

## PROTECTING MINORS IN RELATION TO INTERACTIVE SOFTWARE

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### Abstract

**Purpose** – The objective of this work is to analyze minors' participation in interactive software.

**Methodology/Approach/Design** – The Spanish regulations in effect on this matter will be analyzed. Similarly, applicable best practice instruments that have been adopted will be analyzed.

**Findings** – The interactive software industry's self-regulation could be a thought-provoking tool to complement legal regulations to protect minors.

**Practical Implications** – The implications of this research analysis can be useful for the interactive software industry, civil society, and the public sector.

**Originality/Value** – This research article shows the risks that minors face in the digital world. It provides a perspective that highlights the harmful and illegal content affecting minors.

**Keywords:** Digital Economy. New Technologies. Regulation. Video Games. Minors.

### INTRODUCTION

At present, minors play an extraordinarily important role in the consumption environment. This group is the recipient of advertising practices implemented by service providers that increasingly resort to new media, such as

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the Internet, which is visited increasingly more often by younger people. It is also important to consider the products that we will refer to as interactive software; such products are involved in how this group entertains itself, through video games, and are the subject of Internet advertising.

We are faced with an interactive product related to what young people use as a form of entertainment. While the use of some video games can offer specific advantages for educational purposes and the development of certain skills and/or abilities, this is not always the case. In fact, sometimes, they may include a different type of harmful content that is clearly inappropriate for such a group. Given this situation, it is advisable for Spain's legislators to approve a list of legal standards that will guarantee the protection of minors in various spaces that are either directly or indirectly connected to new technologies. Thus, for our purposes, minors must be given special attention in various fields with implications for e-commerce, understood in a broad sense, including contractual capacity, privacy, and the advertising content or activities present online – Article 3a of Law 34/1988, of November 11, General Advertising Law (LGP), Article 4 of Law 1/1996, of January 15, on the Legal Protection of Minors, Article 96.4 of Royal Legislative Decree 1/2007, of November 16, which approved the Consolidated Text of the General Law for Consumer and User Protection, and other complementary laws (TRLGDCU). These users, accustomed to using the Internet as a resource for entertainment and education, surf the web with remarkable ease and skill. In turn, however, they are the most vulnerable and influential recipients of advertising messages present online (HÖRNLE et al., 2019). Video games hold a leading position among these advertisements.

Regulations attempt to protect minors in numerous areas, but they appear to be quite limited and noticeably outdated in relation to the rapid advances of the Internet in general. One scenario where this occurs is with video games that increasingly allow more user interaction, as online gaming is encouraged and users play with other users based in different parts of the world. Unfortunately, these products include content that is sometimes especially harmful to minors. For example, the content often promotes the game, which could eventually lead to gambling, and other content can be very violent or sexual.

The limitations that legislators cannot or do not want to address can be partially overcome, although they depend on the entertainment software industry's degree of true commitment by resorting to the phenomenon of self-regulation. The statements within legal documents present content adapted to the problems that arise with video games, potentially due to the principle of free will of agents who interact in this field where self-discipline is evident. In addition to being comprehensive, they are continuously and rapidly updated.

While ethical or deontological codes related to interactive entertainment software are a relatively recent experience, they are highly efficient in different sectors likely to be included in the environment we discuss. Video game self-regulation has been implemented in general and on certain networks such as mobile telephones in particular (LÓPEZ JIMÉNEZ & DITTMAR, 2018).

## MINORS AS CONSUMERS IN THE DIGITAL WORLD

Both actions taken on the Internet aimed at advertising goods or services and activities capable of giving rise to perfecting electronic purchasing must ensure that certain groups are respected, particularly minors (WAIGUNY, NELSON & TERLUTTER, 2014).

While it is true that some advertising actions primarily target minors, others can be seen by minors even though they are not in any way directed to this group. These campaigns may occasionally present harmful content to minors that may subsequently harm their mental development.

Both illegal and harmful content should be controlled as much as possible, and specific measures that ensure that the underage population will be protected against such content should be established. As we will see, the legal measures adopted related to interactive entertainment software complement the instruments derived from the industry's self-regulation (LATZER, JUST & SAURWEIN, 2013).

With e-commerce, especially in regard to consumers, *a priori*, it is not possible to check all online sellers' capacity to act. Regarding employers, their identity and corresponding capacity can be found through various means, such as their digital certificate and registration in the Company Register, which can be accessed electronically and is recommended. However, knowing a consumer's effective capacity is more difficult because there are currently no clear mechanisms available that reveal this information. In fact, it is not yet possible to electronically access the Civil Registry for this purpose.

The corresponding capacity to act must be recognized with regard to the legal activity of minors within the framework of e-commerce whenever there is natural capacity. In this respect, while the existence of self-government is demonstrated in some cases, it is not always very clear. At times, a third party may be uncertain as to whether to engage with a legal guardian or with the minor directly.

The validity of electronic contracts entered into by minors is based on the fact that minors are required to have capacity in accordance with their age, understanding, and natural capacity and the fact that the contracts must not be particularly complex, which will not be the case with contracts that minors regularly become party to.

Intervention by the minor's legal guardian is not necessary, in accordance with Article 162.1 of the Spanish Civil Code, which details the contracts in which minors may themselves participate based on their level of maturity.

In terms of contracts in general and e-commerce in particular, recognizing a minor's capacity must be coordinated with the necessary protections. In the absence of a rule that determines the general capacity of unemancipated minors when they enter into electronic contracts, it generally cannot be determined whether or not the contract is valid. Regardless, the specific circumstance must be considered and the minor's capacity assessed, taking into account both the importance of the agreement in question and the minor's maturity and personal development (HABIBZADEH, 2016). Nevertheless, due to the simple fact that a minor is a party to the contract, this circumstance, considering Articles 1300 to 1302 of the Civil Code, may not be invoked by the other party to void the contract because only the minor, upon reaching legal age, or the minor's legal guardian may contest it.

Minors may not purchase certain products or services, such as tobacco, alcohol, or other products that are harmful to their health or prohibited by law. In fact, technical mechanisms must be established that prove that the person who purchases these products is, at minimum, of legal age. In other words, before an electronic contract is finalized, the consumer's or user's age must be verified (CAMENGA et al., 2018).

It is possible for a minor to purchase a good or service electronically using fraudulent schemes designed for this purpose, thus resulting in fraud. This phenomenon occurs when a minor impersonates an adult or another person in an electronic contract, when necessary also imitating the person's personality. Although both actions should be treated distinctly, considering the specific aspects of each scenario, we find it appropriate to establish some general considerations.

In the Civil Code, the interest of protecting minors prevails over trusting the third party involved in the contract. The minor's intent will not prevent the minor's legal guardian from challenging the contract. However, damages caused to a third party who contracted with the minor in good faith must be compensated. Such compensation will include both the expenses incurred to enter into the contract and the value of the delivered, nonrefundable good or service.

When minors enter into contracts in their own name but pretend to be of legal age, the general rules that we have described and analyzed will apply, making the contract voidable by the minors or their legal guardians.

When a minor impersonates another person of legal age, which may include his or her parents or guardians, the contract will be void due to the lack of consent from the person to whom the contract was attributed. In this case, the

minor will be liable for the compensation of losses and damages that, where appropriate, are granted to the third party who operated in good faith. If the minor's parents had him or her under their care, they will be responsible for the appropriate compensation. However, the minor may be directly responsible when the parents are not present or are insolvent.

Finally, parents have the responsibility to inform minors of the risks they run regarding the use of software. In this sense, they need to teach them to use these digital resources reasonably and responsibly. Parental authority is recognized in Article 154 of the Civil Code and is implemented for the benefit of children; it comprehends parents' duty to watch over children, keep them in their company, feed them, educate them and provide them with comprehensive training. Based on such an approach, actions to that end are legitimate. There is a clear duty of care in the best interests of the minor that parents must take into account regarding the possible damage to them that video games can cause.

## MINORS AND ENTERTAINMENT SOFTWARE

The video game market originated in the late 1950s, but it did not prosper until the 1980s. Since then, it has been steadily increasing. Relevant to this discussion, significant technological investments have been made, as well as, most importantly, new and creative ways of creating highly impactful advertising messages. Videos games represent a form of entertainment, although, sometimes, they carry out educational work, and they are firmly established among minors, even though they are also clearly visible to adults.

Video games can be played using various platforms or technological means. In fact, at present, video games have been created specifically to be accessible by cell phones. Importantly, among other features, these devices are able to download these services from phone networks themselves, and they even have the option of connecting to the Internet. Video consoles can also connect to the Internet, and of course, computers can be used.

Analyzing the origins of video games, we find that this market has been growing and evolving significantly since its birth. Compared to those of today, the first video games were very rudimentary. It is now very common for these types of games to include a series of extremely violent or aggressive content, which can naturally be harmful to their youngest users.

Faced with regulations that have existed in the past in terms of film and television content, the rapid and unstoppable growth of the entertainment software industry has meant that it has developed with limited regulations regarding the content introduced. To manage this reality, different best practice documents have been approved whose articles include, among other aspects, the need to protect

minors from certain content that may be harmful to them. We will address this aspect below.

### **Advertising for Interactive Entertainment Software**

Marketing communication is an essential element in the competitive struggle to conquer the market. In this sense, advertising for interactive entertainment software on the Internet, which is one of the pillars of e-commerce, can occur through different advertising practices, which represent an important element of consumer information.

There are numerous advertising techniques related to video games that can considerably vary. In this sense, the methods that are used can be essential. Regardless, certain precautions must be taken so that advertising behavior does not harm minors.

This aspect, as striking as it may be, has not caught the attention of or sparked regulation by state regulators, with the sole exception of illegal content. Remarkably, the instruments derived from self-regulation include specific regulations on this issue, with comprehensive protection against harmful and illicit content (LÓPEZ JIMÉNEZ, DITTMAR & VARGAS PORTILLO, 2020).

Online advertising related to video games may be directed to the general public, including minors, or exclusively to adults, excluding the underage population. Alternatively, it may primarily target the underage population in general or only those who are at least a certain age and thus be not recommended for individuals under that age (MARTÍNEZ PASTOR & NÚÑEZ, 2019).

Three groups of rules applicable to online advertising for minors can be established: first, general advertising regulations and, where applicable, specific regulations based on the type of product; second, specific regulations based on the means of communication, that is, regulations on Internet advertising; and third, specific regulations based on the intended audience, that is, rules that specifically regulate advertising to minors.

We can elicit a series of regulatory principles by reading a compilation of the rules applicable to this type of advertising. These principles complement those that generally govern advertising to minors. They address the principle of advertising identification, the principle of identifying advertising messages aimed at adults, and the principle of good use of Internet technology when developing online advertising messages aimed at minors (WU, 2016). The rapid evolution of the Internet requires these principles to be reviewed and updated periodically to ensure that the protection of minors from online advertising is similar to the protection they receive in relation to traditional media advertising (MICHELLE, 2018).

In addition to presenting an important and central idea that is clearly persuasive, all forms of advertising involve an informative plot, however minimal and associational (DAHLEN & ROSENGREN, 2016). Persuasion can be defined as a process in which a communicator tries to influence another person's or group's beliefs, attitudes, and behavior by sending a message and the recipient has freedom of choice. Persuading does not mean lying, cheating, or manipulating. To persuade is to suggest or advise. Through persuasion, the recipient of the message is influenced, but persuasion does not determine his or her willingness (WAIGUNY, NELSON & TERLUTTER, 2012). Along these lines, the most recent trends show that informative content in advertising is sometimes displaced by the use of irrational persuasive elements related to a recipient's emotions and impulses (PANIC, CAUBERGHE & DE PELSMACKER, 2013). Consequently, as opposed to purely informative messages, at present, advertising communication is connected to stronger creative activity. In the advertising model focused on informing and persuading recipients on the superiority of the advertiser's products compared to those of other companies, advertising strategies are very important, and they specifically seek to give recipients the impression that the company advertising the good or service in question has a future plan and, in turn, is dynamic, which is why, at present, advertisements are so original and diverse.

Consumers must have the opportunity to choose, but to do so, they must be correctly and completely informed with regard to the products or services that are available to them in the market. Only in this way can citizens determine their willingness as consumers and make the decisions they find most appropriate.

In short, advertising aimed specifically at minors is characterized by, among other things, the predominance of irrational elements of persuasion over informative elements (HAAN, 2000). As we have highlighted, such advertising is the recipient of increasing regulation due to the specific risks that it poses (VANWESENBEECK, WALRAVE & PONNET, 2016).

To determine whether an ad is directed to minors, three criteria, which are neither cumulative nor substitutable, must be addressed. Therefore, they should be considered as an overview. The first criterion is the type of product or service promoted. An advertisement is understood as being aimed at minors when it promotes a product or service objectively intended for minors or one that is likely to attract their attention or interest. The second criterion is the design of the advertising message. Advertising aimed at minors is outlined in a way that, due to its content, language, or images, is objectively apt to particularly attract the attention or interest of minors. The third criterion is the circumstances under which the advertising message is disseminated. Among other aspects, the format

or medium used, the broadcasting time slot, and the programming blocks into which it is inserted must be considered.

In this regard, the incorporation into the legal system of Directive 2005/29/EC of the European Parliament and of the Council of May 11, 2005, concerning unfair business practices by companies in terms of consumer relations in the internal market (better known as the Unfair Commercial Practices Directive) considers as undue influence, which is an aggressive practice, any conduct that involves a consultative role toward minors to which minors grant a certain level of trust, either due to an existing family or academic relationship or because of an influential, and sometimes decisive, moral authority that the corresponding person or fictional character can exercise over minors.

Thus, when targeting minors, advertisers must not directly or indirectly incite or encourage, through the minor's own parents or guardians or those of others, purchasing the good or service offered, such as a particular video game, nor under any circumstances may advertisers harm this group in a physical or moral way. Such harm, among other possibilities, will occur when interactive software content is especially aggressive, violent, or xenophobic or contains sexual themes or content that may incite certain types of virtual play, to some extent making it a type of product that encourages gambling.

Such marketing practices, in accordance with Annex I, Number 28, of the Unfair Commercial Practices Directive, are considered an unfair practice under any circumstances and are also considered as such in all member states.

### **Assessments Related to these Products' Potentially Harmful Content**

In the field of advertising, we can distinguish between illegal content and harmful content in accordance with Decision 854/2005/EC of the European Parliament and of the Council of May 11. This decision creates a long-term community program for safer use of the Internet and new online technologies. While both have notably unfavorable consequences for minors, the severity of each is essential in determining, and consequently advising, a wide variety of treatments.

Thus, illegal content is that which, in and of itself, constitutes a crime and warrants criminal sanctions based on criminal law, while harmful content, though not criminal, may be offensive or inappropriate for recipients who view it.

Harmful content, however, is legal but still considered offensive or harmful to the normal development of minors, and therefore, the scope is broader. While harmful content does not have to be illegal, illegal content is by definition included within harmful content. While there is some consensus among Western states regarding criminal behavior or content, such as disseminating child pornography or racist or xenophobic content and defending terrorism, there is no



such agreement with respect to what constitutes harmful behavior or content. That which is harmful is based on concepts that are difficult to measure worldwide because they depend on cultural, social, religious, and moral values. A significant percentage of video games available online and, therefore, accessible to minors include very harmful content for minors that in no way should go unnoticed, as such content is likely to condition their subsequent mental development.

On the other hand, it is important to distinguish between content that is harmful and that which is unwanted because although they are similar, they are by no means the same. Among other characteristics, they are alike in that they represent messages that generally cannot be prohibited, as they may be protected by freedom of expression and the right to information. Thus, harmful content, as we have indicated, is content that can harm a minor, while unwanted content is content that certain users do not want to receive at all. Both harmful and unwanted content depend on aspects of personal sensitivity, including age, intellectual maturity, and ideology, as well as aspects of cultural sensitivity (LÓPEZ JIMÉNEZ, VARGAS PORTILLO & DITTMAR, 2020). Therefore, neither type of message can nor should be banned together, but they must be limited through the sector's self-regulation.

When dealing with illegal content, because they are an active party, either directly or indirectly, to such content, minors are victims of an unlawful encroachment on their rights. With harmful content, however, minors participate only as viewers and do not qualify as victims whose rights to honor, privacy, or self-image have been violated. Unfortunately, this content may have negative consequences for the development of minors' personality.

Child pornography and defamation of minors constitute illegal content that infringes upon the honor, privacy, and self-image of minors. These actions must be suppressed by criminal laws. Faced with such content and the web pages on which they appear, in accordance with Article 30 of Law 34/2002, of July 11, on Information Society Services and Electronic Commerce, a prohibitory injunction may be initiated to obtain a judgment establishing the suspension of the conduct and its reiteration in the future.

Regarding harmful content that is sometimes present in interactive entertainment software targeted toward minors, the preventive and, if necessary, repressive role that codes of conduct may play stands out. These codes suggest a firm commitment by companies that follow such codes to abide by and to implement appropriate technical measures for content that can negatively affect the free development of minors' personalities and their fundamental rights. In this sense, some brief considerations about neo-constitutionalism can be made. Neo-constitutionalism is an approach to a constitution that is committed to values and principles linked to the fundamental individual rights and to dignity that exceed

its written formulation. In this sense, the rights that a constitution includes are principles that are judicially applied through their weighting, and to these we add those principles that are framed within a consensual universal framework of values present in international conventions and treaties that bind states and make them responsible for their omissions and departures. Such a postulate is applicable to the rights of minors in the digital field that must be recognized. Based on such a postulate, better protection of minors can be achieved.

Minors particularly absorb external content. They find distinguishing information from advertising to be remarkably complex (AN & KANG, 2014). In this respect, video game companies must follow responsible advertising practices, taking into consideration their potential customers, essentially their future target audience (JENKINS, 2013). Self-regulation is one tool that can be used to reach this objective. Owing to the documents derived from self-regulation tools, best practices in the field can be promoted and strengthened.

Minors always have a circle of people who exercise a certain degree of authority over them, whether as part of their family or school or as a moral authority, founded on a special bond of trust, sometimes admiration, that minors form with these people. This circle includes parents, guardians, teachers, and, to some extent, people such as certain hosts from children's programs and even fictional characters from television series, movies, video games, etc.

To summarize, to deal with illegal content, current legislation, in addition to criminal and civil reporting channels, must be used. In this case, the goal is to remove such content from circulation, to stop the offenders, and to bring them to justice.

Keeping minors safe from the dangers of the Internet is not an easy task. In addition to fighting against illegal conduct and content, a series of measures must be taken to protect them while respecting their need for freedom and their thirst for knowledge. However, all of these measures, whether technological, educational or social, have costs and benefits. How they are applied will depend on aspects such as the minor's age and characteristics. Finding the balance between interests is also not an easy task: higher costs may be justified if the presumed damage is greater or very likely or if very young children, rather than teenagers, are involved.

In the case of harmful content, the objective is limited to preventing minors from finding unwanted material or that which may affect their normal development, and this objective should be considered applicable for certain types of video games with harmful content. Therefore, the strategies will be preventive, essentially involving technological, educational, and social solutions (HWANG, YUM & JEONG, 2018).

Controlling content related to interactive entertainment software on the Internet is a priority issue that generates new legal challenges and, without question, challenges for video game companies operating in this new online medium. Unfortunately, the way this problem has traditionally been addressed fails in regard to the Internet. First, governments can no longer act alone to control material that circulates by a means of communication that knows no territorial boundaries. For this reason, it can be argued that specific international solutions must be implemented. Second, in addition to these arguments, it is important to remember that on the Internet, continuing to act solely through restrictions, which have been the typical instrument used to control content in classical media, is not feasible to regulate online material, as these measures, in practice, have been shown to be highly inefficient and potentially unconstitutional (BARKATULLAH & DJUMADI, 2018).

Government regulation must continue to play an active role on the Internet in general and in matters of interactive software in particular, but complementary measures must be taken in conjunction. In this regard, sector self-regulation through what are known as codes of conduct stands out, in addition to users taking measures to control content on their own through filters that, as we will see, also give rise to a number of problems (LÓPEZ JIMÉNEZ et al., 2013).

Regarding codes of conduct and the role they play in this matter, we can only predict that they represent a key piece in controlling harmful content in certain video games for minors because they establish a series of ethical commitments that representatives interacting in the video game sector voluntarily agree to adhere to. Often, an age classification is established to prevent harming young people's moral development if they are under a certain age (WAUTERS, LIEVENS & VALCKE, 2016).

As we have indicated, the opportunity for a consumer or user (in this case, the parent or guardian) to install programs that proactively filter content installed on computer equipment is important (STEINBERG, 2020). Depending on the situation, these programs will block access to certain websites aimed at video games with content that is potentially harmful.

However, there is a problem with effectiveness inherent to the limitations of the computer programs themselves that must be addressed. It is impossible for filters to be used to block access to potentially harmful content while never restricting access to pages that are not harmful at all (WEINBERG, 1997). Furthermore, all filters assume the task of selecting and, if applicable, labeling content, which is carried out by private organizations dedicated to classifying online content, including video games.

## **The Risks of Installing Illegal Software**

In addition to the possible risks that potentially harmful content from video games poses for minors in terms of the future development of their personality, other equally important risks must be considered. Here, we refer to illegal copies of video games, particularly pirated software. Royal Legislative Decree 1/1996, which passed the Consolidated Text of the Law on Intellectual Property, protects the creators of this type of work, prohibiting any form of copying or, as it is commonly known, hacking video game programs without the author's corresponding prior and mandatory consent, as well as the distribution of such copies and the possession or manufacture of a device that in any way neutralizes the anti-copy systems of original software. Beyond the violation that pirated copies of entertainment software may entail with regard to intellectual property, they may lead to other proprietary risks that can be avoided using the original video game. In fact, using the original version prevents risks to equipment (such as certain viruses, Trojan horses, and spyware), the computer system (which is not tested and guaranteed), and data (GRIMMELMAN, 2009; MARTÍN-ROMO ROMERO & DE PABLOS HEREDERO, 2018). In addition, original software provides a series of services as part of the purchase, such as post-sales technical support or certain updates, which may sometimes be due to prior security failures.

Downloading this type of entertainment product using certain cracks or patches that, to some extent, allow it to be activated indefinitely may involve inadvertently activating programs associated with objectives that are certainly unwanted by their potential recipients. Trojan horses, such as trap doors, logic bombs, and data diddling, are tools that, automatically and unknown to the affected party, instruct the programs installed on the computer to obtain certain user information.

Spyware consists of spy programs that monitor user behavior and negatively affect the performance and stability of computers. We can differentiate three major types of spyware: snoopware, which includes keystroke loggers and screen capture utilities; adware and similar applications, which are used to follow user behavior and take advantage of their Internet connection (SCHWARTZ, 2004) and which typically come from electronic applications that are offered free online; and unique identifiers of programs or hardware, which usually involve Microsoft and Intel spies.

Notably, spyware tracks information about consumer habits and user navigation without the user's knowledge, and it typically connects to a server belonging to the company that distributed it for transmission. It starts working on its own, without the user's knowledge or consent, using the computer without authorization and transmitting personal information.

Article 5.3 of the Privacy and Electronic Communications Directive addresses the issue of technologies that store information or that obtain access to information stored on a subscriber's or user's terminal. An example of Article 5.3's application is the use of technologies such as hidden "spy programs" and Trojan horses, hidden programs in messages or other programs that appear to be innocuous. The intent of these technologies varies widely. While some are perfectly harmless and even useful to users, others are clearly dangerous and threatening.

Therefore, resorting to non-original video games and thus violating intellectual property regulations can lead to real threats on various levels.

## REGULATION AND SELF-CONTROL BY THE INDUSTRY

Next, we will briefly discuss the legal regulations approved in the industry that directly or indirectly address this matter. Such regulations serve as a complement to the instruments derived from self-regulation.

### Protection of Minors under Private Law

Entertainment activities, such as video games, have personal repercussions for minors. As stated above, minors are especially vulnerable due to their age, inexperience, and immaturity. In this regard, two applicable regulations of interest should be considered.

First, the United Nations Convention on the Rights of the Child, dated November 20, 1989, and ratified by Spain on November 30, 1990, provides that the term "child" applies to any person under the age of 18. Thus, Article 17a of the convention calls on states to promote the development of appropriate guidelines to protect children against all information and material that is harmful to their well-being. Second, the Spanish Constitution refers, first, in Article 20.4, to the principle of protecting children and youth as a limit to the right to freedom of expression and the right to information; second, in Article 39, it refers to the protection of children, in line with international agreements that ensure the rights of children and adolescents.

### Self-Control as a Complementary Instrument

Through the use of various self-disciplinary techniques and, above all, in accordance with codes of conduct, adapting the marketing of certain types of entertainment products to society's sensitivity at a given time can be accomplished, achieving the commendable objective of informing and protecting consumers, in our case the youngest ones.

The use of tools derived from self-regulation may be highly recommended not only within the scope of entertainment software but also for other interactive

software that is exempt from legal classification because such tools can be used to put in place a mechanism for consumers to always have sufficient information about the content and recommended ages to use this type of leisure product.

Voluntary classifications established through this system should refer only to the product's content and its ability to be viewed by minors. Consequently, they should not refer to the degree of difficulty they pose or the skill requirements necessary to properly navigate these types of games. These classifications should be made with particular consideration to certain aspects that could be more sensitive in a society at any given moment, such as physical, moral, or gender-based violence, as well as respect for universal values (MIOTTO & VILAJOANA-ALEJANDRE, 2019; SPOSATO et al., 2015; SPOSATO & JEFFREY, 2020).

In this sense, cell phones represent a significant technological advancement. The functionality they currently provide goes beyond being a simple means of directing voice messages, text messages, and images. Even without Internet access, this technological tool can be used to purchase services specifically designed for cell phones. These services, *a priori*, can be purchased by minors, even though some of them may be harmful to this group.

The risk that purchasing certain services designed for cell phones may pose to the development of minors requires regulation that legislation does not currently cover. Legislators have approved only laws that protect minors against cases that, under the law itself, may be considered illegal but not against those that may be considered harmful for the future development of their personality.

Regardless, the industry associated with the mobile sector (with mobile network operators Telefónica, Vodafone, Orange, and Yoigo endorsing their assessment through a signed commitment) has become aware of the need to write a code of conduct aimed at protecting minors from the risks that certain mobile phone services may pose. This code of ethics deserves praise because, to some extent, it fills an important legal gap that national legislators, as we have seen, have not been aware of or wanted to address (SULLIVAN & KIM, 2018).

The objective of the code of ethics is to unify a list of practices aimed at promoting the responsible use of new mobile services and content for minors, who are one of the most vulnerable population groups. The standards written in the code are aimed at minors in the broadest sense of the term: those under the age of 18.

Next, we will describe the measures established by mobile operators to guarantee the full protection of minors from certain harmful and, where applicable, illegal content that may include cell phone services. These actions can be classified into three large groups:

1. The classification of content using a warning message – The classification criteria cover four types of content: 1. sexual content, 2. online gambling, 3. mobile movies, and 4. video games.
2. The establishment of access control mechanisms by the mobile operators themselves and by the suppliers with whom they have a commercial agreement to prevent exposure to content that is classified as being only for adults.
3. Education and public awareness – The best option against any potentially harmful action, in this case protecting minors from potentially harmful or illegal content, is prevention. The parents and guardians of minors can play a prominent role in this effort.

We have seen a new realm, the responsible use of cell phones by minors, in which self-regulation plays a primary role. The industry is gradually becoming aware of the need to establish protection measures for groups that are susceptible to suffering more harm in the areas in which they operate. Even if, *a priori*, cell phones are designed for all individuals to use, regardless of their age, there are related services that can impair the development of the personality of minors.

The initiatives derived from self-regulation that the entertainment industry itself has agreed should also be mentioned. The initiative adopted in Spain by the Spanish Association of Entertainment Software Distributors and Publishers plays a particularly important role. As the top representative of the sector in Spain that we analyzed, this organization initially developed a code of conduct promoted by public administrations. In this regard, a collaborative agreement was signed with the National Consumer Institute, and a monitoring committee is used as the body responsible for applying the aforementioned code, in addition to having regular contact with the representatives of different social organizations.

Later, as an additional measure, best practice guidelines for interactive software product advertising were approved. The purpose of these guidelines is to specify the principles and ethics that must be observed by traditional and online video game advertising for the benefit of the market, consumers, and the general interests of the public, in accordance with current legislation on the subject and applicable self-regulation instruments. Marketing messages that are disseminated to individuals online must comply with good faith requirements and best practices in marketing. For our purposes, the content present in Article 17 of the aforementioned guidelines is particularly relevant, given that it expressly refers to Internet advertising for these products.

Both texts allow consumers or users to have sufficient information on the content and recommended ages of entertainment software products. The voluntary classification of recommended ages in these guidelines, which must be legible and

noticeable, refers only to the product's content and to how well it can be seen by minors.

In addition, the code of conduct approved by the Pan-European Game Information (PEGI) system is relevant here. This organization and the European entertainment software industry, coordinated by the Interactive Software Federation of Europe (ISFE), took a very important step in unifying the sector across the continent. Sponsored by the European Union, the PEGI project began in May 2001 in a plenary assembly held in Brussels attended by a large number of European governments, along with the top video game publishers and hardware producers. Furthermore, in the first half of 2002, a significant boost was given to the abovementioned code of conduct. As a result, a European working group consisting of representatives from industry, government, and classification directives, coordinated by the ISFE, was created, and two major tasks were assigned: first, to develop criteria and age categories to classify interactive software content harmonized for Europe, as well as content descriptors linked to the age classifications; and, second, to develop a management and monitoring system for the age classification procedure throughout Europe (SCHARRER, et al., 2020).

This document, the fruit of self-regulation, is valid in 16 European Union countries, Norway, Switzerland, Iceland, and Israel. One of its priority objectives is for consumers, especially parents, guardians, and educators, to have sufficient information on entertainment software products for sale across traditional and virtual media, both in Spain and in any other country bound to the code of conduct. Such information will allow them to make an appropriate decision about whether a game is suitable for children of a certain age.

For the self-regulation system to work properly, publishers' self-evaluations of video game content are combined with an independent third-party review, which is conducted by the Netherlands Institute for the Classification of Audiovisual Media (NICAM) on behalf of the ISFE. In addition, content is periodically reviewed, and penalties may be imposed, where appropriate.

This system has subsequently resulted in an online PEGI system, which is the logical continuation of the PEGI system that provides information about video games available on the Internet. Companies that adhere to it may display the system's logo. The logo represents a badge that certifies compliance with various standards, including game content classified by age, appropriate notification mechanisms, removal of inappropriate content, a comprehensive confidentiality policy, community rules for online subscribers and, finally, a responsible community policy.

In addition to the video game sector's self-regulation systems in Spain and in the EU, other similar systems that represent reference paradigms on the



subject in various other areas are worth mentioning. First, we must mention the Entertainment Software Rating Board, created by the Entertainment Software Association (ESA), previously known as the Interactive Digital Software Association (IDSA), which is the North American equivalent to the PEGI system. Second, it is important to note the German Entertainment Software Self-regulation Body. This group constitutes the current entertainment software assessment code in Germany. Note that the PEGI system does not apply in Germany. Third, the Computer Entertainment Rating Organization, which is the Japanese equivalent, should be mentioned. The value of this group should not be underestimated because Japan is one of the main bases of video game development. This organization was created in July 2002 as a division of the Computer Entertainment Supplier's Association.

In our opinion, best practice documents such as these should be complemented with others that, even with the aim of protecting minors, are intended for retailers to specifically prevent the sale of potentially harmful entertainment software to this population group. Additionally, given that the system used to purchase video games has clearly evolved in a short period of time, with consumers now able to purchase online instead of at physical stores, the tools derived from self-regulation should establish appropriate control measures for online purchases, including transactions that involve bank cards and vouchers.

Finally, the possibility that there may be abusive clauses in the contracts of adhesion that mediate in video games should be mentioned. The Court of Justice of the European Union indicates that the consumer is in a position of inferiority with respect to the professional with regard to the ability to negotiate and the level of information. This situation leads him or her to adhere to the conditions established in advance by the professional without being able to influence their content. The fact that such a statement is applicable to the subject matter that we analyze notwithstanding, under EU law, we conclude that abusive clauses will not bind the consumer. The Court of Justice points out the obligation of national judges to examine on their own motion the infringement of certain provisions of European Union law in consumer matters. Typically, the general conditions are not read by their recipients – and to an even lesser extent by minors or their parents. It is not possible to declare the nullity of a clause as abusive if the consumer – in this case, the parent or guardian – does not consider it relevant. The argument offered by EU jurisprudence is that consumer protection cannot be imposed against the will of consumers. In this sense, it is the father who should go to court. For practical purposes, the most advisable course of action under parental authority and the principle of free will is to acquire other video games on the market that are not subject to these potentially abusive general provisions.

## CONCLUSIONS

Minors play a very significant role in the consumption environment. There are all kinds of content, both harmful and illegal, that are likely to negatively affect them. While legal regulations seek to protect this group, especially in terms of new technologies, they are not enough.

Video games or interactive software in general is one area in which safeguards must be approved. In this regard, legislators have approved some standards that can be applied, but they must be supplemented, not replaced, by the industry's self-regulation.

In this research article, we analyzed the self-control initiatives related to this matter that have been approved. One such initiative, the PEGI system, discussed above, represents a broad collection of ethical standards that, in its breadth, seeks to protect minors, thus serving as a reference point for the field.

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