the online sphere, whilst maintaining the government's pro-innovation and proportionate approach to digital regulation. We want to ensure that regulators have good sight of what is happening across the vast, complex, often opaque and automated supply chain, where highly personalised adverts are being delivered at speed and scale.

The OAP focused specifically on paid-for online advertising but identified a wide array of harms, including those caused by 'the intensive collection, analysis and use of consumer data', targeting, and fraudulent adverts which were the main subject of the more narrowly focused Online Safety Bill

(DCMS 2022b). The government puts extra emphasis on the importance of a thriving UK economy and focuses on carefully balancing business needs with the need to tackle these issues. Consequently, it suggested strengthening the existing self-regulatory framework as its preferred solution (Lopez 2022; Dowden 2022). However, the OAP consultation aimed to assess the necessary level of regulatory oversight and presented a full range of possible options and escalation 'from a continuation of the self-regulatory framework though to full statutory regulation' (DCMS 2022b). The underlying principle of the process was to apply a 'holistic' approach, developed through an in-depth understanding of the digital landscape and its inhabitants. Instead of focusing solely on advertisers, the approach was intended to distribute responsibility amongst various actors making up the media ecosystem and regulate user-generated content as well as organisations across the whole supply chain, including platforms, to address wide-reaching problems affecting the online sphere and create a 'pro-competition regime' for digital markets (DCMS 2022b).

Responses to the Online Advertising Programme Consultation

There were 115 responses to the 2022 OAP consultation. 34 were unspecified but of the identified types, the largest number represented civil society organisations (19) and consumer groups (10). For industry, there were marketers (12) and media agencies (2), platforms (7), broadcasters (4) and publishers (4).

Table 4

Type	**No.**
Unspecified	34
Civil Society Organisations	19
Marketers (advertisers/brands)	12
Consumer Groups	10
Regulators	8
Academia	8
Platforms	7
Individuals	5
Broadcasters	4
News Publishers	4
Media Agencies	2
Intermediaries	2
TOTAL	**115**

Consultation responses

It is normal practice that consultation responses are published alongside the formal response made by the Government. This is in line with the Government's own guidance on the conduct and reporting of public consultations (Cabinet Office 2018).

According to the Cabinet Office (2018: 2) document *Consultation principles: guidance*:

1. **Consultation should facilitate scrutiny**
   Publish any response on the same page on gov.uk as the original consultation, and ensure it is clear when the government has responded to the consultation. Explain the responses that have been received from consultees and how these have informed the policy. State how many responses have been received.

However, this was not done. So, there is only limited data in the public domain available for this consultation. The Government's 'Response to the Online Advertising Programme consultation', published in July 2023, provides a list of the named respondents (77) and identifies the type of organisation for 29 of the 38 anonymous responses, with the remaining 9 being identified as 'other'.

38 Anonymous respondents (DCMS 2023a):

- 4 academics
- 4 advertisers (including brands)
- 14 consumer and civil society groups
- 1 media agency
- 9 marked as 'other'
- 1 online platform
- 5 private individuals

The numbers provided cannot be independently verified and so matching the 38 'anonymous' respondents (9 of which are 'other') with the 34 'unspecified' respondents cannot be completed accurately. Some respondents self-published their responses (although some of these may be abridged or redacted versions of the actual submission made). However, in the absence of publication of the (non-confidential) submissions, the BCGP is dependent on the Government's own Response. That document does not provide the level of detail and disclosure that would enable a full and independent assessment of the contributions, as discussed below.

The BCGP Online Advertising Policy Briefing examined the OAP consultation responses, based on self-published responses available at the time (Hardy et al. 2023: 28-31). The responses to the OAP consultation can be broadly divided into those who support the maintenance or adaption of advertising self-regulation (and favour Option 1) and those favouring a

strengthened statutory regulatory component (and favour Option 2 or 3). The former group included most industry trade associations representing marketers, marketing agencies and marketing services, as well as the self-regulatory organisation the ASA. Those advocating Option 3 included civil society and some academic respondents. While, there are strong differences expressed between advocates of options, there is also some commonality. Most of the institutions and individuals who responded to the consultation did not fully endorse the framework as set out by the government, expressing concerns about definition, scope, evidence, and interpretation.

Advocates for building on existing self-regulation: ASA, AA, IAB UK, ISBA

The Advertising Standards Authority (ASA), Advertising Association (AA), and International Advertising Bureau (IAB UK) all set out their concerns with the Government's proposed framework. On the basis of disagreement with the framework, they chose not to endorse a specific option while, simultaneously, strongly rejecting option 3, statutory regulation. The IAB called for option 3 to be removed from the options under consideration. The ASA asked for 'a narrower' consultation, with greater focus, that would allow for 'a more detailed inspection of the opportunities and constraints' of any future government proposal (ASA 2022: 4).

The ASA, AA, and IAB all argued that option 3 would undermine the current self-regulatory system and defended the latter's effectiveness overall, and in adjusting to the changeable online environment. They argued that the process of reviewing governance should be led by industry expertise and knowledge of the sector to address the most relevant problems in the most effective ways. The AA claims that option 3 would 'seriously weaken the ASA's authority' and accuses the Government of undervaluing its leadership and the adaptability (AA 2022: 2). The Incorporated Society of British Advertisers (ISBA), a member of AA, chose option 1, and expresses 'extreme concern at the possibility that Ministers might rip up the system of self-and co-regulation of advertising content and placement that has proven to be a world-leading success story' (ISBA 2022c: 4). All these respondents emphasized the need to differentiate between legitimate industry activities, and the illegal harmful activities of criminal actors. ISBA claimed that there were'very high levels of compliance with the CAP and BCAP Codes for paid-for advertising by the legitimate actors' (ISBA 2022c: 10). Overall, the UK's main self-regulatory body and trade bodies presented a unified position in their responses. The AA, IAB, ISBA are all members of the Committee of Advertising Practice (CAP).

Advocates for strengthened statutory regulation

Those expressing support for option 3, stronger statutory regulation included Professor Jonathan Hardy, University of the Arts London, who is now PI for the BCGP (Hardy 2022b), the food and health advocacy

group Sustain, and online content provider MoneySavingExpert. Sustain represents 'over 100 national public interest organisations' and seeks to limit High Fat Salt/Sugar (HFSS) advertising (Sustain 2022: 1). MoneySavingExpert is a consumer website campaigning for financial justice (MoneySavingExpert 2022: 3). Both organisations described the self-regulatory system as ineffective: Sustain called it 'inappropriate', its enforcement measures weak, and questions the system's transparency and impartiality, while MoneySavingExpert claims the industry created 'almost Wild West situation' online (Sustain 2022: 3, 10 – 12; MoneySavingExpert 2022: 3). Sustain argued that the industry protects 'their own interests over public health and other considerations' and wants online advertising and television regulation to be aligned (Sustain 2022: 3). Both institutions see platform regulation as a blind spot in need of an urgent intervention (MoneySavingExpert 2022: 4; Sustain 2022: 10). The Institute of Alcohol Studies (IAS), and the University of Sheffield and King's College London did not select option 3 but advocated for statutory regulation of all actors listed in the OAP: advertisers, publishers, intermediaries, and platforms (IAS 2022; Chen and Keller 2022). IAS believes statutory regulation would be most effective at protecting children and vulnerable people, but 'in absence of statutory regulation, Permutation 1 is the strongest and most consistent option' (IAS 2022: 10). Chen and Keller did not select any option but explained their doubts arose from a 'gap between data protection's core of rights-based regulation and the ASA's standards-based methods', leading to 'legal uncertainties' (Chen and Keller 2022: 5). The arguments made by Prof Hardy for statutory regulation to provide a more effective and coherent response to converging media-marketing also advocated a mixed approach that combined a reconfiguration of self-regulation, co-regulation, and statutory regulation. That mixed approach is also reflected in other submissions.

The Information Commissioner's Office agrees with the government's assessment that 'a lack of transparency and accountability are key drivers of harm across online advertising'. The ICO (2022: 1) welcomes measures designed to address these issues but argues that the government 'should undertake further analysis of the role existing regulatory regimes, such as that of the ICO, play in addressing harms arising from online advertising and ensure that reforms are only pursued where regulatory gaps are clearly identified, or where evidence demonstrates that an increased level of regulatory oversight is necessary. The Information Commissioner's Office (ICO), and non-governmental organisations such as Privacy International (PI), set out similar concerns regarding privacy protection, ad targeting and data processing, and both highlight the need to address connections and overlaps between advertising regulation and data protection legislation (ICO 2022; PI 2022). The ICO does not set out a formal opinion of which of the three options for regulation should be adopted but sets out their remit and role as advisors to the Government, sharing their expertise and highlighting possible issues which might pose challenges to the creation of a coherent and well-integrated regulatory framework.

The remaining responses (excluding Carnegie UK which did not choose any of the options, and the ICO, discussed above), tended to favour a mixed model: a rebalanced combination of self-regulation, co-regulation, and statutory regulation and each suggested stronger measures that option 1. Both British and Irish Law, Education and Technology Association (BILETA) and Privacy International (PI), a charity protecting 'the human right of privacy', focused on invisible advertising practices as one of the reasons why the ASA system is no longer sufficient. BILETA listed the many forms of hidden advertising to argue that digital marketing requires stronger statutory measures to keep advertising recognizable. BILETA (2022:11) selected option 2. Privacy International claimed that the industry perpetuates invisible harms such as targeting adverts 'based on sensitive or illegally collected personal data' and is only interested in policing 'ineffective ads', rather than 'deceptive and misleading content' (BILETA 2022: 8-9; IP 2022: 11). Which?, the UK's largest consumer advice and advocacy organisation, argued that the ASA cannot 'match the scale of the problem' when it comes to fraudulent adverts (Which? 2022: 3). Overall, even institutions supporting a mixed model and unwilling to apply statutory regulation to all sectors, tend to highlight platforms and intermediaries as two groups which require a statutory intervention and extra measures to address their negative impact on the online environment.

Summary and evaluation

A process of asking questions, 'opening up' was initiated by the Online Advertising Programme consultation. Vociferous supporters of the existing SRO system demanded that the debate be closed down. Option three, a statutory regulator, should be ruled out, removed from discussion altogether, argued the Internet Advertising Bureau, among other members of the self-regulatory system: 'We see no case for the continued inclusion of an option that is based on replacing existing regulation with the "full statutory approach" envisaged in option 3, and this should be excluded from the policy options going forward, in order to focus collective efforts on more proportionate and targeted approaches' (IAB 2022; Hardy et al. 2023: 39). This was a call 'regulatory space' to be shrunk, placing the statutory option beyond the sphere of 'legitimate controversy (Hancher and Moran 1989; Hallin 1986). Here was one of the many paradoxes encountered. The purported goal of the self-regulatory system is to serve the public, not the industry alone. Yet, the Internet Advertising Bureau and other members of CAP argued that a statutory system should not even be contemplated and discussed. As the Government's own summary of responses acknowledged (DCMS 2023a), option 3 was the most favoured option by those the Government identified as being "concerned with illegal harms and protecting vulnerable groups", with industry self-regulation being the least supported, "with the exception of advertisers".

4.4 The Government's Response to the OAP

In February 2023 the Department for Digital, Culture, Media & Sport (DCMS) was replaced by the Department for Science, Innovation and Technology and Department for Culture, Media and Sport. The Department for Culture, Media and Sport (DCMS) returned to its original departmental title (with the acronym retained throughout), and retained responsibility for the Online Advertising Programme. In May 2023, the Rt Hon Sir John Whittingdale MP, Minister of State for Media, Tourism and Creative Industries took over the OAP, providing maternity cover for Julia Lopez MP. Whittingdale oversaw the Government's response to the OAP consultation, published on 25 July 2023, which marked a radical departure from the approach set out in the original consultation. The 2022 consultation, and the impact review that supported it, was built around a case that the status quo was unsustainable, and that some strengthening of legal provision was necessary to deal with the growth of the online advertising ecosystem.

The Government's response to the consultation took three main forms, First, the Government indicated that there would be future legislation. Second, the minister established a taskforce, 'bringing together industry and government to build the evidence base and drive forward non-legislative action' (DCMS 2023c). However, a third key move was to delimit the scope for action for both legislative and non-legislative paths. What was defined as 'in scope' was first, illegal online advertising, and second, protecting under-18s from adverts for products that are illegal to be sold to them.

The Government's OAP response announced (DCMS 2023b):

> [a] new and targeted regulatory framework for online advertising, focused on illegal advertising and increasing the protection of under-18s online. The new framework will introduce statutory regulation of parties in the online advertising supply chain that are not currently regulated by statute for some types of illegal advertising (including fraud and scams) or for the protection of children and young people - namely platforms, intermediaries and publishers (PIPs).

The Government justified this focus in order create a 'targeted package of measures [that] will hone in on illegal adverts as defined under existing criminal provisions, and most importantly, protect children and young people from exposure to this criminal behaviour' (DCMS 2023b). It outlined the intention to legislate, but set out the circumscribed areas this would cover. These were regulation to govern illegal advertising content, and to set out requirements for platforms, intermediaries and publishers (PIP) in tackling illegal advertising perpetrated by bad actors.

These activities were also presented as specific interventions that connect with broader policy and legislative work. In its *Response* (DCMS 2023b) the Government said it would build on the stand-alone fraudulent advertising duties set out in the Online Safety Bill (now Act) and the duties provided for under the Consumer Protection from Unfair Trading Regulations 2008

(discussed below). The Taskforce Action Plan, published in November 2023, stated 'We are also working closely with the Department for Science Innovation and Technology (DSIT) and the Department for Business and Trade (DBT) to ensure joint action against harms within this space through the Online Safety Act 2023 and the Digital Markets, Consumers and Competition Bill' (DCMS 2023f).

The Taskforce

The Government's response announced the creation of a taskforce 'to bring together industry and government to explore non-legislative action to address illegal harms arising from online advertising [fraud, scams, ads for illegal products] and increase the protection of children [from alcohol, gambling, vapes and other products/services prohibited to be sold to them]'. DCMS 'will look to harness expertise from within the advertising industry and support industry solutions through our non-legislative package...to take forward in tandem to our further consultation on the legislative package'.

The Government established a taskforce of 14 people, whose non-governmental appointees are all members of the same self-regulatory system that was placed under scrutiny in the original consultation, except for two members, both from industry-led organisations (TechUK and Stop Scams UK). The taskforce is chaired by the Minister (in 2023, John Whittingdale PM), while the deputy chair of the taskforce is a key member of the existing self-regulatory system placed under scrutiny, Mark Lund Chairman, of the Advertising Standards Board of Finance (ASBOF) the advertising industry body which is responsible for collecting the levy that funds advertising self-regulation (Asbof .n.d.)

There is no DCMS representation on the taskforce itself beyond the Minister. However, Robert Specterman-Green, Director of Media and Creative Industries in DCMS, attended and presented at the first taskforce meeting in July, together with Janis Makarewich-Hall, Deputy Director for Radio, Advertising and Press in DCMS. DCMS civil servants also attend and take minutes. The first meeting, lasting one-hour, took place on 27 July 2023 and was followed by a further one-hour meeting on 25 October, after which the action plan was published on 30 November, with accompanying Ministerial statements made in the House of Commons and House of Lords (DCMS 2023d, 2023e, 2023f).

Minutes of both meeting were published. Those for the first meeting comprise 1.5 A4 pages (635 words) while the second was one A4 page only (352 words). The taskforce terms of reference were also published (DCMS 2023c). As the word count indicates, these were summary minutes only, providing an indication of selected speakers and brief outline of topics. For instance, there is no recorded discussion held concerning the support for stronger statutory regulation among a majority of respondents to the OAP consultation, to which the taskforce itself was the Government and advertising industry-supported response.

A process of asking questions was initiated. Vociferous supporters of the existing system demanded that the debate be closed down. Option 3, a statutory regulator, should be ruled out, removed from discussion altogether, argued the Internet Advertising Bureau, among other members of the self-regulatory system. This was a call for 'regulatory space' to be shrunk, placing the statutory option beyond the sphere of 'legitimate controversy'. The regulatory system is to serve the public, not the industry alone. Yet, read the cries of horror that a statutory fix should even be contemplated and that public-spirited masks slips to reveal more naked self-interest.

The Government's response to its consultation has been led by John Whittingdale MP who took over responsibility from Julia Lopez MP while she was on maternity leave. First, the Government has indicated there will be future legislation. Second, the minister established a Taskforce, 'bringing together industry and government to build the evidence base and drive forward non-legislative action'. However, a third key move was to delimit the scope for action for both legislative and non-legislative paths. What is defined as 'in scope' are first, illegal online advertising, and second, protecting under-18s from adverts for products that are illegal to be sold to them. These are vitally important areas, but the Government has ignored the responses from a wealth of children's, health and other civil society voices to focus entirely on the illegal actions of 'rogue' advertisers and not on the need to create better rules and enforcement across the 'legitimate' industry that the original consultation considered.

The Taskforce comprises 14 people, whose non-governmental appointees are all members of the same self-regulatory system that was placed under scrutiny in the original consultation, except for two members, both from industry-led organisations (TechUK and Stop Scams UK). The Taskforce is chaired by the Minister, while the deputy chair is a key member of the self-regulatory system: Mark Lund, Chairman, of the Advertising Standards Board of Finance (ASBOF), the industry group that oversees the financing of the ASA.

Scope and Limitations of OAP Proposals

The taskforce process and any ensuing consultation was formally and explicitly limited to the two issues set out in the Government response only, what it calls 'two broad categories of in-scope harms'.

These are:

1. Illegal advertising

2. Protections for under-18s from adverts for products that are illegal to be sold to them ('the inappropriate exposure of children to adverts for products and services illegal to be sold to them ('in-scope harms').

These are vitally important areas, yet the Government ignored the responses from across a range of children's, health and other civil society voices to focus entirely on the illegal actions of 'rogue' advertisers and not on the need to create better rules and enforcement that encompass problems across the 'legitimate' industry that the original consultation considered.

The Government announced that the DCMS would carry out further consultation, beyond the industry taskforce group it established. This would provide the opportunity for public input and so those involved in the taskforce may argue that the process of creating an industry expert group, responsible for developing an action plan, that is then submitted to wider public consultation, meets the tests for transparent, accountable and effective policy design. However, consultation would be limited to the two issues set out in the Government's *Response* only. One is entitled to ask if that is an appropriate and proportionate response to the arguments made by a wide range of stakeholders in their Consultation responses?

The UK advertising industry trade bodies and members and supported of the SRO system mobilised to lobby the new Labour Government elected in July 2024. This is examined in greater detail in the BCGP's Media Analysis report (Hardy 2025b). Previous Labour administrations have intervened to strengthen the self-regulatory system and industry has remained wary of Labour advocating stronger advertising regulation. However, to date, Labour has not set out any widespread regulatory reform plans and instead continued with the Taskforce created by the previous administration. Since, Labour's victory the Taskforce has met twice, in 2024 and 2025.

4.5 Assessment: Self-regulation Under Scrutiny?

The self-regulatory system has the declared aim to serve the public, not the industry alone. Yet, to read the cries from industry bodies that a strengthened statutory fix should even be contemplated reveals public-spirited masks slipping to reveal more naked self-interest. To make sense of this, we need a historical as well as contemporary perspective.

The UK self-regulatory system was established in the 1960s, building on earlier industry codes of practice from the late 19th century. Shortly after the Committee of Advertising Practice was formed in 1960, by the advertising and media industries, to draw up a code for non-broadcast advertising, the Advertising Standards Authority (ASA) was created to hold the industry to its own rules. Allowing the industry to 'mark its own homework', under the original CAP proposal, was strongly opposed by the Labour Party and others at the time, and so the ASA was created to provide 'independent' oversight, with a council made up of a majority who were 'unconnected' with the advertising and media industries. Yet, this independence took, and continues to take, peculiar forms. The CAP and ASA are co-located, in the same building. The BCGP has engaged with senior and junior staff at both the ASA and CAP and all have demonstrated a powerful commitment to serve the public and protect consumers, but the movement of staff

across the industry body (CAP) and its 'regulator' (ASA) weaves a complex tapestry. The extent to which CAP and ASA are conjoined prompts a set of fresh defences of self-regulation, as being more responsive and more effective *because* of the closeness of industry and regulator. But those defences are exposed and undermined wherever the system fails, and we are, arguably, at one such moment and critical juncture now.

The case for self-regulation, made to the public and politicians, has been that it creates a nimble, responsive, quick and effective system to protect consumers and keep advertising 'legal, decent, honest and truthful' (CAP 2018). To industry, another key offer was that effective self-regulation could ward off the risks of 'stronger' statutory regulation. It is certainly possible to accommodate and 'balance' serving public and self-interest, but these are tectonic plates that meet under great pressure, capable of erupting, as the OAP consultation has done, albeit far out at sea, beyond the shores of public attention.

The problems of the CAP-ASA do not derive from a lack of commitment to serving the public amongst staff. Rather, they derive from its institutional structure and history. Advertising self-regulation was established to protect the advertising industry. Such protection can certainly be aligned with protecting consumers and the public interest, and for its strongest supporters such goals are indivisible. Yet, the CAP-ASA arrangements are complexly conjoined and so there are important questions as to whether this can provide suitably strong, effective and 'independent' regulation. For instance, the ASA makes much of the fact that its Council has a two-thirds majority of members who are independent of the advertising and media industries regulated, with the interests of the latter served by the Committee of Advertising Practice but also represented in the ASA Council. However, some of the nominally 'independent' members have media and marketing backgrounds and connections that weaken the claims made for independent oversight. According to the ASA (n.d.d) 'Two-thirds of [ASA Council members] are independent of industry and the remaining members have a recent or current knowledge of the advertiser, agency or media sectors'. The phrasing is ambiguous. If 'industry' means 'advertising then the claim has greater merit but if the claim is for independence from 'the advertiser, agency or media sectors', which the non-independent members represent, then it is considerably weaker. Currently, two of the eight 'independent' members have media backgrounds. One, worked for the BBC and Channel Four and runs a television and digital media production company, the other was a former newspaper editor and former member of the press self-regulator, the Press Complaints Commission, that was replaced by IPSO following the Leveson Enquiry. If those two are included, the Council is balanced 6 to 6.

A strong defence of ASA independence was expressed by an interviewee, as follows:

> The ASA is independent of both the industry that it regulates and in its decision-making. It regulates without fear or favour working impartially, free from undue influence or vested interests), and acts against ads, by companies large and small, that break the rules. Its weekly published rulings, proactive monitoring and enforcement action provide comprehensive protections, including online and, in great part, testify to its independence.

The reaction of supporters of self-regulation has been the same as over previous decades: to defend its benefits and suitability. But conditions have changed, as the OAP consultation set out in clear terms. The Impact Assessment produced by the DCMS (2022d) summarises the problems requiring government action as follows:

> The online advertising industry has experienced rapid growth as online media consumption has increased. However, the size and growth of the sector has led to concerns about potential harms to consumers, firms and wider society. Evidence indicates user experiences of harm driven by an absence of transparency and accountability in the supply chain. Existing measures are limited and market incentives drive easy access to online audiences, including from those intent to cause harm such as fraud. Anecdotal feedback suggests that the current self-regulatory framework is not sufficiently equipped to tackle this and a range of other harms.

The old world of advertising self-regulation involved a triad of marketers, marketing agencies and media who were largely professionally and institutionally organised. This triad remains, in expanded form, but is now part of a sextet involving platforms, the adtech system and the expansion of content creators and other conveyers of marketing communications along a professional-non-professional axis that increases the likelihood and opportunities for these to fall outside regulatory and industry compliance (Hardy 2023b; Hardy et al. 2024). The new system also includes a human-virtual axis that creates further challenges for transparency and accountability in marketing communications. Today's media-marketing ecosystem involves a much greater range of actors and processes, many automated, and crucially many have less 'buy in' to existing rules, whether or not those are sufficient.

The acting Minister, John Whittingdale, and supporters of the existing self-regulation place emphasis on tackling 'rogue' players, but the evidence shows non-compliance extends across the legitimate industry to include major brands, agencies and media publishers (Hardy et al. 2023). There is also evidence of low public confidence in the existing system (Jefferson 2021, Lu 2021). This all makes the 'solution' put forward by the Minister of dubious long-term benefit for the industry as well as for consumers and citizens.

It is vital for government and industry to work closely together. Yet the Conservative Government's response to the Online Advertising Programme, proposed that the very institutions placed under scrutiny and under question, should alone provide the remedy. The Taskforce composition reversed the effort made in the original consultation to ensure policy reflected the broadest public interest and concern about advertising. A process of 'opening up' important policy issues to wider public scrutiny was restricted to the very parties placed under review.

There have certainly been positive and welcome aspects. The pressure arising from demands for stronger regulation, for more effective enforcement and oversight, has already had beneficial impact, again part of a longstanding pattern. Advertising self-regulation has tended to resist measures, that industry leadership opposes, until a build-up of pressure from influential stakeholders requires accommodating action. The ASA has invested in greatly increased, AI-assisted, capacity for monitoring online advertising that should lead to significant benefits in enforcement capability. Industry bodies have made further steps to address highlighted deficiencies and seek to show that a robust and effective self-regulatory system can prevail. The work of the Incorporated Society of British Advertisers (ISBA) and Internet Marketing Trade Body (IMTB) to improve guidelines on influencer marketing is one example of such best practice. Likewise, the Branded Content Marketing Association (BCMA), a project partners for the BCGP has produced important best practice and legal compliance guidance on influencer marketing, contracting, AI and other issues. As the BCGP has argued (Hardy 2023), the goal of effective governance occurring through all layers of industry self-regulation, from collective standard-setting to the decisions of teams and the actions and reflections of individuals, is a common foundation for agreement.

4.6 Influencer Culture Report

The Influencer Culture consultation, carried out by the House of Commons Digital, Culture, Media and Sport Committee (DCMS Committee) took place before the OAP but supported strengthened regulation of online advertising. The DCMS Committee's (2022) report *Influencer Culture: Lights, Camera, Inaction*[1] followed an inquiry that took oral and written evidence. The report explores 'the impact that social media influencers are having on UK culture, and how the industry operates', offering a snapshot of the current state of the market (DCMS Committee 2022: 6). It considers the market arrangements, practices, forms and other characteristics of influencer culture, understood as a rapidly expanding creative industry with a transformative impact on commercial activities online. The report discusses influencers' employment rights, the need to protect children (both as influencers and as the members of their online audience), and, most crucially for the BCGP, the activities influencers engage in as providers of marketing communication services.

The report describes 'the rapid expansion of this [influencer] marketplace, both in scale and in technical innovation', which has 'outplaced the

capabilities of UK advertising regulation' (DCMS Committee2022: 3). In response, the Committee recommends regulatory reform. They call for strengthening of the enforcement powers of the Competition and Markets Authority (CMA) and the Advertising Standards Authority (ASA) in order to meet the challenges of this dynamic and volatile marketplace, and to protect customer trust and user safety.

The report identifies advertising disclosure as one of the main areas affected by current gaps and anomalies in regulation (DCMS Committee 2022: 5). The Committee point to the 'sheer volume' of online content that is creating challenges for monitoring and control, and express concerns about the democratisation of influence leading to amateur content creators taking on promotional activities without any supervision or understanding of regulatory requirements (DCMS Committee 2022: 5). In their submissions to the inquiry, both the ASA and the CMA note the widespread non-compliance resulting from this environment (ASA 2021; CMA 2021). Influencers rely on deals with brands as their predominant business model and yet the effectiveness of their promotional activities depends on building trust and creating a convincing illusion of 'authentic' content. This is another aspect highlighted in the report, indicating further reasons for the increasingly blurry division between user generated content and commercial communications, with 'advertorials' figuring on top of their list of possible types of 'paid partnership' deals between brands and influencers (DCMS Committee 2022: 15). They note that brands tend to offer influencers a chance to tailor the commercial message to imbue the endorsement with authenticity, using the influencers' own brand and personality to validate the advertising for their followers and audience (DCMS Committee 2022: 16). Overall, the report identifies branded content as one of the predominant areas of concern in social media communications and dedicates attention to the harm it causes to the online environment.

With confusion caused by non-disclosure and the blurring of boundaries between commercial and non-commercial content, come larger-scale problems and threats to fundamental values such as freedom of expression and democracy. Brands distort online communication and exert disproportionate levels of control within environments where internet users expect to voice and encounter genuine opinions and concerns. The influencers become the mouthpieces for the brands and tailor their content to attract investment, while their fans find themselves deceived and their attachment manipulated. Brands can suppress specific kind of messages and uplift others, transforming the online environment to fit their needs and interests. The report cites Prof. Jonathan Hardy to support that point, indicating shared care about those issues and a recognition of the need for statutory means to prevent further damage to 'communication rights of recipients and the wider public interest' (DCMS 2022: 16; Hardy 2021a, 2022a).

DCMS Committee Proposals

1. A new code governing the relationship between influencers, advertisers, brands and talent agencies

The report proposed solutions to address the issues with influencer non-disclosure. Using The Incorporated Society of British Advertisers (ISBA) Influencer Marketing Code of Conduct as a starting point, the Committee recommended developing a new, Government-supported code regulating the relationship between influencers, advertisers, brands and talent agencies (DCMS 2022: 18; ISBA 2022a). ISBA also offers template contracts: the first one, created in 2016, proposed 'first ever terms for the appointment of social talent' and was designed for marketers employing talent either directly or through an agency; the second was aimed at contracting micro-influencers and was published alongside an updated version of the previous, rewritten in partnership with law firm Lewis Silkin (ISBA 2022b).

The Committee called for a new code of conduct and template contracts, which would require appropriate labelling and disclosures. Clarifying and unifying contractual terms would make it impossible for smaller-scale influencers entering the market to claim ignorance of the rules, while creating separate contracts for various involved parties would clarify and regulate the relationships between the growing number of actors engaged in facilitating influencers' relationships with brands.

2. Statutory powers for the ASA

The Committee proposed that the ASA should be given statutory powers to enforce the CAP code (DCMS Committee 2022: 31). They recommend this should be done as a part of process of implementing new proposals for regulation set out in the Government's Online Advertising Programme (OAP).

3. Replacing the CAP-ASA dual test of payment and control

The Committee makes significant recommendation on the identification and disclosure of marketing communications. It recommends change regarding payment and control.

'We recommend that the remit of the CAP code be extended by removing the requirement for editorial 'control' to determine whether content constitutes an advertisement (paragraph 69)' (DCMS Committee 2022: 26).

The Committee acknowledged the recommendation of the CMA for this proposal. Prof. Hardy (2021a) also argued for the removal of the dual test. His submission also recommended: 'Using the language of the US Federal Trade Commission, material connections between sources and public content should be evident or declared in both third-party and self-published

content. Payment, or 'material connection' related to the published content, should be declared for all third-party content (Hardy 2021a).'

4. The Committee recommended enhanced disclosure standards for advertisements aimed (predominantly) at children (paragraph 116) (DCMS Committee 2022: 40)]

UK Government Response

The report was published on 9 May 2022. The Government gave its formal response in September 2022. This occurred during a period of intense disruption in Government, during Liz Truss's brief tenure replacing Boris Johnson as Prime Minister. On most issues the Government response referred (and deferred) to the ongoing Online Advertising Programme (OAP) review as the place where many of the Committee's recommendations and concerns would be addressed. The Government also redirected the recommendations relating to the CAP code to the ASA (DCMS 2022a: 5):

> The Government will bear in mind the Committee's recommendation on providing the ASA with statutory powers as we complete our analysis, as well as, where relevant, the other recommendations directed at the ASA (paragraph 17)' (DCMS 2022a: 5).'The Government notes the recommendations addressed to the ASA, which the ASA will be responding to directly (paragraph 18)' (DCMS 2022a: 5).

The Government's short and generally non-committal response was considered by some as a failure of the DCMS committee to influence government (Raeside 2022). There were 44 written responses to the Influencer Culture consultation and 11 oral evidence sessions. The BCGP's Online Advertising Regulation Policy Briefing (Hardy et al. 2023) examines Enquiry and consultation responses in greater detail.

4.7 Online Safety Act

The Online Safety Bill (OSB) was introduced following the Government's 2019 manifesto commitment to 'make the UK the safest place in the world to be online while defending free expression' (DCMS 2022c). The bill set out the Government's intentions for regulating platforms and browsers and introduces statutory requirements on services to prevent users from posting or viewing harmful content, either amongst user generated posts or in search results. The focus was predominantly on illegal materials, especially those relating to terrorism or exploitation of children. Children as internet users stand out as the protected category, although the bill contained restrictions against both illegal, and what is defined as 'legal but harmful', content regardless of user's age. The burden of responsibility for moderating content falls on platforms, especially those with high volumes of users, or deemed high-risk. Ofcom is responsible for enforcing these regulations (DCMS 2022c). The bill was introduced in the House of Commons on 17 March 2022. An amended bill was published in December

2022 and after a lengthy legislative process (UK Parliament 2023), the bill received Royal Assent and became law on 26 October 2023.

The measures in the Bill/Act that are most relevant for advertising governance concern ‘fraudulent’, or ‘harmful scam’ advertising being published or hosted on the largest platforms (DCMS 2022c). The Online Safety Act (OSA) creates a new legal duty requiring larger social media platforms and search engines to put in place suitable systems and processes to prevent fraudulent paid-for adverts appearing on their services, and to respond quickly to take down any that do appear. However, the bill explicitly limited in scope to address only these issues of fraudulent advertising and not wider issues in marketing communications and marketing-media relationships.

The draft Online Safety Bill did not include paid-for advertisements, covering only user-generated content (in user-to-user services) and search services. The Government argued that including paid-advertisements would extend the bill’s scope inappropriately and said that it would address digital advertising in the OAP. The Government later agreed to include specific provisions on fraudulent advertising in response to recommendations from the Joint Committee, which was appointed by the House of Lords and the House of Commons to ‘conduct prelegislative scrutiny of the Government’s draft Bill to establish a new regulatory framework to tackle harmful content online’ (JCDOS 2021). The Joint Committee argued that paid-for advertising space is a prime habitat for online scams, as it offers criminals easy access to their audiences, and a means to spread harmful misinformation more easily and with greater precision in targeting, often disproportionally affecting vulnerable demographics (JCDOS 2021: 75-78). This was supported by submissions from Which?, Carnegie UK and the Financial Services Authority (JCDOS2021), who told the Joint Committee that: ‘the problem [of online fraud] is most manifest in the paid-for space, so it does not make sense for the Bill not to deal with the very heart of the problem, which is the paid-for advertising space’. The Joint Committee on the OSB also recommended that Ofcom should be responsible for taking action against platform service providers who consistently allowed paid-for advertisements that created a risk of harm:

> We recommend that the Bill make clear Ofcom’s role will be to enforce the safety duties of providers covered by the online safety regulation, not regulate the day-to-day content of adverts or the actions of advertisers. That is the role of the Advertising Standards Authority. The Bill should set out this division of regulatory responsibility.

However, the wider scope of the Committee’s proposals were not adopted. The Government agreed to address the ‘urgent’ matter of fraudulent advertising with ‘a standalone measure’, while stating that the OAP is the means to address any remaining issues with advertising regulation (DCMS 2022b). The fraudulent advertising provisions in the bill that were adopted are also connected to lobbying led by Martin Lewis, founder

of the consumer help website MoneySavingExpert.com, seeking to tackle the fraudulent use of impersonation and fake authorisation and endorsement. As well as delimiting the scope of advertising addressed in the bill, the proposed measures were also delimiting, designed to address only those serious cases of fraud, which have the potential to have a 'devastating impact' on internet users (DCMS 2022b). These include 'fake' advertisements - involving personification of a celebrity, or a company, to gain credibility - which criminals can use to obtain personal data, promote damaging financial investments, or gain access to bank accounts (DCMS 2022b). Other concerns about harmful advertising were taken outside the bill to be addressed instead through the Online Advertising Programme (OAP).

The government added a new duty to the Bill requiring social media platforms and search engines to prevent paid-for fraudulent adverts appearing on their services (whether they are controlled by the platform itself or an advertising intermediary). Large social media platforms (as defined as Category 1 services in the Bill) are required to put in place suitable, proportionate systems and processes to:

- prevent individuals from encountering fraudulent advertising,
- minimise the amount of time that fraudulent advertising is present, and
- swiftly remove fraudulent advertising once they are made aware of it through any means.

According to the Government, the new legal duty will require that companies operating social media platforms and search engines 'clamp down on ads with unlicensed financial promotions, fraudsters impersonating legitimate businesses and ads for fake companies'. The detailed requirements for platform and search engine compliance will be set out in Codes of Practice drawn up by Ofcom. Under the OSB proposals, 'Ofcom will oversee whether companies have adequate measures in place to fulfil the duty, but will not assess individual pieces of content, in keeping with the approach taken in the rest of the Bill' (Conway2022: 25).

The Government states that advertising is 'largely out of scope' of the OSB, which is concerned with user-generated content (UGC) as it appears on 'user-to-user services' (platforms) and 'search services' (browsers) (DCMS 2022b). They argue that UGC and paid-for advertising are separate entities, which should be regulated in distinct ways with 'paid-for online advertising [being] disseminated via distinct channels compared to user generated content' and 'harms associated with advertising differ[ing] from those' regulated with the OSB (DCMS 2022b). Their omission of instances when UGC becomes indistinguishable from online advertising hints at areas prone to create challenges for effective advertising regulation. The government concludes that the OSB is 'not the right vehicle by which to regulate the many and varied services involved in the online advertising ecosystem,

including ad tech and intermediaries' (DCMS 2022b). However, the OSB does cover all forms of user-generated content including advertising content that that takes the form of organic UCG. This means that influencer marketing is within scope.

4.8 Other Policy Developments

In April 2023, the government introduced the Digital Markets, Consumer and Competition Bill to parliament. The bill created further regulation for digital markets, competition law and consumer protection law. The bill proposed new powers for the CMA to award compensation to consumers and directly impose financial penalties for breach of consumer protection laws, with potential fines of up to 10% of global annual turnover. 'The Bill also contained powers to create new laws against fake reviews, including prohibiting the commissioning of someone to write a fake review; posting consumer reviews without taking reasonable steps to check they are genuine; and offering or advertising to submit, commission or facilitate fake reviews.

The bill was enacted in May 2024 as the Digital Markets, Competition and Consumers Act. The DMCC Act incorporates much of the current EU law governing consumer protection. This includes the provisions of the 2008 Unfair Commercial Practices Directive that address misleading advertising, with only minor differences and, as discussed, includes Annex 1, Section 11 of the UCPD unamended.

In its 2023 OAP Response, the then Government argued that the Consumer Protection Regulations (CPRs) remained the most appropriate vehicle for enforcement against misleading advertising at this stage, especially with the clarified position of their coverage of actors across the supply chain, including PIPs. The Government argued the CPRs remain applicable to fraud and scam content (covered by both the Online Safety Act and Online Advertising Programme); 'We will continue to work with the Department of Business and Trade, Trading Standards and the CMA to ensure PIPs are held accountable for misleading advertising. We will also keep enforcement of misleading advertising under review...' (DCMS 2023b)

A new Digital Markets Unit (DMU) was established within the Competition and Markets Authority (CMA) in April 2021. The DMU will oversee a new pro-competition regulatory regime for the most powerful digital firms. The DMU operates on a non-statutory basis but is expected to be given powers through forthcoming legislation, as set out in the 2022 Autumn Statement (House of Commons Library 2022). The forthcoming bill is expected to create post-EU arrangements for consumer protection as well as changes to the 1998 Competition Act and the CMAs investigation powers. For consumer regulation, the expected changes include enabling the CMA to directly enforce consumer law by imposing fines itself rather than through the courts.

The CMA also conducted a market analysis that concluded “weak competition in search and social media leads to reduced innovation and choice and to consumers giving up more data than they would like”. The CMA estimates that Google earned 90% of total UK revenues for search advertising in 2019, while Facebook earned The CMA recommended that the Government establish a new pro-competition regulatory regime for digital markets. A CMA investigation into AI was announced in May 2023.

In April 2023, the Government introduced the Data Protection and Digital Information (No. 2) Bill, with DSIT as the responsible Department. The bill made provisions ‘for the regulation of the processing of information relating to identified or identifiable living individuals; …services consisting of the use of information to ascertain and verify facts about individuals; …access to customer data and business data; …privacy and electronic communications; …electronic signatures, electronic seals and other trust services; …disclosure of information to improve public service delivery; …sharing information for law enforcement purposes’. The bill also made provision for the creation of an Information Commission. However, the Bill did not complete before Parliament was dissolved on 24 May 2024, and is no longer being progressed.

In May 2022, the Government deferred the introduction of new UK-wide restrictions on paid-for online advertising of HFSS (high fat, salt and sugar) food or drink. The measures are set out in the Health and Care Act 2022 and were due to be implemented on 1 January 2023. The Government announced a one-year delay to implementation, to January 2024. In December 2022, the Government announced that implementation was to be further delayed until 1 October 2025 to allow the businesses affected more time to adjust. The delay followed intensive lobbying by ITV and by commercial media, marketers and trade bodies. The Health and Care Act 2022, establishes the following new UK-wide advertising restrictions:

> A 9 pm watershed for advertising of less healthy food or drink on television. Broadcasters and all on-demand programme services (ODPS) under UK jurisdiction (and so regulated by Ofcom) are liable for any breaches. A restriction on paid-for advertising of less healthy food or drink online. ODPS not regulated by Ofcom will be subject to this online restriction.

This section has focused on UK government and parliamentary policymaking. The BCGP made submissions to other reviews of policy and self-regulation. Shortly before the BCPG project began, Prof Hardy, made submissions to Impress’s Code review. He also made submissions to the BBC commercial services review of guidelines and made a BCGP submission to the BBC review of its editorial guidelines (Hardy and MacRury 2024). Prof Hardy made submissions on behalf the BCGP to Ofcom consultations by Ofcom on its media literacy strategy and work. In addition, the BCGP Co-I Prof MacRury was invited to join Ofcom’s Research Evidence and Evaluation Working Group.

5. Policy Developments in Spain

In 2022, Spain enacted the General Law on Audiovisual Communication (BOE 2022) alongside Royal Decree-Law 24/2021 (BOE 2021), modernising the framework for audiovisual services, digital platforms and regional or local regulations. *General Law 13/2022, 7 July, on Audiovisual Communications* (Ley General de Comunicación Audiovisual, 'LGCA') transposes the *European Directive 2018/1808 on Audiovisual Communication Services* and amends Spain;s Law General 7/2010, March 31, on audiovisual communication. The new law provides a legal framework intended to support greater security and continued growth of the audiovisual sector for all players operating in this sector (traditional, on-demand and/or broadcast television), or the Internet. It also serves to promote European audiovisual production. The goal of the new LCGA Title V is to transform one of the key aspects of Directive 2018/1808, which is the obligation of services whose primary function is to enable and provide the exchange of user-generated video. These services must take measures to protect all users, especially minors, from content that is harmful to human moral and/or physical development. According to the new LGCA, the regulation of these services lies in the impact that videos make when they 'instruct, entertain, or confirm the opinions of other users and influence them'.

In addition to the above, the DSA (*Digital Services Act*) and DMA (*Digital Markets Act*) came into force. Regarding online advertising, the DSA aims to increase liability and obligations in the face of possible illegal or harmful online advertisements on platforms with more than 45 million users. The DMA sets transparency obligations to which service intermediaries must adhere in terms of remuneration and access to independent measurement instruments.

Data protection regulations have had the greatest impact on online advertising in Spain. The framework regulation for the protection of privacy and the processing of personal data is the *General Data Protection Regulation*, GDPR, (*Regulation 2016/679 of the European Parliament and of the Council of April 27, 2016*). Cookies fall under the regulation as the traces they leave behind can help to define profiles of individuals. For its part, the Spanish *Law 3/2018 of December 5, 2018, on the Protection of Personal Data and Guarantee of Digital Rights* (LOPDGDD), modifies the age consent from 13 to 14 years, and incorporates an active treatment by the responsible party, who must provide basic information on the use and treatment of these to users, as well as the need to carry out a study of the possible risks and design a contingency plan. Also noteworthy is the *ePrivacy Directive 2009/136/EC*, which establishes the use of cookies with the user's prior consent as to the purposes for which the data will be processed. In this regard, the 2017 *ePrivacy Regulation* is being negotiated in the EU, which, among other aspects, aims to regulate data in digital communication. In addition, in the Spanish context, the LSSI also affects the regulation of digital commercial communication and that related to the collection and use of personal data. In fact, this law also affects informed consent so that users are aware of the purposes of their data.

Branded content regulatory developments in Spain

According to article 121.1 of the new LGCA, commercial communication is all information that, through image or sound, directly or indirectly promotes goods/services/images of a real natural or legal person doing an economic activity and has 'user-generated videos in exchange for remuneration or similar remuneration'. These commercial communications 'must be clearly distinguished from editorial content by optical and/or acoustical and/or spatial mechanisms' and must not have audio levels that exceed the content average. In addition, commercial communications (under Articles 122 and 123) that violate human dignity, encourage any form of discrimination or humiliation against any group, deceive or contain information hidden or sublime communications, incite conduct harmful to health by prohibiting the communication of any derivative works, drugs, or health care products or alcoholic beverages under certain requirements or levels of alcohol are prohibited. In addition, commercial communication regulates gambling, betting, esotericism, and science. Article 124 specifically provides for the protection of minors in commercial communication from any physical, mental, or moral harm, and from being deceived. Concerning the types of audiovisual commercial communication in branded content, section 129 states that the product location is 'all forms of audiovisual communication that includes, shows, or refers to a product, service, or trade name within a program or a video generated by a user in exchange for remuneration or similar compensation.' Product placement is allowed, except in the news or in current affairs, religious, and children's programs, if it does not influence the independence and responsibility of the provider; does not encourage direct purchase or specific references to the product; it is not overly prominent; and it is appropriately identified such as at the beginning, after interruptions, and at the end of the communication.

Various social networks fall within the scope of this law as they are 'video sharing services on online platforms' whose purpose is to make available a wide range and variety of videos created by others. Although the new LGCA does not aim to regulate social networks, it is administered in Spain by the National Market Competition Commission and sets out a series of obligations related to:

- User protection: Article 88 states that providers of video-sharing services on online platforms must implement measures to protect users from audiovisual content (including commercial) that can harm the physical, mental, or moral development of the user as well as protect him or her from content that encourages any type of violence, hatred and/or discrimination as well as any type of crime according to and without prejudice to the provisions of the Spanish Penal Code.

- Commercial communications: service providers shall ensure that this content complies with the terms of commercial communications (Articles 121 to 125), including age verification, except for the time limits set out in Article 123 (Articles 4 and 5) for alcoholic beverages. In

addition, the Service Provider will formulate features that allow users or content creators uploading videos to indicate whether the videos contain audiovisual commercial communications and to clearly notify receiving users of commercial content within those videos. It also regulates how gambling and gambling-related audiovisual commercial content is distributed.

The law also specifically designates 'video bloggers, influencers or opinion leaders' as 'relevant influencers' who use video sharing services on online platforms they are very influential figures, especially among young people, and because they attract the attention of advertisers. Subject to Section 94.2, to be considered a relevant influencer they must:

- Get rewarded for sharing videos.
- Be responsible for editorial content.
- The content/service is intended for many potential impact users.
- The function of the content/service is 'information, entertainment, education' for distribution purposes.
- The service or content is 'provided through the Spanish electronic communication network'.

Relevant influencers should consider the general principles of audiovisual communication in Title I of the new LGCA and the fundamental obligation to protect minors and consumers. According to Article 39, they must be registered with the National Register of Audiovisual Communication Service Providers of the Spanish Ministry of Economy and Digital Transformation. Pursuant to Section 94.1, relevant influencers who participate in video sharing on online platforms are considered 'audiovisual communication service providers' and must comply with all obligations contained in LGCA. This includes promoting content description mechanisms, highlighting the need to comply with commercial communication obligations under Article 89, especially with respect to audiovisual commercial content.

The Royal Decree (Real Decreto 444/2024) sets out arrangements for the regulation of users of special relevance (influencers), in accordance with Article 94 of the LGCA. To be considered a user of special relevance (influencer), the following two criteria must be met simultaneously:

- Economic criteria: annual income of over 300,000 euros (in cash or in kind) derived from their audiovisual activity.
- Audience criteria: exceeding 1 million followers on a single video-sharing platform or 2 million followers in the overall of their activity. Having published or shared 24 or more videos per year.

All influencers who meet both criteria must register, within two months, in the State Register of Audiovisual Providers as users of special relevance.

Special attention is given to the protection of minors:

- It must be declared whether the communication contains commercial content.
- Advertising space must be identified.
- No advertising of products related to tobacco, medicines, alcohol, gambling, etc., is allowed.
- The communication shall not incite to violence, hatred or discrimination.
- The communication shall not contain a public provocation to commit any offence.

The communication may not harm their physical, mental or moral development:

Mechanisms for age verification, reporting and monitoring of such content must be established. Parental control mechanisms must be established. Children's data may not be used for commercial purposes. Failure to comply with the regulation may lead to fines and the cessation of the activity.

The EU Audiovisual Media Services Directive 2018/1808 is scheduled to be revised in 2026 through a review of the existing rules. It is not yet known whether the outcome of the review will be new Directive (transposed into domestic legislation within two years) or as a Regulation (directly applicable). The new Directive is expected to contain new regulations on branded content, and so the work of the BCGP is of great relevance for European regulators. A particular area of focus is how existing advertising transparency rules apply to content created by social media influencers, especially regarding the protection of children and young people. Another focus, relevant to the BCGP is regulatory coherence and convergence. The European Commission will evaluate the interaction between the AVMSD and other major EU digital regulations like the Digital Services Act (DSA) and the European Media Freedom Act (EMFA) with the aim of ensuring a more coherent and streamlined approach.

6. Interviews

With the aim of strengthening methodological triangulation and enriching the interpretation of the data, we carried out in-depth interviews with key policy actors and stakeholders in media-marketing. We conducted interviews with industry practitioners and trade bodies for our research and report on governance-in-practice (MacRury et al. 2025). For this Policy Analysis report we draw on both interviews with these industry practitioners and interviews, project events, meetings and discussions with policymakers, regulators and other policy actors and stakeholders. These interviews addressed key issues related to formal governance arrangements, from statutory to self-regulation, regulatory adaptation, technological challenges and the evolution of the advertising and branded content practices. This enabled our documentation analysis to be complemented by the direct experience of the actors involved in governance in both the UK and Spain.

6.1 Spain

Interviews were conducted with eight key policy actors, anonymised for the purposes of this analysis, who are identified through an alphanumeric code (Legal 01 - Legal 08). During the coding process, the professional profile was associated with each interviewee, since this is a relevant piece of information to interpret the answers according to their institutional position within the branded content governance system:

- Legislators and advertising regulators - profiles with direct experience in the drafting, interpretation or application of rules on commercial communication (Legal 01, Legal 08).

- Advertising self-regulatory bodies and sectoral associations specialised in branded content - from both self-regulation entities and leading organisations in the field of branded content and the audiovisual industry (Legal 04, Legal 06, Legal 07).

- Members of government media regulatory agencies - people linked to statutory authorities in charge of supervising compliance with audiovisual and digital regulation (Legal 02, Legal 05).

- Legal practitioners specialising in commercial communication - with a consolidated track record in the doctrinal and practical analysis of the legal framework applicable to advertising (Legal 03).

Legal framework for branded content

Among participants in the study there is general agreement that the phenomenon of branded content should be perceived as a form of commercial communication subject to the same general principles that govern any type of advertising, regardless of format or medium. From this starting point, three key legal priorities can be highlighted: the prohibition of deception, the clear identification of the advertising nature of messages, and the protection of consumers and competition.

Beyond this consensus, differences emerge regarding the sufficiency of the current framework to protect against unethical practices, with some participants pointing to gaps, anomalies and 'grey areas' and some argue for the creation of specific legal-regulatory definitions and treatment of branded content in Spain.

Several participants, including a legislator (Legal 01), a jurist (Legal 03) and a key actor from the advertising self-regulatory organisation (Legal 07) argued there is a need to strengthen action against commercial communications liable to mislead the consumer or to involve an improper use of a person, their product or their name. This view is summarised in the comment by Legal 01, for whom the problem appears 'when in a commercial communication there is indeed the improper use of a person or of their product'. For one interviewee this is expressed as a consumer protection measure, to prohibit misleading advertising, understood as that which can affect the economic behaviour of the consumer. In addition, this serves to protect fair competition and can also provide wider consumer benefits by helping to avoid a permanent saturation of commercial messages. Likewise, another interviewee argues branded content must meet, as a minimum standard, advertising transparency, the prohibition of deception and the preservation of orderly conditions of competition, being 'clearly identified, again, by the consumer, by the recipient of the advertising. Also, because it concerns competition, right? […] The General Advertising Law protects the consumer, but also competition. And, ultimately, a certain peace and harmony in the market" (Legal 03).

All the interviewees who advocate regulatory action to enhance governance of branded content refer to the need to ensure transparency of the commercial intention in communications and the clear identification of advertising, especially in mixed and hybrid media-marketing formats. These interviewees, while coming from different backgrounds and professional perspectives, point to the risk that branded content, and related techniques such as native advertising, are deliberately presented as if they were not advertising. One interviewee underlines that 'content is a combination of the editorial and advertising dimension' and warns that it is a 'problematic technique, especially for minors, as its commercial nature can appear blurred'. In the case of native advertising, the same interviewee describes it as 'not transparent because it is camouflaged as if it were part of the editorial content', and notes that it works like 'giving you the medicine with sugar so that you do not have the feeling that there is a brand that is paying to rent that audience'. From a compliance perspective, two regulators interviewed observe that, in practice, many pieces of branded content are not clearly signposted, which makes it difficult for consumers to distinguish between objective information and sponsored content.

The interviewees from government media regulatory agencies (Legal 02 and Legal 05) repeatedly stress the impact that certain forms of commercial communication may have on children, especially on social media. One of them points out that 'most influencers, for example, do not comply with

the essential principle of advertising, which is the identification of the act, that is, of the advertising itself. They broadcast content that indeed is advertising through their social networks, they do not inform that this is advertising, minors are watching it, and the impact that this generates on them is quite high' (Legal 02). Other interviewees (Legal 03 and Legal 07) emphasise that the protection of minors is linked to the identification of advertising, the limitation of the promotion of behaviours harmful to health, and compliance with formal requirements depending on the advertising format (sponsorship, product placement, etc.). There were no significant divergences between participants on this priority, although legislators and members of government media regulatory agencies place it at the centre of their discourse more insistently than others.

The analysis of the interviews shows a debate regarding confidence in the current legal framework and the perception of legal gaps, since the participants display clearly differentiated perspectives according to their professional positioning. Representatives of self-regulatory bodies (Legal 04, Legal 06 and Legal 07) and one of the audiovisual regulators (Legal 05) explicitly deny the existence of 'legal gaps' in the field of branded content. They argue that existing rules are applicable and that the absence of specific reference to forms of branded content does not mean these are not adequately covered: general and sectoral rules on advertising, unfair competition, audiovisual communication, information society services and consumer protection all apply. An example is provided by Legal 04: 'I don't think there are legal gaps. Another matter is that you, as a user, as a consumer, as a competing brand, consider that someone is infringing some regulation, right? But I think that with what we have [already] we don't need anything more to regulate beyond this'. In the same vein, Legal 07 insists that branded content is 'perfectly covered by the regulations in force, both general and sectoral'.

However, other interviewees, including a legislator, present an alternative assessment that greater regulatory attention and specificity is required. One (Legal 8) states:

> branded content is not fully legislated in the Spanish or European legal system. It is a figure that moves in a regulatory grey area, since it does not have an autonomous legal definition or a specific regime, even though its presence in the advertising ecosystem is increasingly relevant. Its regulation is constructed in a fragmentary and indirect way, based on general rules on advertising, unfair competition, audiovisual services, consumer protection and advertising self-regulation.

They add:

> Existing laws are relatively imprecise when faced with these new forms of commercial communication, because they were conceived in an analogue context and focused on more explicit advertising. Although efforts at adaptation have been made, such as the 2022 reform of the LGCA, regulation is still lagging behind the reality of the market.

From this perspective, the main shortcoming is not so much the absolute absence of rules, but their inability to guarantee effective protection in the new audiovisual entertainment formats.

Between these two opposing assessments, there are more mixed, intermediate perspectives. One legal expert does not recognise formal legal-regulatory gaps but does state that wider industry and public confidence in the system is conditional on the capacity of the laws to produce fast and effective results: ' they are either very quick in their effectiveness and in their application, or I really think they are worth little' (Legal 01). A member of government agencies (Legal 02) emphasises the need for evidence-based policymaking and states that they do not have reports proving specific harmful impacts of branded content on audiovisual content consumers. They argue that any possible regulatory change should only follow a prior impact assessment at European level. Finally, the SRO jurist (Legal 03) adopts a position of qualified, conditional confidence, considering that the General Advertising Law framework can cover branded content, but stressing that the real effectiveness of governance depends on how the rules are interpreted and applied, and on the capacity of the different operators (media, platforms, advertisers) to internalise identification obligations and comply.

Regarding possible changes in advertising regulation, regardless of the views expressed, all interviewees point to the relationship between European rules and national legislation. One legal expert stated that 'advertising in Spain, just like advertising in any other EU Member State, is basically regulated—today—by directives and their transposition into the Spanish legal system' (Legal 01). Another interviewee, a member of government media regulatory organisations, specifies the top-down legislative flow from the EU, since 'the most important thing is European legislation and then from there it flows down. If it is a directive, we are obliged to transpose it into a statute and that already allows us certain modifications' (Legal 02). Several interviewees had expertise across national and supranational EU law and discussed recent shift towards greater use of regulations, EU law that is binding and directly applicable in all member states, in areas linked to the digital economy.

Both the transposition of Directives and move towards directly applicable instruments, EU regulations, impact the ecosystem by limiting the room for deviation of regulation in EU Member States. In turn, States also seek to avoid regulatory divergences that could generate competitive market advantages based on the geographical location of operators. Accordingly, the call for greater specification in branded content regulation at national level in Spain is countered by the requirements, and broader arguments, not to deviate from the way branded content is addressed in current EU law, as discussed in section 1.8 above. Likewise, an SRO jury member made a similar point that branded content 'is regulated at the level of legal analogies at the European and national level' (Legal 04), while another interviewee stresses the regulatory density of the Spanish system, which

was designed ‘to harmonise it in general, to avoid national regulations that could create breaches in the principle of the European Single Market’ and, as a result, ‘80-90 percent, is at this moment harmonised at the European level’ (Legal 07). However, another interviewee points out that, despite the directives applicable to all EU Member States, ‘there are some countries that have more restrictive legislation, such as Germany, if I am not mistaken, where fewer things can be done than in other markets’. They argue that there is ‘no specific legislation on branded content’ (Legal 06), meaning an absence of specific references to ‘branded content’ in legislation. For this reason, the interviewee suggests that there is a certain ‘margin’ for action at national level. So, this interviewee identifies the capacity of states to develop their own specific regulations affecting branded content, within the broader framework and harmonisation of EU law, however they also express concern about such potential regulatory intervention on media-marketing financing, creativity and market development. They argue that poorly calibrated regulatory intervention could limit the possibilities for industrial development, expressed in the rhetorical question: ‘why would we want to put a brake on that [advertiser] financing, being able to come also through co-production where brands are involved? […] Hopefully the legislator would open doors and not put up doors…”.

This interviewee also argued that, in a hypothetical scenario of proposed legislative amendments aimed at regulating branded content, there should be deliberation involving a a core group of actors made up of public administration, professional sectoral associations [i.e. media-marketing trade bodies] and wider commercial communication policy stakeholders. Such cross-sectoral consultation was also stressed by other interviewees. One said that the debate ‘should always include advertisers, creative agencies and production companies’ (Legal 01). The audiovisual regulator (Legal 02) specifies this, noting that, in the case of branded content, the key interactions should take place with the ‘Spanish Advertisers Association, with the IAB, which also represents agencies. We have to take into account the providers of communication and hosting services through which this type of content is disseminated to try to see with them how it should be regulated […] (and with) AUTOCONTROL as well, because it is advertising too, which for us is also a relevant player.

From interviewees involved in self-regulation, the important role of BCMA Spain was also highlighted, since ‘it is an association that brings together more than 90 companies, brands, agencies, content producers and media, that represent a very high percentage of all that is invested in Spain in Branded Content’ (Legal 06). Finally, another regulator, who expressed a critical position on need to reform regulation to address the “grey area” of branded content (Legal 08), proposes an explicitly multidisciplinary and participative approach. This would involve:

> regulatory authorities in the audiovisual and consumer fields, professional associations in the advertising and digital marketing sector, digital content and platform service providers, universities and

> research centres, which can provide a critical and systematised view, and, of course, consumer organisations which are essential to balance interests.

Concerning the possible measures in such regulatory reform, those interviewed demonstrate two main alternatives, *with preferences aligning with their principal professional identification and affiliation*. Representatives of self-regulatory bodies (Legal 04, Legal 06, Legal 07) and one of the audiovisual regulators (Legal 05) consider that the current legal framework, including the role of self-regulation, is sufficiently encompassing and adaptable, and they warn against possible 'over-regulation'. By contrast, the legislator-regulator (Legal 08) and the jurist (Legal 03) advocate regulatory reform aimed at improving legal clarity. The former (Legal 8) stresses the need:

> [to create] a legal definition of branded content and a more precise delimitation of its transparency requirements. It would also be advisable to harmonise criteria at the European level and to promote consumer media literacy so that they can identify this type of content. This is not about curbing advertising creativity but about ensuring that its commercial nature is not concealed under an editorial or entertainment appearance.

It is notable that almost all interviewees conveyed some degree of frustration with the functioning of the existing regulatory system. A legal expert and the SRO jurist highlighted the practical ineffectiveness of current rules in relation to legal enforcement, both in terms of the speed of court processes and decision making and with regard to the increasing involvement of foreign operators, making the legal process more costly, given that 'there are platforms that have no headquarters in Spain, etc. and because everything is more costly: court representative, lawyer' (Legal 03). They supported the point with the following example: 'imagine there is an Ad on YouTube and I think it infringes the Spanish General Advertising Act […] suing YouTube is not advisable, neither cheap, nor fast'.

On the other hand, media regulators (Legal 02, Legal 05) and the legislator in favour of specific branded content regulation (Legal 08) express a more specific frustration with the gap between what the BCGP describes as 'legacy' regulatory definitions and arrangements from the pre-digital era, and the need to address branded content and forms of hybrid, media-marketing communication practices occurring today. In this respect, Legal 02 notes that 'the evolution of the sector is so great that the [AVMSD] Directive is quite decoupled', observing a shift in the industry that involves the presence of new actors in the media ecosystem, such as 'influencers who are not included per se within the scope of the European Directive, and we Member States are each, somewhat, doing what we think…at the national level'. In line with this, Legal 08 insists that branded content regulation, both at European level and in the General Law on Audiovisual Communication, 'are relatively imprecise when faced with these new

forms of commercial communication, because they were conceived in an analogue context and focused on more explicit advertising'.

Regulatory agencies

In addition to examining the relationship between national and supranational legislative provisions, thereby demonstrating a high level of regulatory awareness, the interviewees also focus on the cooperation between the legal framework and statutory regulatory bodies involved in the governance of branded content and, by extension, of advertising. Regarding the relevant actors, a broadly shared view emerges. At the level of public regulation, the National Commission on Markets and Competition (CNMC) is highlighted as 'the body responsible for monitoring compliance with the obligations and subjects' (Legal 05), acting as the main guarantor in the Spanish audiovisual field. Legal 4 identifies the CNMC's main role as the protection of competition in the advertising market and acting against breaches of the Ley General de Comunicación Audiovisual, for example, alcoholic drink advertisements broadcast in prohibited time slots. Another interviewee explains the CNMC's scope of action in a transnational context through a Memorandum of Understanding between European regulators, according to which, when conflicts arise with digital actors, 'if a complaint comes in because a television channel or a platform is carrying out a particular type of advertising that is contrary to European rules and is not established in Spain, the CNMC, through that MoU, can contact its Irish, Dutch, Estonian or Luxembourg counterpart, depending on where that provider is, and forward the complaint to them so that they can also analyse it and resolve it accordingly' (Legal 02).

Alongside the CNMC, the interviewees mention other regulatory agencies linked to consumer protection. A lawyer (Legal 03) stresses that regional authorities, and their consumer departments in particular, are the first agency to which citizen-consumers usually turn when they feel they have been deceived, when a message 'was not properly identified as advertising' or when the information is confusing. They also discuss the importance of AUTOCONTROL for both complaints from consumers and from market actors alleging unfair competition in advertising. Legal 04 also discusses the role of the Asociación de Usuarios de la Comunicación (AUC) as a watchdog monitoring content across different media and platforms and identifies it as one of the main complainants in cases of non-compliance.

In the field of self-regulation, AUTOCONTROL occupies a central position and is consistently described by all interviewees as an independent, professional and transparent body, receiving an especially positive assessment overall. Legal 07 explains, AUTOCONTROL has 'a jury, which is an independent body, recognised by the Government as an ADR [alternative dispute resolution] because it meets the requirements of the Directive and the national law on these out-of-court dispute resolution systems' and highlights the prior consultation system (advice and pre-vetting), which allows campaigns to be voluntarily reviewed before being

broadcast, with around 40,000 consultations per year. In terms of authority, Legal 07 places AUTOCONTROL at a third hierarchical level, after the courts and administrative authorities, but emphasises that 'practically 70% of advertising activity and control is carried out through AUTOCONTROL', in a context where the volume of adverts makes exhaustive control by the administration impossible. This positive perception of the self-regulatory body is reinforced by numerous comments throughout the interviews, including: 'Spain is a success story at the European level. We have a self-regulation body of recognised prestige and experience'(Legal 02) and that courts 'even cite AUTOCONTROL in some court rulings' (Legal 03), which shows its consolidation as an interpretative reference. Legal 04, a member of AUTOCONTROL, described the case assessment process carried out by AUTOCONTROL's jury as 'super independent, super transparent, super lawful' (Legal 04) in the course of discussing internal working procedures, composition and publication of decisions in their interview.

In the specific context of influencers and the online environment, the interviews show how coordination between regulation and self-regulation has materialised in concrete instruments. Interviewees Legal 01 and Legal 02 mention Royal Decree 444/2024, which brings certain influencers within the scope of application of the Ley General de la Comunicación Audiovisual, and the specific code of conduct for influencers, co-signed by CNMC, AUTOCONTROL, the Spanish Advertisers Association, IAB and the Ministry of Consumer Affairs. Legal 02 explains that the CNMC signed an agreement with these entities to monitor compliance with this code, and that as a result "the number of complaints being filed and resolved is gradually increasing, and influencers are beginning to take note of the decisions of AUTOCONTROL".

Although, overall, self-regulation receives a particularly positive evaluation, some voices introduce nuances concerning consumer capacity and the level of effective compliance. The reflections of legislators and regulators are illustrative in this respect. According to one of them, Legal 08, "advertising self-regulation, through entities such as AUTOCONTROL, plays a key role, especially in resolving disputes and issuing opinions on branded content pieces. However, its effectiveness depends on the voluntary adherence of operators. For their part, public authorities, such as the CNMC or consumer protection services, act more slowly and generally in exceptional cases". However, Legal 01 stresses that "today's consumer is not as easily deceived as before", suggesting that the media context and accumulated social experience moderate vulnerability to certain practices. In the same vein, the jurist profile (Legal 03) interprets the low level of litigation as a symptom of a sector that has internalised the rules and of major advertisers that see self-regulation as an efficient route. As the interviewee underlines, "AUTOCONTROL not only resolves disputes or complaints, but also creates, as it were, jurisprudence. And it also creates, with its codes, regulation. And I think the legislator and the judges are satisfied that the sector is precisely self-regulating and is resolving problems in a fairly efficient way, relieving the courts" (Legal 03).

Compliance

At the level of compliance with branded content regulation, interviewees identified a series of challenges. First, several profiles point to the response time of the public administration as problematic. As Legal 01 puts it, "in the legal sphere it is very difficult […] because here time plays very much in its favour, and the moment that forceful actions are not taken, the communication goes out, ends up achieving its effects, and it is very hard to undo them afterward and the moment that swift". The same interviewee then adds that they "prefer(s) the courts to self-regulation, but if the courts do not function properly and are not fast enough and very knowledgeable about the subject they address, we would have a problem, right? I think it would be good for the ordinary courts, the specialised ones, to be very quick and to act with great force, and I think the courts are not in favour of administrative bodies being saddled with this task". In similar terms, Legal 02 summarises the situation with a blunt formula: "the sector moves at such a dizzying speed that regulation will never be able to keep up". This diagnosis is reinforced by Legal 08, who indicates that regulation lags the reality of the current market, especially when it faces new forms of commercial communication in the digital environment.

Likewise, another problem identified is the progressive gap between traditional media and online actors. In legal terms, the choice of medium does not determine the application of different rules, since "the essential principles that regulate advertising apply equally to online advertising and to offline advertising" (Legal 07). In the same line, another self-regulatory profile, Legal 04, warns that "you can do surreptitious advertising in a television programme and you can do surreptitious advertising in a post on a social network. So, we apply the regulations regardless of the medium of dissemination". From the point of view of governmental audiovisual communication agencies, Legal 05 reformulates this idea in terms of the LGCA, highlighting "as basic issues applicable to advertising in the media: identifiability, differentiation of content, and the integrity of the programme through Articles 121.3 (linear and non-linear) and 136 (linear)" and then adds that, despite the absence of the term branded content in the regulation, "the mandate to protect the audience would authorise the CNMC to apply the aforementioned principles to any format with a commercial vocation".

The point where this tension between normative continuity and practical mismatch becomes most visible is in the case of influencers and users of special relevance (UER) as subjects of compliance. In this regard, Legal 02 contrasts the situation of free-to-air and pay television and on-demand providers, who "they are indeed totally 'addressed' by the regulations and are perfectly clear that they have to identify advertising and what kind of advertising they can broadcast or not", with online actors, who "do not feel addressed, and they are entering the self-regulation agreement with difficulty". The problem becomes concrete in the case of influencers, since, according to the interviewee, most of them "do not comply with the essential principle of advertising, which is the identification of the act,

that is, of the advertising itself". For his part, Legal 05 draws attention to commercial communications carried out by UER, indicating that "we are currently seeing a series of novel formats that show that the separation between advertising and content is not clear". This challenge is summarised by Legal 08, who states that "digital advertising has blurred the boundaries between content and commercial information. This evolution has generated regulatory challenges that have required constant adaptation, especially regarding the identification of advertising and the protection of minors and vulnerable consumers".

In the face of this compliance problem, several actors involved in self-regulation agree that part of the response requires bringing new market actors within the scope of regulation. Legal 07 points out that the Audiovisual Law has already brought certain video-sharing platforms and influencers within the scope of audiovisual regulation, given that 'influencers, briefly, are famous people who have been used forever in advertising, but it is true that now they have a very different dimension in terms of market share'. Similarly, Legal 06 explains that:

> For me, the world of influencers does not have a very big debate; I think it is fine that it will be legislated, and I am clear that an influencer is, in the end, a medium. What is the fundamental difference? When a brand does advertising, it rents the audience from a third party, a medium, and there is a contractual relationship and even an economic exchange between the brand and the medium in order to rent that audience the medium reaches. An influencer is exactly the same: nothing more than a medium, someone who has their own audience and with whom the brand reaches a contractual agreement in which there is an exchange of money to rent their audience. Therefore, for me the world of influencers should be much more in the terrain of advertising and of advertising regulations, rather than trying to put it into the world of branded content. And that is why I often use the term 'brand entertainment', which should lead us to a totally different sphere. No one would think in the world of entertainment to put the focus of the legislation on actors. That's fine, but what interests me are other aspects: understanding that a brand is creating an entertainment product that must be regulated by the same uses, customs and regulations as any entertainment product, whether audiovisual, editorial or live events.

The proposed alternative suggests treating influencers as media subject to advertising regulation, while branded content is relocated to the field of brand entertainment, governed by the rules that apply to entertainment products.

Beyond the role of laws and self-regulation, several interviewees describe effective compliance in the Spanish market as the result of an ecosystem based on practical tools that also permeate the internal organisation of brands and associations. Likewise, it is standard for brands to "have their

own legal departments, their communication teams, marketing teams, who are keeping up to date and are continually training because of the importance of regulation and how it affects their brands". In terms of practical compliance, Legal 06 notes that, as a response to the absence of a specific regulation on branded content, BCMA has developed a specific legal guide and promotes that brands integrate legal advice from the beginning of projects. However, their recommendation is that "if you are going to do a Branded Content project, put a lawyer in your life", stressing that one should not perceive the "legal department as an enemy; see them as a collaborator, as someone who will help you. Their role is to prevent future disputes for the company". In this approach, compliance is not limited to avoiding sanctions but accompanies the very planning of projects and the way in which brands configure their products as entertainment content, seeking to fit them simultaneously within the advertising framework and within the fiscal and regulatory logics of the audiovisual sector.

The analysis of opinions on the challenges of branded content compliance across different professional profiles shows a constellation of complementary emphases. From the point of view of public regulators (Legal 01, Legal 02, Legal 05, Legal 08), there is concern about the gap between regulation and practice, although the interviewees differ in the degree of trust they place in the sufficiency of the current framework. While members of government media regulatory agencies tend to emphasise the capacity of the LGCA and of the mandate to protect the audience to also absorb branded content in digital environments, advertising legislators underline the temporal limits (delayed effectiveness) and structural limits (difficulty in guaranteeing uniform identification in the online environment). Actors linked to self-regulation and the sector (Legal 04, Legal 06, Legal 07) agree, for their part, that the core of the solution lies in extending classical principles to new formats and strengthening internal compliance mechanisms (codes, guides, legal advice, prior consultation), rather than multiplying regulatory layers, taking into account a hypothetical risk of "hyperregulation". Finally, the only professional legal profile (Legal 03) places digital compliance at the intersection between the European shift towards directly applicable regulations, which transfer obligations to platforms, and the day-to-day practice of bodies such as AUTOCONTROL and CNMC, reinforcing the idea that the effective control of branded content in digital environments can no longer be based exclusively on national law.

Branded Content in Practice

The debate emerging from the overall analysis of the interviews does not revolve around whether regulation applicable to branded content exists or not, but rather around the tension between clarity and flexibility. Profiles from advertising self-regulation and from sectoral associations specialised in branded content prioritise keeping this type of content under the general rules on advertising, justifying this by the effectiveness of the current system, which combines regulation, self-regulation and internal compliance

to manage risks. On the other hand, some interviewees —especially from legislative, regulatory and legal profiles— express a stronger concern about transparency (Legal 02, Legal 03, Legal 05 and Legal 08) and the protection of the audience, above all in relation to minors and to the recognition of new professional profiles, such as influencers (Legal 01, Legal 02 and Legal 05). Likewise, they call for a more explicit recognition of commercial messages on digital platforms (Legal 02, Legal 03, Legal 05 and Legal 08). This discrepancy is key to understanding the governance of branded content in Spain. Until now, the system has opted for assimilation under the general umbrella of advertising, but, as some of the interviewees suggest, the current compliance problems could be considered a good starting point to open a debate on the convenience of more specific regulation, both at national and at European level.

Likewise, for the present study it is important to define how the interviewees understand the term branded content. In general terms, it should not be considered as an anomaly outside advertising law, but rather as a specific form of commercial communication. As the legal profile points out, although its packaging 'is more artistic, more creative and more complex than traditional advertising […] in the end, behind it, be it a leaflet or Branded Content, there is a company' (Legal 03), the format fully fits within the legal definition of advertising, understood as "any form of communication, carried out by a legal person, public or private, in the exercise of a commercial activity, with the aim of promoting, directly or indirectly". In this reading, what changes is the narrative code, not the commercial purpose. Along the same lines, Legal 08 conceptualises it 'as a commercial communication strategy in which a brand integrates its message within editorial or entertainment content, with the aim of generating a more emotional and more lasting connection with the consumer'.

An interesting nuance is introduced by the profile linked to sectoral associations of branded content, who describes the format as 'communication assets produced or co-produced by a brand' (Legal 06), which justifies his idea of placing it within the framework of brand entertainment, that is, of collaboration between brands and the entertainment sector to create products that are relevant for an audience. This conceptualisation vindicates the industrial specificity of the format, as well as its own logics of production, financing and exploitation. From this point of view, "Branded Content is a discipline that complements advertising but is different from it, and if we take it to a legislative plane, we would be doing a disservice to Branded Content and Branded Entertainment if we tried to assimilate it to advertising practices" (Legal 06). In this specific case, there is a conceptual discrepancy even within the same professional profile: while other interviewees fully assimilate it to the current advertising universe, this actor insists on recognising its condition as branded entertainment content.

This tension becomes more visible when analysing the interviewees' perception of the possible differences between traditional campaigns and

branded content pieces. According to several profiles, on digital platforms it is difficult to distinguish advertising blocks. As an illustrative example, Legal 02 mentions short films sponsored by brands:

> I am also thinking, for example, of Estrella Damm's shorts, which it always makes in summer, "mediterráneamente", or for example Campofrío's Christmas ad, which everyone looks forward to—Campofrío. That is, and they are like little shorts. And for us this is interesting because I see the double leg. The leg of this is advertising, but at the same time this is advertising cinema. And for me it has to, for me it is equivalent at that moment if you produce a series or a short, because in reality they are like shorts, but paid for by a brand. So, well, that is the issue. When you distribute or broadcast the "mediterráneamente" ad on your free-to-air television channel, well, you will have to see what the impact is. Whether you have it identified, whether it is alcohol advertising of more than 30 degrees, of less than 30 degrees, whether you broadcast it in the specific time slot, to what audience you are addressing.

Along the same lines, Legal 01 provides other controversial examples:

> BMW's (short film), with two famous names, both Madonna and Clive Owen, who was the driver of the car, where truly, if that were advertising -and it is advertising, because it is made by BMW- it would truly be an incitement to aggressive or reckless driving, which is prohibited in Spain in Article 52 of the Traffic Safety Law, as well as elsewhere and also in the Audiovisual Media Directive. In addition […] the short film "Vale" by Amenábar, from back then, from Estrella Damm […] So the issue is that you use names, you use third-party brands, without them being applied… or at least the same principles being applied to them as to an ad.

Taken together, the interviewees highlight that the problem appears when the brand starts producing advertising short films and the viewer consumes them as if they were a movie, which dilutes the explicitly advertising reading. Legal 01 points out that "it is not the same the misleading advertising generated by a 20-second or 30-second television spot as a piece of Branded Content that lasts half an hour, and where the advertising claims would be arguable", as this is a much denser content and more difficult to assess from a legal point of view.

In this context, the creative process of branded content is conceived by the actors themselves as a space of continuous negotiation with legal and self-regulatory boundaries. Legal 04 describes the format as storytelling that 'tries to…connect a bit more emotionally', therefore the challenge for actors from self-regulatory bodies is to detect what the real message of the piece is in order to know which rule it might be infringing and how it could be reported. This principle of identification is formulated by Legal 07 as a structural limit of commercial communication, since 'if the intervention of

the brand or the promotional purpose of that communication is not clearly deduced from the format, this must be identified, what has been called the principle of authenticity of advertising for centuries'.

6.2 United Kingdom

The UK research with policy actors and stakeholders involved roundtable discussions held under Chatham House rules of non-disclosure, recorded interviews and meetings and discussions. There was a high proportion of meetings and discussions compared with formal interviews. This indicates that discussion about the adequacy of regulation of marketing communications, and self-regulation in particular is a highly sensitive topic. As the BCGP media analysis shows, there is a high level of actively organised advocacy in defence of the CAP-ASA self-regulatory system manifested in proactive statements and reactive media relations by industry members of CAP on behalf of CAP-ASA. As this Policy Analysis and previous BCGP reports show, the period of our research has included the Online Advertising Programme process, as well as policy debates on platform governance, online safety, political advertising, HFSS, gambling, influencer marketing, data privacy and Adtec, all of which has opening up discussion about advertising governance. This context has made it challenging to secure formal recorded comments, even with the guarantees of anonymisation the BCGP's research ethics protocols have provided. Some key policy actors have been very supportive and generous in commenting but done so in circumstances outside of formally recorded interviews. For the following review, we have anonymised all comments.

The key issues concerning the adequacy of existing regulated discussed by Spanish research participants and also shape UK responses. One industry practitioner stated:

> Now the advertising standards um, regulations are pretty clear, the need to differentiate between the two [editorial and advertising], but there is no question that lines can get blurred as to what is in a publication as a result of a deal as opposed to something which is there because an editor has chosen it to be so. Now, there's a lot more of it now than there used to be, there's no question about that.

There were calls for clarity, and simplification, in setting and communicating regulations, and ensuring a strong evidence-base for any changes.

> Well, I think simplification is a key word for me, not only in terms of language, but in terms of [what] we would want [in] recommendations for change. And we'd want to know that as many sources [i.e. policy stakeholders] have been considered as a part of that. I mean, that's, you know, that typical research. And I guess, what if nothing changes? So [research that helps in assessing] the risk of doing nothing?'

The importance of media-marketing trade bodies was highlighted by an interviewee involved in the CAP-ASA self-regulatory system. These trade

bodies, they said are ‘obviously very important to the self-regulatory system because they play a very important part in making sure that best practice is promoted’. They continued:

> More often than not that involves compliance with our codes. And, in the case of people as one can take one particular they are also a member of practice, therefore they are, they’re glad to be the kind of front door for making sure that the rule are where they need to need to be. We obviously we don’t view them as an enforcement partner. I think we’ll be looking at enforcement partners we tend to go towards statutory powers

An important topic for the BCGP analysis is what we can ‘deconvergence’. By ‘deconvergence’ we mean the misalignment between media-marketing convergence in practices and how these are identified and addressed in policymaking and governance arrangements. Variation in the treatment of media-marketing integration across different media forms and contexts within a media system can result in gaps, anomalies and inconsistencies: deconvergence. By this, we seek to highlight the gaps between media convergence and governance arrangements, the lack of coherence and consistency across regulations and the gaps and anomalies in governance. Deconvergence can also be manifested in examples of policy ‘compartmentalisation’ we examine (Hardy et al. 2025a) whereby the scope of regulatory concern is delimited in ways that reduce risks from the treatment of ‘problems’ in the excluded policy area. The prime example in the UK is the delimiting of scope in the OAP.

One interviewee states:

> One of the things that I’ve pointedly pointed out to about three regulators is the Digital Regulation Cooperative Forum, the DRCF… Because it brings together a variety - it’s a great idea - it brings together the regulators. And actually, it does help to address some of those issues where regulators might give conflicting perspectives on something and [in] trying to make sure that it’s absolutely clear. Advertising isn’t [included], you know; the ASA is not a part around that table. And when I mentioned that to somebody from the ICO, they said, ‘but that’s just advertising’. And I said, ‘If you look at online harms, they stem from the advertising model’.
>
> ‘The DRCF has got [an] action plan now which talks about advertising, and again doesn’t mention the ASA, so there’s a bit of a disconnect [there]. And what you always find with regulators, of course, is that their hands are tied, they can only deal with what they’ve been told they can deal with’.

The same interviewee argues for developing governance beyond ‘legacy’ regulatory arrangements:

> Specifically with advertising - but I'm looking at creative industries like podcasting and games industry, yeah - and going where's the interest in this, from Ofcom? You know there's so much focus on broadcasting, and that's great, that's important, but - and again it probably goes back to legislation - it's identified certain things that have to be done, and so there can be a disconnect in terms of what was the original purpose of the regulations, the legislation, what is it actually trying to achieve? And the fact that it's built a process in, or certain focus in it, and then you lose because society's moved on, right, so that's, I'd say, probably the advertising model, and that which is not addressed at the moment.

Other interviewees also commented on gaps and anomalies in UK governance:

> …when you look at regulation now, a journalist to go on a PR trip, a journalist is probably paid for that PR trip, paid to write about it, pay for the press release whether there's no disclosing… An influencer now is probably, I don't know, gifted a trip or gifted a £100 hotel, and there's such heat and…, you know, ferocity around the influencer side. Because there's almost a demonization of the industry, because of what it takes away from another industry [publishing]. I know it sounds like a bit of a conspiracy theory but there's a lot of people and systems that benefit [from working] in a certain way. And new [influencer communications] and disruption, that may be more democratic, it's not always, encouraged because of [those vested media interests]…

7. Problems and Mitigations in Branded Content Governance

This section draws together our summary analysis of 'problems' in branded content governance and proposals for actions ('mitigations') that seek to remedy these problems. The main arguments presented here are set out in our *Branded Content Governance: 32-Country Comparative Analysis* (Hardy el at 2025*) and in our report, *Branded Content Governance: Problems and Mitigations* (Hardy et al. 2025a).

The proposals we put forward are those of the BCGP project alone. We invited all participants to engage in this project on their own terms and without formal endorsement. This includes our project partners, academic advisers, other industry, legal and civil society advisers and all the organisations and individuals who participated in our research.

7.1 Problems

Deconvergence

A process of regulatory convergence to match communications industry convergence has been underway for more than half a century, at national and supranational levels. Yet, this process is underdeveloped at the interface of media and marketing communications. Both national media systems, such as the UK and Spain examined in this Policy Analysis report, and supranational regulatory arrangements, such as the EU, show the following features:

- The persistence of arrangements for legacy media that do not adequately map practices across those media in their contemporary (converged, cross-platform, innovative) forms.
- Extensions of rules to 'new' digital media that can lack scope and reach, clarity and effectiveness in application and enforcement.
- For both legacy and 'new' communications, relative lack of attention to marketing communications issues in legislation and policymaking compared to information, news, entertainment, social media and 'online harms' agendas.

The explanations for why include:

1. The continuing influence of historical arrangements.
2. The 'relative' neglect of media-advertising governance issues (partly arising from 1 but also other factors).
3. The relative strength of lobbying interests that favour the retention of current arrangements against those for change and reform.
4. 'Opportunistic deconvergence': the influence of interests that seek to maintain or promote governance that is/remains fragmented and de-limited in scope.

5. Regulatory risk management: an essential and ongoing activity for those whose activities are affected by regulatory action. Our BCGP analysis focuses on the specific forms this can take by media-marketing enterprises.

6. Corporate lobbying power.

7. Disincentives for politicians' expenditure of 'political capital' to restrict commercial media-marketing.

All these tendencies can generate gaps, omissions, anomalies in formal governance. These tendencies can also be mutually reinforcing, exacerbating problems of 'deconvergence', the BCGP term for misalignment between *media-marketing convergence in practices and how these are identified and addressed in policymaking and governance arrangements*. They can also be manifested in examples of policy 'compartmentalisation' we examine (Hardy et al. 2025a). There, we give the example of EU disinformation policy which initially set out a broad mapping of the problem in 2018 that included brand sponsored content. However, the same year the EU supported an industry-led Code that removed 'misleading advertising' from the scope of disinformation policy. The growing regulatory attention to 'disinformation' and the inclusion of sponsored content and native advertising posed a risk to market actors and intermediaries. The removal of 'misleading advertising' from scope, significantly reduced that risk through policy compartmentalisation. EU consumer protection continues to be hampered by long-standing problems. The civil society resources of consumer advocacy and protection remain 'resource poor' in comparison to the lobbying capacities of the business sector, led by the giant digital platforms. This disparity is compounded by related problems including low public awareness of EU consumer protection, recognised in the Commission's *New Deal for Consumers* as one of the reasons for weak enforcement (European Commission 2018).

Poor compliance, weak enforcement

A discourse of 'responsible' versus 'rogue' marketers is evident, notably in the arguments of those seeking to retain the primary role for advertising self-regulation in the UK (Hardy et al. 2023; Hardy 2024). This seeks to distinguish, and delimit, the case for stronger regulatory action by arguing that such action should target specific, non-legal activities carried out by rogue actors, while asserting that the vast majority of 'responsible' marketers support and comply with voluntary self-regulation. However, examining compliance for issues in branded content complicates and challenges this account. It is significant, but not unique to branded content, that compliance involves obligations across the value chain of marketing, from major platforms and publishers to marketing agencies, adtech systems and other intermediary service providers, as well as the client/sponsoring brands or other marketers, and creators or others involved in the production and circulation of marketing communications.

The BCGP has only conducted its own limited studies of branded content practices, but these show that compliance problems occur across major players in the 'responsible' SRO system, not just rogue actors. We show how brand sponsored content is poorly labelled and disclosed by major UK publishers (Hardy et al. 2023). We also draw on extensive third-party research on platform disclosure compliance, such as Annabell, Aade and Goanta (2024) and Goanta (2020). In its 2021 report on Instagram influencers, the UK ASA (2021) found 'a disappointing overall rate of compliance with the rules on making it sufficiently clear when they were being paid to promote a product or service'.

The ASA's later report (2024: 3) states that 'Whilst there are signs of improvement of ad disclosure rates on social media by influencer accounts generally, the overall rate of ad disclosure – as determined by this analysis - is still below where we would expect the sector to be'. The report finds that 43% of content was not adequately disclosed and only '…approximately 57% of influencer content on Instagram and TikTok in the UK would likely be adequately disclosed as advertising in compliance with the Code' (ASA 2025d: 4). Significantly, even those influencer accounts monitored in 2021 showed only a modest improvement, with a majority still failing to comply, although the report presents this as follows 'The influencer accounts monitored for the 2021 report showed a significant improvement in ad disclosure from 35% in 2021 to 49% in 2024 of their ads adequately disclosed' (ASA 2025d: 4). Finally, the report states that 4 out of 5 pieces of likely advertising content that was categorised as 'undisclosed' or 'inadequately disclosed', 'was completely undisclosed, as no attempt was made to disclose it as advertising' (ASA 2025d: 4).

A European Commission study found that the number of influencers who disclose commercial content as advertising is very low, at 20%, despite 97% engaging in promotional activities (European Commission 2024b). Taken together, there is sufficient evidence that compliance problems occur across the spectrum of actors, and that governance responsibilities need to be applied across the media-marketing ecology sextet.

There are also problems of enforcement across all forms of governance, for reasons including lack of definition, specificity and prioritisation for branded content issues. Some issues have gained significant policy attention leading to regulatory action and enforcement, notably social media influencer marketing. For other issues, including native advertising and sponsored content in publishing, the wave of regulatory attention of the mid 2010s has tended to recede. Branded content issues are present, but relatively subsidiary and displaced in dominant policy discussion on issues such as artificial intelligence, 'online harms' and platform governance. Enforcement problems also include lack of capacity, legal uncertainty (where regulatory action may be challenged or tested in court action) and lack of established processes. More positively, some SROs, including the ASA, have developed AI tools for large-scale, proactive monitoring to underpin enforcement. However, most SROs lack ready access to legal enforcement and lack

powers to impose fines. Finally, a powerful inhibitor on restricting branded content lies in the fact that, for many of the media-marketing interests that comprise the self-regulatory system, attracting brand finance remains existential.

7.2 Mitigations

The BCGP considers mitigations for the four problem areas of branded content:

1. Consumer/users' lack of awareness of commercial intent
2. Detriment to media quality: editorial and aesthetic independence
3. Marketers' power and share of voice
4. Cultural production capacity diminished for professionals/ creators (precarity, perceived lack of agency, confidence, support)

Key mitigations for each include:

1. a) Clearer labelling/ identification b) Better awareness; tools for users c) regulatory monitoring and enforcement d) Ensuring that media literacy programmes include alertness to commercial intents and highlight commercial-branded content communications as a risk/ harm.
2. Supported standards for media integrity
3. Requirements for commercial communications including a) source/paid identification; b) separation of advertising-media; c) action to remove deception and disinformation in ad formats/placement
4. Professional capacity-building to increase confidence, support, agency and compliance.

Context sensitive governance

We argue in our 32-Country Analysis (Hardy et al. 2025a) that to be effective, proposals for better governance must fit the conditions and context in which they are recommended to be applied. Governance solutions must be context sensitive. This is not an argument against common standards, rules and processes. Rather, it is an argument to incorporate into analysis all the relevant insights from historical institutionalism and wider policy studies about how policy and governance processes are influenced and operate in actual, complex, networked, situated contexts. The BCGP analysis places emphasis on the need to recognise and investigate the differences across media systems including the influences shaping institutions (section 1). In keeping with this approach, it is vital that any proposed governance 'solutions', or mitigations of problems, fit the specific conditions and needs that they are designed

to address. As this report, and all BCGP research discusses, there are different views. We respect and value the range of experience and expertise that informs that range and we welcome all opportunities to engage in dialogue, in 'knowledge exchange' and to seek consensus and concrete actions that strengthen governance.

Our proposals identify the need to create a regulatory framework that is comprehensive, coherent and future-facing. We seek to support communication users and public interest values in communications through a legal duty for advertising transparency. We also seek to incorporate some of the key demands made especially by policy actors and stakeholders from the self-regulatory system and media-marketing sector. We propose a principles-led, legal duty of advertising transparency but we support the production of codes by industry, with broader stakeholder input, to shape suitable rules for specific forms and platforms. That is intended to respond to key demands from industry actors across the media-marketing ecology for rules to have sufficient flexibility, adaptability and suitability to achieve the aims of advertising identification, disclosure and separation between advertising and non-advertising. Overall, we propose a strengthened interlinking of existing elements in governance, from self-regulation to statutory. This aims to realise the benefits of each of the main type of democratic governance arrangements, while strengthening their interconnection and creating clearer and more effective escalation paths for enforcement.

Comprehensive legal foundation: duty of advertising transparency

We recommend that the key principle that all marketing communications should be recognisable as such, which is set out in the ICC's voluntary code, should be established clearly in law at national and relevant supranational levels.

We propose that advertising transparency should be established as a principle in law and as a duty on all those engaged in 'paid for' marketing communications.

Marketing communications should be easily and readily recognisable before and during engagement with such content, irrespective of medium or format. Such a duty of advertising transparency would apply singly and jointly to market actors across the media-marketing ecology. However, we consider it important that responsibility is weighted most heavily on resource-rich, institutional actors. For example, responsibility for adherence in influencer marketing should fall heaviest on platforms, marketers and marketing/talent agencies and suitably lighter on those creators who lack access to legal support, advice and training.

As the European Commission (2024a: 173) concludes in its review of consumer protection 'there remains considerable legal uncertainty about the required standard and modalities of ad disclosures'. A comprehensive

legal foundation would set out a clear principle and enforceable requirement that marketing communications should be clearly distinguishable as such. How best to achieve that identification, through recognisable advertising formats and separation, or through effective labelling and disclosure, are matters that need greater consideration, and context-sensitive specification than can be effectively addressed in legislation or in statutory regulation alone. The law is a necessary framework for enforcement and public accountability; however, limitations in application also make it insufficient (González-Díaz et al. 2024). We argue that better governance requires capturing the value and benefits across statutory and voluntary approaches and the term we use for this is 'integrated polycentric governance'.

Integrated polycentric governance

A key contribution of the BCGP is to propose a normative model of 'integrated polycentric governance'. This argues that there is value across the range of different 'centres' of governance, from the most informal voluntary decision-making by creative media-marketing to 'command and control': from practitioners' 'governance-in-practice', to codes and guidance by 'industry regulatory organisations', to SROs, to statutory regulators, government agencies and court systems. We argue that a key focus for 'better regulation' lies in strengthening 'integration'. This means that there are linkages in the chain that connects aspects of support, guidance, oversight and enforcement. There would be a clear escalation path so that non-compliance at the level of voluntary self-regulation would lead to statutory regulatory action. 'Stronger' forms of governance are needed to safeguard the application of core standards, but the various forms of self-regulation and voluntarism can be supported to deliver their benefits, subject to independent accountability and auditing mechanisms designed to uphold the core governance principles of the system as a whole. Our proposal includes an 'escalation path' along the voluntary – statutory axis, so that stronger enforcement action can be taken by statutory authority where justified.

The concept of 'polycentric governance' (Ostrom 2010; Cairney 2020; Carlisle and Gruby 2019) describes a system where multiple governing bodies interact and make decisions within a specific policy area or region, with each centre retaining some degree of independence. Polycentricity focuses on the presence of multiple, overlapping centres of decision-making. The concept invites consideration of the complex, multi-agency production of governance arrangements and of their interdependencies and formal and informal interactions. Industry-SRO lobbying in defence of self-regulation *against* statutory control is more pronounced in the UK system tban Spain but both systems show increasing cooperation and co-development across statutory and self-regulation, such as AUTOCONTROL's code of conduct for influencers, updated from 2021 and co-signed by CNMC in Spain (AUTOCONTROL, AEA and IAB Spain 2025), and the joint CMA and CAP (2020) guidance for influencers published in the UK.

The BCGP proposal for integrated polycentric governance (IPG) has several aims. It seeks to move beyond the terms of an argument that has structured discussion of advertising governance, setting 'self-regulation' against 'statutory regulation'. Advertising Industry self-regulation developed as an effort to prevent or at least delimit statutory regulation and making the case for self-regulation has been a core task for SROs and the business groups involved ever since. Yet, the governance of advertising has been polycentric for many decades. All our 32 countries have a mix of statutory and self-regulation. As the range of marketing activities and marketing actors extends beyond the professional networks who have agreed to be bound by self-regulation, the case for strengthening 'statutory' regulation has grown. The BCGP argues that it would be beneficial, for all stakeholder interests, to move beyond the terms of self-regulation versus statutory and we hope that the concept of IPG may help in opening new 'regulatory space' (Hancher and Moran 1989).

IPG also reflects insights from the wider conception of governance, so that support mechanisms are given due attention as well as control mechanisms. The BCGP mapping of 'problems' includes factors that diminish the capacity of professionals and creators to act in an informed, ethically-reflexive and suitably 'unconstrained' manner. Such capacities may be impacted by precarity in employment, lack of agency, low confidence and capacity due, at least in part, to lack of training and support. It is a false choice to set 'enforcement' and 'encouragement' against one another as the balancing of both is required for effective governance.

Finally, IPG seeks to provide a flexible framework that supports the case for 'context sensitive' governance within the context of agreement on common, baseline standards and auditable indicators of effectiveness. So, this is not an argument against common rules and standards but rather recognition that the most effective arrangements need to build from established institutional practices and cultures. Our own reports, and wider evidence, show that action to 'improve' branded content governance can occur right across the governance spectrum, from supranational laws to industry 'best practice' guidance. The conditions for those actions to lead to meaningful and sustained 'improvements' are themselves complex, ranging from legitimacy and support from those affected, to awareness and education, to accountability and enforcement, all affected by market pressures and conditions. The BCGP analysis places emphasis on the need to recognise and investigate differences across media systems; governance 'solutions' must fit the specific conditions and needs that they are designed to address.

We suggest that this can be developed as a statement of principles and from that the development of indicators for standards and implementation by the key actors and stakeholder groups including marketers, marketing agencies, platforms, media and all those involved in formal governance. There needs to be special attention to the diversity and differential needs of

content creators, in particular those in resource-poor, precarious and extra-institutional positions, and support for their governance capacity building and compliance. Our recommendations are intended to be proportionate, (for example, small service providers and creators might adopt the recommendations with different actions than the largest service providers) and have relevance to across the range of different service providers that make up the media-marketing ecology.

Separation of advertising and media for the 21st century

Identification and disclosure are vital but insufficient. Provisions to alert users to the presence of 'paid' marketing are important, but do not require the separation of advertising from 'editorial' or non-advertising content. As discussed, the principle of the identification of advertising was historically aligned with separation, which has been under ever-increasing strain, especially since the 'digital explosion' of the mid-1990s. 21st century governance has focused on consumer identification, including provision for the labelling and disclosure of commercial content. This has displaced, the second and third problem areas: media integrity and marketers' power of voice. Drawing on the language of Raymond Williams (1977), concern about the implications of branded content for the quality and integrity of media remains, but in weakened form: it is 'residual'. The system-wide concern that the power of marketers should be subject to limits to protect public communications is 'external', it is not articulated within the 'regulatory space' within which core policy actors interact: governmental, regulatory and lead industry actors.

We highlight the need to reincorporate 'separation' between advertising and non-advertising content into stakeholder debate and policymaking. There needs to be wider consideration about how the principle of separation can and should apply across 21st century media. In the complex landscape of what the ICC calls 'mixed content' and with ever-developing forms and formats for branded content, what communication values should be protected? Which communication environments should be kept free from marketing communications?

Both historically and in contemporary regulation there are such protected communication spaces. For instance, the EU Audiovisual Media Services Directive (2018) prohibits product placement in news and current affairs programmes, consumer affairs programmes, religious programmes and children's programmes.

Those provide a starting point for identifying protected communication spaces, where separation could be mandatory. Amongst the protected communication spaces, where separation could be mandatory are designated news services. Determination of rules for the separation of marketing communications from other content targeting children should be developed through the processes of implementation for the UN General Comment 25 (United Nations 2021) on children's rights in relation to the digital environment.

Table 8: Summary of Governance Problems and Mitigations

Governance	Problems	Mitigations
Deconvergence	Legacy of different rules/ treatment of media.	Principles-led/platform neutral, comprehensive law on identification and disclosure of paid-for marketing communications. Integrated polycentric governance: Interlinking governance and support across the spectrum from legal/ governmental bodies to self-regulators, to industry bodies, to more 'informal' governance within organisations/teams/ networked practitioners. Clearer labelling/ identification. Media-marketing governance to include source/paid sponsor identification b) attention to appropriate separation of advertising-media; c) action to remove deception and disinformation in ad formats/ placement. Better awareness; tools for users linked to monitoring/ enforcement. Support for standards for media integrity. Professional capacity-building to Increase confidence, support, agency for pro-am actors across the media-marketing ecology.
	...more fragmentation in treatment of digital media, influencer marketing, streaming services, podcasting etc.	
Reach of regulation	Expansion of market actors beyond existing incentives/ requirements of self-regulation/ regulation.	
Compliance	Poor among 'rogue' actors, as above, but also some 'respectable' actors – brands, agencies.	
Weak enforcement	Some systems rely on self-regulators who (generally) lack powers to impose fines or take legal action.	
Definition/indeterminacy	As a hybrid of advertising and entertainment/editorial/'news' content, fused to commercial ends, there is a problem of indeterminacy in respect of identifying and regulating branded content – for creators, regulators and complainants and courts.	
Low consumer/ user awareness	Low awareness of governance tools and processes available to users.	

Contact information and next steps

Our proposals build from the primary and secondary research undertaken by the BCGP and have been shared at events and meetings as they developed throughout the project during 2022-2025. We organised annual events to present and discussion each year of project work, in summer 2023 and 2024, and concluded the project with a major international conference, Media-Marketing Integration, held at the University of the Arts London on 3-4 July 2025. Complutense. We also shared our work at a special event ion 14-15 October 2025 organised by our Co-I Patricia Gomez and team at Complutense supported by the European Communication Research and Education Association (ECREA).

The BCGP final reports and recommendations are all publicly available on https://figshare.arts.ac.uk/BCG_Project. The BCGP project email will remain active into 2026 and can be used to make contact with the project researchers: bcgproject@arts.ac.uk.

The work of the project will also continue to inform activities organised by the Branded Content Research Network (BCRN). The BCRN is an international network that brings together academic researchers, industry and civil society interests to explore the practices, arrangements, governance and implications of branded content, native advertising and the convergence of media and marketing communications. The network aims to promote research, collaboration, and dialogue across diverse perspectives. The BCRN is hosted and supported by the University of the Arts London and led by the BCGP Principal Investigator, Prof. Jonathan Hardy.

Follow us on LinkedIn Branded Content Research Network for conference updates and more. If you have not already joined the Branded Content Research Network please send a request to bcgproject@arts.ac.uk. The subject 'JOIN BCRN' is sufficient. The Branded Content Research Network has a mailing list from which you can unsubscribe yourself.

All publications from Branded Content Governance Project can be accessed here

8. Conclusion

The differential treatment of media by technological form, distribution platform and industrial and professional-practice arrangements has been institutionally embedded, in some cases over several centuries. The persistence of such arrangements can be explained and justified, not least to protect values of media freedom and plurality, public service, cultural expression and diversity. However, our study highlights that differentiation (deconvergence) may be sustained in ways that prevent consistent and coherent protection of values relevant to the interface of media and advertising. We identify these core values as advertising transparency: the recognisability of marketing communications (identification, labelling and disclosure); the protection of media integrity, including the separation of media and advertising in selected media forms; and governance to set limits on marketers' power and share of voice. We also identify the importance of measures to support the conditions and capabilities of those working across the media-marketing ecology, through training and other initiatives, to act in accordance with reflexive, ethical, professional (and pro-am) and legal-regulatory standards.

The BCGP proposal for a comprehensive legal framework, a duty of advertising transparency, is a call for publicly accountable enforcement for converged media. Our proposal for integrated polycentric governance is also a call to shift the discussion from 'self-regulation vs. statutory' towards a greater focus on the benefits of different governance arrangements, on their positive interlinking to maximise benefits, and for interlinking as underpinning, so that the disbenefits of any specific governance arrangement is mitigated by others. That is vital to ensure that the limitations of voluntary governance established by industry actors are mitigated by statutory powers to protect public welfare and value. However, it is also evident, throughout our study, that flexibility, adaptability, responsiveness, legitimacy and support are also vital. From their embedding in 'governance-in-practice', through to guidance from industry regulatory organisations, self-regulatory organisations, statutory agencies and courts, the governance of branded content illustrates the presence, and the need, for multiple centres, modes and types of governance. We hope to encourage further discussion on what the interlinking of these centres requires so that better governance is nurtured and achieved.

9. References

AA [Advertising Association] (2022) *Response to the DCMS Consultation on the Online Advertising Programme, London: Advertising Association*. https://adassoc.org.uk/our-work/aa-response-to-the-dcms-consultation-on-the-online-advertising-programme/.

AESAN, FIAB & AUTOCONTROL (2012) *Código PAOS: Código de corregulación de la publicidad de alimentos y bebidas dirigida a menores, prevención de la obesidad y salud.* Madrid: Agencia Española de Seguridad Alimentaria y Nutrición (AESAN). https://www.aesan.gob.es/AECOSAN/docs/documentos/nutricion/Nuevo_Codigo_PAOS_2012_espanol.pdf

Annabell, T., Aade, L. & Goanta, C. (2024) '(Un)disclosed brand partnerships: How platform policies and interfaces shape commercial content for influencers', *Internet Policy Review*, [online] 13(4). https://policyreview.info/articles/analysis/undisclosed-brand-partnerships-platform-policies

ASA [Advertising Standards Authority] (2016a) *Trading Standards* https://www.asa.org.uk/resource/trading-standards.html

ASA (2016b) *ASBOF – The Advertising Standards Board of Finance*. https://www.asa.org.uk/resource/asbof.html

ASA (2019) 'Case Handling Principles working with Buckinghamshire and Surrey Trading Standards', ASA, 22 January. https://www.asa.org.uk/resource/case-handling-principles-working-with-buckinghamshire-and-surrey-trading-standards.html

ASA (2020) *ASA Council Member Application Pack*. Available: https://www.asa.org.uk/static/a08e6540-7ad6-4f8a-a8cc515a-6ea2e471/Council-member-recruitment-candidate-pack.pdf

ASA (2021) *Putting Influencers on Notice After Monitoring Sweep Reveals Widespread Failure to Disclose Advertising*. London: ASA. https://www.asa.org.uk/news/putting-influencers-on-notice-after-monitoring-sweep-reveals-widespread-failure-to-disclose-advertising.html

ASA (2022) *ASA System Submission to the Department for Digital, Culture, Media and Sport's Online Advertising Programme Consultation*. London: ASA. https://www.asa.org.uk/static/ab956c83-5797-4158-81695c67632304c9/OAP-ASA-System-FINAL-Response-8-June-2022.pdf

ASA (2023) *Independent Reviewer's Report 2023*. https://www.asa.org.uk/static/f3857bff--5336-43cc-b7273958046e6a7f-/39135757-a63e-4dcd-bd2183b9cabfbc1c/2023-Independent-Reviewers-report.pdf

ASA (2024) *Complaints and Cases in Context: 2023 Annual Summary*. https://www.asa.org.uk/static/e176e250-1451-4182-a19f-43053a22876b/2023-Complaints-cases-in-context-master.pdf

ASA (2025a) 'About the ASA and CAP', ASA. https://www.asa.org.uk/about-asa-and-cap/about-regulation/about-the-asa-and-cap.html

ASA (2025b) 'Compliance Procedures', https://www.asa.org.uk/static/a501c9ab-54c3-4dbc-84d6b61be6f5971b/78273db5-cfc7-4a21-a5017b9bc1a48542/Compliance-Procedures-03022025.pdf

ASA (2025b) '2024 complaints and cases by media', ASA. https://www.asa.org.uk/static/6b092a1d-f35a-4928-b7b1fddf-562358da/2024-Complaints-cases-in-context.pdf

ASA (2025d) *Influencer Ad Disclosure on Social Media: Instagram and TikTok Report (2024)*, London: ASA. https://www.asa.org.uk/resource/influencer-ad-disclosure-on-social-media-instagram-and-tiktok-2024.html

ASA (n.d.a) *Legislation Affecting Advertising*. https://www.asa.org.uk/static/uploaded/2465b4ed-021b-48e1-afab-622ce99700ff.pdf

ASA. (n.d.b). *CAP Panels and Committees*. https://www.asa.org.uk/about-asa-and-cap/people/cap-panels-and-committees.html

ASA. (n.d.c). *Copy Advice Team*. https://www.asa.org.uk/about-asa-and-cap/people/copy-advice-team.html

ASA. (n.d.d). *ASA Council*. London: Advertising Standards Authority. https://www.asa.org.uk/about-asa-and-cap/people/asa-council.html

ASA and CAP (2022) *Annual Report 2022*. https://www.asa.org.uk/static/794c34b2-8a15-45cd-ad224541b6463703/Annual-Report-ASA-CAP-2022-Full-Version.pdf

ASA and CAP (2025) *Annual Report 2024*. https://www.asa.org.uk/resource/asa-and-cap-annual-report-2024.html

Asbof (n.d.) 'Who are we?'. https://advertisinglevy.co.uk/asbof/whoweare/

Asociación de Editores de Madrid. (2023). *Análisis del mercado del libro en España 2022: El sector editorial mantiene el ritmo de crecimiento y acumula una década de subidas*. Madrid: Asociación de Editores de Madrid. https://editoresmadrid.org/analisis-del-mercado-del-libro-en-espana-2022-el-sector-editorial-mantiene-el-ritmo-de-crecimiento-y-acumula-una-decada-de-subidas/

AUTOCONTROL (2020) *Code of Conduct on Commercial Communications for Gambling Activities* [Código de Códucta sobre Comunicaciones de las Actividades del Juego]. https://www.g-regs.com/downloads/SPGamblingCodeAUTOCONTROLJan2020.pdf

AUTOCONTROL (2023a) *Estatutos de AUTOCONTROL*. Madrid: Asociación para la Autorregulación de la Comunicación Comercial. https://www.AUTOCONTROL.es/app/uploads/estatutos-AUTOCONTROL.pdf

AUTOCONTROL (2023b) *Código de Conducta en materia de Tratamiento de Datos en Actividades Publicitarias*. https://www.AUTOCONTROL.es/app/uploads/codigo-de-conducta-proteccion-de-datos-AUTOCONTROL.pdf

AUTOCONTROL (2024a) *Quiénes somos*. https://www.AUTOCONTROL.es/AUTOCONTROL/quienes-somos/

AUTOCONTROL (2024b) *Reglamento del Jurado de la Publicidad*. Madrid: Asociación para la Autorregulación de la Comunicación Comercial. https://www.AUTOCONTROL.es/app/uploads/dlm_uploads/reglamento-jurado-de-la-publicidad-AUTOCONTROL.pdf

AUTOCONTROL (2024c) Servicios. *AUTOCONTROL*. https://www.AUTOCONTROL.es/servicios/

AUTOCONTROL (2024d) *La Base de Datos de las Resoluciones del Jurado de la Publicidad*. https://www.AUTOCONTROL.es/servicios/bd-resoluciones/

AUTOCONTROL (2024e) *Sello de Confianza Online*. AUTOCONTROL https://www.AUTOCONTROL.es/servicios/sello-confianza-online/

AUTOCONTROL (2025) *Copy Advice. Servicio de revisión voluntaria de campañas publicitarias*. https://www.AUTOCONTROL.es/servicios/asesoramiento/publicidad/copy-advice/

AUTOCONTROL, AEA (Asociación Española de Anunciantes) and IAB Spain (2020). *Código de Conducta sobre el uso de influencers en la publicidad*. Available: https://www.AUTOCONTROL.es/app/uploads/codigo-de-conducta-publicidad-influencers.pdf

AUTOCONTROL, AEA and IAB Spain (2025) 'Código de Conducta de publicidad a través de influencers'. https://www.AUTOCONTROL.es/app/uploads/codigo-de-conducta-de-publicidad-a-traves-de-influencers-2025.pdf

AUTOCONTROL and ADIGITAL (2025). *Código Ético de Confianza Online*. https://www.confianzaonline.es/doc/codigo_etico_confianzaonline.pdf

BBC (2025) *The BBC Board*. https://www.bbc.com/abouttheBBC/whoweare/bbcboard

BBFC (The British Board of Film Classification) (2021) *BBFC Response: United Nations Human Rights Concept Note for a General Comment on Children's Rights in Relation to the Digital Environment*. London: BBFC. https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRC/GC-ChildrensDigitalEnvironment/OtherStakeholders/British_Board_of_FIlm_Classification.docx

BCMA (Branded Content Marketing Association) (n.d.) *Influencer Marketing Guidelines and Best Practice (UK)*. https://www.thebcma.info/onewebmedia/DOWNLOADABLE%20DOCUMENTS/BCMA%20Influencer%20Marketing%20Guidelines%20and%20Best%20Practice%20UK.pdf

Bevir, M. (2012) *Governance: A Very Short Introduction*, Oxford: Oxford University Press.

BILETA [British and Irish Law Education Technology Association] (2022) 'Online Advertising Programme Consultation Response', London: BILETA https://scholarlypublications.universiteitleiden.nl/access/item%3A3504993/view

BOE (1982) *Ley Orgánica 1/1982, de 5 de mayo, de protección civil del derecho al honor, a la intimidad personal y familiar y a la propia imagen*. https://www.boe.es/eli/es/lo/1982/05/05/1/con

BOE (1988) *Ley 34/1988, de 11 de noviembre, General de Publicidad*. https://www.boe.es/buscar/act.php?id=BOE-A-1988-26156

BOE (1991) *Ley 3/1991, de 10 de enero, de Competencia Desleal.* https://www.boe.es/eli/es/l/1991/01/10/3

BOE (1994) *Real Decreto 1416/1994, de 25 de junio, por el que se regula la publicidad de los medicamentos de uso humano*. https://www.boe.es/eli/es/rd/1994/06/25/1416

BOE (1996a) *Real Decreto 1907/1996, de 2 de agosto, sobre publicidad y promoción comercial de productos, actividades o servicios con pretendida finalidad sanitaria.* https://www.boe.es/eli/es/rd/1996/08/02/1907

BOE (1996b) *Ley Orgánica 1/1996, de 15 de enero, de Protección Jurídica del Menor, de modificación parcial del Código Civil y de la Ley de Enjuiciamiento Civil*. https://www.boe.es/eli/es/lo/1996/01/15/1/con

BOE (1998) *Ley 24/1998, de 13 de julio, del Servicio Postal Universal y de Liberalización de los Servicios Postales*. https://www.boe.es/eli/es/l/1998/07/13/24

BOE (2002) *Ley 34/2002, de 11 de julio, de servicios de la sociedad de la información y de comercio electrónico*. https://www.boe.es/eli/es/l/2002/07/11/34

BOE (2005) *Ley 29/2005, de 29 de diciembre, de Publicidad y Comunicación Institucional*. Available: https://www.boe.es/buscar/act.php?id=BOE-A-2005-21533

BOE (2006) *Real Decreto 947/2006, de 28 de agosto, por el que se regula la publicidad y la comunicación institucional de la Administración General del Estado y sus organismos públicos*. https://www.boe.es/eli/es/rd/2006/08/28/947/con

BOE (2010) *Ley 42/2010, de 30 de diciembre, por la que se modifica la Ley 28/2005, de medidas sanitarias frente al tabaquismo y reguladora de la venta, el suministro, el consumo y la publicidad de los productos del tabaco*. Madrid: Boletín Oficial del Estado. https://www.boe.es/eli/es/l/2010/12/30/42/con

BOE (2018) *Ley Orgánica 3/2018, de 5 de diciembre, de Protección de Datos Personales y garantía de los derechos digitales*. https://www.boe.es/eli/es/lo/2018/12/05/3

BOE (2020a) *Orden EHA/1718/2010, de 11 de junio, de regulación y control de la publicidad de los servicios y productos bancarios*. https://www.boe.es/eli/es/o/2010/06/11/eha1718/con

BOE (2020b) *Circular 4/2020, de 26 de junio, del Banco de España, sobre publicidad de los productos y servicios bancarios.* https://www.boe.es/eli/es/cir/2020/06/26/4/con

BOE (2020c) *Real Decreto 958/2020, de 3 de noviembre, de comunicaciones comerciales de las actividades de juego*. https://www.boe.es/eli/es/rd/2020/11/03/958

BOE (2021a) *Real Decreto-ley 24/2021, de 2 de noviembre, de transposición de directivas de la Unión Europea en las materias de bonos garantizados, distribución transfronteriza de organismos de inversión colectiva, datos abiertos y reutilización de la información del sector público, ejercicio de*

derechos de autor y derechos afines aplicables a determinadas transmisiones en línea y a las retransmisiones de programas de radio y televisión, exenciones temporales a determinadas importaciones y suministros, de personas consumidoras y para la promoción de vehículos de transporte por carretera limpios y energéticamente eficientes. https://www.boe.es/buscar/act.php?id=BOE-A-2021-17910

BOE (2021b) *Ley Orgánica 1/1996, de 15 de enero, de Protección Jurídica del Menor, de modificación parcial del Código Civil y de la Ley de Enjuiciamiento Civil.* https://www.boe.es/eli/es/lo/1996/01/15/1/con

BOE (2022a) *Ley 13/2022, de 7 de julio, General de Comunicación Audiovisual.* https://www.boe.es/diario_boe/txt.php?id=BOE-A-2022-11311

BOE (2022b) *Ley Orgánica 1/2004, de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género*. Madrid: Boletín Oficial del Estado. https://www.boe.es/eli/es/lo/2004/12/28/1/con

BOE (2022c) *Ley 7/1996, de 15 de enero, de Ordenación del Comercio Minorista*. Madrid: Boletín Oficial del Estado. https://www.boe.es/eli/es/l/1996/01/15/7/con

BOE (2022d) *Ley 13/2011, de 27 de mayo, de regulación del juego.* https://www.boe.es/eli/es/l/2011/05/27/13/con

BOE (2022e) *Ley 11/2022, de 28 de junio, General de Telecomunicaciones*. Available: https://www.boe.es/eli/es/l/2022/06/28/11

BOE (2023a) *Ley 34/1988, de 11 de noviembre, General de Publicidad.* https://www.boe.es/buscar/act.php?id=BOE-A-1988-26156

BOE (2023b) *Real Decreto Legislativo 1/2015, de 24 de julio, por el que se aprueba el texto refundido de la Ley de garantías y uso racional de los medicamentos y productos sanitarios*. https://www.boe.es/eli/es/rdlg/2015/07/24/1/con

BOE (2023c) *Real Decreto 1138/2023, de 19 de diciembre, por el que se regula la actividad publicitaria de los operadores de juego*. Madrid: Boletín Oficial del Estado. https://www.boe.es/eli/es/rd/2023/12/19/1138/con

BOE (2024) *Real Decreto 444/2024, de 30 de abril, por el que se regulan los requisitos a efectos de ser considerado usuario de especial relevancia de los servicios de intercambio de vídeos a través de plataforma, en desarrollo del artículo 94 de la Ley 13/2022, de 7 de julio, General de Comunicación Audiovisual*. https://www.boe.es/diario_boe/txt.php?id=BOE-A-2024-8716

BOE (2025a) *Código de Derecho de la Publicidad*. https://www.boe.es/biblioteca_juridica/codigos/codigo.php?id=248

BOE (2025b) *Real Decreto Legislativo 1/2007, de 16 de noviembre, por el que se aprueba el texto refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias*. https://www.boe.es/eli/es/rdlg/2007/11/16/1/con

Brierley, S. (2002) *The Advertising Handbook*, 2nd edition, London: Routledge.Broughton Micova, S. (2022) 'DMA Transparency Requirements In Relation To Advertising', *Centre on Regulation in Europe*. https://cerre.eu/wp-content/uploads/2022/11/DMA_TransparencyRequirementsinAdvertising.pdf

Business Companion (2024) *Trading Standards: Powers, Enforcement and Penalties*. London: Chartered Trading Standards Institute. https://www.businesscompanion.info/en/quick-guides/miscellaneous/trading-standards-powers-enforcement-and-penalties

CAA (Cinema Advertising Association). (n.d.). *About Us*. London: CAA. https://cinemaadvertisingassociation.co.uk/about/

Cabinet Office 2018 *Consultation principles.* https://www.gov.uk/government/publications/consultation-principles-guidance

Cairney, P. (2020) *Understanding Public Policy*, London: Bloomsbury

Cairney, P., Heikkila, T. & Wood, M. (2019) *Making policy in a complex world*, Cambridge University Press.

Canales, R. and Temiño, I. (2024) 'Advertising and Marketing 2024 Spain', Chambers and Partners. https://practiceguides.chambers.com/practice-guides/advertising-and-marketing-2024/spain/trends-and-developments

CAP (2018) *The UK Code of Non-broadcast Advertising and Direct & Promotional Marketing v12.2.49*. London: CAP. https://www.asa.org.uk/static/47eb51e7-028d-4509-ab3c0f-4822c9a3c4/The-Cap-code.pdf

CAP (2024) *The UK Code of Broadcast Advertising*. London: CAP. https://www.asa.org.uk/static/40293b82-443a-4416-9555ff5259585538/d883bc75-cc39-4721-a6ccb8956f2ec801/The-BCAP-Code.pdf

CAP [Committee of Advertising Practice] and CMA [Competition and Markets Authority] (2020) Influencers' Guide to Making Clear that Ads are Ads, London: CAP & CMA. https://www.asa.org.uk/static/uploaded/3af39c72-76e1-4a59-b2b47e-81a034cd1d.pdf

CAP and CMA (2023) 'Influencers' guide to making clear that ads are ads', https://www.asa.org.uk/resource/influencers-guide.html

Carlisle, K. & Gruby, R. L. (2019) 'Polycentric systems of governance: A theoretical model for the commons', *Policy Studies Journal,* 47**:** 927-952.

Carnegie UK (2022) 'Response to Online Advertising Programme Consultation', Dunfermline: Carnegie UK. https://d1ssu070pg2v9i.cloudfront.net/pex/pex_carnegie2021/2022/06/14122017/Response-to-Online-Advertising-Programme-Consultation.pdf

Carvajal, M. and Barinagarrementeria, I.(2023) The creation of branded content teams in Spanish News Organisations and their implications for Structures, Professioanl Roles and Ethics', in J. Hardy (ed) *Sponsored Editorial Content in Digital Journalism*, Abingdon: Routledge. pp23-43.

Chen, J., Keller, P. (2022) 'The University of Sheffield and Kings College London Response to the Consultation on the Government's Online Advertising Programme'. Sheffield: The University of Sheffield. https://figshare.shef.ac.uk/articles/report/Response_to_the_Consultation_on_the_Government_s_Online_Advertising_Programme/19960280

CIA (Central Intelligence Agency) (2023) 'Spain, Europe', *The World Factbook*. Virginia: CIA. https://www.cia.gov/the-world-factbook/

CIA (2024a) 'United Kingdom, Europe', *The World Factbook*. Virginia: CIA. https://www.cia.gov/the-world-factbook/countries/united-kingdom/

CIA (2024b) 'Spain, Europe' *The World Factbook*. Virginia: CIA. https://www.cia.gov/the-world-factbook/countries/spain/

Clearcast. (n.d.). *Clearance and Regulation*. https://clearcast.co.uk/clearance-and-regulation/

CMA (Competition and Markets Authority). (2016). *CMA Acts to Prevent Misleading Online Practices*. https://www.gov.uk/government/news/cma-acts-to-prevent-misleading-online-practices

CMA (2021) *The Power of Social Media Influencers: CMA Submission to the DCMS Select Committee*. London: CMA. https://committees.parliament.uk/writtenevidence/35433/html/.

CMA (2022) *'Social Media Endorsements'*, 3 November. https://www.gov.uk/cma-cases/social-media-endorsements#update-on-enforcement-action

CMA (2025a) *Guidance: Unfair Commercial Practices*. https://www.gov.uk/government/publications/unfair-commercial-practices-cma207/unfair-commercial-practices

CMA (2025b) *'Social media endorsements: guidance for content creators'.* https://www.gov.uk/government/publications/social-media-endorsements-guidance-for-content-creators/social-media-endorsements-being-transparent-with-your-followers

CMA (2025c) *'Reviews and endorsements: principles for social media platforms'.* https://www.gov.uk/government/publications/reviews-and-endorsements-principles-for-social-media-platforms/hidden-ads-principles-for-social-media-platforms

CMPMF (Centre for Media Pluralism and Media Freedom) (2020) *The Media Pluralism Monitor 2020 – Interactive.* Available: https://cmpf.eui.eu/mpm-2020-interactive/

CNMC (2021) *Study on the competition conditions in the online advertising sector in Spain*. https://www.cnmc.es/sites/default/files/3696007_1.pdf

Consultancy (2023) *UK Becomes Europe's Leading Entertainment and Media Market*. Consultancy.uk. Available: https://www.consultancy.uk/news/34735/uk-becomes-europes-leading-entertainment-and-media-market (accessed: 30 April 2024).

Conway, L. (2020) *Regulation of Advertising by the ASA*. London: House of Commons Library. https://researchbriefings.files.parliament.uk/documents/SN06130/SN06130.pdf

Conway, L. (2022) 'Online Advertising', House of Commons Library Briefing (12 December 2022), London: UK Parliament. https://commonslibrary.parliament.uk/research-briefings/cbp-9510/

DCMS Committee (Department for Digital, Culture. Media & Sport Committee) (n.d) 'Influencer Culture'. https://committees.parliament.uk/work/1126/influencer-culture/

DCMS Committee (2021) 'DCMS Committee to examine the power of influencers', (26 March), London: UK Parliament. https://committees.parliament.uk/committee/378/culture-media-and-sport-committee/news/153483/dcms-committee-to-examine-the-power-of-influencers/

DCMS Committee (2022) *Influencer Culture: Lights, Camera, Inaction?* London: House of Commons. https://committees.parliament.uk/publications/22107/documents/164150/default/

DCMS [Department for Digital, Culture, Media and Sport] (2022a) *Influencer Culture: Lights, Camera, Inaction?: Government Response to the Committee's Twelfth Report of Session 2021–22*. London: House of Commons. https://committees.parliament.uk/publications/28742/documents/173531/default/

DCMS (2022b) *Online Advertising Programme Consultation*. https://www.gov.uk/government/consultations/online-advertising-programme-consultation/online-advertising-programme-consultation

DCMS (2022c) *Online Safety Bill Factsheet*. London: Department for Digital, Culture, Media & Sport. https://www.gov.uk/government/publications/online-safety-bill-supporting-documents/online-safety-bill-factsheet

DCMS (2022d) 'Impact Assessment', Consultation on reviewing the regulatory framework for online advertising in the UK: The Online Advertising Programme, RPC-DCMS-5165(1)', London: Department for Digital, Culture, Media & Sport.

DCMS (Department for Digital, Culture. Media & Sport) (2023a) *Online Advertising Programme Consultation* [updated 25 July]. London: UK Government. https://www.gov.uk/government/consultations/online-advertising-programme-consultation/online-advertising-programme-consultation

DCMS (Department for Digital, Culture. Media & Sport) (2023b) 'Government Response to Online Advertising Programme Consultation', London: House of Commons. https://www.gov.uk/government/consultations/online-advertising-programme-consultation/outcome/government-response-to-online-advertising-programme-consultation

DCMS (2023c) 'Online Advertising Taskforce - Terms of Reference'. https://www.gov.uk/government/groups/online-advertising-taskforce

DCMS (2023d) 'Online Advertising Taskforce: 27 July 2023 minutes'. https://www.gov.uk/government/groups/online-advertising-taskforce

DCMS (2023e) 'Online Advertising Taskforce: 25 October 2023 minutes'. https://www.gov.uk/government/ groups/online-advertising-taskforce

DCMS (2023f) Online Advertising Taskforce action plan, (30 November). https://www.gov.uk/government/ publications/online-advertising-taskforce-action-plan

Del Valle, D. (2025) 'CNMC fines DAZN for untagged ad', *Advanced Television*,17 January. https://www.advanced-television.com/2025/01/17/cnmc-fines-on-dazn-for-unidentified-advertising/

DMA (Data & Marketing Association). (n.d.). *About the DMA*. https://dma.org.uk/contact

Dowden, O. (2022) 'Ministerial Foreword', in *Digital Regulation: Driving Growth and Unlocking Innovation*. London: DCMS. https://www.gov.uk/government/publications/digital-regulation-driving-growth-and-unlocking-innovation/digital-regulation-driving-growth-and-unlocking-innovation#fn:29

Eur-Lex (2000) *Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce).* https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32000L0031

Eur-Lex (2001b) *Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society*. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001L0029&qid=1711734066770

Eur-Lex (2002a) *Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications).* https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32002L0058&qid=1711734066770

Eur-Lex (2002b.) *Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce').* https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32002L0058&qid=1711734066770

Eur-Lex (2005) *Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (Unfair Commercial Practices Directive).* https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005L0029

Eur-Lex (2006) *Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (codified version).* https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32006L0114

Eur-Lex (2009) *Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector, and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.* https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009L0136

Eur-Lex (2016) *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation – GDPR).* https://eur-lex.europa.eu/eli/reg/2016/679/oj

Eur-Lex (2018) *Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities.* https://eur-lex.europa.eu/eli/dir/2018/1808/oj

Eur-Lex (2022a) *Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act)* https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32022R2065

Eur-Lex (2022b) *Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act).* https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R1925&qid=1711734996552

Eur-Lex (2022c) *Regulation (EU) 2022/868 of the European Parliament and of the Council of 30 May 2022 on European data governance and amending Regulation (EU) 2018/1724 (Data Governance Act).* https://eur-lex.europa.eu/eli/reg/2022/868/oj

European Audiovisual Observatory (2025) 'New code of conduct for influencers by AUTOCONTROL', European Audiovisual Observatory. https://merlin.obs.coe.int/article/10406

European Commission (2020) *Proposal for a Regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC*. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020PC0825

European Commission (2021) *Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market*. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2021_526_R_0001

European Commission (2023) 'The Digital Services Act package'. https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package

European Commission (2024a) *Commission Staff Working Document Fitness Check of EU consumer law on digital fairness, SWD(2024) 230 final,* Brussels: European Commission. https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13413-Digital-fairness-fitness-check-on-EU-consumer-law_en

European Commission (2024b) *Investigation of the Commission and Consumer Authorities Finds That Online Influencers Rarely Disclose Commercial Content,* Brussels: European Commission. https://ec.europa.eu/commission/presscorner/detail/en/ip_24_708

European Parliament (2016) Parliamentary Questions P-006787/2016, 18 October. https: https://www.europarl.europa.eu/doceo/document/P-8-2016-006787_EN.pdf [Answer https://www.europarl.europa.eu/doceo/document/P-8-2016-006787-ASW_EN.html]

European Union (n.d.) *Spain – EU country profile.* https://european-union.europa.eu/principles-countries-history/eu-countries/spain_en

FAPE (Federación de Asociaciones de Periodistas de España) (2017) *Código Deontológico*. https://fape.es/home/codigo-deontologico-1/

FEBE & AUTOCONTROL (2023) *Código de Autorregulación Publicitaria de Espirituosos España*. Madrid: Federación Española de Bebidas Espirituosas (FEBE). https://www.espirituosos.es/sd.ashx?a=/media/descargas/Codigo_FEBE_EN.pdf

Fenin & AUTOCONTROL (2023) *Código Ético del Sector de la Tecnología Sanitaria.* Madrid: Federación Española de Empresas de Tecnología Sanitaria (Fenin). https://fenin.es/documents/document/1150

Ferrer-Conill, R., Knudsen, E., Lauerer, C. and Barnoy, A. (2020) 'The Visual Boundaries of Journalism: Native Advertising and the Convergence of Editorial and Commercial Content', *Digital Journalism*: 1–23. doi:10.1080/21670811.2020.1836980

Future Market Insights (2025) 'Native Advertising Market Analysis – Trends & Forecast 2025-2035', *Future Market Insights*, 24 January. https://www.futuremarketinsights.com/reports/native-advertising-market

GALA (Global Advertising Lawyers Alliance) (2019) *Advertising Law: A Global Legal Perspective*, New York: GALA.

GALA (2020) *Advertising Law: A Global Legal Perspective*, New York: GALA.

GALA (2024) *Advertising Law: A Global Legal Perspective* (3rd ed.). New York: GALA.

Goanta, C. (ed) (2020) *The Regulation of Social Media Influencers*, Cheltenham: Edward Elgar.

Goddard, J. (2020) 'Audiovisual Media Services (Amendment) (EU Exit) Regulations 2020', London: House of Commons Library. https://lordslibrary.parliament.uk/audiovisual-media-services-amendment-eu-exit-regulations-2020/

González-Díaz C., Quiles-Soler C., Quintas-Froufe, N. (2024) 'The figure of the influencer under scrutiny: highly exposed, poorly regulated', *Frontiers in Communication 9: 1-13.*

Hacked Off (2025) 'IPSO: the watchdog that won't bite', London: Hacked Off. https://www.hackedoff.org/blog-posts/the-watchdog-that-wont-bite-how-ipso-fails-to-protect-the-public

Hallin, D. (1986) *The uncensored war*: *the media and Vietnam*, Berkeley and Los Angeles: University of California Press.

Hallin, D and Mancini, P (2004) *Comparing Media Systems*, Cambridge: Cambridge University Press.

Hancher, L., and Moran, M. (1989) 'Organising Regulatory Space' in L. Hancher and M. Moran (eds) *Capitalism, Culture and Economic Regulation*, Oxford: Clarendon.

Hardy, J. (2018) 'Advertising Regulation' in J.Hardy, I. MacRury and H. Powell (eds) The Advertising Handbook, Fourth edition, Abingdon, Oxon.:Routledge.

Hardy, J. (2021a) 'Written Evidence Submitted to the DCMS Committee Enquiry on Influencer Culture', London: DCMS. Available: https://committees.parliament.uk/writtenevidence/35397/html/

Hardy, J. (2021b) *Sponsored Editorial Content in Digital Journalism: Mapping the Merging of Media and Marketing,* Digital Journalism, 9:7, 865-886.

Hardy, J. (2021c) 'Meeting the challenges of media and marketing convergence: Revising critical political economy approaches', in *The Routledge Companion to Media Industries*. Routledge, pp. 55–65.

Hardy, J. (2022a) Branded Content: The Fateful Merging of Media and Marketing, Abingdon: Routledge.

Hardy, J. (2022b) *Submission to DCMS Online Advertising Consultation*, Available: https://www.arts.ac.uk/colleges/london-college-of-communication/research-at-lcc/branded-content-research-hub/branded-content-governance-project

Hardy, J. (ed) (2023a) 'Sponsored Editorial Content in Digital Journalism: Mapping the Merging of Media and Marketing' in J. Hardy (ed) *Sponsored Editorial Content in Digital Journalism*, Abingdon: Routledge.

Hardy, J. (2023b) 'Promotional Convergence and Political Economic Critique: Assessing Integrations Across Media and Advertising Industries' in E. West and M.McAllister (eds) *The Routledge Companion to Advertising and Promotional Culture*, (2nd ed) Routledge.

Hardy, J. (2024) Short Commentary and Report on UK online advertising regulation, London: Branded Content Governance Project. https://doi.org/10.25441/arts.25251211.v1

Hardy, J. (2025a) 'Identifying digital advertising: paradoxes and problems in governance', in I. MacRury and D. Manika (eds) *Digital Advertising Evolution*. Abingdon. Oxon.: Routledge.

Hardy, J. (ed) (2025b) *Media Analysis* (Branded Content Governance Project), London: University of the Arts London

Hardy, J (ed) (2025c) *Media-Marketing and Branded Content Policy Analysis: UK and Spain,* (Branded Content Governance Project), University of the Arts London

Hardy, J., Kubicka, H, MacRury, I.; Núñez-Gómez, P.; Rangel, C. (2023) *Online Advertising Regulation Policy Briefing* (Branded Content Governance Project, June 2023), University of the Arts London. https://doi.org/10.25441/arts.25225259.v1et al.

Hardy, J., MacRury, I., Núñez-Gomez, P., Rangel, C., Kubicka, H., Sanchez-Rebato Valiente, C. (2024) *Mapping the Media-Marketing Ecology* (Branded Content Governance Project, June), University of the Arts London. https://doi.org/10.25441/arts.26096632.v1

Hardy, J. and MacRury, I. (2024) 'Submission to the BBC Editorial Guidelines Consultation', London: Branded Content Governance Project. https://doi.org/10.25441/arts.28553666.v1

Hardy, J., MacRury, I.; Núñez-Gomez, P., Rangel, C., Martínez Isidoro, B., Establés M., Vázquez Rodríguez, L., Kubicka, H. and Wysokinski, M. (2025a) *Branded Content Governance: 32-Country Comparative Analysis*, University of the Arts London. https://doi.org/10.25441/arts.29424839.v3

Hardy, J., MacRury, I., Núñez-Gomez, P., Wysokinski, M (2025b) *Branded Content Governance: Problems and Mitigations*, University of the Arts London. https://doi.org/10.25441/arts.29424842.v2

Hardy, J., MacRury, I., Núñez-Gomez, P., Wysokinski, M. (2025d) *Media-Marketing and Branded Content Policy Analysis: UK and Spain*, University of the Arts London.

House of Commons, Joint Committee on the Draft Online Safety Bill (2021), 'Report HC 609 of session 2021-22', 10 December.

IAB (The Internet Advertising Bureau) (2018) *Code of Conduct*, IAB. https://www.iab.com/wp-content/uploads/2015/06/IAB_Code_of_Conduct_10282-21.pdf

IAB UK [The Internet Advertising Bureau] (2022) 'IAB UK Online Advertising Programme Consultation Response'. London: IAB UK. https://www.iabuk.com/sites/default/files/public_files/IAB%20UK%20OAP%20Consultation%20Response.pdf.

IAS [The Institute of Alcohol Studies] (2022) 'Online Advertising Programme Consultation: Response by the Institute of Alcohol Studies', London: IAS. Available: https://www.ias.org.uk/wp-content/uploads/2022/06/Online-advertising-programme-consultation.pdf

ICAS (The International Council on Ad Self-Regulation) (2021) *The ICAS Global SRO Database*. Available: https://icas.global/srodatabase/ (Accessed: 12 December 2022).

ICC [International Chamber of Commerce] (1948) Code of Standards of Advertising, Paris: ICC.

ICC (1966) International Code of Advertising Practice, Paris: ICC

ICC (1973) International Code of Advertising Practice, Paris: ICC

ICC (2006) Advertising and Marketing Communication Practice: Consolidated ICC Code, Paris: ICC.

ICC (2018) ICC Advertising and Marketing Communications Code, Paris: ICC. https://iccwbo.org/publication/icc-advertising-and-marketing-

ICC (International Chamber of Commerce) (2024) *ICC Advertising and Marketing Communications Code*. Available: https://iccwbo.org/wp-content/uploads/sites/3/2024/09/ICC_2024_MarketingCode_2024.pdf

ICO [Information Commissioner's Office] (2022) *Response of the Information Commissioner's Office to the Consultation on the Online Advertising Programme*. London: ICO. https://ico.org.uk/media/about-the-ico/consultation-responses/4020721/ico-response-to-the-dcms-consultation-on-the-online-advertising-programme.pdf.

Ikonen, P., Luoma-Aho, V. and Bowen, S.A., (2017) 'Transparency for sponsored content: Analysing codes of ethics in public relations, marketing, advertising and journalism', *International Journal of Strategic Communication*, 11(2), pp.165-178.

Impress (Independent Monitor for the Press) (2023) *The Impress Standards Code*. London: Independent Monitor for the Press. Available: https://www.impressorg.com/wp-content/uploads/2023/07/The-IMPRESS-Standards-Code.pdf

Impress (Independent Monitor for the Press) (n.d.) *FAQs – Further Information About Impress*. Available: https://www.impressorg.com/about-us/further-information/faqs/

Influencer Legal Hub (n.d.) 'Legal Brief #3: When is an Influencer a 'Trader'?'. https://commission.europa.eu/document/download/55e73447-8c21-4728-a42b-05bd030f7627_en

InfoAdex (2024) *Estudio InfoAdex de la Inversión Publicitaria en España 2024*. https://www.infoadex.es/home/wp-content/uploads/2024/02/Estudio-InfoAdex-2024-Resumen.pdf

INHOPE (2021) *Annual Report 2021*. Amsterdam: International Association of Internet Hotlines. https://inhope.org/media/pages/articles/annual-reports/75b1633383-1652348841/inhope-annual-report-2021.pdf

Innes, M. (2024a) 'Online ads 'most complained about channel' in 2023', *Marketing Week*, 11 April.

Instituto Nacional de Estadística (INE) (2023b) Población que usa internet de manera frecuente, Instituto Nacional de Estadística. https://www.ine.es/ss/Satellite?L=es_ES&c=INESeccion_C&cid=1259925528559&p=%2F&pagename=ProductosYServicios%2FPYSLayout&param1=PYSDetalle&param3=1259924822888

IPSO (Independent Press Standards Organisation) (2025) *Editors' Code of Practice*. London: Independent Press Standards Organisation. https://www.ipso.co.uk/wp-content/uploads/2025/03/ECOP-2025-IPSO-download-version-PDF.pdf

Ipsos (2023) *Ipsos Trust in Professions Veracity Index 2023 – Charts*. London: Ipsos MORI. https://www.ipsos.com/sites/default/files/ct/news/documents/2023-12/ipsos-trust-in-professions-veracity-index-2023-charts.pdf

ISBA (The Incorporated Society of British Advertisers) (2022a) *Influencer Marketing Code of Conduct* (Version 2), London: ISBA. Available: https://www.isba.org.uk/system/files/media/documents/2022-04/17295%20ISBA%20Influencer%20Code%20of%20Conduct%20Ver2.pdf

ISBA (2022b) *ISBA Influencer Contract Templates*. London: ISBA. https://www.isba.org.uk/knowledge/isba-influencer-contract-templates

ISBA (2022c) Submission to Online Advertising Programme, London: ISBA.

ISBA & IMTB (2024) *Influencer Marketing Code of Conduct*, London: Incorporated Society of British Advertisers. https://www.isba.org.uk/system/files/media/documents/2024-11/2024%20Influencer%20Code%20of%20Conduct_0.pdf

Lu, M. (2021) 'One in 10 Brits trusts social media advertising, YouGov survey finds', *Campaign*. https://www.campaignlive.co.uk/article/one-10-brits-trusts-social-media-advertising-yougov-survey-finds/1706357

IWF (The Internet Watch Foundation)(2021) *IWF Response to the Pre-Legislative Scrutiny Committee of the Draft Online Safety Bill*. Cambridge: IWF. https://www.iwf.org.uk/media/mn0lzhy3/internet-watch-foundation-online-safety-bill-final.pdf

JCDOSB (Joint Committee on the Draft Online Safety Bill) (2021) *Draft Online Safety Bill Report of Session 2021–22*. London: The House of Lords and House of Commons. https://committees.parliament.uk/publications/8206/documents/84092/default/

Jefferson, M. (2021) 'Why the ASA believes growing its own brand will help restore trust in ads', *Marketing Week*, 6 October. https://www.marketingweek.com/asa-brand-trust-in-ads/

Jordan, P. sand Butcher, A. (eds.) (2021) *International Advertising Law*. London: Globe Law and Business.

Kreab (2023) *Informe de medios 2023: La silenciosa transformación que no cesa*. https://kreab.com/espana/actualidad/informe-de-medios-2023/

Leveson, B. (2012) *An Inquiry into the Culture, Practices and Ethics of the Press. Volume I*. London: The Stationery Office. HC 780-I. Presented to Parliament pursuant to Section 26 of the Inquiries Act 2005. https://assets.publishing.service.gov.uk/media/5a7cb917ed915d63cc65c755/0780_i.pdf

Lema Devesa, C. (2018) 'Tendencias actuales del derecho de la publicidad: la problemática autorregulación publicitaria en España', *Methaodos. Revista de ciencias sociales* 6 (1): 7-15 https://www.methaodos.org/revista-methaodos/index.php/methaodos/article/view/225

Lloyd-Taylor, G., and Dresden, B. (2023) *Advertising Marketing 2023: UK*. London: Chambers and Partners. https://practiceguides.chambers.com/practice-guides/advertising-marketing-2023/uk

Lopez, J. (2022) 'Ministerial Foreword', in *Online Advertising Programme Consultation*. London: DCMS Available: https://www.gov.uk/government/consultations/online-advertising-programme-consultation/online-advertising-programme-consultation

MacRury, I. (2018) 'What is an advertising agency in the 21st century' in J. Hardy, H. Powell and I. MacRury (eds) *The Advertising Handbook*, 4th edition, Abingdon: Routledge.

MacRury, I. (2020) 'Taking the biscuit: Exploring influencers, advertising, and regulation', in S. Yesiloglu and J. Costello (eds) *Influencer Marketing: Building Brand Communities and Engagement*, London: Routledge.

MacRury, I. (2025) 'The Digital Advertising Machine: Programmatic and its vicissitudes', in I. MacRury and D. Manika (eds) *Digital Advertising Evolution*, London: Routledge. pp. 162-183. https://doi.org/10.4324/9781003168485

MacRury, I, Núñez-Gomez, P., Hardy, J. and Wysokinski, M. (2025) *Governance-in-practice* (Branded Content Governance Project). London: University of the Arts London.

MHRA (Medicines and Healthcare products Regulatory Agency) (n.d.). *What and how we regulate*. https://www.gov.uk/government/organisations/medicines-and-healthcare-products-regulatory-agency/about#what-and-how-we-regulate

Ministerio de Asuntos Económicos y Transformación Digital (2025*) Manifestación de interés: Spain Audiovisual Hub. Gobierno de España*. https://portal.mineco.gob.es/es-es/ministerio/participacionpublica/consultapublica/Paginas/manifestacion-interes-spain-audiovisual-hub.aspx

MoneySavingExpert (2022) 'Response to Online Advertising Programme Consultation'. London: MoneySavingExpert. https://www.moneysavingexpert.com/content/dam/mse/downloads/MSE_response_to_Online_Advertising_Programme_consultation_June2022.pdf

National Trading Standards (2020) 'ASA will now refer property raffle complaints to NTSELAT' Press Release (27 February). https://www.nationaltradingstandards.uk/news/asa-will-now-refer-property-raffle-complaints-to-ntselat/

National Trading Standards (2023) Annual Report 2022-23. https://www.nationaltradingstandards.uk/site_assets/files/ANNUAL%20REPORT%2022-23.pdf

National Trading Standards (n.d.) 'Work with the Advertising Standards Authority'. https://www.nationaltradingstandards.uk/work-areas/work-with-asa/

OECD (2015) 'Industry Self-Regulation: Role and Use in Supporting Consumer Interests', Directorate For Science, Technology And Innovation Committee On Consumer Policy, DSTI/CP(2014)4/FINAL, Paris: OECD

Ofcom (2008) *Identifying Appropriate Regulatory Solutions: Principles for Analysing Self- and Co-regulation*. London: Ofcom. https://www.ofcom.org.uk/__data/assets/pdf_file/0019/46144/statement.pdf

Ofcom (2016) *Broadcast Code Guidance: Section 10 – Commercial Communications in Radio Programming (May 2016)*. https://www.ofcom.org.uk/siteassets/resources/documents/tv-radio-and-on-demand/broadcast-guidance/programme-guidance/broadcast-code-guidance/section10_may16.pdf

Ofcom (2020) *The Ofcom Broadcasting Code (with the Cross-promotion Code and the On Demand Programme Service Rules)*. https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-standards/broadcast-code

Ofcom (2021) 'On-demand programme services ("ODPS") guidance'. https://www.ofcom.org.uk/siteassets/resources/documents/tv-radio-and-on-demand/broadcast-codes/2021/odps-harmful-material-guidance.pdf?v=327303

Ofcom (2022a) *Communications Market Report 2022*, London: Ofcom. https://www.ofcom.org.uk/__data/assets/pdf_file/0018/240930/Communications-Market-Report-2022.pdf

Ofcom (2022b) *News Consumption in the UK*, London: Ofcom. https://www.ofcom.org.uk/__data/assets/pdf_file/0027/241947/News-Consumption-in-the-UK-2022-report.pdf

Ofcom (2022c) *What Is Ofcom?* https://www.ofcom.org.uk/about-ofcom/what-is-ofcom

Ofcom (2023a) *Communications Market Report 2023*, London: Ofcom. https://www.ofcom.org.uk/__data/assets/pdf_file/0034/264778/Communications-Market-Report-2023.pdf

Ofcom (2023b) *Communications Market Report 2023*, London: Ofcom. Available: https://www.ofcom.org.uk/__data/assets/pdf_file/0034/264778/Communications-Market-Report-2023.pdf

Ofcom (2023c) *Approval of the PSA Code of Practice (15th Edition)*. Available: https://www.ofcom.org.uk/phones-and-broadband/phone-numbers/approval-of-psa-code-of-practice-15

Ofcom (2024a) Organisations We Work With. Available: https://www.ofcom.org.uk/about-ofcom/what-we-do/organisations-we-work-with

Ofcom (2024b) *Section Nine – Commercial References in Television Programming*. Available: https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-standards/section-nine-commercial-references-tv

Ofcom (2025a) *Statement: The Future Regulation of Phone-paid Services – Statement on Changes to General Conditions C2.11 and C2.12*. Available: https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-3-4-weeks/consultation-the-future-regulation-of-phone-paid-services-consultation-on-changes-to-general-conditions-c2.11-and-c2.12/main-documents/statement---

the-future-regulation-of-phone-paid-services---statement-on-changes-to-general-conditions-c2.11-and-c2.12.pdf

Ofcom (2025b) 'Repeal of the UK's Video-Sharing Platforms regime', London Ofcom. https://www.ofcom.org.uk/online-safety/illegal-and-harmful-content/repeal-of-the-uks-video-sharing-platforms-regime

Ofcom (2025c) 'Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services (ODPS)', https://www.ofcom.org.uk/siteassets/resources/documents/tv-radio-and-on-demand/broadcast-codes/2025/guidance-for-providers-of-on-demand-programme-services.pdf?v=401549

Ofcom and ASA (2021) Memorandum of Understanding between the ASA, Ofcom, BCAP and BASBOF. Available: https://www.asa.org.uk/static/23cc61df-e57c-4957-81ac15378b7730b7/5c2e367f-7778-405e-b2a09066860bc4ef/mou-asa-ofcom.pdf

Ostrom, E. (2010) 'Beyond markets and states: polycentric governance of complex economic systems', *American Economic Review,* 100**,** 641-672.

PSA (The Phone-Paid Services Authority) (2021a) *Code of Practice*. 15th edn, London: PSA. https://psauthority.org.uk/-/media/Files/PSA/00NEW-website/For-business/Code-guidance-and-compliance/Code-of-Practice/PSA_Code_of_Practice_15th_18-05-2022.ashx

Portman Group (2018) *Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks (6th edition)*. https://portmangroup21.wpenginepowered.com/wp-content/uploads/2021/03/Portman-Group-Review-of-Code-of-Practice-April-2018.pdf

Portman Group. (2019) *30 Years of Responsibility: Celebrating Three Decades of Effective Self-regulation in Alcohol Marketing*. https://portmangroup21.wpenginepowered.com/wp-content/uploads/2020/01/Portman-30-Years-of-Responsibility-Digital.pdf

Privacy International (2022) Submission to Online Advertising Programme, London: Privacy International.

Publishers Association (2023) *A Year in Publishing*. London: Publishers Association. https://www.publishers.org.uk/publications/a-year-in-publishing/

PQ Media (2024) 'Global Product Placement Spending Grew 12.3% in 2023 to $29.6B, Slowing from 14.3% in 2022 Due to Impact of Strikes', Press Release, *Cision*, 25 July.

Radiocentre (n.d) 'About'. https://www.radiocentre.org/about/

Raeside, V. (2022) 'Lights, camera, inaction part two: DCMS' report on influencer culture fails to influence government', Osborne Clark, 20 October. https://marketinglaw.osborneclarke.com/advertising-regulation/lights-camera-inaction-part-two-dcms-report-on-influencer-culture-fails-to-influence-government/

RSF (Reporters Sans Frontières) (2023) *World Press Freedom Index*. Version 2023. Available: https://rsf.org/en/index (Accessed: 20 November 2023).

Reuters Institute for the Study of Journalism (2022) *Digital News Report 2022*. Oxford: University of Oxford. https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2022

Schlesinger, P. (2022) 'The neo-regulation of internet platforms in the United Kingdom, *Policy and Internet*, 14 (1): 47-62. https://onlinelibrary.wiley.com/doi/full/10.1002/poi3.288

Society for Computers and Law (2024) 'European Commission and Consumer Authorities Investigate Online Influencers', *Society for Computers and Law*, 20 February. https://www.scl.org/european-commission-and-consumer-authorities-investigate-online-influencers/

Spain Audiovisual Hub (2023). *Informe Spain Audiovisual Hub April 2023.* https://spainaudiovisualhub.mineco.gob.es/content/dam/seteleco-hub-audiovisual/resources/pdf/Informe%20Spain%20Audiovisual%20Hub_2023_Final_v5.pdf

Statista (2024a) *Media - Spain*. https://www.statista.com/outlook/amo/media/spain

Statista (2024b) *Media & Advertising Outlook - United Kingdom*. Statista. https://www.statista.com/outlook/amo/media/united-kingdom

Statista Research Department. (2023). *Advertising in the United Kingdom*. Statista. https://www.statista.com/topics/1747/advertising-in-the-united-kingdom/#dossier-chapter4

Statista Research Department (2024) *Influencer Marketing in the UK: Statistics and Facts.* Statista. https://www.statista.com/topics/7119/influencer-marketing-in-the-uk/#topicOverview

Suau Martínez, J., Ruiz Caballero, C., Capilla García, P., Yeste Piquer, E., Puertas Graell, D., Cordero Triay, L., and Agràs Masdeu, J. (2022) *Country Report: Spain, in Monitoring Media Pluralism in the Digital Era. Florence: Centre for Media Pluralism and Media Freedom (CMPF), Media Pluralism Monitor (MPM)*. https://cadmus.eui.eu/handle/1814/74706

Suau, Martínez,J., Capilla García, P., Puertas, D., Franquet, M., Yeste Piquer, E., Sintes, M., Cordero, L., and Valsells, R. (2023) *Monitoring media pluralism in the digital era: Application of the Media Pluralism Monitor in the European Union, Albania, Montenegro, the Republic of North Macedonia, Serbia and Turkey in the year 2022. Country Report: Spain*. Centre for Media Pluralism and Media Freedom (CMPF), European University Institute. Available: https://hdl.handle.net/1814/75739 (accessed: 15 May 2025).

Sustain (2022) 'Government Consultation Response: Online Advertising Programme Consultation', London: Sustain https://www.sustainweb.org/reports/jun22-online-advertising-programme-consultation/

The Transparency Project (2023) *Independent External Review of IPSO*. https://transparencyproject.org.uk/independent-external-review-of-ipso/

United Nations (2021) 'General comment No. 25 (2021) on children's rights in relation to the digital environment', https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation

UK Government. (2008) *The Consumer Protection from Unfair Trading Regulations 2008*, UK Statutory Instruments 2008 No.1276. Available: https://www.legislation.gov.uk/uksi/2008/1276/contents/made (accessed: 12 May 2025).

UK Government. (2014) *Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2014*, Statutory Instruments 2014 No. 870. https://www.legislation.gov.uk/uksi/2014/870/made).

UK Government. (2015) *Consumer Rights Act 2015*, c. 15. https://www.legislation.gov.uk/ukpga/2015/15/contents/enacted

UK Government. (2020). *EU legislation and UK law*. https://www.legislation.gov.uk/eu-legislation-and-uk-law

UK Government (2022) *The Benefits of Brexit*, London: Stationary Office

UK Government. (2024a). *The Regulation of Premium Rate Services Order 2024,* UK Statutory Instruments 2024 No. 1046. https://www.legislation.gov.uk/uksi/2024/1046/contents/made

UK Government (2024b) *The Digital Markets, Competition and Consumers Bill*, London: The UK Parliament. https://bills.parliament.uk/bills/3453

UK Government (2025a). *Consumer Rights Act 2015*, c. 15. https://www.legislation.gov.uk/ukpga/2015/15/contents

UK Government (2025b) *Data Protection Act 2018*, c. 12. https://www.legislation.gov.uk/ukpga/2018/12/contents

UK Government (2025c) *Copyright, Designs and Patents Act 1988*, c. 48. Available: https://www.legislation.gov.uk/ukpga/1988/48/contents (accessed: 18 May 2025).

UK Government (2025d) *Communications Act 2003*, c. 21. Available: https://www.legislation.gov.uk/ukpga/2003/21/contents (accessed: 18 May 2025)

UK Parliament (2023) 'Online Safety Bill: Commons stages', Research Briefing, 12 January, House of Commons Library. https://commonslibrary.parliament.uk/research-briefings/cbp-9579/

Valentine, M. (2024) 'People twice as likely to trust ads after seeing watchdog's awareness drive', *Marketing Week*, 22 March.

Which? (2022) 'Consultation Response: Online Advertising Programme', London: Which? https://www.which.co.uk/policy-and-insight/article/review-of-the-online-advertising-programme-which-response-apL5K6l3Z3SJ

Williams, R. (1977) *Marxism and Literature,* Oxford: Oxford University Press.

Woodhouse, J. (2022*Media Bill: Policy Background*. London: House of Commons. https://researchbriefings.files.parliament.uk/documents/CBP-9571/CBP-9571.pdf

Wukovits, N. (2022). *Transposition of the 2018 Audiovisual Media Services Directive. IN-DEPTH ANALYSIS. European Parliamentary Research Service.* https://www.europarl.europa.eu/RegData/etudes/IDAN/2022/730354/EPRS_IDA(2022)730354_EN.pdf

10. Appendices

11. Appendix A: Branded Content Governance Project Activities and Interviews

The Branded Content Governance Project organised a variety of events and meetings that were used both to gather research data and to share and discuss project findings as these developed. We organised invitation-only 'closed' events, most of which were conducted under Chatham House rules, as well as more 'open' events, from 'reading group' events organised in conjunction with the Branded Content Research Network, to public meetings.

Key events organised by the BCGP to inform our policy analysis include our January 2023 policy symposium on Online Advertising Regulation, which was followed by a public event to consider the options and their implications for the regulation of online advertising. Both events considered the wider framework and options for regulation but focused on the identification and disclosure of advertising across news publishing and influencer marketing. The symposium and public event involved key policy actors, academics, legal experts and industry, and addressed issues and policy/regulatory proposals affecting the relationships between media and marketing communications. The events were also organised in association with MeCCSA Policy Network, part of the part of the subject association that represents all who teach or research in Higher Education in media, communications and cultural studies. We held online events addressing AI regulation and branded content, and Children and Branded Content

In Spain, the BCGP organised a similar mix of 'closed' meetings with industry, legal and regulatory participants and 'open' meetings that shared topics and BCGP research findings with wider audiences, notably higher education students and staff but also with those from industry, regulation, legal and civil society. Events included meetings to discuss branded content governance and BCGP project research held at Complutense University in October 2023 and October 2025, and roundtable meetings, research training and BCGP presentations at the University of Malaga in May 2024.

The following individuals took part in public meetings and events organised as part of the Branded Content Governance Project. We have not listed academics directly involved as core researchers in the BCGP.

UK

Tinuke Bernard, The Black Content Creators Directory.
Dean Beswick, Founder, Gorilla Gorilla.
Andrew Canter, Global Chairman, Branded Content Marketing Association.
Julian Coles, Digital Media Policy Consultant.
Adam Davison, Director of Data Science, Advertising Standards Authority.
Jason Freeman, Director, Consumer Law, Competition and Markets Authority.
Gordon Glenister, Influencer marketing adviser, journalist and podcast host.
Scott Guthrie, Director General, Influencer Marketing Trade Body.
Rob John, Managing Director, Content Marketing Association.

Lexie Kirkonnell-Kawana, CEO, Impress.
Neil Kleiner, Managing Partner, Social and Influencer, MSL Group.
Kamiqua Lake, Founder of the UK Black Comms Network and Coldr PR.
Tony Laskar, CEO, Audience2Media.
Ronke Lawal, Founder of Ariatu PR.
Geraint Lloyd-Taylor, Partner, Lewis Silkin.
Vince Medeiros, board member and former Director, Content Marketing Association.
Nicole Ocran, Founder, The Creator Union.
Emma Smith, Operations Manager, Committee of Advertising Practice.
Carlotta Rossi Spencer, Head of Branded Entertainment, Banijay Entertainment.
Gia Thom, Development Director, Impress.
Shannon Walker, Founder and Chief Executive, Social Disruption.
Anthony Worrall, Head of Editorial Standards, BBC Studios.

The BCGP wishes to thank all those who agreed to meet or who discussed the project work with us at BCGP and at third-party events. Many of these discussions took place outside of the formal project interviews. These discussions included senior staff at the following UK regulatory organisations Advertising Standards Association (ASA), Advertising Standards Board of Finance (Asbof), Committee of Advertising Practice (CAP), Competition and Markets Authority (CMA), Department for Culture, Media and Sport (DCMS), Impress.

Spain

Pablo Vázquez Cagiao, Co-founder of APG (Spanish Association of Strategic Planners), Chief Strategy & Brand Officer at BOB Agency (advertising agency).
Charo Sádaba Chalezquer, Professor and Dean of School of Communication at University of Navarra.
Loreto Corredoira, Senior Lecturer in Information Law at Complutense University of Madrid.
Luis Remírez de Esparza, Chief Content Officer (CCO) at BTOB Livebrands and Branded Content Director at BOB Agency (advertising agency).
Jon Lavín, Director of Madrid Content School and Creative Director of Content at Bijoux.
Luis Rodrigo Martín, Professor at Department of Audiovisual Communication and Advertising, University of Valladolid.
Pablo Muñoz, Executive Vice President of the Branded Content Marketing Association (BCMA).
Esther Martínez Pastor, Professor, University Rey Juan Carlos in Madrid and member of the AUTOCONTROL jury.
Carlos Rivadulla, Head of TMT (Technology, Media & Telecommunications) at ECIJA Madrid.
Antón Álvarez Ruiz, Senior Lecturer (Strategic Communication / Strategic Planning) at Complutense University of Madrid.

José Olivares Santamarina, Chief Strategy Officer (CSO) at Margarita, la Meta Agencia and member of BCMA Spain.
Jorge Fernando Abaurrea Velarde, Associate Lecturer in Advertising Law at Complutense University of Madrid.

The BCGP Spanish research team conducted interviews with senior staff at the following regulatory, legal and industry organisations: AUTOCONTROL, BCMA Spain, CNMC (National Commission for Markets and Competition), ECIJA Madrid (law firm), EGEDA (Collective Rights Management Association for Audiovisual Producers), Havas Group Spain.

11.1 Appendix B: Summary of BCGP Reports and Publication

Online Advertising Regulation Policy Briefing

February 2023

This *Online Advertising Regulation Policy Briefing* by the BCGP has a dual purpose. It provides a briefing on developments in UK policy concerning digital advertising regulation. It also presents initial research work for the BCGP, setting UK policy in the wider context of EU law and policy, and policy developments in Spain.

Hardy, J. et al. (2023) *Online Advertising Regulation Policy Briefing*. University of the Arts London. Online resource. https://doi.org/10.25441/arts.25225259.v1

Short Commentary and Report on UK Online Advertising Regulation

February 2024

This short commentary and report on UK online advertising regulation is written by the BCGP Principal Investigator, Jonathan Hardy and the views expressed are his own. The report argues that the UK Government's proposed action following the Online Advertising Programme consultation has been unduly narrow in scope. It argues that it is inappropriate to ask the advertising industry - which the original consultation placed under scrutiny - to provide the solutions alone, without wider public involvement.

Hardy, J. (2024) *Short Commentary and Report on UK Online Advertising Regulation*, University of the Arts London. https://doi.org/10.25441/arts.25251211.v1

Mapping the Media-Marketing Ecology

June 2024

Mapping the Media-Marketing Ecology describes the main features, actor-types and processes involved in contemporary marketing communications. It examines the ongoing convergence of marketing and media across industry arrangements, forms and formats and offers an authoritative analysis of branded content and forms of media-marketing integration. We published an interim version in 2024. An expanded version will be published as a freely-available, open publication, by Routledge in early 2026. We are very grateful for support from UK Research and Innovation to enable us to publish this work in an accessible manner for an international readership.

Hardy, J. et al. (2024) *Mapping the Media-Marketing Ecology*, University of the Arts London. https://doi.org/10.25441/arts.26096632.v1

Individual Country Reports

June 2024

These are individual reports for each of the 32 countries in the BCGP study. Using a common format, with 17 sections, each report sets out the country context, outlines communications and advertising regulation and self-regulation and details the governance of branded content in the following categories: publishing, audiovisual, audio, digital media, social media marketing, outdoor, experiential and other.

https://doi.org/10.25441/arts.26097916.v7

Branded Content Governance: 32-Country Comparative Analysis

June 2025

This report summarises the comparative findings, discusses the methodology, and sets out the theoretical frameworks, context and thematic analysis for the 32-country study of branded content governance.

Hardy, Jonathan; MacRury, Iain; Nuñez-Gomez, Patricia; Rangel, Celia; Martínez Isidoro, Beatriz; Josefa Establés Heras, María; Vázquez Rodríguez, Lucia.; Kubicka, Hanna and Wysokinski, Maciej (2025) *Branded Content Governance: 32-Country Comparative Analysis*, University of the Arts London. https://doi.org/10.25441/arts.29424839.v3

Branded Content Governance: Problems and Mitigations

June 2025

This report sets out the summary analysis and recommendations made by the BCGP. It is designed to serve as an executive summary for our analysis of 'problems' relating to branded content practices and to the governance of branded content, and 'mitigations', actions that could help to remove or reduce those problems. Our analysis is set out in greater detail in other project reports and outputs including Branded Content Governance: *32-Country Comparative Analysis* (June 2025).

Hardy, J. et al. (2025) *Branded Content Governance: Problems and Mitigations*, University of the Arts London. https://doi.org/10.25441/arts.29424842.v2

Governance-in-Practice

November 2025

This report presents BCGP interview, roundtable and desk research on branded content practitioners in the UK and Spain. Governance-in-practice refers to the processes by which individuals, teams and networked practitioners reflect and act in accordance with rulemaking/rule-shaping and internalised norms.

Media Analysis

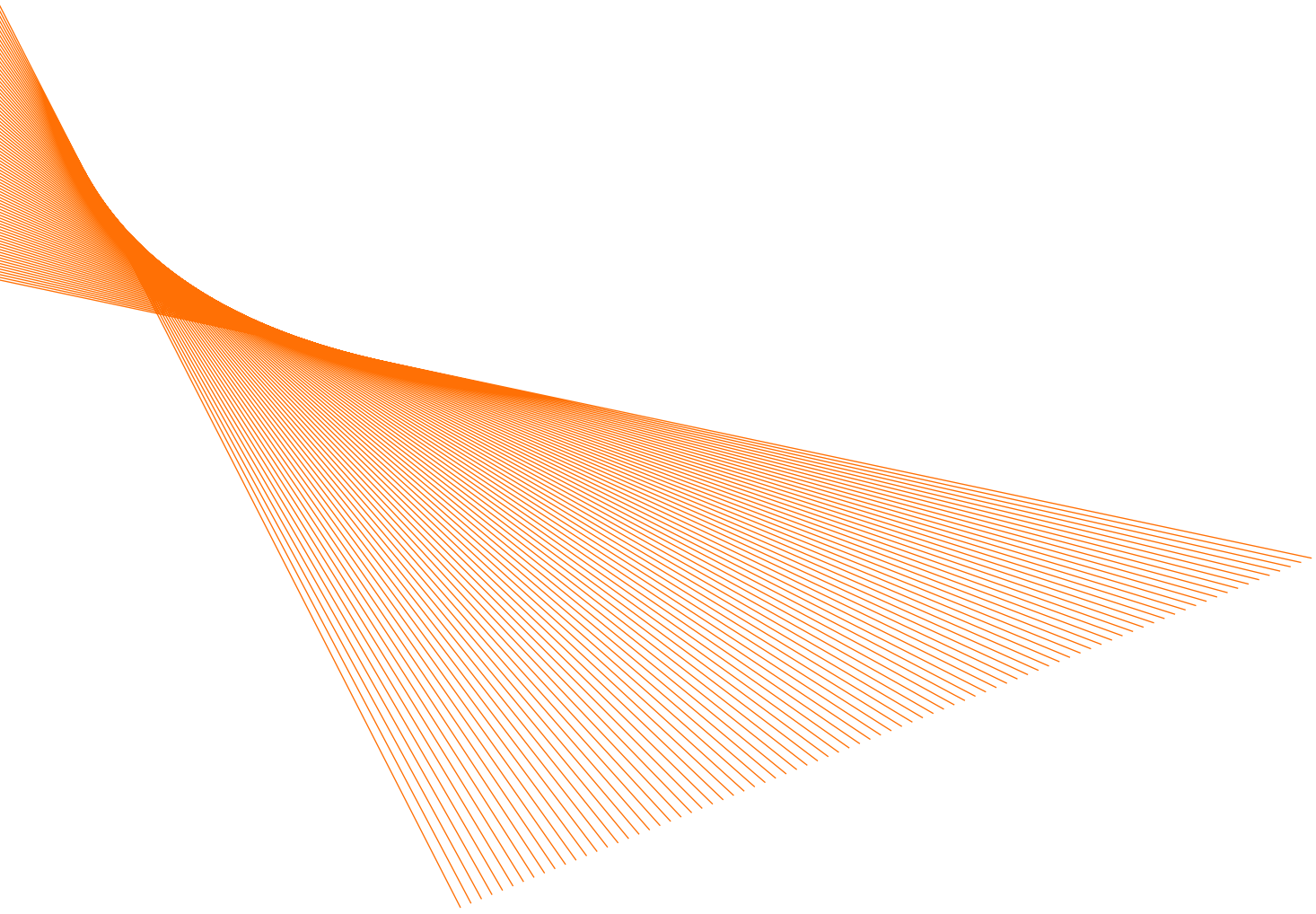
November 2025

This report presents BCGP research on professional ('trade') and public media (newsbrands) reporting and commentary on regulatory issues relating to branded content in UK and Spanish media.

Media-Marketing and Branded Content Policy Analysis: UK and Spain

November 2025

This report examines and compares the law and regulations affecting branded content in the UK and Spain and examines relevant policy processes and actors including through interviews, roundtable meetings and other research activities.



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