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Branded Content Governance: 32-country comparative analysis

The Branded Content Governance Project

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Contents

1. Introduction	5
1.1 How to Read this Report	6
1.2 About the Branded Content Governance Project	6
1.3 Acknowledgements	8
1.4 Executive Summary	12
2. Contextual	15
2.1 The Rise of Branded Content	16
2.2 Branded Content: Three Main Types	20
2.3 Branded Content Governance: Introduction and overview	21
2.4 Governance Analysis	23
2.5 Institutionalism	26
2.6 Media Systems and Cultures	31
2.7 Media Systems and the BCG Project	38
2.8 Communications Regulation	46
2.9 Convergence and Deconvergence in Communications Regulation	48
2.10 Regulating Advertising	49
2.11 Regulating Branded Content	50
2.12 Section 2 Summary	56
3. BCG Project Analysis	57
3.1 Formal Governance	58
3.2 Powers over Advertising Regulation	58
3.3 Glossary of Terms and Explanation of Key Classifications	62
4. Research Design and Methodology	75
4.1 Overview	76
4.2 Methodology Workshops and Consultation	76
4.3 Structure of the Country Reports	77
4.4 Comparative Approach and Analysis	77
4.5 Challenges and Contributions of the Study	79
4.6 The Use of AI	80
5. Data Analysis	83
5.1 Powers over Advertising Analysis	84
5.2 Advertising Self-Regulatory Organisation (SRO) Variations	93
5.3 Co-regulation	99
5.4 Implications of SRO Institutional Formation for Branded Content Governance	100
5.5 Comparative Assessment – Summary	101

6. Thematic Reports	103
6.1 European Union Policy and Governance	104
6.2 Platform Policies	123
6.3 Central and Eastern European Media Systems and Branded Content Governance	123
6.4 Indicators of Governance Effectiveness	128
6.5 Problems and Challenges in Branded Content Governance	142
6.6 Better Practice in Branded Content Governance	153
7. Summary and Recommendations	165
7.1 Summary of Findings	166
7.2 Summary of Analysis: Problems and Mitigations	166
7.3 Towards ‘Mitigation’ of Problems and ‘Solutions’	170
7.4 Recommendations	172
7.5 Further Research	180
8. References	183
9. Appendices	199

List of abbreviations

AHRC Arts and Humanities Research Council
 APEC Asia-Pacific Economic Cooperation
 BC branded content
 BCG branded content governance
 BCGP The Branded Content Governance Project
 COE Council of Europe
 EC European Commission
 EMFA European Media Freedom Act 2024
 ESRC Economic and Social Research Council
 EU European Union
 ICC International Chamber of Commerce
 IM Influencer marketing
 IRO Industry Regulatory Organisation
 OECD Organisation for Economic Co-operation and Development
 SRO Self-regulatory Organisation
 UKRI UK Research and Innovation

1. Introduction

This report presents the findings of a 32-country study examining the regulation of branded content. This research has been carried out by the Branded Content Governance Project (BCGP), a three-year, international research project jointly supported by two research councils within UK Research and Innovation, the Economic and Social Research Council (ESRC) and the Arts and Humanities Research Council (AHRC)

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

This research project builds on collaboration and dialogue between the industries involved, regulators and those affected, and draws on advice from an international network of academics as well as legal, policy and industry experts.

The systematic, comparative, academic study of advertising remains in its infancy in comparison to other sectors of media, most notably journalism. Our project seeks to build on prior work carried out by a variety of academic, legal and industry producers, from the work of those in institutionally commissioned studies such as the European Union supported Media Plurality Monitor (CMPF 2024), and European Audiovisual Observatory, to the work of legal practitioners across the Global Advertising Lawyers Association (GALA). Building the resources for better comparative analysis is a key aspiration for future work, to which we hope this report, and the BCG project as a whole, may contribute and encourage.

1.1 How to Read this Report

Our report provides background information that explains the concepts and various frameworks that our project draws upon. This includes our approaches to legal-regulatory analysis, media systems, communications and advertising governance. As this material will be of interest to different readers selectively, some to academic researchers, others to legal practitioners or policy actors, we have added summaries of sections and guides to help readers navigate to the sections of most interest and we encourage readers to read the report selectively in this way.

Disclaimer: This document does not purport to give legal, financial or tax advice. Should you require further information or legal assistance, you should contact a legal practitioner. *This report, together with our 32 individual country reports and all project publications, contains information about laws but nothing in these pages constitutes legal advice.*

1.2 About 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 our three-year international research project, the Branded Content Governance Project. The BCG Project examines the regulation and broader governance of content that is funded

or produced by advertisers. The project is funded by two UK Research Councils (ESRC and AHRC; ES/W007991/1, part of UK Research and Innovation, a non-departmental public body sponsored by the Department for Science, Innovation and Technology (DSIT).

The BCG Project is led by three Universities (University of the Arts London (UAL), University of Stirling and Complutense University, Madrid) supported by 90+ international academic advisors, industry partners (including the Branded Content Marketing Association and Content Marketing Association) and industry, legal, policy and civil society participants. Jonathan Hardy is Professor of Communications and Media at the University of the Arts London and Principal Investigator for the BCG Project. Iain MacRury is Professor of Communications, Media and Culture at the University of Stirling and Co-Investigator for the BCGP. Patricia Núñez Gómez, is Professor of Advertising at Complutense University of Madrid and International Co-Investigator.

Media-marketing integration

The relationships between media and advertising are changing profoundly as they converge. Brands are increasingly involved in the production of publisher-hosted content. Such non-traditional advertising, which blends brand messages with entertainment or information, has grown worldwide at twice the rate of advertising overall, with double-digit growth forecast from 2021 (PQ Media 2018). Likewise, the global product placement market has experienced double digit growth between 2010-2023, except for the impact of Covid 19 in 2020 (PQ Media 2024). The native advertising market alone was estimated to have had a compound annual growth rate of 14.6% between 2020 and 2024, with a forecast CAGR of 21.7% between 2025 and 2035 (Future Market Insights 2025).

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.

Project need

Branded content has been the focus of business and creative strategies, and of deepening controversy. Marketing that is disguised or 'native' to its editorial environment has generated most concerns, ranging from deception and reader awareness, to the impact on editorial integrity, media quality and trust. We need to examine what is happening, to ask searching questions on behalf of consumers and wider society, and to put forward well-informed proposals for how rules and practices can be improved. The central aim is to provide important insights and recommendations for managing and regulating branded content and communications in the digital age. In doing so we address such questions as how are evolving

forms of branded content addressed in relation to identification and disclosure? What values guide governance, and are these suitable? In summary, our project is oriented to consider ‘problems’ and challenges but offer recommendations arising from research, practice and guided by cross-stakeholder dialogue.

Our research project outputs include this report and our individual country reports that together provide a detailed, cross-national mapping of the emerging rules and practices for branded content across 32 countries, encompassing North America, the UK, all EU countries and Australia. We have produced an analytical report, *Mapping the Media-Marketing Ecology* (Hardy et al. 2024), that describes the main features, actor-types and processes involved in contemporary marketing communications. An expanded version will be published 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* which draws on interviews with practitioners and a Media Analysis report that examines how issues relating to branded content governance feature in reporting and discussion across professional (‘trade’) and public media (news publications). See appendix 1. In addition, we publish a project newsletter and other outputs from talks and events. All these can be accessed at https://figshare.arts.ac.uk/BCG_Project.

The Branded Content Governance Project has been established and funded to run from 2022 to 2025. The project developed out of an earlier initiative, funded by the UK Arts and Humanities Research Council (AHRC; AH/N007719/1) that established the Branded Content Research Network, bringing together international academic researchers with industry and policy actors and stakeholders. For any reader of this report who would like to comment, find out more or is interested in joining the Branded Content Research Network, please email BCGproject@arts.ac.uk.

1.3 Acknowledgements

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. We established a network of academic advisers as well as legal practitioner advisers, listed below.

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. 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. We would like to thank all those who have participated in this project, including all those who generously agreed to be interviewed, and all those who contributed

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Our 32 individual country reports could not have been produced without the research and writing contribution of many people and the guidance of many more. These reports include the work of three postdoctoral research fellows, Dr Hanna Kubicka, University of the Arts London, Dr Maciej Wysokinski and Dr Clara Sanchez-Rebato Valiente, Complutense University, supported by the BCGP research team. The Branded Content Governance (BCG) project is led by academics at three Universities. Prof Jonathan Hardy, University of the Arts London is Principal Investigator, working with two Co-Investigators, Prof. Iain MacRury, University of Stirling, and Prof. Patricia Núñez Gómez, Complutense University of Madrid. Our project research team also includes Dr. Celia Rangel, Complutense University, Dr Beatriz Carmen Martínez Isidoro, Complutense University, Dr. Maria Establés, University of Castilla-La Mancha and Dr. Lucia Gloria Vázquez Rodríguez, University College London.

These reports could not have been produced without the contribution of academic, legal and industry advisers, who have provided expert guidance to assist our team. The contribution of all advisers has been entirely voluntary and at their discretion. Some have offered early suggestions on information sources, while others have been closely involved in the preparation and review of draft versions of individual country reports. Where advisers have provided substantive written text, used in the report, we have cited them as authors, but we acknowledge and appreciate the contribution of advisers to these reports and provide more details in our 'authorship and acknowledgements' section. At the same time, we have made clear throughout our discussions with project advisers, as we do here, that all errors or omissions are the responsibility of the BCG Project alone. Our advisers have supported us in our work but full responsibility for the output rests with the PI and Co-I research leads for our BCG project. The following includes all those who have assisted in any form and whom we wish to thank for their contribution.

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1.4 Executive Summary

There is considerable variation in the formal arrangements for branded content governance across the 32 countries in our study. While 27 (EU countries) have common, harmonised rules, there is considerable variation in the institutional, legal and regulatory arrangements at national (and sub-national) levels.

There is also considerable variation in branded content governance within countries. This includes the way common rules are applied across different media, as well as rules that are specific to particular media ('sector specific').

Variation in the treatment of different media within country contexts and variation between these 'media systems' may be justifiable of various grounds, for instance to better meet specific communication purposes or the needs of communication service users. However, 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. Our term for this is 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.

The differential treatment of media by forms, technologies (esp. of delivery and exhibition) platforms, 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, public communications and marketing communications.

We identify these core values as the recognisability of marketing communications (identification, disclosure), the protection of media integrity, the separation of media and advertising, and governance to set limits on marketers' power and share of voice in communications. We also identify the importance of measure to support the conditions and capabilities of those working across the media-marketing ecology to act in accordance with reflexive, ethical and professional (and pro-am) standards as well as governance standards across the spectrum from formal to informal.

The analysis in this report includes and informs our proposals for integrated polycentric governance. This refers to a recognition of the presence, and value of multiples sites of governance (polycentric), combined with an argument that better governance requires a strengthening of interconnections (integration) across these sites of governance. We identify the key sites of governance across a spectrum ranging from practitioners' 'governance-in-practice', to codes and guidance by 'industry regulatory organisations', to self-regulatory organisations, to statutory regulators and other governmental organisations and court systems.

2. Contextual

2.1 The Rise of Branded Content

The relationships between media and advertising are changing profoundly as they converge across digital platforms. Increasingly, brands are involved in the production of media content. This branded content takes various forms, from material that is self-published by brands, through to 'publisher-hosted' content, where brands supply or fund material carried by third-party publishers. Some of this is so-called native advertising, advertising that blends into the editorial or content environment in which it appears, merging brand messages with entertainment or informational content (Hardy 2022).

The integration of media and advertising is not new, but it is intensifying. Branded content is occurring in different forms across news media, entertainment and social media. The creation of entertaining or informational media content controlled by brand owners ('owned media') is one kind of branded content. Another is brand communications that appear within independently owned, 'third-party', media publications, channels, platforms, and social media spaces that are subject to control by parties other than brands. Increasingly brands are sponsoring, co-creating, sharing control, or exercising full control over content in these media. In fact, marketer control over the content, timing, publication, and dissemination of communications is key to understanding the shift to branded content and the forms and practices favoured in ever-changing environments. Media and marketing communications are merging. Marketers like Red Bull and action camera tech company GoPro became broadcasters and publishers, while media increasingly incorporated brand- created or -sponsored content (Einstein 2016). In entertainment media, marketing integration includes advertiser-financed television, product placement, virtual advertising, and advergames. Boundaries between media and advertising are being tested, crossed, redefined, and erased. Pressures on marketers to find effective ways to reach prospective purchasers and pressures on media to attract advertising finance and accommodate marketers are occurring in contexts of disruption and change in markets, in policy, and in creative communications practices and use. Within the overall convergence of media and communications industries and cultures, the convergence of media and marketing is gathering pace across the various dimensions of ownership, work practices and values, cultural forms, and user engagements. The emergence of new forms and practices of integrated advertising raise a host of issues ranging from consumer awareness and acceptance of advertising to the consequences for the media's editorial independence and creative autonomy.

Neither the production of media by brands nor the integration of brands into media are new in themselves. In 1895, the agricultural hardware manufacturer John Deere published *The Furrow*, 'a journal for the American farmer', lauded as a pioneer in brand magazine production a century before content marketing became a buzzword (Gardiner, 2013). In 1900, French tyre company Michelin produced the first Michelin Guide, providing instructions and travel information for motorists: branded content. Expanding its restaurant guide section in the 1920s, Michelin's

three-star rating system has grown to become one of the most highly prized international awards in the industry. Brands associated with specific products have often created, or licensed, other branded products, which in more contemporary terminology is branded content. For instance, the drinks company Guinness launched The Guinness Book of Records in 1955, a Christmas bestselling annual publication for decades afterwards. The tobacco brand Marlboro extended the brand into clothing, shortly before tobacco commercials in broadcast media were banned in 1971, when the Public Health Cigarette Smoking Act came into effect.

Brands have also sponsored media and paid or bartered to feature within or around programmes. Procter & Gamble and Colgate Palmolive sponsored radio shows (from which the term ‘soap operas’ is derived) from the late 1920s as radio became America’s mass audience medium, and then sponsored television shows (Smulyan, 1994). For the TV shows in the 1950s, the soap brand names were announced prominently at the start and end of episodes, accompanied by regular airings of advertising spots negotiated as part of the sponsorship arrangements.

Branded content has been described as the ‘re-initiation of long-standing practices such as advertiser-funded programming and product placement’ (Grainge and Johnson, 2015: 38). US radio and TV shows were made by ad agencies such as J. Walter Thompson, which produced 60 hours of programming per week by the 1930s (Kretchmer, 2004: 41). Gillan (2015) examines what she calls ‘content promotion hybrids’ in mid-20th century American television involving product integration and sponsored content. Product placement in movies can be traced back to the Lumière films of the 1890s and was well established in the Hollywood studio system by the 1920s (Newell et al., 2006). The Hollywood studios extracted commercial fees for product promotion and endorsement in movies from the early years of the 20th century. This intensified from the 1930s when studios sent scripts and identified potential promotion opportunities for marketers (Grainge and Johnson, 2015: 38). Donaton (2007) identified the merging of entertainment media and advertising in the 2000s as ‘a return to the product placements and program sponsorships that in fact were the hallmarks of the earliest days of American radio and television’. By the 1930s top advertising agencies produced national radio shows such as Kraft Music Hall (1933–1949) by J. Walter Thompson, *Show Boat* (1932–1937) sponsored by Maxwell House Coffee; and *The Jack Benny Show* (1935–1944) produced by Young & Rubicam for General Foods (Meyers, 2011). With increasing academic attention to promotional industries, the rich histories of promotional communications continue to be recovered and re-appraised. One example from the UK is the promotional films made by the GPO (General Post Office) film unit, most famously *Night Mail* (1936), the only GPO film to be sold for release in commercial cinemas. This 24-minute film ends with a verse commentary written by the poet W.H. Auden to an accompanying score by the composer Benjamin Britten (Grainge and Johnson, 2015: 49).

Branded content sits within the broader histories of modern and especially digital communications. The first online advert appeared in 1993 (Oberoi, 2013). Sponsored search dates from 1998 (Jansen, 2008). An oft-cited originary moment is BMW's web series of eight 'mini' feature films, *The Hire*, in 2001 and 2002 (Lehu, 2007: 213). Developed by Fallon advertising agency, the series was produced by David Fincher's production company Anonymous Content at an estimated cost of \$25 million (Leibowitz, 2020). *The Hire* has been described as 'the first modern branded content campaign' (Derda, cited in Dzamic and Kirby, 2018: 115) and the 'first venture in branded entertainment to make concerted use of mobile video technology' (Grainge and Johnson, 2015: 49; Hardy 2022). As Holt (2016) comments, 'The rise of new technologies that allowed audiences to opt out of ads—from cable networks to DVRs and then the internet—made it much harder for brands to buy fame. Now they had to compete directly with real entertainment.' BMW's *The Hire* was not only a strategic response to ad-skipping but one of the first brand partnerships with TiVo as part of an innovative distribution strategy that included the BMW Channel on DirectTV (Leibowitz, 2020).

MacRury (2009:226-7) captured this in his 2009 analysis:

These hybrid 'adfilms' attest to a movement in promotional culture where genre boundaries are being moved, redrawn around film, TV formats and other kinds of cultural output. The line between ad as appendix to the body of culture is yielding (in some instances) to an attempted integration. The media-as-host and advertisement-as-parasite relationship identified by critics (e.g. Thompson 1932), or the ad-media symbiosis accepted as the default for commercial media, is being challenged by new media-advertising hybrid genres.

Branded Content was becoming the accepted term for such hybrids. MacRury (2009:227) further suggested that 'such that critiques of parasitism on the media will give way to critiques of advertisers cloning media output'; adding 'This produces a new order of anxiety for critics' and for industry:

advertisers using this approach risk heightening the very cynicism in audiences that they are attempting to circumvent by deploying these new modes of address (such as the hybrid ad-film or the 'supermarket sponsored' cookery show).

New types of communicators started to emerge: content marketers. These came from positions within advertising agencies, public relations, media production companies, and from brands' own marketing departments and services. Such origins shaped practices and identities, as different domains of knowledge vied for ascendancy in the rapidly converging space of brand marketing and storytelling. This included what critical figures within marketing saw as hype-generation, rebadging (video producers becoming 'rich content creators'), re-presentation, and stretching out beyond existing

expertise and practices (Dzamic and Kirby, 2018: 5–6; Velocity Partners, 2013). Nevertheless, new practices reshaped businesses. Media production companies, such as the independent, *Somethin' Else* (2020a), moved from radio and TV into branded content. Public relations practitioners, skilled in corporate communications, writing news releases, features, and other storytelling, now vied with others to manage brands' communication channels and offer creative content production and marketing solutions. Both PR and advertising disciplines were already competing in the emerging space of digital media and social media communications, where blatant promotional content and 'push' marketing was seen as increasingly ineffective.

Reorganisation to facilitate branded content was occurring across marketer clients, agencies, and media from the early 2000s, accompanied by increasing use of buzzwords associated with 'content'. By the 2010s 'content' was 'becoming the industry descriptor of choice' (Bryant, cited in Grainge and Johnson, 2015: 23; MacRury 2017) and 'the dreaded buzzword' (Weise, 2011). The UK branch of Mindshare held its annual meeting on 'the future of content' in November 2012. The 'institutional' organisation of branded content also occurs from the early 2000s. The Branded Content Marketing Association (BCMA) was established in 2002 in the UK and has since established associations across Europe, Asia and South America. The Content Marketing Association (UK) was created in 2012 as a rebranding of the Association of Publishing Agencies. In 2013 the New York Times ran its first native ad.

Alongside the practices (e.g. industrial organisation), discursive (e.g. trade media), and wider institutional (e.g. trade and professional body) formation of branded content was the role of competition and award ceremonies. The most prestigious international award event for advertising, Cannes Lions, introduced its 'Branded Content & Entertainment' category in 2012. By 2016, the growth of that award category led to its replacement by an entire sub-festival, Cannes Lions Entertainment. In 2015, the first Brand Film Festival was held in New York. Now an annual event, the festival showcases branded content films, from YouTube videos to long-form documentaries, and is organised by the publisher Haymarket Media.

The Interactive Advertising Bureau (IAB), a US-headquartered organisation with national and regional subsidiaries, published the Native Advertising Playbook in 2013 and a revised version in May 2019 (IAB [Interactive Advertising Bureau], IAB 2013; 2019). As well as updating native ad format classifications, the 2019 report took stock of changes. In 2013 only a 'few dozen' publishers invested in native while in 2019 'nearly every publisher' had a dedicated content studio for native advertising. In 2013 there were no industry specifications and only a handful of operators involved in programmatic native advertising. Paid advertising on social media was a mere 10 per cent of total digital ad revenues, with most brands producing for their own organic (non-paid) posts: 'Publishers could distribute content for free and garner significant engagement' (IAB [Interactive Advertising

Bureau], IAB 2019: 4). By 2019, paid social was 25 per cent. For a more detailed history of branded content in publishing see Hardy 2022, 2023a; Lynch 2018. For studies of branded content in audiovisual media in different regions and contexts see Dagnino (2020) for Italy, Yoon (2021) for Korea.

2.2 Branded Content: Three Main Types

Owned Media; 'Native' paid content; Publisher-hosted

The BCGP identifies three main categories of branded content. The first is brands' 'owned media', this is the 'creation of entertaining or informational media content controlled by brand owners ('owned media')' (Hardy 2022: 4, 6). This is brands' own content appearing on marketers' websites, Instagram, Facebook pages, YouTube channels, publications, podcasts, apps, and so on.

The second is the 'native' distribution of marketers' paid content: ads integrated into web pages, apps, and news feeds in social media. Much of this is programmatic, part of the increasing automation of advertising buying, selling, and placement.

The third kind of branded content is material that is hosted by, or made by, publishers. This includes advertorials in news media and magazines, advertising-funded programming (AFP) on broadcast or non-linear TV, and promoted or sponsored posts on social media, such as Facebook, Twitter, TikTok, Snapchat and Instagram.

Of these three main types, the first is brands' own media; the second and third are forms of paid-for marketing communications. The term 'native advertising' is used to cover both the second and third types of branded content and has been defined as 'paid advertising where the ad matches the form, feel and function of the content of the media on which it appears' (Native Advertising Institute 2015).

Native advertising is increasingly used to describe digital advertising formats where the marketer exercises control over the communications. However, we draw an important distinction between types two and three. In type three, 'marketers may pay for content without exercising full editorial control. This is then closer to practices, and regulatory definitions, of sponsorship than advertising' (Hardy 2022: 7). Across both type two and three, it is the blurring of advertising with editorial, and the confusion about where control over content lies, that generated much of the controversies surrounding branded content.

The definitions relating to branded content and the various forms it takes are discussed in greater detail in the BCG report, *Mapping the Media-Marketing Ecology*. We also discuss there the PESO model of paid, earned, shared and owned media (Dietrich 2024, Hardy 2022: 9). This originated in the model of paid, earned and owned space for content marketing developed by Dan Goodall of Nokia in 2009 (Corcordan 2009).

Branded content occurs in the expansion of ‘paid’ advertising into forms such as ‘native advertising’. Earned media describes public relations activities to generate editorial coverage but is relevant for hybrid forms of value exchange and gifting across editorial and promotion. The third area, owned media has seen exponential growth across digital publishing and the production of branded content for online and mobile platforms, which has the effect of also increasing pressures on media for greater accommodation in paid and earned media. The final area, shared, covers social media including the expansion of influencer marketing. Hardy (2022: 9) writes:

The [PESO] model is useful in considering the features of payment, ownership, and control that distinguish each mode, as well as the blurring and convergence occurring between them. Branded content occurs in each PESO circle as well as in converged, hybrid forms where they overlap, and occurs, too, within different gradations of brand control over content, form, dissemination, and context of display. A key limitation of PESO, however, is that it lacks a historical dimension, presenting the modes as a perpetual present. We need to reincorporate history, and consider changes in the rules and regulations governing marketing communications, in order to grasp why the expansion of branded content generates a host of critical concerns from some, as well as enthusiastic support from others.

2.3 Branded Content Governance: Introduction and overview

Advertising has long been the major patron of commercial media¹. Yet various regulatory and market mechanisms set limits on that patronage. Regulations and industry norms upheld principles of separation of advertising and editorial. Market arrangements tended to work against advertisers exercising direct, instrumental power over editorial content. Marketers controlled adverts (paid media) but not the content around them. Public relations professionals pursued ‘earned’ media coverage that they could not fully control. The separation principle was generally upheld by self-regulatory codes across media and advertising industries, with stronger, statutory regulation in sectors such as European broadcasting. The shifts we are seeing certainly pre-date digitalisation, but increasingly marketers’ control is extending from advertising forms to integrated editorial forms. This involves a mix of instrumental and structural power by advertisers, but also complex attenuation, as decision-making spreads across digital advertising networks and into programmatic advertising buying (MacRury 2025: 162-185) and other forms of automation, such as the content-recommendation engines used to place branded content onto publishers’ websites.

A key principle enshrined in international codes and in nationally imposed regulation is that advertising should be readily identifiable: ‘[m]arketing

1 This section draws on Hardy (2022, 2024) and other writings.

communications must be obviously identifiable as such' ([UK] CAP 2014 rule 2.1). Many countries have rules requiring a clear demarcation between marketers' sponsored content and the media's own editorial content. Yet, increasingly, advertising is 'native', blending commercial messaging so that sponsored content 'is often indistinguishable from news, feature articles, product reviews, editorial, entertainment, and other regular content' (FTC, 2015a: 2, FTC 2015b). The blurring of editorial and advertising is becoming a significant challenge for regulators. Branded content, native advertising, influencer marketing (MacRury 2021) and other fast-evolving forms have intensified the challenges to the separation of editorial and advertising that were already being felt across the legacy media of print and television.

Digital media is at the apex of two key trends: towards the disaggregation of advertising and media and towards their integration. The characteristic relationship of media and advertising in mid-20th-century media was integration with separation. Advertising was integrated in the sense that it was physically combined with the media product. In newspapers and magazines, adverts appeared alongside editorial; in linear television, spot (or block) advertising appeared in designated breaks within or between programmes. While advertisers controlled their commercial communications, media firms controlled the packaging and distribution of the ad-carrying media. Media and advertising were kept separate on the whole. It may be argued, as we will consider further, that this was, in fact, a short-lived period, between the advertiser-sponsored broadcasting of the early 20th century and the growth of integrated content, such as ad-financed television, from the 1990s. Yet integration with separation reflects enduring norms that 'advertising – as the major funding system of the mass media – should not unduly influence the non-advertising content' (McAllister 2000: 101).

There have always been opportunities and pressures to integrate, but the principles of separation were generally upheld by journalists, and by creative professionals in television, supported by managers, underpinned by self-regulatory codes of conduct in both media and advertising, and subject to stronger statutory regulation in some sectors, such as broadcasting. The Television without Frontiers (TVwF) Directive (Council Directive 89/552/EEC (European Parliament and the Council 1989) revised 1997 (European Parliament and the Council 1997)) Article 10(1) provided that '[t]elevision advertising and teleshopping shall be readily recognizable as such and kept quite separate from other parts of the programme service by optical and/or acoustic means'. This 'enshrined two closely connected principles, which form essential underpinnings of the EU acquis in the area of television broadcasting and codify the fundamental concept of fairness in advertising as developed in the legal traditions of various member states: the principles of separation of commercial from editorial content and of the identification of advertising' (Angelopoulos 2010: 8). In both ad-dependent print media and television, there was an institutionalised effort to capture the benefits of ad finance while protecting the quality, integrity, and independence of media speech and creative expression. This drew

on a combination of values derived from democratic, consumer welfare, artistic, and cultural concerns. Media and advertising should be separated to ensure that consumers know when they are in a selling environment and to ensure that advertisers should not be the principal arbiters of media content and provision.

Media and advertising integration is by no means a new phenomenon and has a long history across all media forms. Yet arguably the most profound change in the 21st century is that the commercial digital environment has brought increased pressures from marketers met with increased accommodation by media. The emergent relationship is integration without separation. The integration of media and advertising takes various forms, many with long histories, such as product placement, coterminous with the birth of cinema. However, the opportunities and challenges of convergence and digitalisation, not least the struggles to finance an enormous expansion of media, has brought increased pressures from marketers and increased accommodation by media. Product placement, branded entertainment, advergames and infomercials are the most familiar outcomes (Lehu 2007; Hardy 2010, 2013, 2022). The emergent forms, then, are integration without separation, but this co-exists with trends towards disaggregation of media and advertising. Like integration, disaggregation of media and advertising takes various forms with different consequences. The most challenging feature is that advertising is much less dependent on media vehicles as in traditional models. Advertisers can link advertising to search and users' activity online so that advertising follows people's profiles rather than being bundled with media content. The greater range of opportunities to profile, track, and target consumers also diminishes value and exclusivity of mass media vehicles. Content matters, since it attracts the consumers whom advertisers seek to reach. However, marketers have much greater opportunity to reach consumers without subsidising or accommodating media content providers. The intermediary role of media creating an audience to sell to advertisers is being undermined, in part because the production and distribution of physical goods are expensive ways to reach audiences, and in part because of the advantages of new ways to reach target consumers. When brands can track valued users across their web browsing to whatever pages they load, those marketers have less need and less incentive to consider the editorial context and may instead see benefits in reaching those users in the cheapest spaces on offer, which may be those of clickbait providers rather than prestige publications.

2.4 Governance Analysis

The section introduces the analytical frameworks developed and applied by the BCG project. The application of critical governance analysis in the 32 country reports and analysis is discussed in section two, while this section provides an overview of the approach, concepts and definitions.

Governance refers to all processes of governing and rule wherever they occur (Bevir 2012). For Rosenau (1992: 4), governance 'embraces governmental institutions, but it also subsumes informal, non-governmental

mechanisms Governance is thus a system of rule that is as dependent on intersubjective meanings as on formally sanctioned constitutions and charters'. 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 industries, situated within dynamic, adaptive digital communications systems.

Critical Governance Analysis

Governance analysis examines how practices and processes shape, and are shaped by, the distribution of resources and forms of power. A criticism made of some governance studies is that they attend to specific 'micro' operations of power without an adequate account of the macro-level influences of state–capital relationships. To remedy this, critical governance analysis draws on efforts to theorize and examine the interacting relations of power across macro-meso-micro levels, without reproducing a deterministic account (Hardy 2021a, 2022). Analysis, argues Benson (1977: 5), 'must deal with the complex interlocking through which components are built into each other. This involves a search for dominant forces or components without resort to a deterministic argument'. Benson's dialectical network analysis has influenced more contemporary analyses by Jessop (2007), Davies (2011) and others, whose work demonstrates efforts to examine how practices are organized materially and discursively, and trace connections between the influences of political and economic forces on those practices.

Applied to branded content, this includes the task of examining power shifts between marketers, marketing agencies and intermediaries, media, platforms, and consumers. It also requires analysis of the broader influence of neoliberalism on the organization and liberalizing re-regulation of communications markets, and on increasing 'hyper-commercialism' (McChesney 2013), marketization, financialization, and commodification affecting communication services and content (Berry 2019). The discussion below illustrates some resources for critical governance analysis, including the influence of new institutionalism, and concepts of path dependency (Mahoney 2000), path shaping (Jessop 2007), and neo-Gramscian analysis of hegemony (Davies 2011) to study processes of normalization and contestation in governance.

Governance in communication studies

Governance is analytically encompassing, inviting attention to the multiple sites and processes of rulemaking and ordering across production, circulation, consumption, and use. This reconnects the study of media policy and regulation, a specialist subfield, with analysis of production arrangements and practices across media and marketing industries. The study of governance includes examining how professional attitudes change,

how norms are formed and challenged, and how industry practitioners and trade bodies engage with contestation from within and outside their domains. Micro governance extends into the internalisation of norms and boundaries in practices.

In recent years, communication scholars have developed governance analysis, especially within media policy studies (Puppis 2010) but also comparative media systems analysis (Ginosar 2013). Freedman (2008: 14) defines media governance as ‘the sum total of mechanisms, both formal and informal, national and supranational, centralized and dispersed, that aim to organize media systems according to the resolution of media policy debates.’ The concept has been most developed in media policy analysis to encompass the dynamic range of rule-shaping activities and the significance of the discursive production and ordering of power, drawing on discursive institutionalist approaches (Schmidt 2008).

Governance analysis requires study of the organisation of practices and social arrangements, including power dynamics arising from ownership and control, commercial and other managerial pressures, employment status, and other factors affecting decision-making power, such as precarity or role hybridity, and their working out in the practices and perceptions of actors. This requires theories of the relationship, and synthesis, of structure and agency, such as Giddens’ structuration theory. Giddens (1984) proposes three kinds of structure action rules in social systems: signification, where meaning is coded in discourse; legitimation, the embedding of normative perspectives in norms and values; and domination, the way power is exercised, particularly over resources. While there are ongoing debates concerning the interaction of agentic and structural elements across Giddens’ structuration theory, Jessop’s (2007) strategic relational analysis, and others, these approaches can be complemented and enhanced by theories of the maintenance of professional domains and boundaries (BCG Governance-in-practice report; Hardy 2022).

Governance analysis faces a further challenge of addressing the influence of automated processes on rule-shaping. Now, automated, and artificial intelligence (AI) assisted, decisions occur across all stages of marketing communications, including the buying, selling, assembling, and displaying of programmatic advertising (MacRury 2025). While it is essential to recover the human activity at all points, from highly paid programmers to precarious, low-paid piece workers, the ramifications of datafication need to be addressed. In turn, these technosocial processes need to be reincorporated into critical analysis of how capitalist economic and social forces shape the social orders emerging through datafication (Couldry 2020).

Conceptually, governance is helpful in addressing the interacting range of formal and informal regulatory mechanisms, the proliferation and liquidity of actors, the significance of automation and AI, and modes and sites of

contestation. 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 organisation and arrangements; regulatory institutions and processes; socio-cultural practices; norms and attitudes across producers, users, and other actors; communicative action; and discursive interaction across all relevant stakeholders and media.

The critical governance analysis proposed by the BCG Project requires an expansion beyond the policy domain to engage with wider discursive production within practitioner/professional and public-mediated communications. This is developed in the BCGP Governance-in-Practice and Media Analysis reports. For an expanded discussion of critical governance analysis and its application in the study of branded content see Hardy (2021a, 2022).

Key sources of governance

The task of mapping governance requires examining the range of actors and processes through which relations of power are produced, sustained, and contested. The main sources of governance are:

- Formal regulation (regulatory agencies directed by state or supranational law; co-regulation between public authorities and industries)
- Industry self-regulation (codes and standards; technology-assisted rule application)
- Market power (including consumer action and media literacy capabilities)
- Civil society (including institutionally organised and loosely networked actors)

These sources are examined in more detail in Section 3.

2.5 Institutionalism

The BCGP analysis draws on institutionalist approaches and specifically those referred to as ‘new institutionalism’, ‘historical institutionalism’ and ‘discursive institutionalism’. Our research design, methods and analysis are informed by institutional analysis. For this report, institutional analysis is mostly evident at the stages of gathering and classifying data, identifying variables and assessing patterns, but not for the development of (multi) causal analysis which we identify as tasks for future research.

Traditional institutionalism (1930s-1950s) focused on the study of formal

structures and rules of governmental institutions in particular². New institutionalism ‘identifies the rules, norms, practices, and relationships that influence patterns of behaviour in politics and policymaking’ (Cairney 2020: 750). There are various approaches within (‘new’) institutionalism, ranging from rational choice to sociological and historical approaches. We follow critical-historical approaches as part of an overall critical methodology. We draw on ‘historical institutionalism’ in conjunction with a conflict theory of society. This critical-historical approach ‘the formal rules, compliance procedures, and standard operating procedures’ that ‘structure conflict’ (Hall in Thelen and Steinmo 1992: 2). For BCGP, institutions comprise formal and informal governance processes (rulemaking/shaping). Institutions are dynamic formations with elements of ‘structure’ formalised (and variously applied) rules - the “organisation in mind” (Armstrong 2005) - as well as more informal arrangements that encode rules and practices that are subject to contestation (as part of broader power struggles and dynamics) and inform the normative values (and ambivalence/dissonance) of networked individuals in variously ordered social/occupational/economic/cultural relationships.

Institutionalism and communications governance

There have always been differences in the way communication services have been identified and regulated. These reflect the historical origins, institutional arrangements, governing values, purposes and decisions associated with different media. These can be understood in terms of path dependence whereby decisions become embedded in institutional practices and arrangements such that they influence, and often constrain, how changed conditions are responded to. Historical institutionalism is particularly attentive to the way decisions become established in institutional arrangements and may then persist to influence arrangements until a powerful conjunction of forces drives structural change. In his institutionalist history of US media, Starr (2004: 4) describes how: ‘at times constitutive choices come in bursts set off by social and political crises, technological innovation, or other triggering events, and at these pivotal moments the choices may be encoded in law, etched into technologies, or otherwise embedded in the structure of institutions’.

Cairney (2020: 76) describes as historical contingency, ‘the extent to which events and decisions made in the past contributed to the formation of institutions that influence current practices’. Historical institutionalism is

2 In the 1960, mainstream US political science shifted towards the behaviourist study of individual political actors and decisions, with quantitative methods predominating. The so-called ‘new institutionalism’ that developed from the 1980s, notably in the work of Marsh and Olsen (1984, 1989, 1995) ‘sought to rediscover institutional analysis in order to better understand the behaviour of individual political actors within political institutions’ (Ishiyama and Breuning 2014). Those working in this U.S. political science tradition were ‘often...quite normative in their desire to describe how political institutions ought to function, as opposed to the empirical study of how things actually worked in practice’ (Ishiyama and Breuning 2014).

particularly useful in addressing both how ‘many institutions are akin to structures which endure for many decades’ (Cairney 2020: 76), as well as the conditions for sometimes rapid change within periods of disruption (‘critical junctures’, see below)

Path dependence arises when investment in institution/processes produces increasing returns (which may be economic in the case of enterprises or other efficiencies and effectiveness in the case of regulatory agencies) making it costly (and otherwise challenging) to select a different path. From the early formation of arrangements in conditions of unpredictability and innovation, there is subsequent inertia as processes become ‘embedded in the structure of institutions’ in Starr’s (2004:4) terms. Path dependence may also involve reproduction mechanisms that reinforce ‘sunk investments’ and close off alternative options. Established organisations serve to uphold their own rules (Capoccia and Kelemen 2007: 341). Similarly, policies can be developed and enacted in ways that influence, and may constrain, future policymaking. Policy feedback theory emerged from the historical institutionalist tradition and considers how policies created previously affect future policy creation Mettler and Sorelle 2018; Béland and Schlager 2019).

Critical junctures

The analysis of disruption to institutionally embedded governance arrangements is developed further in the concept of critical junctures. For US Communications scholar Robert McChesney (2007), periods in which structural or institutional change is slow can be punctuated by a ‘critical juncture’, where settled arrangements cannot hold and what Starr (2004: 4) calls ‘constitutive choices’ establish new or at least modified paths. For McChesney, critical junctures have occurred for communications when at least two of three conditions pertain: new communications technologies undermine existing arrangements, there is rising dissatisfaction with media content, and a wider political crisis, with the ongoing ‘digital revolution’ marking the latest such juncture. According to McChesney (2007: 9) ‘The notion of critical juncture explains how social change works; there have been relatively rare and brief periods in which dramatic changes were debated and enacted drawing from a broad palette of options, followed by long periods in which structural or institutional change was slow and difficult’.

McChesney argues three such critical junctures occurred in the USA during the 20th century (US): the crisis in journalism in the 1900s-1920s; the emergence of radio as electronic media in the 1930s during a period of growing public criticism of commercialism, and the political economic crisis of the Depression; 1960s/early 1970s including the radical critiques of media by the ‘new’ social movements addressing race, gender, social justice and rights. Writing in the mid-2000s, McChesney described an ‘imminent’, 21st century critical juncture produced by the combination of the digital revolution and disruption, a crisis in the funding and production of journalism and wider political and social crises.

We develop this further in our analysis of ‘deconvergence’ in branded content governance. In summary, this argues that the regulatory response to a critical juncture in communications regulation that began during the era of Internet expansion and digitalisation from the mid 1990s, has been incomplete. Communications regulation has been disrupted and reorganised to respond to the digital revolution, yet the regulatory arrangements for the treatment of advertising and media remain marked by the path dependencies established in the mid-20th century. The separate regulatory treatment of advertising and editorial remains pre-convergent and de-converged. Despite ongoing convergence across media industries and practices, and in regulation, significant differences remain. These are subject to a range of explanations and justifications that need to be recognised and considered. However, we argue that the lack of regulatory convergence has served powerful marketers and media at the expense of consumers and the public interest.

It is important to clarify here that we mean by ‘convergence’, the bringing together of governance measures to match changes in the media-marketing industries, including at the levels of corporate, technological, platform, media form, professional, normative and ideational convergence. We do not use convergence in the sense that it is used in some EU policy contexts to describe the harmonisation of regulations across EU member states, and instead refer to the latter as ‘harmonisation’ for clarity.

Discursive institutionalism

For the lead exponent of discursive institutionalism, Schmidt (2010: 3) describes this as ‘an umbrella concept for the vast range of works in political science that take account of the substantive content of ideas and the interactive processes by which ideas are conveyed and exchanged through discourse’. This discursive focus is particularly apt for the BCGP which examines the interaction between emerging forms of media-marketing communications and the forms of governance that seek to address them. We develop this further in our reporting on the articulation and production of governance through public mediated communications, including ‘general’ public media and ‘trade’ publications (BCG Media Analysis). A full examination of such mediated discourses would also include social media communications, both within formal associations, looser networks and across inter-group and inter-personal communications across media-marketing practices and policy actors and stakeholders.

There are other forms of institutionalism that we draw upon, as relevant. They include empirical institutionalism, identifying ‘formal rules as the cause of different policy styles’ (Cairney 2020: 76), and network institutionalism, focusing on common informal rules (and ‘policy styles’) across political systems (Cairney 2020: 76). We also draw on sociological institutionalism. This rejects the reliance on strategic choices based on preferences of individuals as espoused by rational choice theory, and instead, follows March and Olsen (1984: 739, 2006) in defining political structures as

collections of ‘institutions, rules of behavior, norms, roles, physical arrangements, buildings, and archives that are relatively invariant in the face of turnover of individuals and relatively resilient to the idiosyncratic preferences and expectations of individuals’.

Application to the BCG Project

Regulatory institutions have internal communicative processes through which norms and policy goals are developed and they engage in external communications with policy stakeholders and wider publics as part of securing legitimation and support (Schmidt 2008; Popiel 2020). Hancher and Moran’s (1989:271-299) work on ‘regulatory space’ examines the discursive and non-discursive space in which regulatory issues are identified, framed and enunciated. Critical scholars’ attention to the ordering and framing of policy issues in regulatory space has been advanced to show that while power is diffused in complex ways ‘it is a capacity distributed unequally in society and...is characterized in the sphere of policy making not just by the ability to make decisions but also by the facility to prevent alternative ones from emerging’ (Freedman 2010: 357-8; Popiel 2020). This is not an open contest of ideas, but a ‘space’ (whether occurring at macro, meso or micro levels of analysis) structured by power asymmetries influenced by the distribution of economic, political, social and cultural power in the social formation. It is also a ‘space’ that is, to varying degrees depending on the precise configuration, dynamic, unstable, complex and contested.

The critical governance analysis approach of the BCGP follows these insightful approaches, but argues, *inter alia*, for an expansion beyond the policy domain to engage with wider discursive production within practitioner/professional and public-mediated communications, from industry trade media and general media coverage to social media exchanges.

Summarising the insights of historical institutionalism for policy analysis, Cairney (2020: 82) writes ‘significant institutional differences are likely to develop in each country, because a different set of initial conditions produces a different set of actions and events which gave a cumulative effect and set institutional development on a different path’. To give a full explanation for current policy and institutional differences we must examine how and why they developed as they did. The BCGP seeks to contribute to such analysis. While it does not fully test hypotheses, it formulates and explores several that together assess the influence of the period of formation and institutional histories on innovation, adaptability and engagement with branded content governance. More broadly, we consider how various institutionalist theories and approaches can inform comparative governance analysis.

2.6 Media Systems and Cultures

A ‘media systems’ approach provides a valuable framework for considering the relationships between the organisation and regulation of communications in different states and regions. We draw on the work of Hallin and Mancini (2004) who sought to establish a historical and empirical approach to comparative media studies against an earlier tradition of more normative, ‘global typologising’ (McQuail (1992:66). In the decades since their 2004 publication, there has been considerable debate, critique, revision and extension of their analysis, including by members of the BCG team (Hardy 2008, 2012).

The BCG project seeks to make a significant contribution to the development of media systems research, in particular by incorporating various elements that were neglected in the original schema, such as advertising, by providing a media systems mapping and analysis for our 32-country study of branded content governance, and by identifying ways of reincorporating features of our analysis into more holistic and comprehensive media systems analysis.

Our project extends Hallin and Mancini’s analysis of the role of the state and media regulation into the regulation of marketing communications. We also contribute to the incorporation of the promotional industries as key sectors of ‘media’ systems. This includes the significance of advertising finance for media services, but we make a broader argument that media cannot be fully understood in isolation from the media-marketing ecology and from the marketing communications practices within that ecology. All these elements need to be incorporated into broader ‘media systems’ analysis, although that task is beyond the scope and focus of the BCG project itself.

What is meant by ‘media system’?

In general usage, a media system comprises all mass media organized or operating within a given social and political system (usually a state). McQuail (1992: 96) situates media systems within different levels of media structure that may be selected for study. He differentiates a micro-level, referring to a single media channel such as a newspaper title or television station, a meso-level referring to a particular industrial ‘sector’, and a macro-level. The latter refers to ‘an entire (usually national) media system (or simply all relevant media)’ (McQuail 1992: 96). McQuail adds that macro-level analysis is an ‘unusual choice’, given the size and internal complexity of most media systems, but that such analysis can be adopted to make comparisons between national systems, or within different time periods within a national system.

The concept of a media system was first formulated at a time when there was persuasive authority to speak of ‘national’ media systems. It became widely used in the period after 1945 when most states regulated nationally based broadcasting services and there were clear ‘vertical’ links between national governments and the organization and regulation of other mass

communications. In Western systems, the dominant media were mostly owned by large national firms and were predominantly oriented towards markets within the boundaries of the nation-state.

The term 'media system', however, was not firmly established in 20th century media scholarship (Bastiansen 2008). Instead, four main types of formulation of 'media systems' developed, leading to different conceptual tools and research foci. The first, and historically most influential, has been the normative classification of media systems as governed by political systems (Siebert et al 1963 [1956]). The second approach emerged in response to the integration of media industries and markets. 'To comprehend how media develop and what they do in society', argues Turow (1992: 3-4), 'we must pay attention to the way media industries relate to one another. These interrelationships form what can be called the media system of a society'. The third approach is that of systems-theory sociologists such as Luhmann (2000 [1996]) who examines the differentiation of functional systems in society, building upon the structural-functionalism of Talcott Parsons. The fourth kind of usage is the main focus of this report and is characterized by a qualified rejection of the first and third approach, by a more historical and empirical account of 'system', and by a strong emphasis on diachronic as well as synchronic connections between media and politics.

Hallin and Mancini's Media Systems analysis

Over the last two decades there have been welcome developments in comparative media systems analysis, comparative analysis and internationalizing media studies. Most of this work has been developed in a political science tradition that asks questions about relationships between political systems, media organization, news output and public knowledge and opinion.

We draw on the 'new' approach to media systems analysis espoused by Hallin and Mancini (2004) in their analytical mapping of western media systems. We also engage critically with this work, drawing on other work that is in critical dialogue with Hallin and Mancini (H&M) as well as broader scholarship on media systems and cultures.

Hallin and Mancini's *Comparing Media Systems* published in 2004, argues that there are historically established connections between the development of political systems and 'media systems', focused on the development and modes of news journalism in particular. *Comparing Media Systems* is an analysis of 18 western democracies: the US, Canada and most of Western Europe. It is based, like Humphreys (1996), on 'most similar systems' design, which for Lijphart (1971) is a means of reducing the number of relevant variables by focusing on a set of relatively comparable cases. The study aims to assess whether 'systematic connections between political and mass media structures' (Hallin and Mancini 2004: xiii) can be identified. But Hallin and Mancini emphasize

that their study is necessarily exploratory. With comparative research at a 'relatively primitive' stage their aim is to enable the formation of concepts and hypotheses about the interrelationships of key variables in media and political systems, arguing that causal inference belongs to more advanced stage of analysis (Hallin and Mancini 2004: 5).

Based on an extensive range of country and cross-national research they propose three 'models of media and politics'. These are the Mediterranean or polarized pluralist model; the North/Central European or Democratic corporatist model, and the North Atlantic or Liberal model. As these titles indicate each model predominates in different countries and regions but is also centrally defined by political system characteristics. The Mediterranean or polarized pluralist model (Italy, Spain, Portugal and Greece) is characterized by the relatively late development of capitalism, industrialization and democratic traditions. In these largely agrarian societies feudal relations persisted and the landed aristocracy remained key sources of power into the twentieth century. In the North and Central European model (Germany, Austria, Switzerland, Scandinavia and the Benelux ('Low Countries') countries, Belgium, Luxembourg, Netherlands) the power centres of the ancien régime were weakened earlier in the eighteenth or nineteenth century. In this 'democratic corporatist model', traditions of power sharing amongst groups representing different political and cultural interests became more formalized along with the development of a welfare state in the mid-twentieth century. In the North Atlantic or Liberal model (USA, Canada, UK and Ireland) there was a stronger influence of classical liberalism favoring a more restricted role for the state, checks on governmental power and greater freedom for capital.

They identify four key dimensions for analysis of national media systems:

1. The development of media markets, with particular emphasis on newspapers and the mass circulation press;
2. Political parallelism (links between political parties and the media and more generally the extent to which media reflect political divisions);
3. Journalistic professionalism (the development of journalistic professionalism associated with formal professional bodies and 'differentiation' of the field of journalism);
4. The degree and nature of state intervention in the media system.

Hallin and Mancini identify a series of five political system variables:

1. The role of the state (including policy and regulation)
2. The nature of formal political systems and democratic rule
3. The role of interest groups and their incorporation into political structures
4. Rational-legal authority and clientalism. This addresses whether the rule of law (rational-legal authority) prevails over other means of allocating resources. Clientalism refers to a pattern of social organization in which access to social resources is controlled by patrons and delivered to

clients in exchange for deference and various kinds of support (Hallin and Mancini 2004: 58). One such form is media owners using their media to bargain with political elites.

5. Moderate vs. polarized pluralism. This distinguishes the depth of 'system' agreement between political parties, a 'polarized' system being post-war Italy with 'anti-system' communist and fascist parties.

One of the main differences between the three models concerns 'political parallelism' – that is, how far the media are integrated into factional politics. In Polarized Pluralist countries, the newspaper press historically served elites. A mass, commercial press developed comparatively 'late', in the early 20th century, if at all, and the press continues to be closely tied to the world of politics, and to serve as a means for parties and political elites to debate and bargain with one another. In Democratic Corporatist countries, strong media markets with professionally autonomous journalists developed, but were heavily influenced by civil society organizations. In the early twentieth century 'pillarisation' in Dutch society, for example, broadcasting was organized under separate associations rooted in subcommunities: protestant (Calvinists), catholic, socialist, and liberal. In Liberal countries strong media markets developed earliest of all and there was the strongest development of a non-partisan view of journalistic 'objectivity'.

Hallin and Mancini's study has been subject to extensive critiques of the scope, focus and approach (Hardy 2012; Humphreys 2011, Curran 2011, 2025). The following provides only a brief, selective review before focusing on issues most relevant to the BCGP.

Reading the national and transnational

Media systems research is challenged for its nation-centrism, 'container thinking' and 'methodological nationalism' (Beck 2002). Nation state units seem particularly inappropriate for dealing with some central issues in 'media systems' analysis: the system-wide forces of convergence arising from global capitalism, technological innovation and diffusion; the relationships between global and national capital; the transcultural flows of content, practices and ideas; and the relations of media governance operating within and between different 'levels': supranational, national, regional, local. Various globalization theorists propose that a post-national analysis is more appropriate and highlight the erosion of nation-state powers across politics, the economy, culture and media. However, as Chadha and Kavoori note (2005: 86) 'what is often overlooked in ... analyses of globalization ... is the structural and institutional transformation of media systems that has occurred in the context of the phenomenon at the national level'.

Nation states and culture

Insofar as scholars propose, or presume, a homology between national culture and nation states they are open to a powerful set of critiques from 'cultural studies' approaches that recognize cultures as plural, hybridized, conflictual and contested (Bhabha 2004; Morley and Robbins 1995). While there are deep sedimented cultural characteristics, variously reproduced and institutionalized across cultures, 'national' culture tends to be viewed skeptically as imposed and exclusionary (see Hardy 2008). Moreover, traditions of cultural essentialism (Huntington 1996) and their consequences are strongly critiqued both for their ethnocentric cultural orderings and political effects.

For Hepp and Couldry (2009: 36-37; Couldry 2007) 'territorial essentialism' is problematic as 'contemporary media cultures are not per se bound in such national containers, and so are not necessarily available to be compared in this way'. They call instead for a transcultural approach, while acknowledging that comparative analysis of media cultures 'is necessarily more difficult and more fuzzy than comparing media systems'. Likewise, Curtin (2003: 203; 2009) highlights that 'scholars are relinquishing the metaphor of national containers, choosing instead to examine the ways in which contemporary television is transcending frontiers and disrupting conventional structures of domination'. He proposes analysis of 'media capitals' (such as Mumbai) as 'centers of media activity that have specific logics of their own; ones that do not necessarily correspond to the geography, interests or policies of particular nation-states'. Media systems and media cultures do not simply map onto one another.

The case for taking the nation as unit for comparative analysis remains strong. Media systems have 'historically been rooted in the institutions of the nation state, in part because of their close relationship to the political world' (Hallin and Mancini 2004:13). The political economy, cultural and communications policies of nation-states still play a very important role in determining how media industries and markets are organized and regulated. Analysis of the national must not be 'contained' within frameworks that conceive the national as pre-given, essential or bounded and must incorporate supranational and subnational. For example, Mihelj (2007: 449) concludes that: 'Europeanization of communicative spaces – as well as any Europe-wide convergence of editorial and journalistic values and practices – is inflected not only by national frames, but also by regional, language-based, historical and ideological alliances'. She calls for analysis of 'non-national forms of stratification of public communication, and the ways in which they relate to inequalities arising along the lines of class, ethnic, gender and other social cleavages' (Mihelj 2007: 454-5).

Chadha and Kavoori call for empirical analysis and appreciation of difference and specificity in media systems – combined with analysis of forces globalisation today. Hardy (2012) argues that if we want to properly analyse contemporary media systems then we need to reincorporate all

these neglected elements. Comparative media systems research should aim for an integration of vertical perspectives (focused on political and media institutions within nations) and horizontal perspectives (incorporating cultural flows and social communications and cultural exchanges of media forms, ideas, practices, and comparing their effects on systems). Pursuing this, Hardy (2012) proposes extending the media system variables outlined by Hallin and Mancini, and adding some new ones. Their first variable 'the development of media markets' is most amenable for expansion to include the range of historical and contemporary communications – including internet and digital communications. The four media systems variables were fashioned for the purposes of explaining systems in formation, their contents can be expanded and updated, but there is scope to add additional categories in order to engage better with 'horizontal' and transnational/transcultural dimensions. Hallin and Mancini neglect transnational and diasporic media which are of critical relevance throughout the historical evolution of 'national' media systems as well as in the increasingly globalised media landscape.

A new fifth variable would be geocultural, to address the patterns of transcultural exchanges across media markets and important factors shaping media markets and cultures including geolinguistic and cultural affinities, regionalism, and religion. The geocultural includes what Humphreys (2011) calls ethnic/linguistic structure (homogenized, regionalized, sub-state nationalisms), which has particular bearing on the unitary or federal, centralized or decentralized, characteristics of media systems. Yet geocultural is broader, incorporating transcultural flows and affinities that problematize such correspondences between (sub) national political and cultural arrangements.

A sixth category would be that of media and civil society. While organized politics and social groups are included in political parallelism, this category invites broader consideration of social actors and their communications. The fifth category counters nation-centrism, while the sixth counters both media-centrism and concentration on organized politics at the expense of considering wider media-societal relationships. Criteria for evaluating media democratization can also be further advanced under this sixth 'dimension', not least by reconnecting with literature on media pluralism and democratization variables. While certainly not exhaustive, these additions would balance the (intended) parsimony of the original four variables with two interlinked 'dimensions' that incorporate the horizontal and transnational aspects of communications, cultural production and exchange – and connect to research into such topics as media and social movements; diasporic media cultures; mass self-communication, and citizens' media.

Commenting on such proposals as Hardy's (2012), Mihelj and Huxtable (2018: 6) state: 'many scholars have...proposed methodological solutions designed to make comparative work more sensitive to transnational exchanges and influences. *However, these solutions are yet to be tried and*

tested on a substantive body of empirical materials'. (emphasis added). The application and development of media systems analysis outlined in this report is one effort to respond to that important critique.

Mihelj and Huxtable's work is highly relevant to the aims of our BCG analysis. Their work includes Central and Eastern European systems that lay outside Hallin and Mancini's analysis. They also call for analysis of 'media cultures' that addresses multiple neglected features in H&M's 2004 work. This call is not a repudiation of media systems approaches, but an extension: '... we argue that a comparative inquiry into media cultures cannot proceed without a parallel consideration of media systems, which constitute one of the major contextual factors that help explain why media cultures are the way they are' (Mihelj and Huxtable 2018: 7). Their focus is on a non-essentialist (and de-Westernised) analysis of media cultures, 'the specific patterns of practices and meanings that constitute them, and the ways in which these patterns are negotiated in processes that tie together the circuits of media production, texts, reception and use'.

Hallin and Mancini's work represents a significant advance on the earlier tradition of 'global typologising' represented by *Four Theories of the Press*. Where that earlier tradition was 'idealist' in presuming news media take on the 'coloration' of the dominant ideology of the political system, Hallin and Mancini advocate an empirical approach, assessing the historical evolution of the media, and an approach that resists privileging one 'model' over others. They argue that normative questions are important but cannot be answered 'in a purely abstract and universal way'; 'It is not clear that media models that "work" in one context would also "work" in another very different one.[...] Any judgement we make about a media system has to be based on a clear understanding of its social context – of such elements as the divisions existing within society, the political process by which they were (or were not) resolved, and the prevailing patterns of political belief (Hallin and Mancini 2004: 14-15).

Hallin and Mancini remedy, but also reproduce, problems of the *Four Theories of the Press* tradition. Four key criticisms can be made of the latter:

1. The narrow scope and focus of classification – i.e. what media are included and how they are conceived
2. Oversimplification of media systems
3. The fusion of normative and empirical
4. Ethnocentrism

H&M's analysis reproduces all four problematic features. The focus on news media (and on publishing more than broadcasting) is insufficient to support the claim of media system analysis and the internet, then a decade old, is unjustifiably ignored. H&M's work and the comparative research tradition examines how communication resources are organized by states, political parties and private actors but the focus on both media forms and institutional relationships tends to be narrow. Critical studies are emerging

to address various gaps, including Mihelj and Huxtable (2018) on media cultures, (Hardy (2021b) on disinformation, although much remains to be mapped, for instance comparative analysis of diasporic, community, radical and other 'alternative' media.

The analysis does privilege empirical over normative, but the latter are evident, for example, in the tendencies to value commercial media 'independence' over political alignment. H&M do strive to counter ethnocentrism but reproduce a problematic ordering of more/less 'advanced' systems criticised as inaccurate then, and increasingly so as the US media system diverges even further from a normative liberal ideal.

Hallin and Mancini's work was explicitly delimited to 'similar systems' as was much work that followed (Hardy 2008) but a growing body of work examined media systems in central and Eastern Europe (Czepek et al 2009; Dobek-Ostrowska et al 2008, 2010), while some attempted regional or global mappings (Blum 2005). there has been a flourishing of comparative work on non-western systems, including a collection edited by Hallin and Mancini (2012) called *Comparing Media Systems Beyond the Western World*. However, for some critics, this work demonstrates that the original schema does not work when 'transferred' to other systems; its inherent, and unintended, ethnocentrism is revealed. According to Curran (2025: 305) H&M's 'classification system only seems to work for the north-western hemisphere', and the 2012 book's attempt to 'deploy it around the world... failed'.

2.7 Media Systems and the BCG Project

For the purposes of our study, the key area of neglect is advertising, in all aspects relevant to a 'media systems' analysis. This includes the role and influence of advertising as a source of media finance, the significance of the promotional industries within a wider analysis of media and communication systems, and the importance of the historical and ongoing co-development of media and advertising.

There are brief references but no substantive analysis of advertising in H&M (2004) and it does not form a component of media systems analysis, except indirectly as part of the development of media markets. At the end of the book, Hallin and Mancini (2004: 302), pose the question whether shifts to a 'Liberal model' 'make the flow of communication more open and equal, as entrenched political groups lose their control of the media system, or less so, as media fall more exclusively under the control of business, and as consumers', investors', and advertisers' dollars...come to underlie the development of media structure?'.

Earlier, they also briefly mention the issue of media-marketing integration that the BCGP examines. Hallin and Mancini (2004: 291) refer to the blurring of boundaries between advertising and media, 'as product placement, for example, increases in entertainment and as news is used to cross-promote other products of media conglomerates'. Finally, Hallin and Mancini also refer to the significant regulation of media and advertising in democratic

corporatist systems, reflecting those systems' treatment of media as 'a social institution and not simply a private business' (Hallin and Mancini 2004: 163).

The significance of advertising and the promotional industries in the development of media systems is not adequately addressed and incorporated into H&M's media systems analysis. The BCG project seeks to contribute in various ways. *Above all, we seek to incorporate the significance of advertising across media practices, media financing, media governance and media convergence.*

The other key component of the BCGP, governance, is also only partially and narrowly addressed. Hallin and Mancini do examine the organisation and regulation of media, focusing on the role of the state in the governance of the press (news publishing) and broadcasting. However, consideration of differences in legal systems and the domains of comparative legal studies, socio-legal studies and wider studies of communications policy and regulation, including advertising, are beyond the scope of their analysis. The key lens is that of political science and not comparative policy or legal studies. This is a deficiency that needs to be addressed and the BCGP seeks to make a specific and illustrative contribution to that broader task. The BCG project contributes by analysing the role of the state, laws and regulation in detail and by extending the 18-country focus of Hallin and Mancini to map both similar and dissimilar systems across our 32-country study.

We argue that media systems can be understood as the interface of communications systems/processes/cultures with governance systems/processes/cultures, with particular regard to organisation (arrangements) at the level of states and to the historical (political, economic, ecological, social, (geo)cultural) configurations/conjunctures that have mutually shaped them.

The relations between communications and governance involve the interaction of configurations that range from the hyperlocal to global, and combine processes that have supranational, national and subnational dimensions. As discussed above, we follow those scholars who reject 'methodological nationalism' (Beck 2002, 2009) and those emphasising the global-local nexus across communications activities, and governance. Yet, we argue that the organisation and governance of communications by and within states, including legal-regulatory capacity and jurisdiction should be an essential focus for media systems analysis. In summary, media systems analysis needs to address the interface between communications and governance with particular regard to their formal organisation and broader industrial and geocultural interaction at the level of national states. The BCGP contributes to examining how communications are generated, organized and contested within and across state-mediated arrangements.

The following ‘missing’ elements need to be reincorporated into media systems analysis:

Governance including legal-regulatory (political economic; historical institutionalism (+); ‘media policy studies’; legal/socio-legal studies

- Advertising and Media Finance/influence
- Promotional industries
- Co-development of promotional and communications industries
- Comparative analysis beyond ‘similar systems’

Building on the two additional variables for media systems analysis proposed by Hardy (2012), the BCGP analysis can be mapped as follows:

1. The structure of media markets

- Promotional Industries
- Media-marketing ecology

2. Degree and form of political parallelism

- Marketers’ power (payment and control) inc. ‘political’ actors/ purposes/effects

3. Development of journalistic professionalism [aspects of media-marketing governance]

- Governance of media-marketing [governance-in-practice; Industry regulatory organisations (IROs) linking to SRO; Statutory/ Governmental; Courts: polycentric governance]

4. Degree and form of state intervention in the media system [aspects of media-marketing governance]

- Governance – formal policy and regulation [Statutory/Governmental; Courts, linking to SRO, IRO, governance-in-practice: polycentric governance]
- Critical governance/institutionalism - Complexity across ‘rational-legal v instrumentalist action; media-marketing industrial-governance ecology – multiple actors/interests
- Governance convergence/compartmentalisation

5. Geocultural

- Transnational/cultural ‘flows’ - governance values (and capacities)
- System; Strategic; Operational; Dissemination; Societal [Examining structuring of power...without ‘determinism’]
- Institutionalism: rulemaking/shaping patterns across regions/ countries/’sectors’/networks

6. Media and Civil Society

- Policy and governance processes (CS actors and stakeholders)
- Mediated communications (trade/general media; social media)

Our BCG analysis seeks to examine the following, and to make policy recommendations arising from our comparative analysis.

- Variations in
 - Legal and regulatory provisions
 - Institutional arrangements and processes of governance
 - Policy processes (focus on UK- Spain)
- Research insights for recommended action (identifying areas of ‘better/worse’ practice)
- To produce ‘context-sensitive’ mapping/‘menu’ of measures for advancing better governance.
- Identify patterns (co-presence of variables) in governance arrangements and processes

We seek to explore (if not fully test) hypotheses concerning the conditions in which institutional governance defines and addresses branded content (see section 3). This includes assessing the scope and ordering of policy issues in ‘regulatory space’; rulemaking/shaping by Governments/courts/statutory/ SRO/IROs; governance effectiveness; governance-in-practice. We consider whether regulatory responsiveness and effectiveness is more evident in established ‘legacy’ regulatory agencies or in those created within the 21st century and digital era. Overall, we seek to assess what (system/institutional) conditions favour responsive rule-making and effective application.

The BCGP’s use of media systems is situated between more modest and more ambitious aims.

Modest Aim: to link our work to existing scholarship

- Using ‘media systems’ as a contingent, contextual mapping to situate each state in our 32-country analysis
- Providing connective explanatory frameworks and data (e.g. Hallin and Mancini and related work on media systems; Media Plurality Monitor; media freedom rankings; comparative advertising law studies, etc.)

Ambitious Aim: contribute to extension of comparative ‘media systems’ analysis

- Incorporate neglected topics (marketing communications; advertising regulation; +)
- Group countries according to modified ‘media systems’ classification
- Map patterns across these ‘clusters’
- Consider (test) implications for empirical/theoretical analysis
- Develop synthesizing mapping (incorporate media-marketing practices/governance into mapping of media/communications systems and cultures)

BCG Project Media System Mapping

The BCG Project places the 32 countries in our study into four ‘clusters’. This builds upon, but modifies, the three-model classification of Hallin and Mancini. As stated, we use Hallin and Mancini’s classification as a contextual guide to describing each of the 16 countries in their study that are included in the BCG study. We also refer to classifications derived from Hallin and Mancini and applied by other scholars to countries not included in H&M’s original analysis, although this is a heavily contested space. Hallin and Mancini originally warned against efforts to apply their analysis and classification to other countries outside of Western Europe and North America. They write ‘ We have rejected the kind of universalistic approach that characterised *Four Theories of the Press*, and hope that our work will not be used as *Four Theories* was, as a set of categories to be imposed on systems that developed in very different contexts, in a way that would actually prevent us from analyzing other systems on their own terms and understanding their distinctive logics’ (Hallin and Mancini 2004: 305). Their later edited book to examine media systems ‘beyond the Western World’ demonstrated that the original schema did not work across diverse countries (Hallin and Mancini 2012; Curran 2025). The effort to apply the original schema to other systems faces the problems of fit and imposition discussed. In addition, any such application faces problems concerning the temporal uncertainty of the models themselves, describing characteristics that H&M argue were most distinctive up to the 1970s before increasing convergence in the decades since. In addition, such classifications fail to address ruptures and change, ‘critical junctures’ and their aftermath in media systems. These problems are relevant across all 32 countries but in particular the eleven CEE countries in our study.

The approach of the BCG project is to use Hallin and Mancini, and related descriptions, for contextual reference and as a bridge between our analysis and the body of work that has been built up around media systems. We also supplement and complement our use of media systems by drawing on a range of other mappings. These include country data (CIA Yearbook and other sources); indicators of media policy and performance, and ‘media freedom’ from the Media Plurality Monitor project and from freedom of expression reports and rankings, and comparative studies of media, advertising, competition and consumer law and regulation.

Table 2: BCGP Media Systems Mapping

Country	BCG Project Analysis (32)	EU Member States (27)	Hallin and Mancini 2004 (18)
Australia			
Austria			
Belgium			
Bulgaria			
Canada			
Croatia			
Cyprus (Republic of)			
Czech Republic			
Denmark			
Estonia			
Finland			
France			
Germany			
Greece			
Hungary			
Ireland			
Italy			
LaLatvia			
Lithuania			
Luxembourg			
Malta			
Mexico			
Netherlands			
Norway			
Poland			
Portugal			
Romania			
Slovakia			
Slovenia			
Spain			
Sweden			
Switzerland			
United Kingdom			
United States			

We retain all 16 countries in the same grouping used by H&M, but we change some model descriptions, and we add countries not included in Hallin and Mancini's original analysis.

16 of our countries are included in the original classification of Hallin and Mancini. The exceptions are Mexico, Australia and the countries in Central and Eastern Europe (CEE) that are EU Members. Hallin and Mancini include two non-EU countries (Norway and Switzerland) that are not included in the BCG study. They also excluded two, 'small state', southern European countries that might otherwise have been included in the Mediterranean/polarised pluralism 'model': Cyprus and Malta. Both countries are included in the BCGP.

Mexico is not included by Hallin and Mancini with the other North American countries (USA, Canada) that form part of the 'North Atlantic or Liberal Model'. Australia is outside the 'Western' media focus of the study, although the 'similar systems' rationale might have justified inclusion of Australia, and other countries, as a 'Western' aligned, liberal-democratic, capitalist market system whose history is deeply entwined with patterns of Western colonialism, voluntary and forced migration, and displacement of indigenous peoples. Of the five countries in our study that are outside the EU, three are neighbouring states all have close historical ties and interrelationships (Canada, USA, Mexico). Mexico is the comparative outlier in that group, geographically part of North America but also the most northwesternmost country in Latin America.

The full list of 27 EU member states (2025) is Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

Some European countries are not included in any of the lists (BCG; EU; Hallin and Mancini). These are Albania, Bosnia-Herzegovina, Iceland, Liechtenstein, Macedonia, Montenegro, San Marino, Serbia, Kosovo. Further east the European continent includes Belarus, Russia (spanning Eastern Europe and North Asia), Turkey (spanning Southeastern Europe and Southwestern Asia), Ukraine, all of which are also excluded from the BCG analysis.

BCG Project Media System 'Clusters'

The BCGP identifies four main 'clusters' (based on historical and geocultural development) as follows:

- **'North Atlantic'/ Liberal (with Mexico and Australia)**
Australia, Canada, Ireland, Mexico, United States, United Kingdom (6)

- **Northern European**

Austria, Belgium, Denmark, Finland, Germany, Luxembourg, Netherlands, Sweden (8)

- **Mediterranean**

Cyprus, France, Greece, Italy, Malta, Portugal, Spain (7)

- **Central and Eastern European (CEE)**

Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia (11)

Our clusters modify but are derived from Hallin and Mancini. This means we draw from a classification that is a *priori* in respect of our own analysis. Our clusters are also geographic and proximate, except for the 'North Atlantic', in which we include Australia. Our clusters are also based on historic, political economic and geocultural affinities. For instance, all the Central and Eastern Europe, share geographic location but also shared histories of incorporation into and later independence from the Soviet-Communist system as Eastern Bloc members of the Warsaw Pact (Bulgaria, Czechoslovakia[later Czech Republic, Slovakia], Hungary, Poland, Romania), independent but aligned (Yugoslavia from which Slovenia was formed, together with non-EU countries Serbia and Montenegro] or the Union of Soviet Socialist Republics (USSR) formed between 1922 and 1991, including in our study, now EU countries Latvia, Estonia and Lithuania who all declared independence in 1990.

The clusters are contingent. They are used as a basis to identify and assess patterns. They are used to consider if there are 'intrinsic' patterns relating directly to our study of branded content governance (such as commonalities in regulatory and self-regulatory arrangements within clusters and differences between them). They are also used to identify linkages between our analysis and broader media system analysis (such as patterns relating to journalistic professionalism or the role of the state). The application of media systems analysis is discussed further in the methodology section 4 and the report of findings, section 5.

We show here a summary table that is discussed in section 5.5 but is relevant here to indicate some features of our clusters

Table 3: Powers over Advertising: Media System Cluster Analysis

	Northern European	Mediterranean	North Atlantic	CEE (Central and Eastern Europe)
EU Supranational	8/8	7/7	1/6	11/11
EU Accession	Early	Mixed	Early	Late
State (direct gov.)	Low	High	Low	High
State (autonomy)	High	High	High	High
Co-regulation	High	Low	High	High
Powers over advertising	Court led	SRO led	Mixed Stat./SRO	Gov/Stat led
SRO Formation	Early	Mixed	Early	Mixed
SRO Enforcement (Branded Content)	Mixed	Low	Mixed	Low

Our clusters show clear differentiation in their relationship to the EU. Three clusters contain EU members only, while the ‘North Atlantic’ is mixed, with only one EU member, Ireland, and the formerly influential but now ex-member, the United Kingdom. Of the three EU member clusters, they show a pronounced pattern in their relative accession dates. The Mediterranean is ‘mixed’ with France and Italy joining at the formation in 1958, followed by Portugal and Spain joining later in 1986 and Malta and Cyprus in 2004. Northern Europe is also partly ‘mixed’ as Austria, Finland and Sweden all joined in 1995, but we identify it as ‘early’ because five of the eight had joined by 1973 (Denmark joining, from 1958, Germany, Belgium, Netherlands and Luxembourg). The CEE cluster all joined ‘late’, the majority in 2004 but with Bulgaria and Romania in 2007 and Croatia in 2013 (European Council 2025).

2.8 Communications Regulation

The regulation of branded content falls within two main types of regulation, that of media and communications, on the one hand, and that of marketing and marketing communications on the other. Within the latter, branded content activities are subject to both ‘general’ regulations (such as for enterprise and trading activities, competition, and consumer protection/welfare) and ‘specific’ regulations (such as regulations for specific goods and services such as medicines, gambling, financial services).

If branded content falls *within* media and advertising regulation, a key motivation for the BCG project is that it also falls between these domains, 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. This is one reason why a critical-historical institutional analysis is so valuable. The matching of industry and regulatory arrangements, formed for the governance of pre-digital electronic media can persist within the configuration of institutional arrangements, or ‘ideas’ about regulation, acting as barriers against matching regulation to changed, and evolving, industrial-practice conditions. To give another example, the influence of Public Service Broadcasting as a ‘gold standard’ in communications professionalism can provide an indirect benchmark against which to measure boundary blurring between media and marketing. The BBC’s codes of practice around the management of commercial content for professionals, even where they are working in more commercialised environments (Hardy and MacRury 2024).

There are some key historical patterns found among many of our 32 countries, but in particular Western European countries and our ‘Liberal’ cluster. The first is the division between state regulation (or statutory regulation, keeping the executive government at ‘arm’s length’ from direct control) of broadcasting and voluntarism (industry self-regulation) for ‘the press’ (news and periodical publishing). While news publishing has been subject to extensive laws, the principle of press freedom has supported principles of no-prior censorship. So, there has been an underlying bifurcation within the regulation of media, between state and market. This was established in the early 20th century in some countries (UK, USA, Canada), from the mid-century in others, and in some cases in CEE systems, in the later 20th/early 21st century.

The bifurcation between broadcasting and publishing has also been reflected in the regulation of advertising. Where radio and later television has been subject to state (or statutory) regulation, this has usually included all broadcast output, programmes, programme announcements and (for permitted services) advertising. By contrast, voluntary self-regulation of the press has often exercised a separation between editorial content that is subject to the press self-regulator, and advertising that is subject to advertising self-regulation. The UK is an example of that separation, with various incarnations of press self-regulation (Press Council/ Press Complaints Commission/Independent Press Standards Agency) alongside the self-regulation of non-broadcast press advertising (and later broadcast advertising) by the Advertising Standards Authority.

Such arrangements have been further characterised by indeterminacy in regulation at the intersection of media and advertising. The UK ASA has maintained delimiting of its regulation so that it does not cover news and editorial content, or public relations. Public relations content was excluded

from the advertising SRO but treated by press self-regulation under general rules for editorial only, with other industry regulatory organisations setting rules for their member organisations and individual PR practitioners (Chartered Institute for Public Relations, Public Relations Consultants Association).

Press self-regulation, in the UK but also in other of our 32 countries, has tended not to include rules pertaining to commercial communications or sponsor influence. More precisely, this delimiting has been a feature of press self-regulatory codes drawn up by editors and publishers, while codes and standards of journalists, drawn up by trade unions or professional associations, generally do include rules concerning both the 'external' influence of interests, including advertisers, and the 'internal' influence of owners or those exercising control over the publication. The International Federation of Journalist's *Global Charter of Ethics for Journalists* (IFJ 2019) states in Article 13 that 'He/she will avoid any confusion between his activity and that of advertising or propaganda'.³

In the UK, an exception is the news publishing self-regulator Impress whose code (from 2017) has included a clause on transparency, requiring 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'.

2.9 Convergence and Deconvergence in Communications Regulation

Historically, media communications have been regulated by industry and technology for production and/or distribution. There has also been more 'general' regulation affecting communications (such as copyright laws from the early 18th century). The regulation of mass media forms has been primarily national but with supranational regulation for communication services, from postal to telecommunications regulations, satellite and later digital technologies.

From the latter half of the 20th century media regulations (in the 32 countries) has shifted from primarily national to a mix of supranational and national. There have also been shifts from sector-specific towards more general regulation (for example, from dedicated media ownership rules to general competition rule, some with media specific provisions). There has been a broad shift from separate regulatory arrangements for different media to more convergent ones. This process increased from the late 1980s with efforts to bring about regulatory convergence to match and support the technological-industry convergence of telecommunications, computing and 'media' (notably broadcasting). This process increased

3 Article 13 of the IFJ's Global Charter of Ethics for Journalists also states: 'The journalist shall not use the freedom of the press to serve any other interest and shall refrain from receiving any unfair advantage or personal gain because of the dissemination or non-dissemination of information. He/she will avoid - or put an end to - any situation that could lead him/her to a conflict of interest in the exercise of his/her profession' (IFJ 2019).

in the 1990s but regulatory convergence was developed and debated in contexts (in the EU and most Western governments) in which neoliberal arguments for 'deregulation' (better understood as pro-market, liberalising re-regulation) were dominant, such as the Bangemann Report (D10, European Commission 1995) and process.

Regulatory convergence has increased, and various positive, pro-consumer and pro-market arguments can be made for much of this). However, the BCG project examines areas where regulatory convergence is lacking and in need of development. This is developed further below in sections 5, 6 and 7.

2.10 Regulating Advertising In most countries, advertising is regulated by a mixture of legislation and self-regulatory codes of practice. There are three main types of advertising regulation: statutory regulation, derived from legislation; self-regulation by industry (with varying degrees of 'independent', non-industry oversight); and a blend of both (co-regulation).

Controls affecting advertising have existed for several centuries in most countries, but it is in the early twentieth century that more pervasive regulatory systems developed. In Britain, one of the first significant moves towards self-regulation occurred in 1880, when the United Bill-posters Association and London Bill-posters Association, sensitive to increasing public criticism of outdoor advertising, set up a joint committee to exclude 'the obscene, the offensive and the overtly sensational' (Cronin 2004: 36; Miracle and Nevett 1988). Various business codes of practice were introduced from 1910 onwards in both the US and Britain, but the first proper code of advertising ethics was drawn up in 1924 at an international conference in London, where delegates pledged to be truthful, avoid exaggeration and misleading claims, and refrain from unfair criticism of competitors. Later that year the Advertising Association was formed in Britain with the declared aim 'to promote public confidence in advertising and advertised goods through the correction or suppression of abuses which undermine that confidence' (Miracle and Nevett 1988: 10). In 1928, the AA established an Advertising Investigation Department that encouraged prosecutions to drive out rogue advertisers. A significant motivating factor here, as in subsequent efforts to modify self-regulation, was to stave off the threat of governmental controls and legal restrictions. In France, a self-regulatory body was first established in 1935 and in 1937 the International Chamber of Commerce (ICC), meeting in Paris, published the first International Code of Advertising Practice, which began with the declaration 'All advertisements should be legal, decent, honest and truthful'.

Advertising regulation concerns three main aspects: the matter being promoted, the content and form of promotional messages, and the placement of messages, including the allocation of media space or time given to promotions. Regulation can also be thought of in relation to the different stakeholders affected. Regulation may have as its focus

consumers (whether actual or intended) for products or services, recipients of marketing communications (those who do or might encounter such messages), other suppliers (affected by claims made in marketing communications), the communication channel or service used, other communicators, or anyone affected, the latter reflected in the principle that '[a]dvertisements must be prepared with a sense of responsibility to the audience and to society' (BCAP 2010: 9; Rule 1.2).

2.11 Regulating Branded Content

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' rules. 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 requirement that all marketing communications must be recognizable) or addressed in more specific rules and guidance, such as for advertorials, native advertising, or influencer marketing.

A key principle of advertising regulation is that '[m]arketing communications must be obviously identifiable as such' (CAP, 2010; rule 2.1). Yet, increasingly, advertising is 'native', blending commercial messaging so that sponsored content 'is often indistinguishable from news, feature articles, product reviews, editorial, entertainment, and other regular content' (FTC, 2015a: 2). Fast-evolving forms of branded content have intensified the challenges to the separation of editorial and advertising that were already being felt across the legacy media of print and television. The blurring of editorial and advertising is becoming a significant challenge for regulators.

Separation of media and advertising

In the 20th century, all Western media systems had rules requiring the separation of media and advertising in at least some media. In UK commercial broadcasting, such clear separation was stabilised after an early, experimental phase of 'advertising magazines' was halted following the Pilkington Committee (Hardy 2010: 245-262)

In news publishing, F P Bishop (1949:169) described the ethical challenges associated with the links connecting press, PR and advertisers:

A whole journalistic sub-world has grown up to serve the interests of advertisers in the matter of news. Some are employed by the newspapers themselves. There are gossip writers, correspondents,

feature editors of many kinds who lunch at the advertiser's table, accept his free tickets and "write up" his story for their papers.

Non-disclosure was posed, then, as an ethical problem as much as a regulatory one. Bishop (1949: 85) noted this "sub-world" of "publicity" men, "press agents", and the like who make it their business to provide advertising in the hidden form of "puffs" and "pretended news paragraphs", highlighting the dishonesty in "deceiving the consumer" by "trying to make an advertisement look like something else" (Bishop 1949: 85-6).

The separation of editorial and advertising matter has been a long-standing issue; the UK SRO, ASA (2019: 4) noted that '[a]s far back as 1964, the ASA's annual report stated, "A reader has a right to know whether he is reading independent editorial opinion, or a news item, or advertising matter. For advertisements to appear as either editorial or news matter is clearly misleading"'. In its report on influencer marketing, the ASA (2019a: 4) affirms 'drawing a clear line between advertising and editorial content is as important today as it was then, but now the explosion of online marketing channels raises significant new challenges'.

Branded Content: Four Problem Areas

The BCG project identifies four main problem areas in branded content. We develop these in our analysis of problems and mitigations (sections 6 and 7). The following section summarises the problem areas and our mapping of how these manifest in policy action and discourses overall.

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).

We began with an outline of three problem areas and how they feature in current governance. The lead 'problem' concerns the labelling and identification of marketing communications. The second problem concerns the consequences of brand voice/influence on editorial (independence) and aesthetic (autonomy) qualities. This is strongly articulated in some 20th century regulations but is arguably weakening and becoming 'residual' in contemporary governance. We discuss below the shifts in the International Chamber of Commerce code. Another example is the US where the principle of separation between editorial and advertising was articulated in terms of the protection of media integrity but has been weakening since the 1970s (Hardy 2010, 2022, 2023a). Currently the main regulation of branded content is that of the FTC (2015a, 2015b) whose remit and focus is on consumer protection rather than on the impact and implications of branded content for media quality, independence and integrity. Regarding FTC regulation, Hardy (2022: 152) argues that '[o]nce the requirement of consumer recognition of native ads is passed there is little left in

the prevailing regulatory arsenal to act against the impact of branded content on media channels themselves, and hence on the quality of... communications services’.

The third problem, marketers’ power and share of voice, summarised more radical critiques that demand more systemic reforms. These share a focus on the implications of communications environments on consumers, media and society but we have added a fourth to add focus on the capacity of those involved in evolving forms of promotional cultural production to exercise good governance. This seeks to address issues of power, precarity, training, support and more that affect practitioner-creator capacities to influence ethical outcomes.

Table 4: Branded content problems in governance discourses

Consumer Awareness Labelling, identification	Dominant
Integrity of media channels Editorial, creative independence	Residual
Marketers ‘share of voice’ Marketers’ influence on content and range of information, imagery and ideas circulating.	External; Emergent?
Diminished governance agency capacity for cultural workers	Emergent?

Shift from concerns about media quality and integrity to disclosure

Since 1966, the leading international code of advertising, that of the International Chamber of Commerce, has clear rules on the identification of advertisements. This requires that “advertisements should be clearly distinguishable as such, whatever their form and whatever the medium used” (ICC 1966: 8; ICC 2018). That 1966 wording is instructive, because it is not anachronistic, it has the scope to include influencer marketing today, or indeed any of the new and hybrid digital ad-formats that began from the 1990s, three decades after it was written.

The International Chamber of Commerce (ICC) is private institution that represents more than 45 million companies in over 100 countries and

promotes international trade and investment. The ICC established its first code of advertising in 1937, approved by ICC congresses that year and in 1939. As presented to the United Nations Economic and Social Council (ECOSOC 1947), the code was four pages long, with sections on basic principles, public confidence in advertising, fair dealing between advertisers, and on advertising, agencies and media. It outlined the principle that “no [advertising] practices should be permitted which tend to impair public confidence” and stated that advertising statements must not mislead the consumer, or “cast doubt on the truth of other advertisements” (ECOSOC 1947: 1, 2). It addressed methods that might confuse consumers by imitating competitors’ trademarks or advertisements, but did not address the identification of advertising explicitly. The code was revised in 1948 and 1954, but it was not until 1966 that a new article on identification was introduced. This formed part of a broader overhaul of the code that provided greater clarity and organisation, with rules now both numbered and titled. Sweden’s self-regulatory body, Näringslivets Opinionsnämnd, had developed guidance on identification that influenced the ICC’s 1966 code revision (Nordell 1999: 847; Svensson 2016: 112). Rule 9 “Identification of advertisements” states (ICC 1966: 8):

Advertisement should be clearly distinguishable as such, whatever their form and whatever the medium used; 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.

This articulates a principle of identification but also one of separation: advertising should be “so presented” that it is readily distinguishable and separate from editorial matter. While focused on consumer recognition of advertising it also identifies a value in protecting the qualities of news and editorial opinion for media that contain these.

In the next version of the code (ICC 1973), now Article 11, the first clause is unchanged, but the second now reads: “when an advertisement appears in a medium which contains news or editorial matter, it should be so presented that it will be readily recognised as an advertisement.” This strengthens the obligation on the marketer, advertising agency (and media publisher) to ensure that the advertisement is “readily recognisable” a judgment that is more securely located in examination of the content rather than in assessments of the capabilities of “the consumer” to do so. This wording was unchanged in the 1987 code revision and again in 1997, although it was now renumbered as Article 12. The next version in 2006 saw a major overhaul when the ICC created a “Consolidated Code for Advertising and Marketing Communication Practice”, bringing together previously separate codes including on Sales Promotion, Sponsorship, Direct Marketing, the Use of Electronic Media and the Environment, and including new material on Internet advertising and marketing to children.

The 2006 code is framed around the broader term marketing communications, which “includes advertising as well as other techniques, such as promotions, sponsorships, and direct marketing, [...encompassing]

any form of communication produced directly by or on behalf of marketers intended primarily to promote products or to influence consumer behaviour” (ICC 2006: 11). That formulation leaves unresolved when communications, such as by a social media influencer, may be editorial rather than “intended primarily” to promote or influence consumer activity, but does encompass communications that are subject to payment (or other economic consideration) or control by marketers (“produced directly by or on behalf of”).

In its revised version (ICC 2006: 15), Article 9 (Identification) now begins: “Marketing communications should be clearly distinguishable as such...” Article 9 also introduced a second clause, whose wording was further revised in the 2011 and 2018 codes. In the 2006 code this begins “Marketing communication should not misrepresent their true purpose”, while the most recent edition (ICC 2018) uses the term transparency. Article 7 “Identification and Transparency”, states (ICC 2018: 10):

Marketing communications should be clearly distinguishable as such, whatever their form and whatever the medium used. When an advertisement, including so-called “native advertising”, appears in a medium containing news or editorial matter, it should be so presented that it is readily recognisable as an advertisement and where appropriate, labelled as such.

The true commercial purpose of marketing communications should be transparent and not misrepresent their true commercial purpose. Hence, a communication promoting the sale of a product should not be disguised as, for example, market research, consumer surveys, user-generated content, private blogs, private postings on social media or independent reviews.

The 10th version of the code (ICC 2018) gave greater attention to the ever-expanding role of digital marketing communications. The chapter on Direct Marketing and Digital Marketing Communications (C1) elaborates on Article 7 and includes obligations on marketers towards network sites and communicators (ICC 2018: 31):

Where a marketer has created or offered consideration for a product endorsement or review, the commercial nature should be transparent. In such cases, the endorsement or review should not state or imply that it is from or conferred by an individual consumer or independent body.

Marketers should take appropriate steps to ensure that the commercial nature of the content of a social network site or profile under the control or influence of a marketer is clearly indicated and that the rules and standards of acceptable commercial behaviour in these networks are respected.

The most recent version of the Code is 2024 (ICC 2024). Article 7 on Identification and Transparency, states (ICC 2024: 26):

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.

Marketing communications should be transparent about their true commercial purpose, and not misrepresent it. Hence, a communication promoting the sale of goods, or the contracting of a service should not be disguised, for example as news, editorial matter, market research, consumer surveys, consumer reviews, user-generated content, private blogs, private postings on social media or independent reviews etc.

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, and its commercial nature should be transparent. It should be so presented that it is 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 ICC seeks to uphold the principles of identification but in a context that acknowledges the varieties of integrated media and marketing communications. 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 (Chapter B) 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. Marketers and their influencers, as well as creators, should ensure the content is properly presented as marketing communications in accordance with the principles of identification and transparency (see Article 7).

The ICC code is an example of industry self-regulation; it is a voluntary code with no direct powers of enforcement, although the code 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, and to serve as an example for national, sectoral and corporate codes around the world' (OECD 2015: 51) Its place within the broader arrangements of regulation and governance is considered further below, but it is the leading international code of advertising and has influenced other forms of governance, including codes and laws worldwide (OECD 2015; Osborne Clarke 2003). For instance, the ICC's codes formed the basis for the UK's British Codes of Advertising and Sales Promotion drawn up by the Committee of Advertising Practice (CAP) representing the marketing and media industries and enforced by the Advertising Standards Authority (ASA), an SRO.

2.12 Section 2 Summary

How branded content has developing in different national and regional contexts is influenced by formal laws and regulations, corporate decision-making, civil society advocacy, and by the cultures and practices of media and marketing practitioners and users alike.

There are three main types of advertising regulation: statutory regulation, derived from legislation; self-regulation by industry (with varying degrees of non-industry oversight); and a blend of both (co-regulation). In most countries, advertising is regulated by a mixture of legislation and self-regulatory codes of practice (Ikonen et al. 2017).

The governance of the interface of marketing and media communications continues to be shaped by the ways these types of communication have been treated over long histories and how governance arrangements have informed and co-developed with industries, institutions (including governmental, regulatory, legal, industrial and civil society), practices and professional (and non-professional) identities, and discourses (values, attitudes, etc).

Media has historically had divergent treatment between a voluntary (self-regulatory) 'free press' model (no prior governmental control over content) and a statutory model (gov agency or statutory regulator) for broadcasting (radio and television). Advertising has tended to be regulated along self-regulatory lines (similar to and sometimes sharing 'free press' arguments – 'right to advertise) but with advertising affected by a range of legal and regulatory measures affecting what can be marketed, how, where, when and to whom.

The BCG project argues that (overall) the governance architecture needs to be overhauled. There are gaps and anomalies in governance. Regulatory convergence has been partial and incomplete. The present phase, mapped out in this report, can be characterised as 'deconvergence'. The final section, drawing on our analysis of measures taken across our 32 countries, discusses positive developments towards greater convergence, greater reach and consistency in governance. We also set out our arguments for integrated polycentric governance.

3. BCG Project Analysis

3.1 Formal Governance

The BCG project adopts an expansive conception of governance that includes all rulemaking/rule-shaping behaviour across formal and informal processes. ‘Informal’ governance includes the influence of public-mediated communications (general/group/ peer/intra-institutional/cross-institutional) and what we call governance-in-practice. ‘Formal’ governance includes legal and regulatory measures overseen by institutional processes with powers over enforcement and compliance. For our 32-country reports, our focus is on more ‘formal’ governance measures and so the following section discusses their definition and scope.

The main ‘domains’ for the assessment of ‘formal’ regulatory/governance of advertising are:

1. Executive/Government
2. Legislature/Legislation
3. Courts of law
4. Statutory regulatory authorities
5. Advertising self-regulatory organisations (SROs; inc. co-regulation)
6. Media and other SROs

The categories above are the formal types of legal-regulatory authority that exercise powers over advertising that are identified in our table.

We identify Industry Regulatory Organisations as being located across the border between formal and informal regulation depending on whether and how they oversee compliance and undertake enforcement activities. We do not include IROs in our 32-country mapping of ‘formal’ regulation except where they are involved in co-regulatory arrangements with formal regulatory agencies (usually statutory regulators). We also refer to IRO organisations and their codes and guidance where relevant in our reports. IROs are important elements in governance ecosystems overall, and interact with the formal agencies in various ways, including in co-regulatory arrangements. IROs are also relevant to include in the discussion below, to clarify the distinctions we make between IROs and self-regulatory organisations (SROs). ‘Informal’ governance includes the organised activities of professional bodies that produce codes and guidance for members (‘industry regulatory organisations’, IROs) and the processes by which governance is managed and negotiated by those producing content and services (governance-in-practice). These latter are examined in more detail in sections 6 and 7 in this report and in other BCGP reports, notably *Governance-in-Practice* (forthcoming BCGP) and *Mapping the Media-Marketing Ecology* (this is a forthcoming Routledge book, with an earlier version available, Hardy et al. 2024).

3.2 Powers over Advertising Regulation

The focus of our project is on the regulation of branded content, but this can only be understood in the broader context of the regulation of marketing communications. There are also significant differences across our 32 countries in the respective roles of governmental and statutory

agencies, the courts, and self-regulatory authorities. Our ‘powers over advertising’ table below summarises these key differences. However, this is a complex area to map. At an initial level, there are challenges for data collection since there is a lack of systematic, comparable data and difficulties in obtaining records on each individual institutional arrangement. This is compounded by problems of comprehension, from challenges of translation between languages to the deeper level of encountering both common terms and system-specific terms to describe institutions whose actual characteristics differ and require context-specific understanding of their formal, and actual, operations, which are usually complex, changeable and require privileged access to data to assess.

Our analysis is also delimited in other key ways. Our aim is to provide the wider context that is most relevant for branded content. This covers general powers over the content of advertisements and powers over the relationship between advertising and media communications. Our table seeks to map the location of powers concerning advertising content and advertiser-media relationships, including ad placement in media.

The following table (5) summarises our criteria for inclusion in the powers over advertising table. This is based on the concepts of creation and enforcement of regulation.

Creation means the authority to develop rules and guidance on regulation. The power to create regulation is usually circumscribed and also subject to review by the courts and other bodies. Enforcement means the power to initiate (or complete) processes designed to achieve compliance with a law, regulation or obligation.

For government Ministries, we only include them in our table when they exercise significant enforcement powers over advertising content directly. We recognise that all ministries are involved in ‘creation’, rulemaking. For regional government we only include them in our table where they have authority over rule-making that goes beyond the enforcement of rules created by powers elsewhere. We treat all governmental agencies, statutory regulatory agencies and (formal) self-regulatory organisations with responsibility for advertising as being involved in creation and enforcement, while recognising that enforcement mechanisms vary. For the court system, the primary role is enforcement, but higher courts can usually exercise authority relevant to ‘creation’, in rulings on the interpretation or application of legislation or regulations.

Table 5: BCGP selection criteria for advertising regulatory powers analysis

Advertising Regulatory Powers Distribution	Creation	Enforcement	
Government			
Ministry of State	x	x	Included
Ministry of State	x		Excluded
Regional	x	x	Included
Regional		x	Excluded
(Non-ministerial) Governmental agency	x	x	Included
Statutory			
CP and Competition Authority	x	x	Included
CP Authority (discrete)	x	x	Included
Competition Authority (discrete)	x	x	Included
Communications Regulator(s)	x	x	Included
PBS/Broadcasting Regulator (discrete)	x	x	Included
Co-regulation Stat+ SRO	x	x	Included
Self-regulation			
Ad/Marketing SRO	x	x	Included
Media/Coms SRO	x	x	Included
Journalism/Press SRO	x	x	Included
Courts			
		x	Included
	x	x	Included

Our focus is on the institutions that not only enforce but create regulations concerning advertising content and/or advertising-media relationships. So, the focus in our analysis is on the location of powers to regulate advertising content (and within that branded content).

There are usually powers to enforce regulations concerning marketing communications exercised by regional or local government. For instance, in Spain the seventeen autonomous communities exercise powers over outdoor advertising. We only include these in our powers over advertising analysis where there is significant authority to determine regulations. This means we do not include here governmental or other agencies that carry out enforcement activities only, such as rules on the physical placement of advertising hoardings, screens or other promotional material (see below). This is an imprecise demarcation since enforcement agencies may have formal powers and make judgements concerning advertising content. However, we focus on the agencies that exercise significant, demonstrable authority over the creation and application of regulations. We have chosen not to include the following:

1. Controls over the physical placement and exhibition of advertising

Such controls are usually distributed across government. Across our 32 countries such powers over the placement of outdoor advertising hoardings or bill posters usually rest with regional or local levels of government. To include them would mean that our table would show a significant role for regional/local government in all 32 countries. Instead, we seek to highlight 'regional' governmental authority where this exercises significant powers over 'creation' of regulations concerning advertising content and advertising-media relationships.

We do examine outdoor as one of our categories of branded content. When such content appears in physical public space it is usually subject to the same controls that regional/local government exercises over the placement of 'traditional' advertising formats. Some regional/local government powers can include matters concerning content. In the UK, for instance, the governmental body responsible for transport in London has introduced and exercised powers over political advertising, sexism and promotion of high fat, salt or sugar (HFSS) food and drink. Also, across the UK, local government has powers over obscenity, public order offences and other matters that can be exercised to ban or restrict advertising.

2. Specific sectoral powers over advertising

The laws and regulation of specific goods and services often include rules concerning marketing activities and marketing communications. Key sectors such as medicines, health care, food and drink, financial services, professional services, gambling have 'sector specific' rules and often specialist regulators and regulatory arrangements. We examine relevant rules in our 32 country reports where these have direct application to

branded content. For our general powers over advertising analysis, we deal with the agencies responsible for general rules on advertising only. The governance of marketing communications to children is usually addressed in both 'general regulation/self-regulatory codes, and in 'sector specific' regulation/self-regulation. For our country reports, we examine the relevant regulatory agencies. For our powers over advertising table, we focus on 'general' regulatory agencies. This provides a mapping of key agencies exercising powers over advertising to children. However, the powers table does not include all specialist agencies with powers over advertising and does not include all the relevant agencies affecting advertising to children.

3.3 Glossary of Terms and Explanation of Key Classifications

Sources of Law

There are various sources of law. All our 32 countries are subject to international law. International law is 'an independent system of law existing outside the legal orders of particular states' (Shaw 2025). Supranational law is a form of international law in which nations explicitly submit their right to make judicial decisions by treaty to a common authority. The 27 countries in our study that are members of the European Union are subject to 'supranational' EU laws, as well as other legislative and regulatory powers. The European Union is a supranational organisation, a multinational association in which member countries cede authority and sovereignty on at least some internal matters to the group, whose decisions are binding on its members. For our study, we use supranational to refer to any relevant legal authority above the level of the nation state, or sovereign political entity in the country.

At the level of the 'nation state', or highest political unit within the country, in democratic systems most laws are drafted by the government (executive) but are determined by the legislature (the parliament or elected chamber(s)). Some laws are created by the executive (the government) without recourse to the legislature (such as 'statutory instruments' in the UK system).

A third key source of law is the judiciary. In the UK, 'case law' refers to 'the system by which reports of previous cases and judges' interpretation of the common law can be used as a precedent where the legally material facts are similar' (Banks and Hanna 2009: 573).

Separation of powers

The doctrine of the separation of powers refers to a core division of democratic states into three main branches: an executive, a legislature and a judiciary. Each branch has separate and independent powers and responsibilities. 'The distribution of power in this way is intended to prevent any one branch or person from being supreme and to introduce 'checks and balances' through which one branch may limit another' (Law Wales 2021).

In practice, many states, including the United Kingdom, do not opt for strict separation of powers and instead share some functions across the institutions that make up the state. [Note: 'For UK, as a whole, the executive comprises the Crown and the UK Government, including the Prime Minister and Cabinet Ministers. The executive formulates and implements policy. The legislature, the UK Parliament, comprises the Crown, the House of Commons and the House of Lords. The judiciary comprises the judges and other officers of the courts and tribunals of the three UK legal jurisdictions, overseen by the Supreme Court' (Law Wales 2021).

The Executive/Government

The executive is the 'branch of government responsible for the overall governance of a state. In countries which base their political system on the separation of powers, the executive branch of government is responsible for enforcing and executing laws made by the legislative branch of government' (Polyas n.d). Executive power comprises 'the power to manage public affairs and to implement the law', however, it is also 'difficult to describe' (LexisNexis 2025).

For our analysis, the executive/'the Government' is the highest level of government in each country we examine. We use the term country to define an area of land that forms an independent political unit with its own government. Some of our 32 countries are nation states while others are multinational political units. All political units that operate at sub-national level *within* the state, and which have geographically limited powers, are all grouped together (in our powers over advertising table) as 'regional', see below.

The terms 'executive' and 'the Government' are used interchangeably, including in our reports. However, there are important differences in the forms and degree of control exercised by members of the ruling Party or coalition across agencies that form part of the government. The UK system distinguishes between Ministries (where a Government Minister exercises control) and non-ministerial Government Departments, which have some autonomy from direct government oversight. This is discussed further below; however, it is challenging to accurately map such distinctions across the diversity of our 32 country political systems.

Law and Regulation

The Government 'runs the country and has responsibility for developing and implementing policy and for drafting laws' (UK Parliament n.d.) Most laws are drafted by the Government (executive) but are determined by the legislature (the parliament or elected chamber(s)).

In the UK system, 'primary legislation' refers to Acts of Parliament, also known as statutes. Secondary legislation refers to statutory instruments 'a generic term used for Orders, Regulations, Rules, Codes etc. They are

also referred to as subordinate, subsidiary or delegated legislation. They are generally made by Government Ministers under powers delegated by Parliament' (University of Oxford n.d.).

For our project, we adopt a broad definition of 'regulation' as the use of rules or directives by an authority to seek to influence the behaviour of individuals or organisations. However, a more specific legal definition is relevant when considering the formal powers by which government or other agencies set and enforce rules. In a UK legal context, regulations are a type of secondary legislation: 'law made by a person or body other than parliament within the framework of an enabling Act of parliament' (Bishop 2024; Kelly 2016). Such regulations 'specify detailed requirements or standards developed to implement the principles and objectives set out in primary legislation' (Bishop 2024). Regulations may be created and implemented by a variety of institutional forms. These include Ministries: departments of Government led by a member of the Government who oversees the work of civil servants or others authorised to act. They include various regulatory agencies that have some formal independence from direct oversight by a member of the Government, the governing party or coalition. In the UK system there are 'non-ministerial government departments', public bodies and statutory regulatory agencies.

For our analysis we seek to draw a division between governmental regulation that is carried out by the highest level of government (and may be described as 'central government' in some systems), regulation that is carried out by government agencies (with some independence from day-to-day government oversight) and regulation that is carried out by 'statutory regulators', agencies granted powers by legislation and which are not subject to day-to-day government control. Actual bodies take a variety of complex forms across these three types.

Where an agency excises regulatory or legal functions in accordance with legislation, some systems favour a statutory regulatory agency that is independent from the executive and is able to carry out its duties without direct governmental interference. However, the government usually has powers over senior agency appointments, funding and strategic activities that provide formal routes for influence and can exercise 'informal' influence to the extent the actual system allows.

State Ministries

For our study, a State Ministry refers to a government department that is led by a minister (a member of the executive).

Government powers relevant to the law and regulation of advertising (and branded content) may be distributed across a range of Government departments. All governments exercise powers over advertising and all are involved in the drafting of laws relating to advertising. As such, we might include Ministries or Departments of State as a relevant component in all 32

countries. Instead, we seek to identify those systems in which a Ministry/ government department carries out the administration and enforcement of its own regulations directly, affecting advertising content and/or advertising-media relationships.

Ministries are included in our Powers over advertising table where there is one or more Ministry/Department of State that exercises legal and regulatory powers directly over advertising.

For EU member states, the transposition of EU laws generally requires direct oversight by state ministries. EU directives, which are not directly applicable in member states, need to be incorporated into national law, and that process often involves ministerial involvement. Member states also have some discretion in how they implement EU law, further requiring ministerial oversight.

Delegation of powers

The executive may seek to delegate powers to bodies that exercise those powers without direct (day-to-day) oversight by Ministers. Such delegation can include bodies that have various institutional forms and arrangements for formal 'independence' from the executive.

Writing in a UK context, the former Chief Executive of the UK's Better Regulation Executive, Martin Stanley (n.d) states:

Ministers also often conclude that hard but necessary decisions are best made by independent bodies whose objectives are set by Parliament, but which are then free from political control. [...] This delegation of power to regulators inevitably creates pressure for them to become more "accountable" than they are now.[...] Therefore, because Ministers are anxious to ensure that they have no responsibility for the often controversial decisions made by such bodies, but are sensitive to the criticism that those regulatory bodies might become over-powerful, they are sometimes created as non-ministerial government departments so that they are directly accountable to Parliament.

Such non-ministerial government departments feature in the UK system and include the Competition and Markets Authority that exercises powers over advertising and branded content. The term quango describes such bodies that have delegated powers and government funding and are subject to government control but are established at 'arm's length' from government, exercising some autonomy. A quango is a *Quasi-Autonomous Non-Governmental Organisation*.

Ministerial and non-ministerial departments

A ministry is a department of government that is headed by a member of the executive, a government minister. In the UK, the category 'government department' is not limited to ministerial departments (such as the Department for Culture, Media and Sport and the Department for Science, Innovation and Technology) but includes 'any body exercising statutory functions on behalf of the Crown'. The term 'government departments' extends to a) 'non-ministerial departments headed by civil servants and which usually have a regulatory or inspection function' including the Competition and Markets Authority (CMA) (ICO 2022) b) 'non-departmental public bodies, i.e. all those bodies which operate at arm's length from ministers, albeit having a role in the process of national government' (ICO 2022), such as the Advisory, Conciliation and Arbitration Service (ACAS) and the British Council.

A Non-Ministerial State Agency is a government agency or department that is not led by a government Minister, or directly controlled by the executive, but is granted some formal level of independent authority and autonomy. An account written for the UK (Cabinet Office 2021) states 'Non-ministerial departments (NMDs) operate similarly to normal government departments in the functions they perform (though they are usually more specialised and not as wide-ranging in the policy areas they cover). They generally cover matters for which direct political oversight is judged unnecessary or inappropriate' (Cabinet Office 2021).

There are important distinctions between government departments/agencies that are subject to direct oversight by the executive (such as Ministries) and those granted some autonomy (non-ministerial departments/agencies). However, it is very challenging to map these distinctions with sufficient accuracy and comparability across all our 32 countries. Our mapping of powers over advertising therefore seeks to identify Government agencies where these carry out both creation and enforcement. We then identify as 'Statutory' agencies any agency that is established by statute. We retain the identification of 'non ministerial' agencies, but this is not a mutually exclusive category and so agencies that meet this criterion are also included in the statutory regulation section, identifying whether these are competition and/or consumer or communications agencies. The imperfect and imprecise nature of the non-ministerial categorisation is indicated by colour (grey) to distinguish this from more reliable categorisations (black*).

Regional government

For our study, regional government, refers to any governmental entity that exercises legal and regulatory powers directly over advertising at a level below the highest governmental authority in the state. This is government at the 'sub-national' level (for unitary nation states) but can also mean 'national' level within multinational states. 'Regional government', therefore,

ranges from national governments or assemblies in multinational states, to 'regional' authorities in federal systems or forms of 'regional' or 'local' government.

Federal systems of government involve the division of powers between a central authority and regional or state governments. Such arrangements usually include some delegation of powers over communications and advertising regulation. In our 32-country study, federal systems include the USA, Canada, Germany and Belgium. Canada operates under a federal system with a multi-level regulatory structure. Advertising and branded content are governed at both federal and provincial levels. Each province has its own consumer protection laws, with Québec's Consumer Protection Act being particularly strict on advertising transparency. Industry-specific regulators, such as Health Canada for food and drug advertising, further regulate branded content in certain sectors. This complexity requires advertisers to comply with multiple layers of regulation.

Germany is a Federal Republic consisting of 16 states, governed by a complex blend of state-specific and uniform federal laws, and overseen by numerous regulatory bodies operating both at intrastate level and through interstate coordination. The regulatory framework combines strong statutory enforcement, primarily delivered through courts, and situates branded content rules predominantly within competition law (especially, the Act Against Unfair Competition), alongside self-regulatory oversight limited to taste and decency issues.

In the United States, for instance, delegated powers seek to create a clear distinction between the roles of state and federal governments by specifying what functions are reserved for the national level. This division is intended to prevent overlap and conflicts between state and federal authorities, promoting a system of checks and balances.

In the UK, a centralised, multinational political system, the level of 'local government' is usually responsible for the implementation of national regulations at a local level. The laws of the UK, or of the Scottish Government, Welsh Assembly or Northern Ireland Assembly are carried out at local level by 'local authorities' (Bishop 2024).

Such a pattern is common to other countries in our study, although the institutional forms (and descriptions) differ considerably. The regional or local level usually has responsibility for local implementation of 'national' (or highest authority) regulation in such areas as trading laws (including the marketing of goods and services) and consumer protection. There are also usually powers that affect where advertising can be displayed. However, the authority to make changes in laws or in regulation of advertising content (and advertising-media relationships), 'creation', is usually not located at the level of 'local' government, which deals exclusively, or at least predominantly, with 'enforcement'.

The 'regional' level is more complex because this broad category covers political entities with significant legislative authority and autonomy, at least in designated areas, as well as entities whose characteristics are closer to the 'local' level in enforcing laws and regulations created by higher authorities. It is common for 'regional' or 'local' authorities to exercise some powers over advertising (placement of advertising hoardings, signage as well as some content regulation) and marketing (trading rules, consumer enforcement, etc.). However, this regional/local level does not usually exercise agency in shaping rules governing branded content and its powers. So, regional is an imperfect descriptor, but the aim of our powers table and analysis is to locate key sources of authority for the creation as well as implementation of regulatory powers.

For government Ministries ('State Ministries'), we only include them in our table when they exercise enforcement powers directly. For 'regional government' we only include them in our table where they have authority over rule-making that goes beyond enforcement of rules created by powers elsewhere.

Statutory Regulatory Agency

A statutory regulatory agency is a governmental organisation that is established and operates in accordance with legislation (statute) and which exercises power to enforce rules and standards. A statutory regulator is a specific type of government agency established by legislation to independently oversee and enforce rules in a particular sector. Statutory legislation is a formal written law that is enacted by a legislative body, such as Parliament. It can also be referred to as statute law.

A statutory regulatory agency usually enjoys a higher degree of legal independence from direct government control. Statutory agencies usually exercise greater formal autonomy from government than non-Ministerial state agencies. However, the distinction between a statutory organisation and a non-ministerial state agency is complex and varies between countries. There is complexity in the range of formal institutional models whereby governmental functions are undertaken. Further, while analysis of formal arrangements is challenging it is also insufficient to assess the manner in which autonomy is achieved and protected in practice. A full analysis must examine not only formal arrangements but the historical record to assess, inter alia, how the executive and other powerful interests have influenced the autonomy and conduct of regulatory agencies.

For Statutory Regulatory Agencies we identify the following

- Consumer Protection (CP)
- Competition and Markets
- Combined CP and Competition

Some systems have separate or combined bodies. We have not examined all the variation across nations or regions within the 32 countries. There is

scope to examine these configurations within states, but we have focused on the highest level of authority (in centralised states) or the presence of these bodies at the highest level in federal or multinational systems.

- **Communications Regulator(s)**

This refers to statutory regulatory agencies who exercise powers over advertising. In the UK, Ofcom is the UK's independent regulator and competition authority for telecoms and wireless telegraphy. Ofcom is a statutory regulatory agency that has 'statutory responsibility for the regulation of advertising on broadcast television and radio services, on-demand programme services, video-sharing platforms and for the online advertising of less healthy food and drink products. Ofcom shares this responsibility with the Advertising Standards Authority (ASA)' (Ofcom 2024b).

- **Public Service Media Regulator**

This refers to a regulator (or regulatory system) that is dedicated to the regulation of licensed public service broadcasting (radio and television) and usually also public service media across all forms produced by the authorised providers. Such a regulator/system is usually responsible for all output including advertisements (where permitted). In addition, such regulators deal with issues of commercial interests and communication, sponsorship, product placement and other matters that are particularly relevant for branded content governance.

Where there is such an entity (PSM regulator) that is separate from the main/general communications regulatory body it is reported in our table. However, we only list the PSM regulation where this is such an additional body and not where the regulation of PSM is carried out by the communications regulator alone.

Self-regulatory Organisation (SRO)

The relationship of self-regulatory organisations to the enforcement of laws and to statutory regulation can take many forms, both in the general relationship between institutions, and also across different areas of practice covered by SRO codes. This makes this a complex area to map, but some common features can be identified. First, most SROs specify that they are not legal bodies. The concept of self-regulation is rooted in voluntarism and not in legal compliance. As Liz (2015: 4) states in an opinion for the EU's European Economic and Social Committee:

The concept of self-regulation ...broadly denotes the adoption by economic operators of certain rules of conduct among themselves or in relation to third parties in the market and in society, adherence to which is agreed among themselves, without any external coercive mechanisms.

Where they are well-established and operational, advertising SROs typically serve as the major reference point on professional standards and norms for practitioners and their clients. SRO codes are usually independent of the law and SROs usually state that they are not legal bodies. However, most SRO codes require that those subject to the SRO code act in accordance with the law. The key principles, outlined in the ICC and many national codes state, as the UK CAP Code (CAP 2014: 11) puts it, that advertising should 'legal, decent, honest and truthful'. The interface between SRO adjudication and legal enforcement can take various forms. One form is provision for the referral from the SRO to a legal enforcement authority. Another principal form is co-regulation between the SRO and a regulatory authority.

Co-regulation

We use the term co-regulation to describe a formal arrangement whereby a governmental agency or statutory regulation grants a non-statutory agency powers to enforce rules. Liz (2015: 7) states 'co-regulation generally refers to a form of regulation of stakeholders that is promoted, guided or controlled by a third party which is either an official body or an independent regulatory authority, normally with oversight and monitoring powers and in some cases with the power to impose sanctions.

Co-regulation can take various forms. These include statutory regulators statutory powers granting powers under contract to an SRO (e.g. the UK SRO the Advertising Standards Authority is given responsibility for regulating the content of broadcast advertising under contract from statutory regulator Ofcom, described as 'self-regulation within a co-regulatory framework' (ASA n.d.). The indicators for effectiveness include those for the constituent parts as well as for co-regulation arrangements in relation to control, accountability, transparency; role of industry, etc.

We recognise that the separation between 'government regulation' and 'self-regulation' is complex, not only because of formal co-regulatory arrangements but a variety of forms of governmental/legal interaction with self-regulatory schemes. As the OECD (2015: 11) discusses

Self-regulatory schemes entailing some degree of government involvement are common; the level of involvement, however, can vary significantly among schemes. [...] government can play a variety of roles in encouraging and interacting with self-regulatory schemes even outside of a co-regulatory model.

Within the EU, self-regulation and co-regulation were favoured approaches by the Commission and many national governments. Such approaches are associated with 'soft law' that is non-binding and voluntary, such as guidance, as distinct from 'hard law' that is legally binding and enforceable, such as statutes. Codes of conduct may be either soft or hard law depending on their legal status and enforcement.

The framing of self-regulation as the preferred alternative to detailed legislation and ‘command and control’ regulation has deep roots in the formation of industry associations, and later self-regulatory organisations, organised to counter the ‘threat’ of strengthened legal controls. In the EU, in 1991, Sir Leon Brittan, Vice-President of the European Commission and Commissioner for Competition Policy, ‘challenged the advertising industry to find ways of solving the problems raised by the creation of the Single Market through self-regulation, thereby avoiding the need for detailed legislation, which the industry opposed’ (Conseil de l’Éthique Publicitaire 2024). Later the same year, the advertising industry brought together the ad hoc group of existing SROs to form, in 1992, the European Advertising Standards Alliance (EASA). The broad terms of the ‘self-regulation vs statutory’ framing have been established over many decades. Since the 2000s, however, the growing complexities of the media-marketing ecology, the expansion of applicable laws, co-regulation and self-regulation make this older framing both increasingly inaccurate and unsuitable. The BCGP sets out an alternative framework of integrated polycentric governance to replace the voluntary-legal binarism and this is discussed more fully in section 7.

Industry Regulatory Organisation (IRO)

This new term has been created by the BCG Project. We define an industry regulatory organisation 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.

All professional associations include terms for the management of the organisation itself, in accordance with relevant laws on the constitution, responsibilities and liabilities of the organisational form adopted, and rules on the conduct of financial, legal and other activities. Professional organisations also include terms for membership or affiliation, although this may be less defined and more fluid as networks develop. Once established as corporate entities, most professional associations have some form of code that outlines the terms and conditions for membership. This usually includes the conduct of members in relation to the professional association itself. However, codes vary considerably in the degree to which the conduct of members in their own industry professional work is addressed. Some organisations have detailed rules and standards for the behaviour of members’ (individual/corporate) in their relations with clients, suppliers, intermediaries, users and consumers.

There is also considerable variation in the degree to which any rules are accompanied by enforcement mechanisms and the forms taken by the latter. For instance, the UK Chartered Institute for Public Relations sets out in its detailed Code of Conduct, the arrangements for its Professional Practices Committee and Disciplinary Committee (CIPR n.d.)

We summarise the following common strengths and limitation of IROs

Strengths

- Close/responsive to industry/practitioners
- Leadership (autonomy, accountability)
- Trust/ buy-in
- ‘Code’/standards creation and guidance (adaptability; co-design; influence)
- Intra-industry dialogue/negotiation on governance
- Advocacy to Policy/Reg actors

Limitations

- Vulnerable business model (member fees)
- Resource constraints (voluntarism)
- Code/standards Enforcement
- Scope and reach (sectoral)
- Meeting demands for comprehensive governance ecosystem
- Tensions ‘interested’ advocacy vs. pro social/multi-stakeholder]

In particular, we are making distinctions with the category of ‘self-regulation’ to distinguish as ‘Industry Regulatory Organisations’ (IROs) those industry bodies/associations that produce guidance (and codes) but do not have routine, established mechanisms for monitoring compliance and ensuring enforcement. We use self-regulatory organisation (SRO) for bodies that do have established mechanisms for monitoring compliance and ensuring enforcement.

Governance-in-Practice

Governance-in-practice is another term created by the BCG project to describe the interface of ‘external’ and ‘intrinsic’ rulemaking/rule-shaping behaviour, the interface of ‘regulation’ and ‘ethics’ as realised within the practices and reflection on practice of socially organised and networked practitioners.

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. This occurs in encounters between practitioners and ‘external’ rules.

Issues such as credibility and reputation form further important governance consideration for practitioners, and media-marketing institutions, as they manage decisions around compliance. In similar terms, brands

commissioning promotional content, or producing it themselves, will rely on the (professional) practical sense, a professional 'habitus' (Bourdieu 1984; 1977; Drumwright and Kamal 2016: 175; Schultz 2007), more or less internalised, of permitted and appropriate/required compliance with formalised regulations and a feel for the 'sense of the game' (Bourdieu 1977:79). Personal ethics and group norms, as well as organisational ethos provide a mix of explicit and tacit guardrails that governance.

Those rules that carry risks of legally enforced penalties for non-compliance, impacting the individuals involved (directly or indirectly), and a high likelihood of enforcement are expected to be of greatest concern. However, awareness and valuation of what 'rules' matter at all and which matter most, are important issues for research.

Governance-in-practice also connects to our focus on communication activities and spaces as important elements of governance. The BCGP examines media reporting and mediated discourses in public media, in both 'general' news publications and specialist 'trade' media, such as advertising, marketing and media publications aimed at industry professionals. The Media Analysis Report (forthcoming, BCGP) examines and compares public and trade media coverage of relevant issues in advertising regulation, branded content and influencer marketing in UK and Spanish media.

4. Research Design and Methodology

4.1 Overview

The methodology adopted by the BCG Project for our 32-country analysis combined desk research using primary and secondary sources, manual and AI-assisted data search; review and responses from a network of independent academic experts assembled for the project; interviews, workshops and symposia with policy and academic experts.

This section outlines the methodological approach used in the cross-country comparative study conducted as part of the Branded Content Governance (BCG) Project. The study systematically examines governance frameworks for branded content across 32 countries, covering all EU member states, as well as the United States, Canada, Australia, and Mexico. Given the rapidly evolving nature of branded content and its regulation, the study aims to capture a snapshot of the regulatory landscape up to late 2024, and map the legal, regulatory, and self-regulatory measures shaping governance in each jurisdiction and to identify patterns, gaps, and challenges in enforcement. While any summary of legal provisions becomes rapidly outdated, the analysis of the development, interrelationship, effectiveness and influence of governance arrangements will go beyond existing data and have more durable value in both data and design for future comparative research.

Timeline

- September 2022 BCG Project begins
- December 2022 First Methodology Workshop
- January 2023 Survey for advisers
- February 2023 Second Methodology Workshop
- May Invitation to advisers to review first draft country reports
- December 2023 Revised drafts sent to advertisers for review
- April 2024 Close of consultation with advisers on second draft reports
- June 2024 Draft Country reports published (some July-Oct)
- November 2024 Final comments on draft reports
- June 2025 Country Reports published

4.2 Methodology Workshops and Consultation

The BCG project began in September 2022. We held two methodology workshops to engage our network of academic advisers in an inclusive process to co-design and refine the structure of the 32 country reports, which we call the ‘country report template’.

The first workshop took place online in December 2022, with the second in February 2023.

4.3 Structure of the Country Reports

Each report follows a standardised structure, covering the following core sections:

1. Country Data: basic economic and demographic indicators, as well as legal and political system classifications, to contextualise the regulatory landscape.
2. Media System and Advertising Market: an overview of the country's media ecosystem, advertising industry, and the role of the state in media governance.
3. Communications, Legal and Regulatory Framework: analysis of overarching communications laws and regulations that impact advertising and branded content.
4. Advertising, Legal and Regulatory Framework: a detailed examination of advertising laws, including definitions, restrictions, enforcement mechanisms, and responsible authorities.
5. Self-Regulation: documentation from self-regulatory organizations (SROs), including codes of conduct, and industry-led governance initiatives.
6. Branded Content, General Legal and Regulatory Framework, with a focus on the governance of branded content, including rules on disclosure, transparency, and commercial communication across different media.
7. Sector-Specific Regulation, the governance of branded content across key media sectors, including:
 - Publishing (e.g., news media, magazines, digital native platforms)
 - Audiovisual (e.g., television, on-demand services)
 - Audio (e.g., radio, podcasts)
 - Digital Media (e.g., programmatic advertising, AdTech regulation)
 - Social Media Marketing (e.g., influencer marketing, platform responsibilities)
 - Outdoor and Experiential Advertising (e.g., billboards, branded events)
8. Convergence and Cross-Sectoral Issues: a discussion of cross-platform governance, regulatory gaps, and emerging challenges in branded content governance.

4.4 Comparative Approach and Analysis

The structured template allows for systematic comparison across jurisdictions, enabling the identification of key themes, regulatory trends, and areas of divergence in branded content governance. The comparative synthesis of the 32 reports, will:

- Provide a taxonomy of branded content governance approaches.
- Highlight best practices and stand-out regulatory systems.
- Identify challenges and gaps in governance, particularly in digital media and influencer marketing.

Formulate policy recommendations for improving transparency, consumer protection, and regulatory coherence in branded content governance

The Template

- The design (and why).
- Changes to the design (how it developed – successes and challenges).

Compiling the 32 country reports: Research Design and Data Collection

To facilitate systematic data collection and comparative analysis, we developed a standardised country report template. This template serves as a structured data-gathering tool, ensuring consistency across the 32 reports while allowing for the identification of patterns, divergences, and gaps in regulatory approaches to branded content governance. The template was designed to capture key elements of national governance frameworks, including statutory regulations, self-regulatory codes, and enforcement mechanisms.

Each country report was compiled using a combination of desk-based research, legal and regulatory analysis, and expert consultation. Data sources included:

- Existing reports and resources: CIA (relevant data from Central Intelligence Agency's *The World Factbook*), EASA SRO data (European Advertising Standards Alliance's information about its member organisations), GALA (relevant sections from Global Advertising Lawyers Alliance, *Advertising Law: A Global Legal Perspective*, last edition 2024), ICAS (relevant sections from International Council for Advertising Self-Regulation's Global SRO Database), MPM (relevant sections from an EU funded study on media plurality from Centre for Media Pluralism and Media Freedom), IAL (relevant sections from Butcher, Andrew and Jordan, Paul (eds.) (2021) *International Advertising Law*, London: Globe Law and Business), Chambers and Partners (*Advertising and Marketing Guide 2024*), Legal 500 (*Advertising and Marketing: Country Comparative Guides*).
- National legislation and regulatory frameworks governing advertising and media, particularly provisions affecting branded content.
- EU directives and regulations, to examine the transposition of relevant supranational rules into national law.
- Reports and guidance issued by regulatory authorities, industry associations, and self-regulatory organizations (SROs).

- Academic literature, industry white papers, and policy documents relevant to media and advertising governance.

Academic Advisers

- Recruitment (how we selected our advisors) – how detailed? We could mention how many people we approached, activity levels, etc.
- Consultation (how many times we asked for feedback, what we asked for).
- Feedback (some quotations from Advisers, maybe?).

Expert contributions from scholars, regulators, and industry practitioners, who provided insights and clarification where necessary.

4.5 Challenges and Contributions of the Study

Conducting a cross-national governance study of this scale presents significant challenges but also contributes unique insights.

Key Challenges:

- Managing large volumes of complex data:
 - We sought ways to collect and integrate legal texts, court judgments, government documents, regulatory rulings, industry reports, and academic analyses across 32 countries.
 - Limitation: this could not be achieved to the same extent across all project countries.
 - Contribution: we developed sophisticated systems and produced a highly developed compilation of data, which can be used as a reference point beyond the length of the project.
- Language barriers:
 - Governance documents exist in multiple languages, requiring AI-assisted translations.
 - Limitation: this added to the time needed to gather data for some countries; there were clarity and translation-quality issues, especially for Greek-language texts.
 - Contribution: in many cases, the use of AI enabled near-instant access to original legislative and regulatory texts, overcoming historical research limitations.

Data sources

- Overreliance on legal sources/guidelines produced by law firms. Law firms and practitioners that specialise in media-marketing law and regulation provide expert, independent professional advice, guidance and commentary. However, this material can be shaped by their position as suppliers of services to clients who are predominantly marketers, marketing agencies or commercial media. Overall, legal commentary tends to align with the perspectives of industry trade associations in

advocating for self-regulation and a ‘reduction in regulatory burden’. However, the advocacy role of lawyers is complex, and an important area for further research, as legal practitioner commentary also serves to inform clients and other stakeholders about compliance requirements and can be a principal source to articulate and promote the principles and values underlying governance measures. Data accessibility in Eastern European and post-communist countries:

- Eastern European countries often have transparency issues, are undergoing rapid changes, and/or are not as well documented as Western countries in academic literature.
- Limitations: publicly accessible regulatory documentation and research into regulation in Eastern European countries was limited and some of our reports for those countries could not be completed.
- Contribution: this study provides the first comprehensive account of branded content governance in several post-communist nations.
- Speed of change:
 - Our project covers a vast range of governance activities occurring across many sectors of media-marketing within each country as well as supranational legal-regulatory developments. This is a dynamic, rapidly expanding and developing area. We set out to provide a mapping accurate to the end of 2024, with selected references to developments in 2025. However, the scale of the task and our limited capacity mean there are likely to be errors.
 - The problems are compounded by regulatory agency websites sometimes being ‘out of synch’ and slow to update on their own, or relevant, regulatory activities.
 - There are also added difficulties in capturing regulatory changes in countries in-transition, where political transformations lead to a lack of clarity, stability or durability in formal governance arrangements.
- Sustaining communication with international advisers:
 - To contextualise and verify our findings, we sustained collaborations across multiple countries, time zones, and legal systems. Engagement with local experts served to ensure accurate data interpretation.
 - Limitations: it was not possible to go through multiple rounds of consultations and we had to balance involvement to equalise progress over the reports.
 - Contribution: our findings are supported by feedback from a network of nearly a hundred academics.

4.6 The Use of AI

Coinciding with the data collection phase of the project, the quite rapid mainstreaming of various AI support tools became quite helpful in trying to rapidly collect, collate and cross-check materials from multiple sources and across international borders. During a research project involving data collection across 32 countries. Despite the research team's multilingual skills, AI, particularly large language models (LLMs), was essential for search, cross-checking, and contextualization, as not all regulatory

information was available in English. Initial experiences with ChatGPT showed it to be of limited use, though its capabilities evolved during the project

Its role as a search engine

Most crucially, although the research team had a good degree of multilingual competence, we could not cover all the different languages across the 32 countries. Although it is typical for regulators and sometimes even for statutes, for these to be available in English, and where, of course, much European Union legislation is also translated. Nevertheless, for the purposes of search, cross-checking and contextualization, it was very helpful to have the facility afforded by various forms of AI and large language models to support the collection and search for data. We found large language models, notably ChatGPT, to be of some but limited use in initial searches and analysis, although concurrent with the project these models have evolved. Similarly, a tool which had value in respect of its capacity as a search engine was Perplexity. Perplexity, as one of the early commercially available AI tools, has had particular value in providing accurate live links to documents, to support cross-checking, and to deepen and intensify search in line with the efficiencies required within the constraints of a large scope and a small team.

Creation of Custom GPTs

One line of development, which has been encouraging but which remains inconclusive, has been the creation of 32 custom GPTs for each of the countries under analysis; this took the form of modifying and specialising OpenAI's GPT models by feeding them with additional publicly available documentation, notably statutes, annual reports from self-regulatory authorities, as well as other documentation connected to the specifics and minutiae of regulation in the promotional communications domain. Although again this was a limited approach given both the availability of public domain documents and also the cap on the number of documents that could be uploaded, the custom GPTs proved a further useful tool both for exploratory search and, with additional training, to support the generation of further prompts that could then be deployed in traditional search engines such as Google but also in Perplexity. So we made a, for us, quite pragmatic and engaging experiment in conjoining produced custom GPTs and the production of prompts informed in such a way that they could search more effectively through the Perplexity engine. We nevertheless ensured that text and analysis gleaned through these searches was fully referenced to the relevant sources and written and drafted to follow the patterns and sense of our pro forma analysis for the country reports. Whilst this workflow and search strategy has certainly assisted in terms of efficiency, and notably in respect of translation, our feeling is that the nuanced analysis and key work of verification and cross-checking of sources has typically needed to remain very much a human endeavor

Future possibilities

We nevertheless think that the navigability, accessibility and indeed the structure of regulatory information, and the means whereby regulations will become accessible and can inform practice on a daily basis, means that there are positive future uses for custom-made large language models in the domain of cross-checking and informing decision-making in respect of fast-moving communications environments, just in the way that we notice, for example, junior doctors deploying various AI assistants in the diagnosis and analysis of medical data, albeit maintaining the human and professional judgment necessary to support high quality decision making and understanding.

5. Data Analysis

Overview

Quantitative Table Data and Findings

5.1 Powers over Advertising Analysis

Table 6: Powers over advertising: 32-country analysis

	Northern European								Mediterranean						
	AT	BE	DK	FI	DE	NL	LU	SE	CY	FR	GR	IT	PT	MT	ES
Government															
Ministries of state				•			•	•						•	•
Regional		•					•	•						•	•
Non-ministerial state agency	•	•	•	•		•		•	•	•	•	•	•		•
Statutory															
Consumer Protection & Competition Authority		•		•		•				•			•	•	
Consumer Protection Authority (discrete)			•	•			•	•	•						•
Competition Authority (discrete)	•		•		•		•	•	•	•	•	•			•
Communications Regulator(s)	•	•	•	•	•	•	•	•		•	•	•	•	•	
PBS/Broadcasting Regulator (discrete)	•		•		•				•	•	•		•	•	
Co-regulation Stat + SRO	•	•	•			•			•	•		•			•
Self-regulation															
Ad/Marketing SRO	•	•		•	•	•	•	•	•	•	•	•	•		•
Media/Coms SRO				•					•				•		
Journalism/Press SRO	•	•	•	•	•	•	•	•				•	•	•	•
Courts															
High					•										
	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•

North Atlantic						Central and Eastern Europe										
AU	CA	IE	MX	USA	UK	BG	CZ	EE	HR	HU	LV	LT	PL	RO	SK	SI
		•	•			•	•	•	•	•		•	•			•
	•		•			•	•	•			•	•				
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•	•		•	•			•	•	•	•	•	•	•	•		
•	•	•	•	•	•	•		•	•	•		•	•		•	•
•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•

Table 6 summarises for comparison the sources of formal regulatory authority over marketing communications in each of the 32 countries. More precisely, this is a mapping of formal regulatory powers that affect the conduct of branded content at the intersection of media and marketing and in the context of relevant formal regulations in the domains of advertising/marketing communications, media/communications, competition/markets and consumer protection. Whilst that covers most of the key domains it is not fully comprehensive. We do not seek to include all ‘general’ regulations that affect the conduct of trading (including B2B, B2C, e-commerce) or the conduct of enterprises, such as employment or tax law but focus on regulations that affect media-marketing communication activities and content. Further, we do not map here, or in our individual country reports, all aspects of relevant information/data regulation that have ‘general’ application and focus only on those affecting branded content practices. That data regulation would need to be included for a more comprehensive mapping but is not included in table 6.

The production of this table has been challenging and so further revision and refinement is likely to be needed. Further to our discussion of governmental and other formal regulation in section 3 and methodology in section 4, we offer the following summary of issues.

Government

It is important to differentiate between agencies that are directly controlled by the executive government (usually with leadership by a Government minister) and those whose ‘formal’ arrangements establish greater autonomy. Our table seeks to differentiate and use the term ‘non-ministerial state agency’ for governmental agencies with some ‘autonomy’. Differentiating non-ministerial’ from ‘statutory is also challenging. In particular, while the categories should be mutually exclusive, we do not provide sufficiently accurate differentiation between ‘non-ministerial state agency’ and statutory. Consequently, our table show the non-ministerial category as greyed out. We present our table as being ‘indicative’ rather than definitive in the identification of agencies across the non-ministerial/statutory boundary. Nevertheless, we believe the table helps to show those systems where a directly government controlled agencies exercises regulatory powers itself. For those systems that have regulators who operate ‘at arms length’ our ‘statutory’ section shows the relevant configuration of such agencies. For example, in Spain the Ministry of Economy, Trade and Enterprise (MINECO) is responsible not only for creation but also enforcement of regulations, including in areas of trade, marketing, telecommunications and audiovisual services. Spain also has an independent, (‘non-Ministerial’) agency, The National Commission on Markets and Competition (CNMC), which plays a key role in market supervision, conflict resolution, and the enforcement of audiovisual regulations.

Statutory

A key aim of the statutory section is to identify whether regulatory authority rests in a combined competition and consumer protection agency or separate agencies. This has value as an indicator of the scope and orientation of agencies within the system. However, there is some complexity as Germany's Federal Cartel Office (Bundeskartellamt) illustrates. The Bundeskartellamt is an independent, statutory competition authority. It does not directly enforce consumer rights. However, in 2017, the Bundeskartellamt was given new powers relating to 'economic consumer protection, with a focus on issues relating to consumers' everyday digital activities' (Bundeskartellamt n.d). We have identified the Federal Cartel Office as a competition authority to distinguish from those with significant 'dual' powers over competition/markets and consumer protection, however this example shows that the actual mix may be complex, dynamic and changeable.

This section also identifies media and communications regulators with authority over advertising and the media-advertising interface. Some systems have a dedicated public service media regulator This is usually in addition to some form of communications regulator with a broader remit. Czechia (Czech Republic) is an exception, with a dedicated PSM regulator but with Ministerial department rather than statutory authority oversight of communications.

Comparative Analysis - Summary and discussion of comparative data

The following table summarises variations in the organisation of powers over advertising regulation across the four 'clusters'.

Table 7: Powers over Advertising: cluster summary

	Northern European	Mediterranean	'North Atlantic'	CEE (Central and Eastern Europe)
State (direct gov.)	Low	High	Low	High
State (autonomy)	High	High	High	(High)
Co-regulation	(High)	(Low)	High	(High)

Similar to the general arguments made by Hallin and Mancini (2004) in *Comparing Media Systems* we think it is premature, given the state of knowledge and available data, to advance causal explanations, but, like them, we aspire to identify the co-relation of variables in order to consider patterns/clusters in the conditions and governance arrangements of the countries studied.

Analysis of trends across all 32 countries: Powers over Advertising (Main types of governance arrangements)

This section discusses key differences in the organisation of powers over advertising across our 32 countries and patterns identified across the four clusters. We examine features of individual systems further in sections 5 and 6 where we consider problems, limitations and better practice in governance.

Northern European Systems: strong statutory regulation

Within the Northern European ‘cluster’, there is a pattern of strong governmental oversight but carried out through relatively independent statutory agencies rather than through state ministries, directly controlled by the executive government.

Austria and Germany exemplify a model of advertising regulation that minimises industry-led oversight in favour of statutory enforcement. Both countries have a *statutory framework that in the principal means of handling advertising rule breaches, while the courts also play a crucial role, particularly in cases involving misleading or deceptive advertising*. Austria's strong legal framework and strict transparency requirements are notable strengths, while weak enforcement of influencer marketing rules, limited self-regulation, and regulatory fragmentation could be seen as the main challenges.

Branded content governance in Norway is primarily regulated under the Marketing Control Act (MCA), with oversight from the Norwegian Consumer Authority. The MCA requires that all marketing must be clearly identifiable as such (Nordengen and Digernes 2024). Section 3 of the Act stipulates that marketing should be designed and presented so that it is unmistakably recognised as marketing. The Norwegian Consumer Authority interprets this to mean that advertising on social media must be identified with the words for ‘advertisement’ or ‘marketing’, except where it is evident from the context that the content is advertising, such as on a company’s owned media content.

The Norwegian Consumer Authority oversees compliance with the MCA and can impose fines for violations. influencers and advertisers have been fined for failing to properly disclose advertising content (Nordengen and Digernes 2024).

Branded content governance in Sweden is primarily regulated under the Marketing Act (SFS 2008:486, and updated), which aligns with the EU Unfair Commercial Practices Directive. This Act mandates that all marketing communications, including those by influencers, must be clearly identifiable as advertising to prevent misleading consumers. The Marketing Act applies to all forms of marketing, regardless of the medium. It requires that marketing be clearly distinguishable from other content, ensuring that consumers can easily identify promotional material. 'The Swedish Marketing Act applies to all marketing, no matter the media. Influencer marketing in Sweden must therefore comply with, inter alia, the general requirement that all marketing shall be formulated and presented in such a way that it is clear that it is a matter of marketing' (Kempas 2019).

Branded content governance in the Netherlands is structured through a combination of statutory regulations and self-regulatory codes, with legal requirements for transparency and consumer protection across all forms of advertising, including influencer marketing. The Dutch Advertising Code Authority (Stichting Reclame Code) handles complaints regarding advertising practices and can issue public reprimands, though it lacks the authority to impose fines. The Netherlands Authority for Consumers and Markets (ACM): Monitors unfair commercial practices and can enforce actions against misleading advertising.

Systems with a strong competition regulation framework

All EU countries have a strong supranational competition framework although that is not exercised directly to address advertising content or branded content issues, but rather market dominance issues in the wider media-marketing ecosystem, such as adtech and the market dominance of Google in the digital advertising market. At national level, some systems do exercise powers over advertising through competition regulation and competition law. This pattern is most evident in some Northern European, CEE and Liberal/'North Atlantic systems although it is not common across all or most countries in any of the four clusters.

Germany's regulatory approach to branded content is predominantly located within competition law through the Unfair Competition Act (UWG), specifically targeting hidden advertising (§5 UWG), misleading comparative claims (§6 UWG), and aggressive marketing (§4a UWG). The strong statutory framework, as in other systems which define advertising regulation as business-first concern, wields strong enforcement powers, but prioritises the industry over consumers. Germany's advertising regulatory system combines statutory bodies with formal enforcement powers, primarily addressing specialised issues like market dominance and digital service compliance, with a broader system of market-based, private litigation led by industry bodies. General compliance with advertising rules under the UWG is not monitored by dedicated statutory regulators but instead enforced reactively through civil lawsuits initiated by disadvantaged competitors, industry associations, and consumer organisations. This

dual enforcement model encourages industry self-policing, while statutory regulators intervene selectively in specialised or severe cases.

Unlike many countries where advertising laws are embedded in consumer protection frameworks, Canada, similarly to Germany, primarily enforces branded content rules through competition law. The Competition Act (R.S.C., 1985, c. C-34) strictly regulates misleading advertising, deceptive marketing practices, and false endorsements. The Competition Bureau enforces these laws, and produces guidelines, investigating digital advertising practices, including influencer marketing. This approach provides direct enforcement mechanisms, with appropriate penalties.

In Lithuania, the Consumer Rights Protection Authority (VVTAT) oversees compliance with advertising regulations, including those related to branded content. the VVTAT has the authority to investigate and address violations of advertising laws.

Combined Competition and Consumer Protection Authority

Several systems have a state agency/statutory regulatory authority that is responsible for both competition and consumer law. In Malta, this is the Malta Competition and Consumer Affairs Authority (MCCAA).

The UK (in our 'Liberal/'North Atlantic' cluster) is a mixed system that has tended to privilege advertising self-regulation. Statutory underpinning has been strong in broadcasting and some audiovisual media, but rarely applied in relation to branded content in non-broadcast media. However, the Competition and Markets Authority, a non-ministerial government agency that has relative autonomy (and is classified as a statutory regulation in our 'powers over advertising' analysis) has become more active in recent years, issuing guidance in collaboration with the SRO (CAP-ASA) and was granted new enforcement powers under the 2024 Digital Markets, Competition and Consumers Act (DMCC). The CMA is also an example of a combined competition and consumer protection agency, as discussed below.

Systems with combined statutory consumer protection and advertising SRO

This pattern is evident across several Mediterranean cluster systems, but also in all other clusters. All the systems in our study that have an advertising SRO combine this with consumer protection law that is enforced by the courts and various state/statutory bodies.

In Cyprus, branded content is primarily regulated through a combination of consumer protection measures and self-regulation. The Consumer Protection Law 2021 (CP Law 2021) plays a crucial role by outlining the framework for unlawful commercial practices, including misleading and comparative advertisements, aligning with EU legislation. The Consumer

Protection Service (CPS) is the main statutory regulator enforcing the rules in this area. Media-specific rules are handled through media law and enforced by the Cyprus Radio-Television Authority (CRTA). Overall, Cyprus aligns with many of the EU countries, through its placement of general branded content rules within a consumer protection framework and a system shaped through the implementation of EU directives.

Greece employs a hybrid branded content regulatory framework combining statutory oversight with voluntary self-regulation. The regulatory model combines statutory oversight with industry-led self-regulation through the Greek Advertising Self-Regulation Council (SEE). SEE administers the Greek Code of Advertising and Communication (HCACP), resolving ethical advertising complaints via voluntary compliance. This dual structure allows for industry participation but lacks co-regulatory arrangements which would strengthen self-regulation by lending it statutory enforcement powers, typical of other better integrated systems. SEE can, however, refer serious cases to statutory regulatory bodies and create reputational risks for the non-compliant advertiser.

Greece's Consumer Protection Law aligns closely with EU regulations, and the transparency norms affecting branded content are placed in, and drawn from, that framework. The General Directorate of Consumer Protection enforces rules regulating misleading advertising practices, including hidden advertising. The Hellenic Competition Commission (HCC) ensures fair competition in advertising, enforcing the corresponding rules in B2B cases. The National Council for Radio and Television (NCRTV), oversees audiovisual media and enforces rules transposed from the Audiovisual Media Services Directive (AMSD). The rules and enforcement bodies are broadly in line with the European standards with no stand-out features, or innovative branded content rules.

Finland ('Norther European' cluster) employs a dual governance system combining public oversight and industry self-regulation. Public oversight involves the Finnish Competition and Consumer Authority (FCCA), which issues fines for misleading advertisements and the Consumer Ombudsman, which investigates covert advertising practices and provides clear guidelines. However, the criteria for investigation based on significant distortion of market competition is a potential restriction on the regulation of hidden advertising practices. The prioritisation of fair trading and business practices highlights a regulatory gap, especially when compared to Denmark's transparency-focused, consumer-centric model. In Finland, industry self-regulation involves the Council of Ethics in Advertising (MAN), which sets ethical advertising standards but lacks enforcement authority, and the Board of Business Practice (LTL) resolves B2B advertising disputes under competition law. A unique feature of Finland's approach is the separation of ethical consumer protection (MAN) from business competition concerns (LTL), unlike Denmark's centralised statutory oversight, governed by the Danish Marketing Practices Act (Markedsforingsloven) and the Consumer Ombudsman (Forbrugerombudsmanden).

Branded content governance in Mexico is primarily structured around the Federal Consumer Protection Law (FCPL), with enforcement led by the Federal Consumer Protection Agency (PROFECO). Recent developments have introduced specific guidelines for influencers, aiming to enhance transparency and protect consumers in the digital advertising landscape. Mexico has a self-regulatory organisation, CONAR (National Council for Self-Regulation and Advertising Ethics). According to Martinez et al (2024) 'CONAR is often used to inform and advise Mexican authorities on day-to-day cases that are related to advertising matters'.

Systems with 'strong' governmental enforcement and SRO

Portugal's Advertising Code was approved by Decree-Law No. 330/90 of October 23, 1990. The Advertising Code mandates that all advertising, regardless of the medium, must be clearly identifiable as such. This includes digital platforms and social media. The code prohibits misleading, deceptive, or unfair advertising practices. The governmental agency responsible for enforcement is the Directorate-General for Consumer Affairs (Direção-Geral do Consumidor). This body operates under the jurisdiction of the Ministry of Economy and Innovation (Consumers International 2025). Specifically, it is responsible for implementing consumer policies and protecting consumer rights. The Secretary of State for Trade, Services and Consumer Protection within the Ministry of the Economy, Innovation and Development is the official responsible for consumer policy. The Directorate-General for Consumer Affairs oversees compliance with advertising regulations and has issued guidelines for influencers and advertisers, emphasizing the need for clear disclosure of commercial relationships. Non-compliance can result in penalties for all parties involved, including advertisers, agencies, and influencers. Portugal's advertising SRO is Auto Regulação Publicitaria, a non-legal body that oversees a general Code of Conduct and sector specific rules.

5.2 Advertising Self-Regulatory Organisation (SRO) Variations

Table 8: Advertising SRO arrangements across the 32 countries

Grouping	Country		Main Enforcement of Ad laws	SRO	Year SRO created	Regulatory Convergence (cross-platform rules/enforcement)
						Mixed
Northern European	Austria	EU 1995	Courts/Stat	No	1974	Limited
	Germany	EU 1958	Courts	Yes	1972	Limited. Stat reg broadcasting. No stat reg. advertising.
		EU 1957	Stat/SRO	(No)	2009	Mixed
	Cyprus	EU 2004	SRO/Stat	Yes	2012	Limited
	France	EU 1958	Stat/SRO	Yes	1935	Limited
	Greece	EU 1981	Gov Ministries/ Stat/SRO	Yes	2003	Mixed (integration in law and SRO code but uneven enforcement)
	Italy	EU 1958	Stat/SRO (co-reg from 2022)	Yes	1966	Limited
	Portugal	EU 1986	Stat/SRO	Yes	1991	Limited
	Spain	EU 1986	Gov Ministries & regions/ SRO/Courts	Yes	1995 (replaced 1977- org)	Limited
'North American'	Australia	(APEC, CPTPP+)	SRO/Stat	Yes	1998	Limited. Mix of general/ sectoral
	Canada	USMCA	Stat/SRO	Yes	1957	Limited. Limited SRO authority/enforcement
	Ireland	EU 1973	Stat/SRO	Yes	1981	Mixed (updated SRO code)
	Mexico	USMCA	Stat/SRO	Yes	1997	Limited
	USA	USMCA	SRO/Stat	Limited	1971	Limited
	UK	(EU 1973-2020)	SRO/Stat	Yes	1962	Limited

CEE	Bulgaria	EU 2007	Stat	Yes	2009	Limited
	Hungary	EU 2004	Stat	(Limited)	1996	Mixed (some integration in law and SRO code but limited SRO enforcement)
	Latvia	EU 2004	Stat/SRO	Yes	1994	Limited
	Lithuania	EU 2004	Stat/Courts	No (inactive)	2005	Limited
	Poland	EU 2004	Stat/SRO	Yes	2006	Limited
	Slovenia	EU 2004	Gov Ministries/ SRO	Yes	1994	Limited
	Czech Republic	EU 2004	Stat/SRO	Yes	1994	Limited
	Estonia	EU 2004	Stat	No	No SRO	Limited AV stat; publishing SRO

See also appendix 2

SRO data summary

Age of SROs:

The average (mean) age of these institutions is around 37.6 years, with a standard deviation of 19.4 years, indicating a relatively broad range in their ages. The youngest institution is 12 years old, and the oldest is 90 years old.

- **Young (≤ 25 years old):** Bulgaria, Cyprus, Finland, Greece, Luxembourg, Poland, Sweden.
- **Mid-Aged (26 - 50 years old):** Australia, Czech Republic, Hungary, Ireland, Latvia, Mexico, Portugal, Romania, Slovakia, Slovenia, Spain.
- **Oldest (> 50 years old):** Austria, Belgium, Canada, France, Germany, Italy, The Netherlands, United Kingdom, United States.

Madelin (2006) in a report for the European Commission set out three models of SRO's derived from the grouping of European Advertising SROs, EASA. The first model is *Self-regulation, within a strong legislative framework* with two sub-types. In the first, 'legislation allows extensive scope for self-regulation' and includes the UK, Spain, Ireland and the Netherlands (Madelin 2006: 15). In the second sub-type, illustrated by France 'advertising is subject to extensive legislative regulation, but...self-regulation has nevertheless established an effective system by fulfilling a complementary role to legislation'.

The second model is one where ‘the presence and detail of national legislation [means there is] limited scope for self-regulation to operate’. Two sub-types are where the legal framework is competition based (Germany, Austria) or consumer protection based (Finland, Sweden). The third model identified in the period is that of ‘emerging self-regulatory systems’ in the new accession countries of CEE (Poland, Czech Republic, Hungary, the Slovak Republic, and Slovenia) that ‘have no established tradition of advertising self-regulation’ (Madelin 2006: 17). A more recent survey of European advertising self-regulation has been produced by France’s Conseil de l’Éthique Publicitaire [Advertising Ethics Council] (2024). The Conseil de l’Éthique Publicitaire alerts the Autorité de Régulation Professionnelle de la Publicité on relevant trends ‘likely to foster the evolution of ethical codes’ (ARPP 2017: 6).

Systems with no advertising SRO

Denmark, Estonia

Denmark has a strong regulatory framework for branded content, with strong consumer protection, and effective integration of EU directives. However, the Danish system does not have a national self-regulatory organisation (SRO) for advertising. Instead, the Danish Consumer Ombudsman provides statutory oversight, acting as the main regulator in this area, and fulfilling many of the functions relegated to SROs in other countries.

The Danish Consumer Ombudsman is a powerful regulator that monitors compliance with advertising rules. It issues guidelines on advertising transparency and has significant enforcement powers, including sanctions, and even imprisonment in cases of serious, repeated non-compliance. The Ombudsman provides guidelines for influencers on hidden advertising and regarding digital media disclosures. It is active and responsive to new challenges. The absence of an SRO means that the statutory bodies, the Danish Consumer Ombudsman, the Danish Radio and Television Board, and the Danish Competition and Consumer Authority, a government agency, handle regulatory activities in this area. This strong reliance on government oversight is a unique feature of the system.

The legal framework for consumer protection encompasses all sectors and the Ombudsman oversees the enforcement of these laws, making for a well-integrated system. The Ombudsman compiles rules prohibiting hidden advertising across all media, demanding clarity regarding commercial interests behind mentions regardless of format. There are greater demands if the message is aimed at children and young people. The Ombudsman pays special attention to particularly challenging sectors, such as publishing, and oversees journalistic practice with a focus on advertising transparency, prohibiting blending editorial and commercial content, defining it as both a legal breach and a violation of good practice guidelines. Denmark manifests a feature of Northern European systems

highlighted by Hallin and Mancini (2004) in treating media (and here also advertising) as a social good warranting a high level of protection, here manifested as statutory oversight in place of an SRO.

Estonia lacks a centralised advertising self-regulatory organization (SRO). The multiple sector-specific self-regulatory bodies focus on new media and journalism. The system is complex, with multiple codes and three major institutions: the Estonian Press Council, the Estonian Association of Journalists and the Estonian Public Broadcaster (ERR). The division of media accountability between two institutions with competing viewpoints, the Estonian Press Council and the Estonian Association of Journalists, both occasionally stalls and often enriches the self-regulatory discourse. Estonian Public Broadcaster (EER) houses the Ethics Ombudsman, which produced a comprehensive code of ethics to protect democracy, creativity, and editorial standards. This model contrasts with countries employing extensive sector-wide self-regulation and suggests a unique focus on editorial integrity in journalism over other possible transparency issues, and a strong value-driven approach to protection of media quality. However, the media SROs operate without strong enforcement powers, and their overlapping, media-focused remits can cause confusion for advertisers, undermining compliance consistency.

SRO remits

We classify advertising SROs in relation to the derivation and scope of their remits.

- Applying ICC code

Some systems apply the ICC code and associated codes and guidance directly. This is particularly the case for newly created SROs and so is common across the CEE cluster. Other SROs that apply the ICC code directly include Finland, Sweden and Belgium (appendix 2; Conseil de l'Éthique Publicitaire 2024)

- ICC derived

Some systems are ICC derived, including the UK which does not apply the ICC Code directly. In Greece, the *ICC Code is applied with modifications linked to the legal framework, with case law determining how the Code provisions are interpreted* (Conseil de l'Éthique Publicitaire 2024).

- Autonomous

Some systems have developed in more autonomous ways. In particular, some systems have what we describe as a 'limited' remit. This description is not intended to be pejorative or to assess wider issues of effectiveness. Instead, it describes SROs whose remit is restricted. This restriction is usually to what some call 'taste and decency' issues (others 'harm and offence').

We also identify systems that are SRO-led, where the SRO is the principal, first agency for the regulation of most forms of advertising to deal with most business or consumer complaints about advertising.

Systems with ‘limited’ remit for advertising self-regulation

Germany's advertising self-regulator, Deutscher Werberat, primarily addresses taste and decency issues, such as gender stereotyping, and sector-specific concerns, such as alcohol marketing targeting minors. Despite high voluntary compliance, the body lacks authority over core issues such as misleading or hidden advertising practices. This appears as a common feature amongst Germanic (and some Scandinavian) systems where statutory oversight dominates, reducing the role of the industry self-regulation. Both Austria and Germany, within the Northern European ‘cluster’, have SRO Codes which play a purely supplementary role. Their SRO codes are characterised by low alignment with legal rules and prioritisation of taste and decency/harm or offence issues. Branded content rules are out of scope of the code and not the primary concern for the SROs). The regulation of branded content is carried out through competition regulation and the court system.

SRO-led systems

Spain's advertising practices are primarily governed by the General Advertising Law (Ley General de Publicidad) and the Unfair Competition Law (Ley de Competencia Desleal). These laws prohibit misleading advertising and require that all commercial communications be clearly identifiable as such. The General Law on Audiovisual Communication (Ley General de la Comunicación Audiovisual) aligns with the EU's Audiovisual Media Services Directive, setting standards for audiovisual commercial communications, including product placement and sponsorship disclosures. Spain's advertising SRO, Autocontrol, provides a code of conduct for responsible advertising practices that applies across all advertising content, including influencer marketing. Autocontrol is a non-legal body that handles complaints and disputes related to advertising ethics and can recommend corrective actions for non-compliant advertisements.

‘Due to the established practice of resolving advertising disputes through Autocontrol, the number of cases brought before civil courts is notably low. Advertising complaints fall under the scope of the Unfair Competition Act, meaning they must be resolved by commercial courts, which are often heavily burdened. As a result, first-instance proceedings can take over a year to conclude. Rulings from commercial courts are subject to appeal before the provincial appeal courts (*Audiencias Provinciales*)’ (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’s activities qualified as advertising under Article 2 of the Spanish General Advertising Law...The court ruled the campaign constituted surreptitious advertising because the defendant failed to inform consumers that the content had advertising intent. While the defendant argued that the influencers’ testimonies were protected by the right to 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).

The National Commission on Markets and Competition (CNMC) monitors audiovisual media services and enforces regulations related to advertising and commercial communications. The CNMC can issue fines. For example, in 2025, CNMC fined sports streaming platform DAZN €182,531 for showing an advert without including the tag *publicidad* (‘advertising’) (Del Valle 2025).

The Spanish Data Protection Agency (AEPD) is the authority responsible not only for enforcing privacy laws but also for regulating anti-spam activities and e-commerce practices. The AEPD has exclusive jurisdiction over the enforcement of both the General Data Protection Regulation (GDPR) and Spain’s national privacy regulation (LOPD).

Both Spain and the UK are systems in which public authorities delegate some of their responsibilities to self-regulatory bodies, Autocontrol in Spain and the CAP-ASA in the UK. The UK is a mixed system but the self-regulator is the ‘one-stop shop’ for complaints about advertising content across broadcasting and non-broadcast media. The Advertising Standards Authority is the officially recognised agency for the UK’s obligations for advertising under consumer protection law, even though the ASA is a non-legal body, and so the system has formal ‘legal backstop’ underpinning through the statutory powers of Trading Standards to whom the ASA can refer market actors who do not comply with ASA adjudications in specific areas of consumer law.

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 a local level but also provides the national ‘legal backstop’ powers for referrals from the ASA. ‘The Advertising Standards Authority 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 in connection with branded content in the five years 2019-2024 (see BCGP UK-Spain Policy Analysis).

5.3 Co-regulation

Branded content governance in the United States is primarily overseen by the Federal Trade Commission (FTC), which enforces regulations to ensure transparency and protect consumers from deceptive advertising practices. However, the USA has a variety of different federal agencies with powers over advertising including the Federal Communication Commission, Food and Drink Administration, as well as powers at State administration levels. The self-regulatory National Advertising Division (NAD) of the BBB, works in tandem with the FTC. The NAD reviews challenges to advertising claims and can refer unresolved cases to the FTC for enforcement. The FTC's truth-in-advertising laws grant it powers to ensure that ads are truthful, not misleading, and backed by evidence. Section 5 of the FTC Act prohibits 'unfair or deceptive acts or practices in or affecting commerce'. This provision forms the basis for regulating advertising practices, including branded content and influencer marketing. The FTC has been active in producing guidance on native advertising (FTC 2015) and social media influencer disclosure (FTC 2019). In 2023, the FTC updated its endorsement guidelines last revised in 2009, and set out a stricter definition for 'clear and conspicuous' disclosures. This went beyond the prior standard that such disclosures should be 'noticeable and easily understandable' to require that online disclosures must be "unavoidable." A briefing by US legal firm Davis&Gilbert (2023) states "Unavoidable" means that a consumer cannot miss the disclosure and must not be required to click through or take other actions to see material information'. NAD applied the FTC endorsement guidance in an independent monitoring action concerning three posts featuring Cariuma brand sneakers on the Instagram and Facebook accounts of *Travel + Leisure*, *US Weekly* and *The Quality Edit*. These posts promoted articles with affiliate marketing links, included images of Cariuma sneakers, and invited consumers to "shop here" or "learn more" about the sneakers. These posts were labelled "sponsored" below the publisher's name. NAD found that a 'sponsored' disclosure was insufficient for social media content promoting a brand and posted by a publisher – as consumers might not understand whether the post was sponsored by the brand or by the publisher (Davis&Gilbert (2023). However, enforcement activity for branded content remains low (Campbell and Grimm 2019). Hardy (2022: 148-152) examined FTC enforcement action relating to native advertising in the five years since the 2015 guidance and found that there were only ten cases involving undisclosed commercial communications in third-party media.

'New' Co-Regulatory Approaches

Hungary combines statutory oversight from bodies such as the Hungarian Competition Authority (GVH) and the Media Council (NMHH), with voluntary self-regulation through the Self-Regulatory Advertising Board (ÖRT). The new Media Act (2010) encouraged co-regulatory arrangements, by granting the NMHH the right to offer supervisory powers to professional organisations, including ÖRT. The powers are limited to specific industries, sectors and types of advertising, but include subliminal advertising. However, it is important to note that in a country where political interference

is a significant issue, closer relationship between the SRO and a statutory body might pose challenges.

5.4 Implications of SRO Institutional Formation for Branded Content Governance

Hypothesis: The period in which the advertising self-regulatory system was first established correlates with the ways in which the SRO engages with legacy media, digital media and ‘contemporary’ social media

This is one of several hypotheses we have articulated. The BCG project aims to explore these testable propositions but does not provide the systematic review necessary to test them fully.

We do not presume or privilege quantitative research methods in addressing them but rather seek a mix of qualitative and quantitative research as is suitable, feasible and guided by our academic and other project advisers.

We find some confirmation for the hypothesis. ‘New’ advertising self-regulatory systems tend to develop their codes and governance in relation to contemporary conditions in marketing-media markets and select regulatory issues that reflect contemporary practices and concerns. This is evident in governance that identifies and addresses branded content.

The Croatian Association for Self-Regulation of Market Communications was established in 2016 and was the first SRO of this type in Croatia. The remit of the Association is to report to relevant national state institutions any violation of law and of the Croatian Chamber of Commerce’s Code of advertising, market communications and business ethics. Association membership is diverse and includes marketers, advertising agencies, media, private universities and state institutions (Bijelic 2016). The Croatian Association of Communications Agencies (HURA) was also established and established IAB Croatia when it joined the IAB Global Network in 2021 (Brdar 2021). HURA is an important hybrid in our analysis. As a trade association and member of IAB it has the characteristics of an industry regulatory organisation. However, HURA has developed and enforces a detailed self-regulatory code, making it an SRO in our classification.

HURA’s Code was updated in 2020 and reflects a strong awareness of the impact that digitalisation has on transparency, with an explicit focus on identification of commercial communications in online environments and a comprehensive set of rules regulating hidden advertising in its many forms. The Code also emphasises the importance of following the standards set by the International Chambers of Commerce, suggesting a clear ambition to align with international standards. Despite creating a strong legal harmonization code, HURA, lacks enforcement mechanisms, and operates as a part of a weak and still developing self-regulatory system.

Another relatively ‘young’ SRO is Hungary’s Self-Regulatory Advertising Board (Önszabályozó Reklám Testület, ÖRT) established in 1996. In 2023,

following two years of consultations, the Codification Committee of the Self-Regulatory Advertising Board (“ÖRT”) and the Hungarian Advertising Association (“MRSZ”) launched a revised version of the Hungarian Code of Advertising Ethics, last revised in 2015 (Pánszky 2023). Chapter III of the new Code, which regulates advertising in the digital space, includes updated rules on influencer marketing (Article 27) ‘building on the content of the recommendations previously issued by the Competition Authority’ (Pánszky 2023). The Code emphasises its cross-platform approach and the universality of the identification rule, paying careful attention to the principle of separation and prohibiting misrepresentation of one type of content for another. It also contains sponsorship rules in line with the Audiovisual Services Directive and regulates user generated content. The ÖRT is a co-regulatory body and was set up following an overhaul of an earlier self-regulatory system established in 1981.

However - Despite ÖRT updating influencer marketing guidelines in 2023, compliance remains low due to their voluntary nature (European Commission 2024b).. Although GVH recently initiated proceedings against non-compliant influencers, penalties have been minimal, highlighting the need for legally binding regulations.

5.5 Comparative Assessment – Summary

Table 3: Powers over advertising: media system cluster analysis

Our table summarises our finding of differentiation at the level of clusters overall, even though there is

	Northern European	Mediterranean	North Atlantic	CEE (Central and Eastern Europe)
EU Supranational	8/8	7/7	1/6	11/11
EU Accession	Early	Mixed	Early	Late
State (direct gov.)	Low	High	Low	High
State (autonomy)	High	High	High	High
Co-regulation (advertising)	High	Low	High	High
Powers over advertising	Court led	SRO led	Mixed Stat./SRO	Gov/Stat led
SRO Formation	Early	Mixed	Early	Mixed
SRO Enforcement (Branded Content)	Mixed	Low	Mixed	Low

greater variability across individual media systems. The Northern European cluster is characterised by 'low' direct governmental enforcement and preference for agencies that operate with relative autonomy from direct governmental control and oversight. Such direct governmental control is a stronger feature across both Mediterranean and CEE clusters.

Co-regulation of advertising is most developed in 'North Atlantic' systems but is becoming more established across Northern European and CEE systems, while less developed across Mediterranean. Given that the latter are all EU-members, this indicates how media system arrangements and institutional legacies remain important influences within the broader processes of EU harmonisation.

Identifying an overall pattern in the organisation of powers over advertising within clusters is hazardous given the variations and complexity discussed in this report and the individual country reports. However, it is also valuable to identify such patterns as they indicate the range of governance preferences and significant variation across systems. So, at a high level of generalisation, we find Northern Europe to lead on legal processes overseen by courts. We find Mediterranean systems to favour self-regulatory organisations as lead agencies. In the North Atlantic cluster we find a pattern of supporting and connecting (through co-regulation) both statutory and self-regulatory organisations. Within CEE we find the strongest orientation to statutory or directly-controlled Government agencies as lead institutions.

6. Thematic Reports

6.1 European Union Policy and Governance

EU regulation of branded content

Branded content (BC) is regulated in the European Union (EU) through a framework of regulations (binding legal acts that take effect directly), transposed directives, and national laws. The Maastricht Treaty ratified by Law no. 454 of November 3, 1992, transformed the European Community into the European Union. This legislation established a high degree of consumer protection, for the protection of health and welfare and consumer's economic interests including in relation to information and advertising of products and services. A process of harmonisation of different laws was developed alongside efforts to improve information for consumers (Corradi 2021). Special assistance was given to the new accession countries of CEE, providing resources for technical and legal assistance to protect the interests of consumers and develop consumer policy.

The European Charter of Fundamental Rights (ECFR) was created in 2000 to affirm and consolidate the broad array of rights afforded to citizens of the European Union. BC governance intersects with three primary concerns in the ECFR: the protection of consumer rights, the safeguarding of media freedom and plurality, and the protection of personal data. The first connects to BC through consumers' right to be informed about the type of content they are consuming – commercial or editorial; the second to the need to protect editorial independence, also from commercial pressures; the third protects personal data from being exploited for the purpose of targeted advertising. These fundamental concerns inform the EU regulations, setting standards for Member States.

The ECFR, Article 38, states 'Union policies shall ensure a high level of consumer protection' (European Parliament, Council and Commission 2012). The European Commission's New Deal for Consumers notes that this focus has led to tangible results: 'since 1987, the EU has had the strictest rules on consumer protection in the world, with a comprehensive set of consumer rights in place today' (European Commission 2018a). The second relevant right, listed under Article 11(2) of the ECFR, 'the freedom and pluralism of the media shall be respected' is emerging as a central motivation shaping recent EU media policy, including the development of the European Media Freedom Act (EMFA) (European Parliament, Council and Commission 2012). The third right, Article 8 (1), stating, 'everyone has the right to the protection of personal data concerning him or her', and (2) specifying that the data should only be processed for clear purposes and with the consent of the concerned party, informs EU policies protecting the digital sphere.

Given the diverse ways in which commercial and editorial content intersect across media platforms, and the multiple ways such practices can impact EU citizens' rights, BC governance requires a harmonized regulatory approach. However, existing EU regulation remains fragmented, with rules spread across multiple legislative fields, including consumer protection,

media regulation, and data privacy. This complexity poses challenges for enforcement and compliance, requiring stronger cross-sector coordination to ensure consistent application of transparency and accountability measures. The following sections review key EU instruments affecting governance of branded content, and their enforcement mechanisms.

Relevant Directives and Acts

BC regulation is distributed across multiple legislative instruments, each addressing different concerns related to advertising transparency, editorial independence, and personal data usage. The prohibition of hidden advertising, expressed as an obligation to identify ‘business-to-consumer commercial practices’ or simply ‘commercial practices’, is a requirement that protects consumers (through the Unfair Commercial Practices Directive) and extends to businesses (through the Misleading and Comparative Advertising Directive), covering all forms of content created with the intention to sell, and imposing identification requirements on traders. Commercial practices are defined, under the Unfair Commercial Practices Directive, Article 2(d), as ‘any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers’.

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. Article 7 of the Unfair Commercial Practices Directive (Directive 2005/29/EC) classifies the failure to ‘identify the commercial intent of the commercial practice if not already apparent from the context’ as a misleading omission, which is a prohibited practice (Directive 2005/29/EC). The UCPD also requires the identification of the trader. Article 7, (2)). Article 7 (4) states: ‘In the case of an invitation to purchase, the following information shall be regarded as material, if not already apparent from the context: (b) the geographical address and the identity of the trader, such as his trading name and, where applicable, the geographical address and the identity of the trader on whose behalf he is acting’. Influencers who qualify as traders must meet these requirements, including identifying themselves and their location. This identification requirement has been controversial and challenged for increasing risks for vulnerable influencers such as individuals working from home and those who may be targeted based on gender, ethnicity, sexuality, disability or other types of discrimination. The Directive also requires the Member States to have appropriate enforcement powers so consumers can act when affected by breaches of these rules, including through legal routes, regulatory authorities, and/or complaint systems.

The Unfair Commercial Practices Directive (Directive 2005/29/EC) also includes commercial practices prohibited in all circumstances (‘blacklist’).

The list includes ‘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)’ (Annex I to Directive 2005/29/EC, (11)). The Amending Directive (EU) 2019/2161 (The Omnibus Directive) has added several additional prohibited practices, with the publication of fake consumer reviews (47) and hidden advertising in search results (18 – 20) listed amongst them (AKA Annex I to Directive 2005/29/EC). The rules are detailed and put responsibility on traders to make consumers aware of the ‘processes and procedures’ leading to the production of reviews, and to make it clear ‘whether those reviews have been sponsored or influenced by a contractual relationship with a trader’ (47). Hidden advertising appears in the form of unexplained higher ranking of specific products and products offers, with instances where ‘a trader provides information to a consumer in the form of search results in response to the consumer’s online search query without clearly disclosing any paid advertising or payment specifically for achieving higher ranking of products within the search results’ becoming prohibited (20, The Omnibus Directive).

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 B2B relations, giving competitors the right to act when undisclosed commercial content puts them at a disadvantage (Directive 2006/114/EC, Article 4 (a)).

UCPD and influencer marketing

Influencer marketing is a specific subspecies of branded content that has received increasing attention from regulators, including the EU, over the last decade. Updated guidance by the Commission (European Commission 2021) stated that the UCPD applied in cases of influencer marketing. In an answer to a question before the European Parliament on 26 April 2023 a statement by Mr Breton on behalf of the European Commission (21 June 2023) stated.

Influencer marketing is regulated by the Unfair Commercial Practices Directive 2005/29/EC (UCPD)[1]. The explanations about the rules applicable to influencer marketing are included in the Notice on the interpretation and application of this directive[2] (see Section 4.2.6.)[3] However, it went on, ‘In its ongoing fitness check of EU consumer law on digital fairness the Commission is examining whether the concept of an influencer and the obligations they have towards consumers should be further clarified. The fitness check is foreseen to conclude in mid-2024.

The question (E-001363/2023) by French MEP Geoffroy Didier was presented as follows:

On Thursday 30 March 2023, the French National Assembly voted in favour of a proposal for legislation to combat scams and abuses by influencers on social media.

Most notably, the text legally defines what commercial influencers and influencer agents are, and it seeks to ban the advertising of surgical procedures, including aesthetic procedures, financial products and services and counterfeit goods. A code of conduct for influencers was also produced.

Although France is the first country in the world to impose obligations of this kind, other EU Member States, such as Germany, Italy and Spain, require influencers to be transparent about their sponsored content by specifically stating that it includes an advertising and financial element.

In light of these initiatives taken at national level and the Commission's work on the Digital Services Act, and in order to prevent imbalances and circumventions in the internal market, does the Commission intend to take up this matter by issuing a legislative proposal aiming to establish at EU level a common, harmonised framework for influencer marketing?

This concern was also reflected in the views of consumer organisations who responded to the European Commission's 2022 consultation on its 'fitness check' of consumer protection. Consumer organisations and NGOs 'often considered that the UCPD blacklist should be updated and provide clearer definitions, while also taking into account that the rapidly changing nature of digital technologies may make the enforcement and identification of such practices quickly outdated' (European Commission 2024a: 129).

The Commission published its fitness check findings on 3 October 2024. The report (European Commission 2024a: 32 identified among 'other harms' that

Commercial marketing practices that are based on the creation of parasocial relationships between consumers and social media influencers can exacerbate the commercial pressure that consumers feel, even if there were to be full disclosure about the presence of commercial communications.

It also noted that 'Consumers may also be more perceptive to undue influence (e.g. hidden advertising, pushed to conclude microtransactions) when they are immersed in gameplay or virtual world environments' (EC 2024a: 32).

The Commission review of responses to its 2022-23 consultation on consumer protection shows how the policy not to revise the UCPD to include more explicit reference to influencer marketing reflected the dominant view of business organisations. The Commission report states (European Commission 2024a: 134-135):

Overall opinions regarding social media influencers were divided threefold: consumer-oriented organisations and few other stakeholders advocated for a better definition of the concept, more transparency and some for prohibitions of marketing certain products/services (including to prevent regulatory fragmentation through national legislation). Trader-oriented organisations argued that influencers are already extensively de facto regulated in current EU consumer law, even if there is no definition of an influencer as a specific category of trader. Finally, a few entities requested further transparency requirements for influencers when they are engaging in paid promotions. Many stakeholders, including authorities, argue that the current situation is one of high legal uncertainty, and legislative action to clarify this concept would in their view be highly advisable. Consumer organisations consider that the promotion of illegal products and services by influencers should constitute an unfair commercial practice and be blacklisted in the UCPD.

Against that collective call by consumer organisations, the Commission cited the business case made against further legislative action, concluding its summary of opinions (European Commission 2024a: 135):

A digital organisation moreover notes that the DSA and AVMSD also introduce helpful transparency standards on user-generated commercial content. Moreover, they consider that consumers are increasingly savvy to the world of influencer marketing and sales of products and understand the commercial nature of such communications.

The UCPD ‘can be and is already used to tackle several problematic practices [in influencer marketing], such as the lack of disclosure of commercial communications, false or misleading marketing claims (e.g. exaggerated claims about health products or financial services) or direct exhortations to children’ (European Commission 2024a: 171). This has been strengthened by the 2021 UCPD Guidance, produced by the Commission, including (European Commission 2024a: 171):

‘the qualification of influencers as ‘traders’ or ‘agents acting on behalf of a trader’ (regardless of the size of their following), the interpretation of the concepts of ‘editorial content’ (to include social media content), ‘payment’ (to include any form of consideration with an asset value..., guidance on a sufficiently salient disclosure... and an acknowledgement that the breach could be attributed to both the influencer and the brand, regardless of the presence of editorial control by the latter’.

However, the EC also acknowledges that the Guidance is not legally binding which, together with the absence of European Court of Justice (CJEU) case law, means there is ‘legal uncertainty about the applicable rules, including about the responsibilities of other actors in the value chain, such as the brands whose products and services are being promoted (besides that of platforms, regulated inter alia in the DSA)’ (European Commission 2024a: 171).

Crucially for the BCGP, the report adds (European Commission 2024a: 171-2) ‘Furthermore, aside from the limitations established in the AVMSD for audiovisual 255 § 5a para. 4 Unfair Competition Act. commercial communications and other sector-specific legislation, there are no specific prohibitions preventing influencers from advertising certain products, which risks regulatory fragmentation’.

Through its broad scope, the UCPD, acts as a ‘safety net’ protecting against unfair commercial practices, including those not captured through other consumer protection legislation and sector-specific laws (Zard and Sears 2023: 825). According to some, this allows regulators to address emerging deceptive practices, such as undisclosed sponsorships in influencer marketing and algorithmically boosted product rankings. However, in the absence of a comprehensive requirement for disclosure of commercial communications there remains legal uncertainty in the application of the specific provisions of the UCPD to all forms of media-marketing integration.

Media regulation

Sector-specific EU media regulation involves rules affecting commercial communications distributed through specific types of media outlets, with an emphasis on audiovisual media, and advertising within the digital sphere. The Audiovisual Media Services Directive, under Article 1(1)h, indicates the broad scope and the range of various forms ‘audiovisual commercial communication’ encompasses, including ‘inter alia, television advertising, sponsorship, teleshopping and product placement’ (AMSD). The European Audiovisual Observatory notes that for content to meet the definition of ‘audiovisual commercial communication’, it must (1) have a direct or indirect promotional purpose, (2) ‘the promoted goods, services or images must pertain to a natural or legal entity with an economic purpose’, (3) ‘the promotional images must be shown in return for payment or similar consideration, including self-promotional purposes’, and/or must cover one of the explicitly mentioned categories, such a sponsorship (European Audiovisual Observatory 2017).

The Directive defines ‘audiovisual commercial communication’ as ‘images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity; such images accompany, or are included in, a programme or user-generated video in return for payment or for similar

consideration or for self-promotional purposes' (AMSD). The definition encompasses multiple forms of branded content, meaning that, within the scope of the directive, BC must comply with traditional audiovisual advertising rules, including transparency, identification, and editorial independence requirements. The requirements also extend to digital platforms, indicating continuing broadening of scope.

The Audiovisual Media Services Directive (Directive 2018/1808) (AVMSD) serves as the framework for the sector-specific legislation (its scope covers audiovisual broadcasting, on-demand broadcasting platforms and user-generated audiovisual content). The AVMSD contains the transparency rule stating that 'audiovisual commercial communications shall be readily recognisable as such' (Article 9, 1(a)) and prohibits the use of 'subliminal techniques' (AVMSD, Article 9, 1(b)). 'Subliminal' is a potent term in the history of advertising critique (MacRury 2009: 238) as several respondents in our study have mentioned. It also 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 AVMSD (Directive 2018/1808) covers many forms of audiovisual communication, including user-generated content, which means that the rules, also those affecting sponsorship and product placement, apply to influencers (Society for Computers and Law 2024). The Directive encourages national authorities to promote co-regulation and self-regulation through national codes of conduct to oversee advertising practices.

The rules on commercial communications applicable to television services and video-sharing platforms (VSPs) have been adopted in EU member states' national legislation through the transposition of the revised AVMSD, with many states also setting out further and more detailed rules on implementing the legal provisions by means of secondary legislation. A report by the European Audiovisual Observatory (2022) sets out rules on commercial communications applicable to video-sharing platforms.

There is a wide range of soft-law or self-regulatory instruments pertaining to commercial communications and commercial practices in general, many of which directly affect VSPs. The overview of applicable provisions across territories covered by this report offers an insight into many areas of the revised AVMSD, that are complementary to its objectives in the field of commercial communications (i.e. consumer protection, competition, e-commerce, health protection, data protection). In addition, when influencers meet the criteria set out in Article 1(a)(i) and (g) of the Audiovisual Media Services Directive (AVMSD)[6], they can qualify as on-demand media services and are required to comply with specific requirements for the fairness and transparency of advertising, such as the need for advertising to be recognisable and not surreptitious, as well as the prohibition of advertisement on tobacco or medicinal products.

The EU principle of freedom of movement within the union, for goods, services and people, is reflected in the principle of freedom of transmission in the AVMSD (and earlier Television Without Frontiers Directive). Under the ‘country of origin’ principle, broadcast and ODPS (on-demand programme services) licenced in one member state can be provided in all other Member States, without further restriction from those National Authorities except in very limited circumstances.

The principle is mirrored in the Council of Europe’s European Convention on Transfrontier Television, established in 1993. This means that all signatories of the ECTT, which includes the UK, 20 EU countries and several non-EU countries, agree to rules whereby ‘providers of broadcasting channels and video on-demand services based in one country are only subject to one set of rules and regulations from a ‘country of origin’ (DCMS 2020).

Digital Services Act

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 (DSA). The DSA requires that online platforms clearly communicate whether content is advertising and who paid for the communication (Article 26 Digital Services Act). The EC fitness check on consumer protection (EC 2024: 534) describes how the DSA ‘mandates specific conditions for complaint-handling concerning illegal content (e.g. notices about a lack of disclosure on sponsored content, flagging fake or unsafe products), but this does not extend to other type of problems that consumers could face, such as product returns’, although its notes that ‘the effectiveness of these provisions of other laws was not evaluated in this Fitness Check’.

The DSA introduced a ‘general obligation for platforms to provide recipients of the service with a functionality to declare whether the content they provide is or contains commercial communications, triggering a clear and prominent marking allowing to identify the commercial nature of the content (Article 26(2)) (EC 2024: 173). Very large platforms must meet strict 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). However, the DSA provisions concern advertising spending (“advertisement” as a service, in other words, on the basis of remuneration to be given to an online platform’) and so do not cover all instances of branded content, including some influencer marketing (EC 2024: 173). Influencer marketing is of special interest to the

European Commission following a study which revealed 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). The DSA obliges influencers to disclose whether their content contains commercial messaging.

The Commission response to the 2023 European Parliament question on influencer marketing (Breton 2023) states that the 'Digital Services Act (DSA) makes it clear in Recital 72 that 'know your business customer' provisions (Article 30) applicable to online marketplaces also apply to influencers'. However, recitals are a set of introductory paragraphs that explain the reasons for the legislation's operative provisions; 'Recitals to EU laws are not in themselves legally binding in the same way that the operative provisions are' (Thompson Reuters 2025). Recitals can be important in interpreting EU law where its provisions are ambiguous (Thompson Reuters 2025).

Article 26(2) of the DSA includes a tool to facilitate compliance by influencers using a platform in order to provide content with commercial communications, by providing a functionality through which they can declare if the service contains commercial communications, thus triggering specific markings in this regard. The DSA provisions became fully applicable from 17 February 2024.

Data Protection

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, 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.

Digital Services Act (DSA) impact assessment emphasized Article 7 (Respect for Private and Family Life) and Article 8 (Protection of Personal Data) in justifying stricter obligations for digital advertising transparency (European Commission 2020).

The General Data Protection Regulation (GDPR) explicitly states that it is based on Article 8 CFR (Data Protection)

The eCommerce Directive (2000/31/EC) contains transparency and identification rules regulating 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'. The eCommerce Directive (2000/31/EC) also contains rules regarding liabilities of intermediaries, including releasing hosting providers from responsibility for user-generated content if they do not have the knowledge of, or control, over it (DataGuidance 2023).

Enforcement and Relevant Organisations

The enforcement of EU advertising laws and regulations in individual member states involves governmental oversight, industry self-regulation, and platform accountability. National Regulatory Authorities (NRAs) play a crucial role in this process, as they are responsible for successful implementation of the rules. They monitor compliance and can impose sanctions for violations. These organisations operate within a broader European framework, coordinating their activities through networks such as the European Regulators Group for Audiovisual Media Services (ERGA), which provides guidance on consistent enforcement of EU law across member states (European Commission 2022).

These governmental bodies, industry self-regulation plays a significant role in promoting and enforcing advertising standards. The European Advertising Standards Alliance (EASA) coordinates self-regulatory efforts across Europe, with the stated aim of ensuring that national advertising self-regulatory organizations (SROs), such as the UK's Advertising Standards Authority (ASA) and Spain's Autocontrol, 'complement legislation'(EASA n.d.; 2022).

The increasing role of digital platforms has led to a shift in regulatory focus. The Digital Services Act (DSA), adopted by the EU in 2022, introduced new obligations for online platforms, particularly Very Large Online Platforms (VLOPs), to ensure transparency in advertising practices. This includes labelling of branded content, disclosure of sponsorship arrangements, and providing users with clear information about targeted advertising (European Parliament and the Council 2022). Additionally, the DSA requires platforms to maintain publicly accessible advertising repositories, reinforcing the regulatory framework for digital advertising (von Rimscha 2024). These developments highlight the evolving interaction between statutory regulation, industry self-regulation, and platform accountability in shaping the governance of branded content in the EU.

EU and national governance of branded content

The incorporation of EU law and regulations takes different forms but also has different effects and implications for countries in our study. For some countries, EU regulations arrive after they already developed their own strategies, for others EU rules align with domestic policy action, for others, the EU is the first source of regulations with domestic arrangements being absent or underdeveloped.

For all 27 EU member states in our 32-country analysis, we list the relevant National Regulatory Authority responsible for the implementation of EU law and regulation. Each report describes how the relevant EU Directives and Regulations were implemented in individual countries including a detailed explanation of rules affecting individual sectors.

The European Commission's fitness review of consumer protection reports how some EU states have been active in enforcing the existing EU obligations to disclose commercial communications. Up to 2024, the Belgium Authority has launched over 90 investigations into influencer marketing (European Commission 2024: 172). The French authority launched investigations in 2023 after research showed that a majority (60%) of influencers did not comply with disclosure requirements. The Polish authority took action in 2023 against influencers and marketers ('traders') 'highlighting in particular the active role that the trader played in directing the influencers to disregard clear disclosures' (European Commission 2024b: 172). However, non-compliance levels remain high despite increasing enforcement activity. A EU-wide sweep of posts from 576 influencers in 2024 found that 'while nearly all of the influencers posted commercial content, just 20% systematically indicated the commercial nature of the content shared' (European Commission 2024: 172). More than a third (38%) did not use the platforms' own ('platform-facilitated') tools to disclose the commercial nature, such as the 'paid partnership' toggle on Instagram. Only 40% of influencers provided the disclosure immediately and up front, 'while 34% opted for less visible disclosures that required the consumer to take additional steps, such as click on 'read more' or scroll down' (European Commission 2024: 172). There was also 'divergence in the wording used in the disclosures, such as 'collaboration (16%), 'partnership' (15%) or generic gratitude expressed for the brand (11%)' (European Commission 2024b: 172).

European Media Freedom Act

The European Media Freedom Act, Regulation (EU) 2024/1083, entered into force on 7 May 2024, enforceable from 8 August 2025

According to the EMFA (European Parliament and the Council 2024): 'The European Media Freedom Act puts in place a new set of rules to protect media pluralism and independence in the EU. They will ensure that media – public and private – can operate more easily across borders in the EU internal market, without undue pressure and taking into account the digital transformation of the media space'.

One of the aims is to protect editorial independence. Others including

- Ensuring Member States provide an assessment of the impact of key media market concentrations on media pluralism and editorial independence
- Ensuring the independent functioning of public service media

- Enhancing transparency in state advertising for media service providers and online platforms
- Boosting transparency in audience measurement for media service providers and advertisers

A new independent European Board for Media Services is created to replace the European Regulators Group for Audiovisual Media Services (ERGA), operating from February 2025.

The EMFA builds upon the European Commission Recommendation (EU) 2022/1634 of 16 September 2022 on internal safeguards for editorial independence and ownership transparency in the media sector

EMFA and Branded Content

The initial proposal for the EMFA put emphasis on two areas relevant to BC regulation: (2) ‘increasing regulatory cooperation and convergence through cross-border coordination tools and EU-level opinions and guidelines’ (which might improve the fragmented BC regulation systems by enforcing better integration) (European Commission 2022); and (3) ‘facilitating provision of quality media services by mitigating the risk of undue public and private interference in editorial freedom’ explicitly targeting commercial influence (EU 2022). The focus on editorial independence is especially relevant, with Commission Recommendation (EU) 2022/1634 of 16 September 2022 on internal safeguards for editorial independence and ownership transparency in the media sector, the precursor and complementary measure to the EMFA stating under point (7) that ‘the internal rules of media service providers (...) could cover’, amongst other aspects, (d) ‘rules ensuring the separation between commercial and editorial activities, including, for example, requirements to ensure that the editorial content is separated and clearly distinguishable from advertising and promotional content’ (European Commission 2022, emphasis added). The Commission recommendation (European Commission 2022: 58) included criticism of self-regulation and need for stronger enforcement of journalistic ethics: ‘Media self-regulation and standards of journalistic ethics are effective tools to empower journalists and help them to resist undue pressure, including of a political and commercial nature, thus enhancing public trust in the media’ (Preamble, 14)). The 2022 Media Pluralism Monitor , the report states, ‘points to the deficiencies in the effective implementation of self-regulation’ (European Commission 2022: 58).

Section II contains specific suggestions for safeguarding editorial independence (safeguards catalogue), including the creation and enforcement of ethical codes:

- (5) Media service providers are encouraged to lay down internal rules to protect editorial integrity and independence from undue political and business interests which may affect individual editorial decisions. Where such internal rules exist, it is encouraged that they are fully

recognised and endorsed by the owners and management of the media company.

(6) Such internal rules could be collected in charters, codes or other editorial guidelines and policy documents, which media service providers are encouraged to make publicly available and accessible, to the extent possible, also to persons with disabilities, on their websites' (European Commission 2022: 61).

However, despite direct references to commercial influence across multiple documents, the EMFA focuses solely on advertising subsidy by states. The influence of the government through the distribution of funding and investment in advertising and beyond, and the impact of their financial decision-making on the quality of Public Service Media providers, feature as the most prominent threats being addressed.

The EMFA addresses advertising only in the context of state advertising and concern about how this subsidy is distributed. EU concern regarding Hungary was at least partially the motivation for those developments – the 'quiet' influence of the state through the distribution of funding is also why state advertising is more of a concern than other forms of advertising. Similarly the EMFA's attention to the 'quality' of PSM providers is also reflective of the issues caused by the state influencing the content or de-funding PSM if it does not conform to ruling party interests align with.

The concerns about commercial communications are made in earlier papers that fed into the EMFA but do not appear in the Act itself. This appears to show that commercial interests were successful in directing policy towards state advertising and away from commercial communications. To confirm this, however, would require an examination to substantiate how lobbying occurred and what interests prevailed.

The lack of focus on commercial interference indicates the problem of 'compartmentalisation' we discuss elsewhere in this report. It also indicates that a process of delimiting took place between the earlier scoping of media freedom and the final Act. The processes of interest group lobbying and their influence would need to be examined, but the outcome indicates an Act that provided much less threat to commercial media and marketing interests than the earlier policy formulations would have produced. This context makes the relative neglect of commercial influence in the approach to media freedom of academic and civil society interests all the more consequential. The ordering of importance, rightly places 'interference' by state actors as the highest priority for action to protect media freedom and pluralism. However, the neglect of commercial interference is disabling.

The EMFA was shaped by and reflects the approach of the Media Plurality Monitor whose country reports tend to highlight political capture and discuss commercial influence only when it intertwines with political power. The underlying assumption is that the two issues blend into one through an 'intricate interplay' of market and state control, influencing what information

reaches the public eye (Trevisan 2024). This creates an interesting tension: the EMFA is relevant to branded content regulation due to its focus on the protection of editorial independence and regulatory convergence, but also increasingly diverges from it, existing parallel to the core concerns regarding commercial capture. At the same time, the Act represents a wider shift: away from consumer protection as a way of strengthening commercial objectives and towards the protection of media freedom based on a principle-led approach, which prioritises normative values over business interests. It is also a reminder that the core motivations behind branded content regulation overlap with EU's fundamental rights, suggesting that the issue might gain greater prominence as the regulations continue to evolve and develop.

Policy processes and lobbying

The European Commission emphasises the collaborative nature of its legislative activities, with stakeholders participating at multiple stages of the process, both publicly and in private, and a significant number of interest groups contributing throughout. The groups responding to the consultation on new rules safeguarding media freedom in the EU (European Commission 2023), included citizens, journalists, representatives of member states, broadcasters (both private and public), human rights organisations, various civil society actors, academics, representatives of governmental bodies, and over 45 industry representatives (European Commission 2023; Sjökvist 45 - 46).

The extent to which the industry influenced the EMFA is difficult to assess. However, Moa Sjökvist (2024: 47) notes that the policy areas which require a significant level of technical expertise, especially one surpassing common knowledge amongst policymakers, tend to be open to stronger industry influence, with their direct experience serving as a guide for subsequent decision-making, allowing them to further their agendas. This role was more significant in discussions informing the process of drafting the more technical AMSD and was challenged through the development of the more principle led EMFA.

The organisations which were satisfied with the existing levels of protection for media freedom and plurality were Association of Commercial Television in Europe, News Media Europe, and European Publishers Council. Association of Commercial Television in Europe opposed new procedures and government oversight, arguing for self-regulation amongst commercial media companies. The European Publishers Council challenged the regulation on the grounds of press freedom and expressed a preference for the narrower scope of the AVMSD, wanting to relegate increased statutory regulatory scrutiny to broadcasting and digital content (Sjökvist 2024: 54). The publishing sector shows a particular resistance due to their traditional reliance on self-regulation and eagerness to protect their sector against content regulation similar to that outlined in AVMSD (Sjökvist 2024: 64). The European Broadcasting Union additionally expressed scepticism regarding

the balancing of competences between national broadcasters and single market objectives (Sjökvis 54). These areas of difference in industry response to the EMFA and the AVMSD illustrates the shift in European media regulation towards a more all-encompassing and integrated approach.

The European Federation of Journalists (EFJ), DIGITALEUROPE and DOT Europe were supportive of the Act. However, the EFJ perceived the measures taken as insufficient and wanted extra protections for journalists, greater guarantees of public media independence, and support for media pluralism across all EU member states, arguing that regulation at the EU level is essential to address existing issues, including the damage caused by state propaganda. Overall, human rights organizations, media freedom advocates, and journalistic bodies argued that the EMFA is a necessary intervention and that the threats to democracy in Europe are reaching critical levels (Sjökvis 2024: 54). These concerns influenced the final form of the EMFA showing the growing influence of organisations which protect normative values.

On the whole, businesses responded to the EMFA from a commercial rather than normative perspective, despite the issues under consideration having wide implications for political stability and citizen's rights. However, concerns about significant threats to media and democracy, such as high levels of political interference in Baltic states, united both groups (Sjökvis 2024: 58). Extreme examples of political turmoil within the EU, such as the Polish government battling to shut down a commercial media broadcaster TVN to eliminate independent media in Poland, vividly illustrate why issues such as these unite the normative concern with media freedom amongst media trade unions and civil society groups, and the business-focused priorities of commercial actors. The concern about government interference, however, is wider and affects multiple countries across various areas, from state-controlled public service media to overt oppression of journalists, building up to a sense of an EU-wide emergency. Foreign influence, a problem made more urgent due to Russia broadcasting propaganda to Europeans, and the ongoing challenges to democracy in the US, are further examples of a common area of agreement (Sjökvis 2024: 59).

Despite the various organisations being divided on regulations affecting VLOPs, the growing frustration with big tech and business oligarchs constitutes another unifying force. VLOPs, through their unquestionable dominance over digital advertising, and their role as media content gatekeepers, threaten the interests of national businesses and traditional media providers, while proliferating the spread of disinformation (Sjökvis 2024: 60). This paints them as the natural enemy of traditionally divided interest groups: industry representatives (who lack the resources to compete with the strongest players in the digital industry), traditional broadcasters, organisations protecting journalists and press standards, and human rights advocates (Sjökvis 2024: 69). Publishers who, as

discussed before, might oppose regulations, which can affect their content production, are more amicable in this context, due to multiple areas where their interests align with the priorities of the EMFA, including seeking ways to address the destructive impact of the digital revolution on traditional journalism.

Overall, significant external events and internal threats, including but not limited to the ongoing political and economic crisis, the growing crisis of democracy, the evidence of foreign interference, the dominance of online platforms, and the negative impact of excessive digitalisation, led to a significant reshuffling of interest groups with decisive influence on European media policy. This included broadening of the scope of shared concerns, a broadening of the range of stakeholders seeking the opportunity to engage, and the creation of new advocacy coalitions. With traditional divisions temporarily put aside, new initiatives and previously repressed concerns, including those rooted in normative values, can become a part of the debate, with a significant potential for issues such as commercial influence to naturally follow once the most pressing concerns are meaningfully addressed.

The shift towards principle-led European media regulations

The EU has historically struggled with balancing media's economic and cultural values, a tension that has affected numerous policy decisions and led to significant criticism (Erickson and Dewey 2011). For example, Madsen and Bondebjerg (2009) argue that the prioritisation of business growth and the deregulation and privatization that followed created a communication landscape dominated by global corporate interests, and obstructed any regulatory interventions which counter the pull of the existing market forces, including those aimed at protecting media freedom and recognising the intrinsic value of arts and culture. The European Media Freedom Act represents a significant shift in EU policy: away from the growing emphasis on media as a commercial sector governed by competition laws and towards a recognition of its fundamental role in supporting democracy and protecting public interest (Holtz-Bacha 2024). This change is reflected in the acknowledgment that media companies cannot be treated as any other businesses and that their independence must be protected at the EU level (European Commission 2022a).

Comparing the Audiovisual Media Services Directive (AMSD) and the EMFA, it is evident that while the AVMSD focuses on technical and operational aspects, such as advertising regulation and media regulator independence, the EMFA is more principle-driven, incorporating elements that emphasize transparency, independence, and democratic accountability (Sjökvist 2024). The EMFA, then, contains both normative principles and technical regulations (European Commission 2022a, 2024). This shift activated interest groups motivated by normative values over business motivations, leading to increased engagement and growing trust among stakeholders that the European Union might move beyond economic

considerations to address fundamental media rights and freedoms (Sjökvis 2004: 64). This creates favourable conditions for discussions of branded content as a threat to editorial integrity, leveraging the temporary weakening of industry influence on EU media policy debates, a trend which results from external factors and internal turmoil, and is likely to continue in the face of political and economic challenges affecting Member countries.

Compartmentalisation

EU policy on disinformation illustrates the processes of compartmentalisation and de-limiting in policy that have affected how branded content has been addressed. In 2018, the European Commission set out its views and strategy for tackling disinformation. The document, *Tackling Online Disinformation: a European Approach* (European Commission 2018b) set out objectives that included the following ones relevant for branded content:

- Significantly improve the scrutiny of advertisement placements...to reduce revenues for purveyors of disinformation, and restrict targeting options for political advertising;
- Ensure transparency about sponsored content, in particular political and issue-based advertising
- Facilitate users' assessment of content through indicators of the trustworthiness of content sources

The Commission invited the advertising industry and broader sectors to create and sign up to a code of practice on disinformation which was published the same year. *The 2018 Code of Practice on Disinformation was drawn up by* 'representatives of online platforms, leading tech companies and players in the advertising industry' (European Commission 2022b). The 2018 Code removed 'misleading advertising' entirely from its scope, stating:

The notion of "Disinformation" does not include misleading advertising, reporting errors, satire and parody, or clearly identified partisan news and commentary, and is without prejudice to binding legal obligations, self-regulatory advertising codes, and standards regarding misleading advertising.

The broader agenda of the Commission communication to incorporate 'transparency about sponsored content' was rejected and foreclosed. The 'regulatory space' that was opened up in the Commission document and which would have connected disinformation across both political and commercial speech was managed and restricted. The actions and motivations of key actors would require further detailed analysis as the basis for critical evaluation. However, we can identify this process as one of regulatory risk management being undertaken with an outcome that was 'successful' for key media-marketing ecology actors invited to draw up the code. However, this is also an example of 'compartmentalisation' with

significant implications for branded content governance and for the wider interests of consumers and citizens.

The voluntary Code was revised and published in 2022, and described as a 'strengthened code'. However, the text cited above from the 2018 Code was now set as a footnote only and an important reference to the ICC Code, on identification of advertising, was removed entirely.

In a section (II.b.) on 'Political advertising and issue based advertising', the 2018 Code stated:

Signatories commit to keep complying with the requirement set by EU and national laws, and outlined in self-regulatory Codes,[10] that all advertisements should be clearly distinguishable from editorial content, including news, whatever their form and whatever the medium used. When an advertisement appears in a medium containing news or editorial matter, it should be presented in such a way as to be readily recognisable as a paid-for communication or labelled as such.

The endnote stated '[10] Such as the ICC Advertising and Marketing Communications Code(<https://cdn.iccwbo.org/content/uploads/sites/3/2011/08/ICC-Consolidated-Code-of-Advertising-and-Marketing-2011-English.pdf>) or the advertising Codes of conduct enforced by self-regulatory organisations at national level.

While we are critical of the delimiting of the code to remove 'sponsored content' and native advertising from the frame of 'disinformation', the 2018 Code did provide this important statement committing signatories to ensuring 'all advertisements should be clearly distinguishable from editorial content. However, the so-called 'strengthened' Code, removed the reference to the ICC and other codes. It sets out commitment 8, to 'to provide transparency information to users about the political or issue ads they see on their service', including 'identification of the sponsor'. Commitment 6 on 'efficient labelling', states:

Relevant Signatories commit to make political or issue ads clearly labelled and distinguishable as paid-for content in a way that allows users to understand that the content displayed contains political or issue advertising.

However, this is delimited, in the Code at least, to cover political or issue advertising. The 2018 Commission statement has prioritised but not delimited the scope: 'Ensure transparency about sponsored content, in particular political and issue-based advertising'. The industry-led 2022 Code had evolved to remove all general references that might have resulted in forms of 'normal' but misleading commercially oriented forms of marketing communications being included in a broader framing of 'disinformation'. The key risks of that would be to associate 'normal' forms of branded/sponsored content with the toxicity of 'disinformation' with implications for consumer trust and across the supply chain. More concretely, incorporating the scope of 'legitimate' media-marketing

activities into the disinformation policy area would risk a general strengthening of legally enforced regulation of branded content.

Conclusion

There is a strong, fundamental rights supported case for protection against possible harms caused by branded content. The EU addresses some of these concerns, but in relation to branded content, as in the wider case of other threats to editorial independence and integrity, the system is fragmented. This is a concern raised directly in the EMFA, which states (5), ‘although the fragmentation of editorial independence safeguards concerns all media sectors, it especially affects the press sector as national regulatory or self-regulatory approaches differ more in relation to the press’ (EMFA 2024).

The dimensions of this fragmentation are recognisable on multiple levels: BC’s correspondence to multiple fundamental rights (8, 11, 38), then informing various types of directives, then implemented into various types of national legislation (advertising law, consumer protection law, competition law, media law, and privacy law).

Article 11 on Freedom of expression and information incorporates in modified form Article 10 of the European Convention on Human Rights:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected (European Parliament, Council and Commission 2012).

The relationship between Article 11 of the Charter of Fundamental Rights of the European Union (CFR) and restrictions on freedom of expression due to commercial influence is complex, as it involves balancing media freedom, editorial independence, market dynamics, and consumer protection. While Article 11 primarily addresses state-imposed restrictions on freedom of expression, EU’s regulatory framework—through the EMFA, AVMSD, UCPD, and DSA—demonstrates a growing recognition that market forces, corporate ownership, and advertising dependencies can undermine media pluralism and restrict free expression. By ensuring transparency in advertising, protecting editorial independence, and regulating platform influence, the EU is working to align commercial activities with fundamental rights, ensuring that economic power does not become a form of censorship BC regulation touches upon issues at the core of the European Union’s values, echoing in two fundamental rights, and aligning with the ongoing turn towards normative values resulting from the growing threats to democracy in Europe. These conditions and the indicative developments in EU media policy, suggest multiple routes for BC regulation to gain new prominence.

However, we have also shown evidence of compartmentalisation and fragmentation in the development of policies that have been detrimental to addressing branded content issues. Such compartmentalisation indicates the influence and relative success of powerful commercial interests from the media-marketing ecology. That is evident in the narrowing scope and regulatory risk management that occurred in the development of disinformation policy. However, a complex range and interaction of interests shape policy making. The calls from MEPs and national politicians for a more explicit extension of the UCPD to cover influencer marketing has so far also gone unheeded. We discuss this further in section 7, where we recommend that the EU sets out a clear and comprehensive requirement for the identification of marketing communications.

6.2 Platform Policies

Social media platforms like Instagram, TikTok, YouTube, and Snap have their own policies requiring influencers to disclose paid partnerships. These platform-specific guidelines complement legal requirements and play a significant role in shaping how branded content is presented to audiences. Platforms like Instagram and Facebook have implemented tools to facilitate compliance with disclosure requirements. For instance, Instagram's "Paid Partnership" tag allows influencers to clearly indicate sponsored content.

Annabell, Aade and Goanta (2024) offer an analytical distinction between governance by platforms, through their own policies, practices and user interfaces, and governance of platforms, which 'involves the influence of mandatory legal frameworks on platform behaviour'. Our country reports focus on the latter, but we examine governance by platforms further in our *Mapping the Media-Marketing Ecology* report and forthcoming book to be published by Routledge. In their study of branded content governance by platforms (examining Instagram, TikTok, Snap, and YouTube), Aade and Goanta (2024) find that: 'Through platform documentation, platforms unanimously distance themselves from disclosure duties, even in cases where influencer agreements are concluded on-platform', with 'a lack of emphasis on moderating undisclosed commercial content, compounded by the de-prioritisation of disclosure tools on some interfaces'. They argue that 'this might contradict their expected role under European consumer law', particularly their disclosure obligations under the UCPD, and the their need to require and enforce use of their in-app disclosure tools.

6.3 Central and Eastern European Media Systems and Branded Content Governance

This section provides more detail in comparing regulatory arrangements for branded content across Central and Eastern Europe systems. We have discussed different arrangements for powers over advertising in section 2 and discuss examples of better/worse practice in sections 6.5 and 6.6 below. This next section seeks to identify commonalities and significant diversity in regulation within the CEE cluster. Hungary and Estonia, for example, illustrate the wide spectrum within CEE countries in their approach to regulation.

Bulgaria's regulatory landscape for branded content is shaped by a transitioning media system, delayed implementation of EU digital regulations, and a developing co-regulatory approach to advertising rules enforcement. Bulgaria's post-Soviet media system includes some characteristics associated with the Mediterranean (Polarised Pluralist) model (Hallin and Mancini 2004), characterised by strong state control and press subsidies. Public Service Broadcasters (PSBs) receive significant state funding, but face financial difficulties and political pressure, impacting media independence. The high level of state influence raises concerns about advertising and media regulation. The system faces additional challenges resulting from media concentration, and the lack of protections for journalism. There have been significant delays in transposing EU digital regulations in Bulgaria. This includes a more than ten-year delay in implementing the ePrivacy Directive (2009/136/EC). The Digital Services Act (DSA, 2022/2065) is still undergoing national adaptation, and the Digital Content Directive (2019/770) has been gradually adapted, impacting rules on influencer marketing and digital advertising. These delays create legal uncertainty for branded content governance and highlight the need for accelerated transposition of EU digital laws to ensure alignment with transparency and platform liability rules. Until 2022, Bulgarian law did not directly regulate digital platforms, but ongoing, if also delayed, transposition of EU rules is closing gaps, with national efforts to align with evolving digital governance standards. The EU rules currently being transposed are the first to regulate this area, accounting for the intensity of the changes. In 2024, Bulgaria adopted the National Roadmap for Digital Transformation, outlining the country's strategic vision for digital development until 2030.

Croatia is an example of a post-communist system in transition. Croatia's branded content regulation is also in transition, influenced by the ongoing transformation of the country's post-communist media system and evolving digital advertising rules. The country is gradually aligning with European media models, but challenges persist due to the strong role of the state in media governance and the dominance of foreign-owned commercial broadcasters. The ongoing efforts to improve media transparency, such as amending the legal framework for media ownership disclosure, are crucial for enhancing media independence and reducing political influence. These changes aim to align Croatia's media governance more closely with European standards, ensuring greater accountability in the media sector. However, a review by the Media Freedom Rapid Response (MFRR) consortium in September 2024 noted that 'current reform of the Media Law has been highly criticised by civil society and public watchdogs, particularly regarding the lack of a consultative process', while 'Transparency in state advertising allocation to media outlets is a major concern, particularly at the local level. Many institutions fail to disclose this information, raising concerns about their influence on editorial independence' (ECPMF 2024; Open Government Partnership n.d.). Croatia follows the trend, consistent with other Eastern European countries, of creating an ambitious advertising self-regulatory body, with a well-developed Code that puts special emphasis on transparency. However, this SRO system lacks an effective enforcement framework.

The Czech Republic's media system has evolved significantly since its transition from a socialist state. The Czech Republic is generally aligned with EU digital regulations but faces challenges in their effective implementation. The Digital Services Act (DSA) has been in force since February 2024, with the Czech Telecommunications Office (CTU) designated as the Digital Services Coordinator. However, the CTU lacks sufficient staff and legal empowerment to fully enforce the DSA. The Czech Republic does not have significant delays in transposing EU digital laws, but it is still refining its regulatory framework to address emerging issues like programmatic advertising and influencer marketing transparency. In August 2024, the government approved draft law on the digital economy from the Ministry of Industry and Trade (MIT). The Digital Economy Bill 'prepares the Czech Republic for the adaptation of the European Digital Services Act (DSA) and the Data Governance Act (DGA), which regulate the functioning of the digital space in the European Union' (Ministry of Industry and Trade 2024).

The Czech Republic's branded content governance is distinguished by the presence of numerous self-regulatory organisations, a feature that sets it apart from other CEE countries. The Czech Advertising Standards Council (CASC/RPR) is the main advertising self-regulatory body. The CASC is a well-established self-regulatory body that oversees the Czech Advertising Code, based on the International Chamber of Commerce (ICC) Code. It handles advertising complaints and dispute resolution through its Arbitration Committee, which meets monthly. The Code requires transparency, disclosure and separation, although is not as detailed or as focused on commercial communication identification as some of the codes in other countries. There is a separate institution overseeing digital advertising standards, the Association for Internet Development (SPIR), and three institutions regulating the broadcasting industry. This multiplicity allows for specialised oversight tailored to different media sectors, potentially leading to more nuanced regulation, and involves multiple actors concerned with protecting editorial integrity and standards. However, this can lead to inconsistencies in enforcement across platforms due to varying standards and enforcement mechanisms. Ensuring coordination among these bodies is crucial to maintain regulatory consistency and avoid overlapping responsibilities.

Estonia's branded content regulatory framework relies on government enforcement bodies complemented by limited sector-specific media self-regulation, which is focused on upholding journalistic standards, locating transparency concerns in news production. Estonia has closely aligned its national advertising legislation with EU standards, successfully implemented key directives, and participated in EU policymaking through the activities of the Estonian Ministry of Culture. The Advertising Act (2008) applies consistently across all media types, including emerging formats such as influencer marketing. However, the role of the Act is supplementary, with consumer protection legislation playing the leading role in branded content regulation.

Finland has a comprehensive branded content regulatory framework, with strong integration of EU rules and a dual system characterised by a separation of institutions protecting businesses and consumers, with regulatory emphasis frequently placed on business interests at both statutory and self-regulatory levels. The statutory system is strong, but consumer rights self-regulation is limited to taste and decency concerns.

Hungary's branded content regulatory framework combines EU-aligned competition law with a co-regulatory model. Sharing some features with Northern European/Germanic systems, for example in prioritising competition law over consumer protection, it also faces difficulties more typical of Eastern European countries, including challenges in enforcement, transparency, and political influence on media regulation. Hungary emphasizes competition law for advertising regulation, underpinned by the Competition Act (Act LVII of 1996), Advertising Act (Act XLVIII of 2008), and Unfair Commercial Practices Act (Act XLVII of 2008). Misleading advertising is treated primarily as anti-competitive behaviour, with some similarities to the German system. The Hungarian Competition Authority (GVH) enforces advertising rules under competition law frameworks. Recent amendments in 2023 introduced formal notices to encourage voluntary business compliance, increasing enforcement flexibility.

Latvia's branded content governance is primarily structured around the Advertising Law (1999), supplemented by sector-specific regulations and aligned with broader European Union directives such as UCPD. The Advertising law mandates that all advertising, including influencer marketing, must be clearly identifiable and not misleading and requires explicit distinction between commercial and organic messaging. This provides a clear legal basis for regulating all forms of advertising, including branded and influencer content. However, Latvia lacks detailed guidelines tailored specifically for influencers, or branded content in social media, which can lead to inconsistencies in labelling and disclosure practices. Current rules require transparency but do not standardise how disclosures should be made (e.g., "#ad," "Paid partnership"). Infringements can result in modest fines of up to \$14,000, suitable for acting as a deterrent on smaller market actors only.

Lithuania, like its neighbour Latvia, has an Advertising Law, which mandates that all advertising, including influencer marketing, must be clearly identifiable and not misleading. This forms the basis for its branded content governance. There is a lack of detailed guidelines tailored specifically for influencers, leading to inconsistencies in disclosure practices. Additionally, public awareness of the need to identify sponsored content is limited, highlighting the need for increased education on recognizing such content. The Law on Advertising of the Republic of Lithuania prohibits hidden advertising and requires that advertising must be clearly identifiable to consumers (influenceriai n.d).

Poland lacks legal provisions dedicated to branded content, but existing

legislation and regulatory guidelines establish clear expectations for transparency and consumer protection. The Act on Counteracting Unfair Market Practices incorporates the UCDP and prohibits misleading and surreptitious advertising. The Suppression of Unfair Competition Act is complementary and addresses unfair competition practices, including misleading advertising and deceptive marketing strategies

Branded content governance in Poland has evolved significantly, particularly concerning influencer marketing and social media advertising. The Polish Office of Competition and Consumer Protection (UOKiK) issued guidelines for influencers and their business partners in 2022. While not legally binding, the guidelines set out rules on clear and unambiguous labelling of advertising to prevent consumers being misled and on self-promotions and gifting policies. UOKiK actively monitors influencer marketing practices and has imposed significant financial penalties for non-compliance. In recent years, total financial penalties amounted to over EUR 1 million (PLN 5 million) (Hughes and Opalinski 2023). UOKiK 'applies a rather broad interpretation of remuneration. Products or services, discounts on the purchase of products or services, profits from the publication of discount codes, affiliate links, licenses granted, promotional vouchers, bonuses, coverage of additional costs of participation in an event in addition to the admission ticket, but also an increase in sales of the influencer's own goods or services, all qualify as remuneration under the Guidelines' (Hughes and Opalinski 2023).

Branded content governance in Romania is shaped by a combination of EU-aligned consumer protection laws (incorporating UCPD and other legislation), sector-specific regulations, and self-regulatory initiatives. In common with most EU states, Romania lacks influencer-specific legislation but has addressed issues of transparency and accountability in digital advertising. In March 2025, Romania proposed legislation targeting the spread of illegal and harmful content on social media platforms. Romania's advertising practices are primarily governed by the Law on Audiovisual Content (Law No. 504/2002) and the Consumer Protection Law. These laws prohibit misleading advertising and require that all commercial communications be clearly identifiable as such. Romania's advertising SRO is the Romanian Advertising Council. The RAC produced a Code of Best Practices in Influencer Marketing in 2020, developed with industry groups including the Interactive Advertising Bureau (IAB) Romania, with support from IAB Spain (Cristea 2020).

Developed by industry stakeholders, this code aims to enhance transparency and credibility in influencer marketing. It serves as a practical tool for companies engaging in digital campaigns, outlining expectations for ethical conduct and disclosure.

Branded content governance in Slovakia is structured through a combination of statutory regulations and self-regulatory codes. The Advertising Act No. 147/2001 Coll. is the primary legislation that governs

advertising practices in Slovakia. It mandates that all advertising must be clearly identifiable and prohibits misleading or hidden advertising. The Media services Act (Act No. 264/2022 Coll.), complements the Advertising Act and regulates audiovisual media services, including online platforms and requires clear identification of advertising content. Slovakia's advertising SRO is the Slovak Advertising Standards Council (RPR). The RPR's Code of Ethics in Advertising Practice, applies to all advertising, including branded content and influencer marketing. A separate code on influencer marketing was created in 2022, requiring clear disclosure of any paid collaborations and prohibiting practices, such as fake reviews and unsubstantiated health claims. The RPR is a non-legal body. Advertising Enforcement powers are located in State agencies (Health, Drug Control) and by Regional Trade Licensing Offices.

Branded content governance in Slovenia is structured through a combination of EU-aligned legislation, national laws, and self-regulatory codes. Slovenia's advertising practices are primarily governed by the Consumer Protection Act and the Electronic Commerce Market Act. These laws require that all advertising must be clearly identifiable and prohibit misleading or hidden advertising. They also enforce compliance with the EU's Audiovisual Media Services Directive. Slovenia has an advertising SRO, the Slovenian Advertising Chamber which oversees the Slovenian Advertising Code (SOK). The Court of Arbitration of the Slovenian Advertising Chamber oversees compliance with the SOK and can issue public calls for the withdrawal or correction of non-compliant advertising messages.

In 2020, the Slovenian Advertising Chamber issued recommendations for influencer marketing, emphasizing the importance of transparency and clear labelling of sponsored content. These guidelines aim to prevent misleading commercial communications and ensure that consumers can distinguish between editorial and promotional content (Slovenska Oglaševalska Zbornica 2020). The Marketing Association of Slovenia (Društvo za marketing Slovenije) also published 12 golden rules of influencer marketing in 2023, although the rules were described as 'almost exclusively business oriented' (European Audiovisual Observatory 2024: 207). A new Media Act in 2024, aligned with the EMFA and DSA applies disclosure requirements across online platforms, social media, influencers and AI content (Ministry of Culture 2024).

6.4 Indicators of Governance Effectiveness

As discussed in Section 3 Methodology the project had to scale back assessment of governance effectiveness. This was always a stretching objective, but we revised this principally because of a lack of data for systematic review. This is therefore an area for future research development, including our own.

Our original objective was to include indicators of governance effectiveness in the 32-country report analysis. However, we scaled back that ambition

for a variety of reasons. The chief reason is that the process of compiling data on the formal regulatory arrangements has been a large undertaking, and we have focused our limited resources on the completion of this task across all 32 countries in the study. The second key reason is that the study of effectiveness requires systematic study of a kind we have not been able to produce ourselves. From the outset, we recognised that we could not attempt to offer authoritative assessments of governance performance across all 32 countries except for our more detailed studies of the UK and Spain. Therefore, we planned to cite third-party sources offering analysis and evaluation of governance performance, without seeking to present a summative assessment of our own which would require data collection and analysis beyond what has been achievable. Such use of sources is susceptible to partiality, since governance arrangements for communications are contested and often highly politically sensitive issues. Further, the available sources and discussion of advertising governance is weighted towards 'resource rich' sources, including regulatory bodies, over those of consumer, civil society or independent, 'critical' sources including some academics. Legal practitioners are a vital source of expert and professionally accurate and 'impartial' commentary. However, the majority of advertising lawyers seek to advise industry actors across the media-marketing ecology and seek to explain and interpret the activities of regulatory agencies. Legal practitioners do critique governance arrangements and can serve as important mediators for the concerns of their clients as well as an important source of critique based on legal-normative principles including fairness, accountability and due process. However, legal sources tend not to articulate extra-system or systemic critique and so the range of source opinion tends to be weighted more towards system-support, except where a 'critical juncture' widens critical debate. So, to mitigate, we have sought to make the provenance of sources, and range of sources cited, explicit and to identify as claims, statements that we cannot fully evaluate or endorse ourselves.

Indicators of Governance Effectiveness: General

For our methodology workshops in 2023 we outlined 'indicators of effectiveness' that we considered relevant for the assessment of branded content governance. As we stated then, 'We expect that this project can only provide suitable (systematic) research findings in selected areas and not across the totality of relevant indicators. However, we aspire to make an initial mapping of relevant indications as an important outcome from this research project and to use this process to help identify what indications of effectiveness (IE) for branded content we can incorporate into our data collection and analysis for WP2 and other outputs. We seek to identify existing (third party) data that is relevant for the assessment of IE for branded content governance'.

We also stated that we sought to maintain our research focus on branded content governance, while taking account of the relevant broader contexts of regulation and practice in order to do so. This means we will seek to

be selective and delimit the scope of considerations of effectiveness as these apply to all actors and processes. For instance, there is an extensive literature that examines effectiveness and recommends best practice in the areas of legislation/legislative assemblies; statutory regulatory authorities; advertising self-regulatory organisations, other SROs. We need to connect to this literature but not reproduce a broad range of indicators. Instead, we need to select and justify indicators that relate to the identification and application of ‘rules’ that have relevance for the conduct of producing and distributing branded content.

‘We may include general indicators of effectiveness where these meet the following tests:

1. Systematic data collection
2. Availability of data from third party source
3. Data available for a majority of the countries examined in WP2
4. Relevance for the analysis of branded content governance.

Where there is only single country data relevant to general indicators of effectiveness, this may be included in commentary sections, but we should try to maintain a clear separation between item entries where we seek to achieve comprehensive and comparable data for the purposes of analysis, and sections that contain ‘additional’ data.

For our own primary research/country report data, we should include indicators of effectiveness that meet the following criteria:

- Relevance to BC practices
- Relevance for the analysis of BC governance
- Feasibility (data collection/availability of data for comparison)
- Significance for analysis and testing of project/WP2 hypotheses/RQ.

The next section presents some of the broader and more general indicators. This includes general values/indicators for any relevant governance, as well as indicators that are relevant to advertising governance in general (rather than branded content specifically). The process of identifying and selecting indicators of governance effectiveness is linked to the process of policy advocacy, identifying and putting forward proposals for policy and governance. For this there are principles and considerations for how policy proposals should be arrived at from research, co-design and dialogue, and how evidence-based proposals should be presented to policy actors and stakeholders (e.g. CAP 2018). There are also sets of principles and considerations for communications policymaking (e.g. Picard and Pickard 2017; Buckley et al 2008). Picard and Pickard (2017: 8) set out their proposed principles for communications policymaking under seven rubrics:

1. Meeting fundamental communication and content needs.
2. Providing effective ability for public use of media and communications.

3. Promoting diversity/plurality in ownership of media and content available.
4. Affording protection for users and society.
5. Providing transparency and accountability.
6. Pursuing developmental and economic benefits; and
7. Pursuing equitable and effective policy outcomes.

Governance assessment general criteria

- Awareness: the extent to which there is Knowledge and understanding of schemes designed to regulate the [communications] environment.
- Adoption: concurrence with schemes and enduring acceptance of authority of regulatory agencies/actors
- Attitude: Perception in terms of trust, credibility and legitimacy of regulatory bodies
- Action: extent of compliance with schemes, numbers of complaints received, disputes handled, and levels of governmental engagement

Sources: Just, Latzer, and Saurwein (2007); Latzer (2007); Saurwein (2011).

There are also general or system-wide considerations including principles and best practice for regulation. These are usually applied in discussions of 'government regulation', versus 'self-regulation' alternatives, but the range of governance tools and options apply across all forms of governance and so can be considered 'system-wide' (or multi-system). These are considerations of the justification and use of different policy instruments, such as APEC's (2000) guidelines on technical regulation. While such documents encode normative values and choices that require critical analysis, they do provide a guide to (context specific) prevailing standards and to criteria for access, influence and legitimacy in policy advocacy.

APEC's (1997: 3) guidance on regulatory reform states

In order to ensure that any government intervention brings the greatest possible net benefits, it is important to ensure that all the feasible options are identified and assessed. In addition to the imposition of technical regulations, there are several policy instruments available which should be considered. Such alternatives could include:

- status quo
- reliance on general law
- educational programmes
- voluntary standards
- economic instruments (taxes, tradable property rights)
- insurance and liability laws
- codes of conduct/practice
- industry self-regulation and co-regulation'

General criteria for policy assessment include:

- Has the problem been clearly identified?
- Have all the options to address the problem been considered?
- In particular, has self-regulation been considered?
- Have compliance mechanisms been considered?
- Has consultation taken place?

Formal Governance

The main 'domains' for the assessment of ('formal' regulatory/governance effectiveness are:

1. Executive/Government
2. Legislation/Legislature
3. Courts of law
4. Statutory regulatory authorities
5. Advertising SROs (inc. co-regulation)
6. Other SROs

1. Executive/Government

Transparency, access and inclusiveness in the policy process (Government policy documents)

Exercising of executive powers/statutory instruments

Control/influence over legislation

Government – industry/key stakeholder relationships

Transparency, power, interests and behaviour in lobbying/advocacy

2. Legislature/Parliamentary

Transparency, access and inclusiveness in policy process (Government/Parliamentary Committee/Political party policy documents)

Political parties– industry/key stakeholder relationships

Transparency, power, interests and behaviour in lobbying/advocacy

Indicators of effectiveness of legislation

- Does the legislation have a clear purpose?
- Is the substantive content of legislation aligned to purpose?
- Is the substantive content of legislation conducive to results?
- Is there adequate information to measure the results of legislation?
- How do the new provisions interact with the legal order?
- Source: Mousmouti (2014)

Indicators of effectiveness of the legal framework

- How high is the threshold for legal action?

3. Courts of Law

Indicators of best practice in processes

Judicial independence/interference

Relationship between the Courts and Statutory Regulatory Authorities

- How closely do the Statutory Regulatory Authorities (SRA) and the courts work together?
- How often is an SRA decision/adjudication upheld/supported by the courts (for example following a legal challenge to the SRA adjudication)?
- What is the relationship between SRA decisions and judicial review or other legal remedies available for industry/other actors?

Relationships between the Courts and Advertising Self-Regulatory Organisations

- How closely do the SROs and the courts work together?
- How often is an SRO decision/adjudication upheld/supported by the courts (for example following a legal challenge to the SRO adjudication)?
- What is the relationship between SRO decisions and judicial review or other legal remedies available for industry/other actors?

The Global Advertising Lawyers Association (GALA 2019, 2024) assesses the degree to which the SRO and Court systems are coordinated as an indicator of greater effectiveness.

Another factor is the degree of judicial deferral to the (national) advertising SRO, as the (Government recognised) expert authority on decisions within the remit and competence of the SRO. Is the SRO considered as more specialised and therefore better informed than the courts? If so, the weight of decision-making may be shifted to the SRO. GALA (2019, 2024) considers that this makes the SRO/System more effective, although that claim needs to be tested. Court deferral to SROs may have several benefits: speed of ‘adjudication’, costs, minimisation of ‘double jeopardy’, clarity and transparency. However, the value will depend on the qualities and effectiveness of the SRO, the remedies available and the scope and process for complainants.

4. Statutory Regulatory Authorities

See Picard and Pickard 2017 on principles for communication policymaking.

Standards for Statutory Regulatory Authorities, see e.g. Ofcom, the UK Office for Communications:

Ensuring ‘interventions are evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome’
‘clearly articulated and publicly reviewed annual plan, with stated objectives’
‘consulting widely with all relevant stakeholders’
assessing the impact of regulatory action in advance of regulating

5. Advertising Self-regulatory Organisations

General:

Does the SRA 'provide a fair, effective, efficient codes and complaints system for consumers'.

' [Q1] Is the self-regulation system effective? [Q2] Is it widely used and followed?' (GALA 2024)

For GALA Q1 (above) is an overall assessment, Q2 required data on usage (reach), Q3 concerns compliance levels (and support).

The following questions /criteria for assessing SRO effectiveness draws on FAR (2016), EASA and other sources.

- What is the composition of the SRO?
- What is the composition of the board/authority that decides on code breaches?

Funding

- How is the SRO funded?
- Is the SRO sufficiently funded to enable it to provide a level of service in accordance with best practice standards
- Do all major sectors of industry give financial support to the SRO?

Relationship to marketing and media industries – (formal Industry involvement, linked to issues of wider industry adherence and support)

- Is the SRO operated by advertisers with the support of agencies?
- Do the other major industry sectors of industry support the SRO?
- Does the SRO operate in a tripartite model (marketers, agencies, media)?
- Do most major sectors of industry accept the Codes as the minimum industry standard to which all advertising should conform?
- Do all sectors of the industry including media accept the Codes as the minimum industry standard to which all advertising should conform?
- Do all major sectors of industry give actual and moral support, and commitment to the SRO?

Independent, Efficient and Resourced Administration

- Is the SRO sufficiently resourced to meet objectives
- Is the Secretariat independent of industry, government and sector interests
- Is the SRO located in separate premises not associated with government, industry or another sector?

Communications and access for users/consumers

- Is the SRO customer focused?
- Is the SRO easily accessible (by telephone, mail, email, website, social media and physical location)?

Governance processes (Complaints/adjudication/investigations)

- Can the SRO initiate its own investigation or respond to complaints only?

Scope of Code: 'Universal and Effective Codes'

- Codes should cover all kinds of advertising including commercial, non-commercial, Government, advocacy and political advertising.
- Are the Codes based on the ICC Code of Marketing and Advertising Practice?
- How are marketing communications defined?
- What types of marketing communications does the SRO have authority over?
- What is the scope of the Code/SRO action and boundary points between what is included and excluded (e.g. advertising and editorial)
- Do the codes cover all forms of branded content including editorial/advertorial/native and social media marketing?
- Are merchandising, sales promotions, sponsorship and other forms of promotion (e.g. advergames) covered by the Codes?
- Are the Codes available in written form in the main languages of the country?
- Are the Codes easily accessible to everyone?
- Are there specific provisions for different areas of concern? (a) Misleading?
- Are the Codes written in unambiguous plain language?
- Are the Codes written in a consistent style?
- Do the Codes reflect national cultures and law?
- What range of stakeholders consulted during the development of the Codes?
- Government agencies? (b) Business sectors? (c) Consumer, family, youth organisations? (d) Pre-vetters and copy advisers? (e) Academia? (f) Ethical authorities? (g) Lawyers? (h) Other relevant citizen organisations?

Prompt and Efficient Complaint Processing

- Is it easy (minimum bureaucracy) for consumers to complain?
- Can complaints be made to the SRO by voice/mail/email/online?
- Is there a social media platform for consumers to make enquiries?
- Are complaints by consumers processed for free?
- Are all decisions released publicly?
- Are all decisions available on the SRO website?
- Are complaints processed on average within 30 working days?
- Are complaints processed significantly faster than those ruled on by the courts?

Adjudications: Independent and Impartial Adjudication

- Is the adjudication panel separate and independent from the governing board of the SRO?
- Do members of the adjudication panel declare any conflict of interest and not participate in the decision-making where there is a conflict?

- Are the procedures for hearing complaints by the adjudication panel in writing and publicly available?
- Do those independent persons have diverse backgrounds and expertise on interpreting and understanding communication?
- Are more than 50% of the adjudication panel independent (non-industry and non-Government) persons?
- Are the SROs decisions binding for all [industry sector(s)], or just the members?
- Are the SRO decisions (some/all) legally binding?
- GALA calls this 'the force of legal recognition' and emphasises its importance for effectiveness (GALA 2019: 442). However, the decisions of a self-regulatory body being legally binding might also decrease its effectiveness in the sense that some industry members will look for a non-binding alternative to avoid prosecution (GALA 2019: 916).

Compliance

- Do advertisers, agencies and media agree to comply and actually comply in practice by the decisions of the complaints adjudication body?
- Do advertisers, agencies and media comply with an adverse decision of the adjudication panel? [Compliance rate as indicator of effectiveness, Gala (2019)]
- Is the advertisement withdrawn immediately when it is found in breach of the Codes by the adjudication panel?
- Do advertisers, agencies and media ensure the advertisement is withdrawn when asked to do so?
- Do Government agencies comply with an adverse decision of the adjudication panel and withdraw the ad?
- If a claim in an advertisement in one media is found to be in breach of the Codes by the adjudication panel will other media decline to run similar advertisements with the identical claim?
- For repeat offenders or recalcitrant advertisers, are there systems to deal with them such as Ad Alerts, mandatory pre-approval and a regulatory backstop??
- For repeat offenders or recalcitrant advertisers are there systems for enhanced name and shame such as news release, publication on website and Google search?
- Do the terms of trade of the media usually contain a requirement to comply with the SRO Codes?
- Do contracts between advertisers and agencies have a requirement that advertisements comply with the SRO Codes?
- Are decisions of the adjudication panel and any sanctions imposed recognised by the courts?
- Is compliance voluntary? [For GALA (2019) if compliance is voluntary, the system is assumed to be less effective than ones with legally enforceable sanctions.]
- Does the SRO have legal enforcement powers (directly itself) or through 'backstop powers' or other provisions? [Backstop powers refers to provisions for a legally enforceable action to be taken when

the sanctions imposed by an SRO have not deterred a marketer from continuing to breach SRO rules. For example, in the UK, National Trading Standards acts as the legal backstop for the Advertising Standards Authority to take enforcement action in cases of misleading advertising.]

- Code advice and information (to industries covered)
- Are there structured seminar and/or training programmes for industry on the Codes?
- Are regular communications (such as advice notes, alerts or information) sent to industry by the SRO?
- Does the SRO or associated organisation provide copy advice to advertisers, ad agencies and media?
- Does the SRO or associated organisation provide a pre-approval service
- Do the listed media have an internal screening process to ensure ads comply with the self-regulatory Codes and the law?

Awareness and Transparency (for public)

- Does the SRO actively inform the public of their right to complain?
- Does the SRO have a website with the Codes and information on how to complain?
- Does the SRO have a website with written decisions of adjudications?
- Are policymakers and stakeholders sent copies of all decisions of the adjudication panel?
- Is there a structured program to inform policymakers and stakeholders of current issues?

Monitoring and auditing

- Does the SRO monitor complaint performance standards?
- Are timeliness performance standards monitored?
- Is there regular analysis of the type and number of complaints?
- Are the performance standards and results publicly stated?
- Is there regular analysis of the sources of complaint?
- Is there regular analysis of the type of complainant –consumer, consumer organisation, lobby organisation and competitor?
- Is the complaints data benchmarked against similar SROs in other countries?
- Is the complaint upheld rate consistent with similar SROs in other countries?
- If your SRO uses a filtering/triage system for complaints, is the percentage of those filtered out consistent with similar SROs in other countries?
- Are the performance standards independently audited?

Another ‘system-wide’ consideration is access for complainants. What are the barriers to access to SROs?

6. Other SROs

The general criteria included in section 5 also apply to other SROs that have governance of branded content, such as those for media industries/sectors such as publishing/journalism.

The criteria in sections 5 and 6 are relevant for formal co-regulation between statutory or governmental agencies and self-regulatory organisations. Some of these arrangements also include what we term Industry Regulatory Organisations (IROs). As discussed, IROs are on the border between formal and ‘informal’ governance depending on their enforcement powers and activity, and on their inclusion in formal co-regulatory arrangements.

‘Best practice’ models for SRO governance

There are various statements setting out undertakings or best practice for advertising self-regulation and the conduct of SROs. This includes resources at international level (ICC, ICAS), regional level (EASA, APEC) and at national level. EASA’s 30th Anniversary Declaration (EASA 2022:1) advocates for ‘ad SR [self-regulation], often combined with legal backstops, [as] the best way to guarantee a high level of consumer protection and justified trust in advertising for the benefit of all stakeholders and society as a whole’. It promotes:

‘the participation of all advertising industry actors including digital pure-play companies’

‘technology-enabled advertising self-regulation’ (using ‘data-driven solutions where relevant’

‘national advertising self-regulatory systems recognising the unique value of locally rooted, independent, consumer-facing self-regulatory organisations’

‘responsive, inclusive, effective, and nimble advertising self-regulation’

It promotes a ‘common European approach’, albeit a qualified one:

‘Consider, explore, and implement European-wide solutions to emerging challenges where relevant. These shall foster harmonisation while enabling adequate adaptation to local markets and enforcement by local advertising self-regulatory organisations’.

Such localisation/‘subsidiarity’ is also reflected in EASA’s (2002:11) ‘Statement of Common Principles and Operating Standards of Best Practice’, which states:

‘24.3 Codes should reflect national culture, law, and commercial practices, within the spirit of mutual recognition’.

EASA advances its role in advocacy and promotion for the advertising industry:

‘Support the industry in enhancing advertising as a force for good, recognising that advertising has the capacity to contribute to promoting attitudes and behaviours that help respond to global challenges such as sustainability, diversity, social inclusion or equity, etc...’

EASA’s operating standards of best practice (EASA 2002: 10) sets out common principles for self-regulation. On ‘Effectiveness’, the principles are:

14.1. Notwithstanding the national legislative framework, self-regulation must be and seen to be effective, in both its operation and outcome.

14.2. Self-regulation must be rapid, flexible, current and applied in a non-bureaucratic manner.

14.3. Self-regulatory rules and procedures should be applied in both the spirit and the letter and regularly reviewed.

Section 16 on the interface with law, states:

‘Self-regulation must always be in compliance with the law, and no part of the self-regulatory process should deprive a consumer of the protection provided by the law’.

On Codes and their development, EASA (2002: 11) states

24.4 SROs should ensure that self-regulatory principles for advertising content are applied to new areas of advertising and commercial communications.

24.5 Self-regulatory rules and procedures should be regularly reviewed in the light of regulatory, social and technological developments, including consumer attitudes to advertising.

‘Best practice’: Integrating advertising standards: Government – Self-regulation

Various national and supranational authorities have drawn on best practice guidance to support an integrated system for effective advertising standards. For instance, APEC (2015) considered a document ‘Government’s Role in Promoting Effective Advertising Standards: Principles’.

The first of a six-point set of proposals, states:

‘1. Encourage Self-Regulatory Action. When consumer issues in advertising have been identified by stakeholders and it has been determined that an action needs to be taken, governments can consult with industry and other stakeholders to determine what policy options would be the most effective, and the role that self-regulation could play in addressing them’ (APEC 2015: 1).

Point 4 on ‘Multi-stakeholder Dialogue’, states ‘Governments can promote dialogue with and among stakeholders in Industry-Led Self-Regulation (ISR), including civil society groups such as consumer organizations. Point 5 on promoting effective programmes states, ‘Governments can play an

important role in monitoring, evaluating, and reporting the effectiveness of self-regulatory programs, and to promote best practices with the industries' (APEC 2015: 1)

- Does the SRO have cooperation arrangements with other regulatory and self-regulatory agencies to redirect complaints to the correct body?
- Do cooperation arrangements between the SRO and other regulatory and self-regulatory agencies include the avoidance of double jeopardy in the event of a Government agency or other self-regulatory agency and the SRO receiving the same complaint?
- Is the government connected to the SRO?

GALA (2019, 2024) argues this can potentially increase the effectiveness of the system – a proposition to be tested empirically. Is there a positive relationship between the extent of government involvement in SRO activities and the effectiveness of regulation?

BCG Project: Indicators of Governance Effectiveness: Branded Content Governance

This section outlines the general criteria set out by the BCG Project in 2023. Section 7 below sets out our summary of recommendations for best practice arising from or full analysis in 2025.

General/integrated

- Goal to reduce deceptive and misleading advertising in the context of branded content
- Identification of marketing communications
- Identification of sources
- Rules on separation of marketing communications from editorial/'non-advertising' content
- Promoting media and communications accountability through legal and self-regulatory mechanisms.
- Fostering meaningful public consultation and participation in the policy process.
- Employing multiple policy mechanisms and tools to achieve objectives.

Awareness: the extent to which there is Awareness - Knowledge and understanding of schemes designed to regulate the promotional communications environment, especially as applied to branded content...

Adoption: Concurrence with schemes and enduring acceptance of authority of regulatory bodies as applied to branded content

Attitude: Perception in terms of trust, credibility and legitimacy of regulatory bodies in respect of branded content

Action: extent of compliance with schemes, numbers of complaints received, disputes handled, and levels of governmental engagement in

respect of branded content. (Adapted from Just, Latzer, and Saurwein 2007; Latzer 2007; Saurwein 2011)

- ‘Universal’ scope and application of governance rules and arrangements
- Definitions (of marketing communications) scope of rules (law, SRO codes etc. to cover branded content
- Platform/technology neutrality
- [to consider suitability and scope for platform/tech neutral, and value for platform/tech specific and ‘context sensitive’ rules and governance arrangements]
- Future-proofing and adaptability

Principles-led governance arrangements; role for specific rules and guidance (‘soft law’ guidance, etc.)

1. Executive/Government

Government sets criteria for governance (subject to legal and parliamentary/legislature oversight) that addresses the full range of branded content practices.

2. Legislation/Legislature

A clear legal framework

Explicit application of law across branded content practices

Legal enforcement as the foundation/‘backstop’ for governance

3. Courts of law

4. Statutory regulatory authorities

5. Advertising SROs (inc. co-regulation); other SROs

- Do codes cover the full range of marketing communications (including commercial and non-commercial) including in editorial /advertorial/ native formats?
- Are branded content communications in all types of media (including advertiser controlled digital platforms) covered by the Codes?
- Are merchandising, sales promotions, sponsorship and other forms of promotion (e.g. advergames) covered by the Codes?

Branded content performance levels in assessments of SRO

Adjudication (enforcement) – BC only

- How many claims/disputes/appeals/cases/decisions, etc. have addressed matters of direct relevance to branded content? What is the rate of a) complaints b) independent investigation of cases b) processing of complaints [deemed out of scope; rejected; pre-adjudication resolution; adjudication outcome c) compliance d)
- How consistent are the self-regulatory codes [relevant to branded content] with the law? If consistent, GALA (2019) assumes higher effectiveness.

The closeness between the law and SRO codes also means that SRO codes can be used as guidelines for understanding the law – better understanding implies greater effectiveness (and means the rules are easier to comply with).

SRO responsiveness to changing market conditions/practices

- How often does the SRO modify its codes, revise their decisions, meet to discuss recent developments, etc.

6.5 Problems and Challenges in Branded Content Governance

This section discusses problems and challenges in branded content governance highlighted in our 32-country report. This summary complement and develop our more general identification of problem areas set out in our ‘Problems and Mitigations’ analysis. This section is followed by a similar effort to draw out examples from our 32-country study but one focused on identifying areas of notable good/better practice.

Key challenges for branded content governance

The challenges of regulating digital communications platforms and services are all relevant to branded content governance as types of content and services on these platforms. The major digital platforms from the USA, and China, pose challenges for EU supranational and national governments. The regulation of digital content is, to varying degrees, ‘emergent’ in national governance and where regulated is usually subject to multiple pieces of legislation and regulatory agencies.

State authorities lack jurisdiction over foreign-based digital platforms. Within the EU, the application of the General Data Protection Regulations (GDPR) constrains regulators’ monitoring capabilities for targeted advertising. Regulatory oversight gaps also exist concerning AI-generated content and programmatic advertising.

Austria is affected by the problems shared by most countries, such as technological changes outpacing regulation. The online sphere remains the most difficult to supervise and digital advertising poses most significant challenges to consumer protection with the continuous blending of editorial/user generated and commercial content, and the use of data to target consumers. Despite these issues, KommAustria’s remit extends to intermediary services, platforms and video-sharing platforms. It also acts as national ‘Coordinator for Digital Services’, and enforces the Digital Services Act, with continuous developments aiming to improve regulation in this sector (Roundfunk and Telekom Regulations n.d). In line with most EU countries, the digital sphere poses significant regulatory challenges, with the regulatory focus and the strongest enforcement mechanisms relegated to breaches of rules causing consumer harm and strict rules for audiovisual content, but weaker enforcement for digital and social media marketing.

Problems in governance

European Union

As 27 of our countries are EU member states, we begin with some problems and limitations at EU level. EU legal provisions for transparency and disclosure in commercial communications have a wide scope and application. However, calls for the UCPD to be updated to address influencer marketing disclosure have so far been rejected. 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.

The development of policy in relation to disinformation and media freedom has identified the need for disclosure of sponsored content and hidden advertising. Likewise, there have been policy debates on the need to identify and disclose AI-assisted/AI-generated content including marketing communications. A Bill introduced to the US Senate in 2023 (S. 2691) would, if enacted, require ‘each generative AI system that, by means of interstate or foreign commerce, produces image, video, or multi-media content to include on such content clear and conspicuous disclosure’ Similar requirements would apply to text AI-generated content. Enforcement would be the responsibility of the Federal Trade Commission. The bill would also establish an ‘AI-Generated Content Consumer Transparency Working Group’ comprising regulators, academics, technologists, and others, tasked with creating ‘technical standards for AI-generated content detection technology to assist platforms in identifying image, video, audio, and multimedia AI-generated content’.

Under the EU AI Act, article 52 (3) requires that ‘Deployers of an AI system that generates or manipulates image, audio or video content constituting a deep fake, shall disclose that the content has been artificially generated or manipulated’. The Act is not explicit on all requirements for marketing communications, but a new section added to article 52 in February 2024 indicates the importance of both formal statutory and self-regulatory codes addressing labelling and disclosure. Article 52 (4a) states:

The AI Office shall encourage and facilitate the drawing up of codes of practice at Union level to facilitate the effective implementation of the obligations regarding the detection and labelling of artificially generated or manipulated content. The Commission is empowered to adopt implementing acts to approve these codes of practice in accordance with the procedure laid down in Article 52e paragraphs 6-8. If it deems the code is not adequate, the Commission is empowered to adopt an implementing act specifying the common rules for the implementation of those obligations in accordance with the examination procedure laid down in Article 73 paragraph 2.

Such policy approaches would enable more general action to require the disclosure of the interests of sponsors, marketers or other actors who exercise payment (or economic consideration) and control over communications content. However, the actual development of policy has involved processes we call compartmentalisation and deconvergence. In some case we can see evidence of policy changes reducing the risk of a policy issue, such as disinformation, leading to action that would curtail commercial activities in the media-marketing ecology.

The AVMSD provisions, incorporated into national law in EU member states are a strength, mandating transparency 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 of the program to inform viewers of any commercial involvement. However, the AVMSD covers television broadcasting and on-demand programme services but not radio broadcasting, podcasting or other media. Some regulators such as the ASA in the UK have begun to explicitly pay closer attention to podcasting not least because of the relatively recent and rapid expansion of this form and its increasing deployment in various forms of branded content and commercial communications. In addition, the AVMSD establishes similar but divergence regulation for television services and ODPS. These differences have been repeated, and in some cases expanded in national law and regulation. 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 .

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 resources of the business sector. This disparity is compounded by related problems including low public awareness of EU consumer protection. The EU lists low awareness levels about consumer rights as one of the reasons for weak enforcement in their New Deal for Consumers (European Commission 2018a).

The remainder of this section considers problems and challenges for governance that manifest at the level of national governance but may also apply to varying degrees also to supranational and sub-national governance.

Branded content innovation and legacy governance influences

Branded content governance is affected by the historical, institutionalised divisions in the regulatory treatment of communications industries and practices. Examples include divisions between the regulatory treatment of public service and commercial media, where the latter are subject to

'light' regulation, including for marketing/commercial communications. The separate treatment of private/public services (with separate legislation or separate rules/extra regulations created by public broadcasters, the protection of public services can be sometimes treated as sufficient, which leads to treating private services as, by default, open to commercialization with limited regulatory oversight of commercial communications).

Another example is the way that the relative neglect of radio compared to television (and audiovisual) in communications policy and regulation. is reflected in comparatively weaker regulation of commercial communications in radio. From the inception of the EU's Television Without Frontiers directive, on to the current version of the Audiovisual Media Services Directive, radio broadcasting

Regulatory gaps, anomalies and deconvergence

The co-existence of older and more recent laws can be a source of confusion where both are operative. This is most evident where there are different sectoral laws for media creating confusion about how the law applies across contemporary practices that may be occurring outside the sectoral legal framework.

The remits of statutory regulators (or other governmental agencies such as State Ministries) may be overlapping or unclear, creating uncertainties. For example, in Bulgaria, digital content is regulated by all statutory regulators active in the media sector: consumer protection, competition, electronic media, communications and data protection.

Our 32-country study highlights the importance of recognising system disruption and dynamic change and incorporating this into expanded media system/governance analysis. Some systems are undergoing intense political change and turmoil. Poland's parliamentary elections of 2023 ousted the Law and Justice party, which had instrumentalized public broadcasting as a propaganda tool for the far-right government. Policy priorities in such conditions can reduce the capacity and attention towards issues that are regarded as less pressing and important and that can reinforce the relative neglect of branded content, which may be viewed variously as nascent, emergent, complex. In addition, governmental priorities may increase support for voluntary governance or market solutions over statutory regulatory capacity.

The regulatory framework in Australia is fragmented across different media formats. Audiovisual media (TV and radio) is strictly co-regulated under ACMA, while print and online publishing are mostly self-regulated by the Australian Press Council. Social media marketing falls under ACL and self-regulatory codes but lacks the application of co-regulatory measures, leading to inconsistent enforcement. Consequently, platforms can evade the strict regulation applied to traditional media, creating regulatory gaps. (refs; ACL)

Other regulatory fragmentation

Our reports show particularities across the systems that can generate or intensify regulatory fragmentation. Belgium's approach to branded content governance is unique due to its decentralised and regionalised regulatory system. Unlike most EU countries, which have a single national media regulator, Belgium divides regulatory responsibilities among three linguistic communities: the Flemish Community (overseen by the Flemish Regulator for the Media, VRM), the French Community (regulated by the Conseil Supérieur de l'Audiovisuel, CSA), and the German-Speaking Community (supervised by the Medienrat). This system can deliver, as designed, context-specific governance oriented to the specific needs of each linguistic community. However, in relation to branded content this regulatory fragmentation can result in differences in the implementation and enforcement of branded content rules across Flanders, Wallonia, and Brussels (Upadhyaya 2021). Regional regulatory fragmentation leads to variations in the enforcement of EU-based rules, as each linguistic region independently oversees compliance, creating inconsistencies in branded content governance. For instance, Flanders and Wallonia have separate rules for product placement and sponsorship, and broadcasting regulations differ across regions despite being based on the Audiovisual Media Services Directive (AVMSD) (RTL 2021).

Germany operates under a complex multi-level regulatory federal system. Advertising is governed at both federal and state levels, leading to layered requirements. Unlike Belgium, where regulation aligns with linguistic communities, Germany maintains separate regulatory bodies at the state (regional) level while ensuring interstate coordination through specific umbrella organisations in certain sectors. However, advertising regulation—particularly rules around unfair competition practices under the Act against Unfair Competition (UWG)—is enforced through civil litigation by industry associations, rather than a single coordinated statutory body. Thus, advertisers in Germany must navigate a patchwork of state-specific regulations, federal competition laws, and sector-specific enforcement mechanisms.

Germany's branded content regulatory framework demonstrates a robust system rooted in competition law and supported by a decentralised federal structure with strong enforcement powers. This approach is particularly effective in traditional media contexts, where clear rules and established enforcement pathways ensure compliance. However, it faces significant challenges in adapting to the complexities of digital advertising. The reliance on private litigation under competition law limits proactive monitoring of emerging issues like influencer marketing, AI-generated content, and programmatic advertising. These gaps are compounded by the limited scope of Germany's self-regulation of advertising.

Self-regulation issues

Limited scope of some SRO remits

Austria's advertising self-regulation focuses on social responsibility, decency, and public morality. The Austrian Advertising Council (Österreichischer Werberat) plays a key role in ensuring that advertising avoids sexism, discrimination, and harmful stereotypes. This approach allows the SRO to regulate content in areas where legal measures may not be appropriate or sufficient. The Council lacks binding enforcement mechanisms, and relies on reputational pressure, issuing public warnings. Brands that repeatedly violate ethical advertising standards face no formal penalties. This strong focus on socio-cultural responsibility in advertising, makes the Austrian Council a unique model within Europe.

Finland - The Council of Ethics in Advertising, despite following the ICC Code, has a remit limited to issues of 'discrimination, decency and social responsibility', and is not authorised to make statements regarding misleading advertising, product placement, or any other legally regulated advertising practices. In contrast, the Board of Business Practice handles business-to-business disputes relating to unfair commercial practices and presents itself as a quicker, more discrete and cost-effective alternative to court proceedings.

Limited enforcement powers

In some systems, including the UK, the advertising self-regulator takes the primary role in addressing BC issues, without the enforcement powers which would have been available if the available statutory regulations were enforced by the statutory regulator instead.

Emergent practices, actors and processes in the media-marketing ecology

There are differences in the way influencers are defined and treated across the systems we examine. Influencers may be positioned as traders but also as content-creators, publishers, as part of or independent of brands who commission them. Influencers may be subject to specific regulations. For instance, some SROs incorporate or draw on the ICC rules on influencer marketing and, like the ICC, may reiterate core code requirements (such as identification) but set out detailed requirements. In other systems, there are no explicit rules and influencers are subject to general rules only. Some SROs have added rules organised by categories such as 'influencer marketing' or 'online behavioural advertising'. This shows SRO activity and efforts to address new issues and challenges arising from digital communications. However, this 'add on' approach can create uncertainty between the status of advisory guidance and codes/rules where there are gaps or where the enforcement of 'guidance' is unclear. It is also significant, for our study, is that such additional rules do not always capture the totality of relevant branded content practices under the added provisions.

Lack of rules on influencer marketing

Bulgaria lacks a dedicated legal framework for influencer marketing, relying on general advertising and consumer protection laws. Guidelines published by the National Council for Self-Regulation (NCSR n.d.) are voluntary. There are no specific penalties for influencers failing to disclose paid partnerships, and platforms are not required to enforce transparency rules on influencer content. This gap highlights the need for legal disclosure requirements and platform enforcement to ensure consistency with the DSA.

Croatia lacks a dedicated legal framework for influencer marketing, relying instead on general advertising and consumer protection laws. This creates regulatory gaps in disclosure requirements, enforcement, and platform responsibility, leading to inconsistent transparency practices. Despite HURA's focus on the importance of transparency in the digital sphere, a concern which includes influencers and their commercial activities, there is no formal oversight or enforcement mechanism. Croatia's legal system is fragmented and complicated, with many overlapping laws covering areas relevant to branded content, leading to confusions and difficulties in enacting the laws in practice. Croatia also lacks a centralised advertising regulator, relying on the Agency for Electronic Media (AEM) and the Croatian Competition Agency (AZTN), along with self-regulatory body, the Croatian Association of Communications Agencies (HURA). There are no existing co-regulatory arrangements, although the system is developing in that direction. This still evolving, and fragmented structure can lead to gaps in compliance and accountability.

Non-compliance in influencer marketing

The Australian Influencer Marketing Council (B) developed a Code of Practice, which is widely referenced, although the full guidance remains accessible to industry members only, limiting transparency and public scrutiny (AIMCO 2021). Aimco is a IRO, an industry body with no legal powers but also lacking the enforcement powers found in most self-regulatory organisations (SROs), as an early review of its code highlights (Wilkinson 2021). In 2024, Ad Standards, part of the Australian Association of National Advertisers, issued updated guidance on disclosing ad content in influencer marketing (Ad Standards 2024). However, a significant challenge in Australia remains the high level of non-compliance with influencer disclosure rules. The Australian Competition and Consumer Commission (ACCC 2023) assessed a sample of social media accounts and found that 81% of influencer posts (in a study of 118 influencers) failed to disclose commercial intent properly, presenting paid promotions as personal recommendations, featuring undeclared product placements, using discount codes and referral links, and tagging brands without clear disclosure. ACCC Acting Chair Catriona Lowe, said 'Based on the findings of our sweep, we are concerned that influencers, brands and advertisers are taking advantage of consumers' trust through hidden advertising in social media posts by influencers'. She added 'We found that many

influencers were formatting their posts to hide their advertising disclosure or make it difficult for consumers to notice it’.

Austria faces challenges in enforcing influencer marketing compliance, in line with broader EU trends. Despite legal requirements for disclosure, enforcement is weak due to a lack of specific penalties or fines for non-compliance. The Austrian Advertising Council focuses on socio-cultural issues and lacks the power to impose fines or binding rulings.

In Ireland, influencer compliance remains problematic, despite the ASAI guidelines mandating clear labelling (e.g., #Ad, #Fógra). In 2023, the Advertising Standards Authority Ireland worked with the Competition and Consumer Protection Commission (CCPC) to issue new guidance on influencer marketing, addressing paid promotion, gifting and advertising of own-brand products and services (ASAI 2024). A 2023 ASAI reporting tool received significant complaint volume, highlighting growing scrutiny, but persistent enforcement gaps. Between its introduction on 17 November and the year end, 903 notifications were made, the majority (590) for missing disclosure labels or hashtags, but also for labelling that was incorrect (142), not upfront or otherwise lacking in visibility (171) (ASAI 2024: 15). Ireland’s Competition and Consumer Protection Commission (CCPC) highlighted the need for correct labels to disclose the commercial nature of content published online after serving compliance notices on influencer marketers for the first time in 2024 (Humburg and Bourke 2025).

An EU-wide sweep of social media posts across 22 countries, found that ‘97% published posts with commercial content, but only 20% systematically disclosed this as advertising’, 38% of those carrying out commercial activities did not use the platform labels designed for commercial disclosure, such as the “paid partnership” toggle on Instagram, but ‘opted for different wording, such as “collaboration” (16%), “partnership” (15%) or generic thanks to the partner brand (11%,)’ (European Commission 2024b). Only a minority (40%) ‘made the disclosure visible during the entire commercial communication’ while only ‘34% of influencers’ profiles made the disclosure immediately visible without needing additional steps, such as by clicking on “read more” or by scrolling down’ (European Commission 2024b). Of those who marketed their own products, services, or brands, most (60%) ‘did not consistently, or at all, disclose advertising’ (European Commission 2024b).

Limited enforcement of influencer marketing rules

In Canada, ASC’s 2023 *Influencer Marketing Disclosure Guidelines* set clear rules, but the system lacks direct enforcement mechanisms. The Competition Bureau has issued guidance but does not monitor influencer content, and platforms are not held responsible for ensuring transparency in influencer posts.

In Cyprus, CARO’s Influencer Marketing Code is comprehensive and contains specific transparency rules. However, compliance relies on

cooperation with media outlets and platforms. In 2024, the Consumer Protection Service (CPS), in the Ministry of Commerce, and the Advertising Control Agency (ACA) this week signed a 5-year memorandum of understanding (Mou), aiming to inform consumers about the commercial pursuit of posts published by influencers on various social media platforms (Psara 2024). The Digital Services Act (DSA) applies to Cyprus, but local implementation remains unclear and Cyprus was among five EU states (Czechia, Spain, Cyprus, Poland and Portugal referred by the Commission to the ECJ for their failure to implement the DSA effectively (European Commission 2025).

Challenges of AI and branded content governance

With the rise of AI-generated influencers and branded content, most of the 32 country systems do not yet address synthetic media or non-human content creators.

Lack of integration of branded content in platform and data governance

Several EU countries, including Finland, lack a dedicated regulator addresses transparency issues related to programmatic advertising or algorithmic targeting, despite GDPR and DSA obligations. Additionally, strong enforcement in traditional media contrasts with weaker oversight in digital and social media platforms.

Low public awareness

In Bulgaria, public awareness of advertising transparency rules remains low, as regulatory bodies provide limited proactive transparency initiatives, particularly in online and social media advertising. The NCSR publishes rulings only in cases of non-compliance, limiting public knowledge of ethical advertising standards.

Poor protection for media integrity

Bulgaria is an example of a system in which editorial independence in sponsored content is poorly protected, with growing risks of hidden political and commercial influence. According to Index on Censorship (2013) in a report that is now over a decade old, branded content in news media is often not clearly labelled, increasing risks of covert advertising and political influence.

Gaps and anomalies in branded content governance: examples

Here, we summarise some of the examples provided in this report and discussed further in other BCGP publications.

Influencer marketing and professional publishing in the UK

Our reports (Hardy et al. 2023, Hardy 2024) on UK governance highlight that the obligations to disclose payment or gifts are stronger for influencers/creators than for professional journalists.

The standards for news and periodical publishers should be at least as high as those that apply to social media influencers, many of whom self-publish and operate outside of the professional, institutional and governance arrangements found in news and periodical publishing. For instance, the CAP and CMA (2020: 4) guidance states:

If you have any sort of commercial relationship with the brand, such as being paid to be an ambassador, or you're given products, gifts, services, trips, hotel stays etc. for free, this is all likely to qualify as 'a payment [or other reciprocal arrangement]'. There's nothing wrong with getting paid to create content, but you need to be upfront about this with your audience.

That level of disclosure for influencers, who may be 'amateur' and individual self-publishers, exceeds the current practices of professional news and periodical publishers in the UK, where junkets, gifts, supplied goods, affiliate marketing and other 'reciprocal arrangements' are not consistently, clearly, and explicitly disclosed to readers. Such good practice for disclosure would also align with developments in the regulation of influencer marketing. The ASA has ruled that influencers who promote brands outside of contracted campaigns should nevertheless disclose their relationship to the brand to users who can then better assess their communications about the brand. This has arisen in cases where influencers and marketers/agencies have claimed that promotions were 'organic' and not paid or controlled by brands, but where the ASA has ruled that disclosure was required.

The obligations for social media creatives and influencers to declare payments, gifts, affiliate marketing links and other relationships with sponsors are clear but are not matched across UK journalism. The self-regulator Impress has long held that paid for editorial should be disclosed to readers and has recently updated its code. Yet, the majority of national news publishers are members of IPSO which does not address brand sponsored content in its Editors' code. Currently, a teenage creator on TikTok, working without professional or legal support, has a greater obligation to reveal 'incentivised content' than the professional publishing sector.

Branded entertainment and commercial references in audiovisual

The liberalisation of product placement rules in the 2010 Audiovisual Media Services Directive (2010/13/EU) was accompanied by rules limiting what products and services could feature and what programme types could include product placement. The Directive was updated in 2018. The Directive carries a principles-led, comprehensive requirement for the

disclosure of commercial communications in audiovisual services. Article 9 (1), unaltered from the 2010 version, states:

Member States shall ensure that audiovisual commercial communications provided by media service providers under their jurisdiction comply with the following requirements:

- (a) audiovisual commercial communications shall be readily recognisable as such;
- surreptitious audiovisual commercial communication shall be prohibited;

Article 11 (3) (d) of the Directive (2010 and 2018) requires that:

Viewers shall be clearly informed of the existence of product placement by an appropriate identification at the start and the end of the programme, and when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer.

The UK is a complex example as it is no longer subject to the AVMSD, but is subject to the Council of Europe's European Convention on Transfrontier Television (ECTT) (DCMS 2020). The UK is though an example of divergent treatment. Original production television programmes containing product placement are required to display a P sign at the start and end of the programme and after breaks. These rules were introduced in 2011 when product placement was allowed for the first time. The Ofcom Broadcast Standards Code Section 9: commercial references on TV (Ofcom 2024a) states:

9.14: Product placement must be signalled clearly, by means of a universal neutral logo, as follows:

- a) at the beginning of the programme in which the placement appears;
- b) when the programme recommences after commercial breaks; and
- c) at the end of the programme.

Note: The universal neutral logo is defined by the criteria set out in Annex 1 to the guidance accompanying Section Nine of the Code.

However, On-Demand Programme Services (ODPS) are subject to the following disclosure rule only (Ofcom 2020: 15):

Condition G

2.79 The ODPS in question signals appropriately the fact that product placement is contained in a programme, no less frequently than—

- a) at the start and end of such a programme, and
- b) in the case of an on-demand programme service which includes advertising breaks within it, at the commencement of the programme after each such advertising break.

Note: Condition G applies only where the programme featuring the product placement has been produced or commissioned by the provider of the service or any connected person

This means that, where applicable, ODPS programmes must disclose

product placement but are not required to use the P sign to do so. Having established a clear symbol (P sign) to denote product placement there would appear to be strong grounds to require this for all services. This would be the best way to ensure, and maintain, consumer awareness of paid placement which is the underlying objective of the Directive. A single, consistent sign would appear to provide the best means for public education and media literacy. The case against such consistency is weakened by the capabilities shown by virtual product placement whereby audiences can be served targeted (increasingly microtargeted and ‘personalised’) advertising inserted into programmes. As well as the advantages of coherent and consistencies, the disbenefits of allowing discretion in disclosure formats are also considerable, risking greater confusion or inattention by users. For governance, the risks are that divergent treatment weakens the disclosure requirement and its effectiveness across both television and ODPS services. As audiences continue to shift to streamers there reduced encounter with television programmes with P signs is likely to render the sign more confusing and less familiar, especially if it not present across the ODPS programmes that they more frequently and heavily consume.

6.6 Better Practice in Branded Content Governance

This section identifies areas of ‘better’ governance of branded content. In some systems there have been innovative efforts to identify and address branded content issues in governance. In some systems we identify arrangements that we think show how ‘problems’ in governance have been addressed. However, two key caveats must be made. First, any instance of ‘better’ governance needs a full assessment of its operation, impact and effectiveness within the context in which it occurs. We have not carried out such studies to provide the support necessary to make such assessments. Our reporting below is located at an earlier stage of analysis and is best understood as identifying potential areas of better governance. Second, we argue 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. We echo a key point made in Hallin and Mancini’s media systems analysis: ‘[normative] questions can never be answered in a purely abstract and universal way. It is not clear that media models that “work” in one context would also “work” in another very different one’. It must not be assumed that any component of governance that works effectively in one system can be uprooted to fit and work effectively in another. This is not an argument for extreme relativism or 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 work in actual, complex, networked, situated contexts.

Comparative analysis can also show possibilities to do things differently and can show evidence of effectiveness in the operation of governance arrangements. Both of those can make important interventions in policy

debates showing how alternative arrangements can operate and be successful. Again, such investigation is a process, and our early-stage work of 'identification' needs to be followed by more detailed examination into how, and how effectively, such governance operates. However, the opening up of alternatives is of great value, especially where there are powerful interests or incentives to delimit policy options in the ways described in this report and other BCGP publications. Our BCG study shows how such delimiting has taken place in UK policy debates (refs).

Comprehensive legal provisions for identification of advertising

Australian Consumer Law (ACL), enforced by the Australian Competition and Consumer Commission (ACCC), part of the Competition and Consumer Act 2010, prohibits false or misleading representations, extending to hidden advertising and requiring separation between editorial and commercial content (Fra). 'Failure to adequately distinguish advertising content from editorial content may amount to false, misleading or deceptive conduct in contravention of the ACL' (Cox and White 2019). However, Section 19 of the ACL exempts the information providers (media) from claims for misleading and deceptive conduct in relation to editorial stories and news (Fraser and Elhosni 2025).

Simple, overarching, and all-encompassing BC rules: Some Northern European countries (especially Finland) have one piece of legislation which covers all commercial communications and has a single, clear rule that applies to all media. Finland's Consumer Protection Act (1978) mandates uniform transparency standards across all media. The 1978 Act, in Chapter II, sets out requirements for advertising transparency. These are primarily focused on preventing false or misleading marketing practices but include the requirements that advertisements are identifiable, not hidden within other communications. Of course, such requirements pre-date the internet and digital media and the intensification of branded content from the 2010s but such general rules, established in legal provisions, counter fragmentations, gaps and anomalies in formal governance.

Austria enforces strict rules requiring all commercial communications to be clearly recognisable as advertising. The Federal Act Against Unfair Competition (the UWG) requires identification of commercial communications, and the Media Act (Mediengesetz), requires that any paid-for publication, in any format, across all media, must be marked as such. This comprehensive legal framework takes the lead in a system in which the advertising self-regulatory organisation has a narrow focus on taste and decency/harm and offence concerns. Austria offers an alternative model of advertising governance that prioritises statutory oversight and which limits the role of the industry self-regulation. Austria stands out as an example of good practice with its integrated approach to branded content governance and strong statutory bodies which have broad and complementary remits.

Belgium has a robust legal framework for advertising transparency and consumer protection, primarily derived from EU law. The Code on Economic Law (CEL) implements key directives such as the Unfair Commercial Practices Directive and the Misleading and Comparative Advertising Directive. Book VI of CEL covers advertising practices, ensuring that misleading claims are regulated. Disclosure of branded content is legally required, and hidden advertising is explicitly prohibited under Article VI.100 of the CEL. This integration of EU advertising rules ensures advertising transparency.

Innovations in Legal provisions for influencer marketing

France introduced new law in 2023 (Act No. 2023-451 of 9 June 2023) to regulate the influence marketing industry with the aim of combatting harmful practices by influencers and their agents and brand clients. The French government subsequently issued an ordinance No. 2024-978 on 6 November 2024 to modify the 2023 Influencer Marketing Law.

The original Act introduced legal definitions for “commercial influencer” and “influencer agent”, set out clear rules for labelling content, and contractual obligations for influencer partnerships, and banned certain industry sectors from using influencer marketing.

Among the Act’s requirements were that influencers must explicitly disclose the commercial or advertising nature of their content or posts using terms like “advertising” or “commercial collaboration.” This disclosure must be prominently displayed in French and remain visible throughout the duration of the promotion. The new rules are subject to oversight by the General Directorate for Fair Trading, Consumer Affairs, and Fraud Control (DGCCRF). In response to some influencers switching to English language in efforts to evade French law, the DGCCRF reiterated that the provisions of the French Consumer Code are applicable to all influencers, irrespective of nationality or language, where they target a French audience. (Bettach and Vuchot 2024).

The 2024 modifications affect two key areas of the 2023 law: labelling requirements for commercial posts were made more flexible, and the application of the French law to all European creators has been repealed. Under the original 2023 law, #publicité and #collaborationcommerciale were the only two transparency labels permitted; under the modified rules, creators may use labels as long as they are ‘clear, legible and understandable’ or an ‘an equivalent statement adapted to the characteristics of the influencing activity and the format of the communication medium used’.

The 2024 ordinance also clarifies Article 9 of the law to specify that it applies to creators working as commercial influencers and targeting a French audience. Creators and influencers targeting French audiences who

live outside the European Union, Switzerland or the European Economic Area must designate a legal representative in the EU to guarantee contracts and compliance with the law. The modifications to France's influencer marketing law follow advice from the European Commission that the law contradicted the Digital Services Act. The Commission advised the French government that the sections of the law pertaining to large digital platforms, social media networks and e-commerce encroached on EU regulations (Kolsquare 2024). The Act was also subject to lobbying and 'complaints from industry players that it lacked clarity at an operational level' (Kolsquare 2024).

The French law demonstrates an effort to establish specific regulations to address influencer marketing practices. While general requirements were already established in the French Consumer Code, the new law provided specific, targeted legal provisions, supported by statutory regulation. The DGCCRF levied sanctions against several individuals for deceptive commercial practices including disclose sponsored content and has powers to impose penalties of up to two years' imprisonment and a fine of €300,000 (Bettach and Vuchot 2024).

As the European Commission's fitness review summarises (EC 2024: 171), France, Spain, Italy, the Netherlands and Denmark have all adopted or updated laws to address influencer marketing in recent years, some by applying the AVMSD rules to influencers (Núñez-Gómez, Rangel-Pérez and Rivero 2025).

Influencer marketing is regulated under the Danish Marketing Practices Act, requiring clear disclosure of commercial intent. New guidelines from 2024 mandate stricter disclosure using hashtags like #Ad or #Sponsoreret. Influencers with business registrations must disclose all social media posts as commercial content. This requirement is based on the premise that all social media activity of these influencers constitutes a part of their business and therefore should be regulated, even if a specific post is not directly commercial in nature. The new guidelines explain when influencers classify as traders, details the responsibilities and disclosure methods and contains warnings about criminal liability. The guidelines introduce legally binding disclosure requirements, similar to those mandated by influencer law in France, and mandate platform responsibility for enforcing branded content transparency. This is a unique and innovative approach despite being based on wider EU consumer protection principles, as set out in the provisions of the UCPD that trader activities must be transparent.

In August 2023, the Federal Consumer Protection Office (PROFECO) in Mexico published the Influencers Advertising Guide as a reference tool for content creators, influencers, and the general public on compliance with the provisions on advertising established in the Federal Consumer Protection Law. The guide is non-binding but sets out suggestions for publications on digital platforms and social networks and non-compliance may still lead to enforcement actions under the FCPL (Villanueva-Plasencia et al 2023):

- Include the following tags in a visible place to inform if there is any type of commercial relationship with the trademark they recommend: #PaidAdvertising, #Advertising, #PersonalOpinions, #SponsoredBy.
- Do not include misleading or abusive descriptions.
- Include warnings for the safe use of the products, goods, or services, as well as restrictions or prohibitions for consumer safety or health reasons.
- Ensure that the opinion is limited to one's own experience with the products, goods, or services.
- Check that the trademarks, goods, or services are safe and comply with all the corresponding standards.

Following a public consultation in 2023, the Italian Communications Authority (“AGCOM”) published a resolution in 2024 containing guidelines for influencers. The AGCOM guidelines state that when ‘professional’ influencers meet certain criteria they should be regarded as audiovisual media service providers under the Audiovisual Media Services Code (TUSMA). Key criteria for influencers include having more than one million followers across all platforms, publishing regularly (at least 24 pieces of content over the previous year) and maintaining an average engagement rate of 2 per cent or higher on at least one social media or other platform over the last six months. The guidelines identify the provisions of TUSMA with which influencers must comply, including the protection of minors, protection of fundamental rights, commercial communications, and product placement. Non-compliance can result in fines ranging from €10,000 to €600,000. AGCOM has also created a specialist working group responsible for establishing further measures applicable to influencers. The AGCOM requires influencers to clearly label advertising content to ensure transparency. Influencers must comply with the rules on commercial communications, online shopping, sponsorship, and product placement set forth by the TUSMA. They also must comply with rules forbidding hidden advertising. When dealing with content that involves product placement, influencers must include proper disclosure about the promotional nature of the content in an immediately recognizable manner. Influencers must comply with intellectual property rules and comply with TUSMA provisions on audiovisual media services (Article 4), which include protection of individual freedom of expression, protection of human dignity, non-discrimination, fair information, and countering misinformation. However, smaller ‘micro’ influencers are not regulated in the same way as they do not fall under AGCOM guidelines, creating gaps in governance.

The regulations were partly prompted by ‘Pandoragate’, when influencer Chiara Ferragni, was fined over €1 million for misleading consumers about a charity-linked product promotion when she claimed that sales of a ‘designer’ pink pandoro would help fund a children's hospital in Turin (Vock 2023). The fine was imposed by AGCM, the Italian Competition Authority (Autorità Garante della Concorrenza e del Mercato) who said the false advertising had exploited consumers’ ‘sensitivity to charitable initiatives, especially those aiding children with serious illnesses’, and constituted

unfair commercial practice, violating Italy's consumer code (Vock 2023). In the Netherlands, from July 2022, the Dutch Media Act applies to professional influencers who meet specific criteria that include being active on platforms like YouTube, Instagram, or TikTok, having 500,000 or more followers/subscribers, posting at least 24 videos annually and receiving compensation (monetary or in-kind) for their content. Influencers who meet these criteria must register with the Dutch Media Authority (Commissariaat voor de Media), the Dutch Advertising Code Authority (Stichting Reclame Code), and the Netherlands Institute for the Classification of Audiovisual Media (NICAM). Such 'professional' influencers must clearly disclose advertising, sponsorships, and product placements in their content (Rijks 2022).

In Malta, influencers who promote products or services in exchange for compensation are classified as 'traders' under the Consumer Affairs Act (1996, last amended 2022). They are obligated to clearly disclose any commercial relationships to avoid misleading consumers. The Consumer Affairs Act transposes the provisions of the UCDP. In November 2024, the Malta Competition and Consumer Affairs Authority (MCCAA) issued guidelines specifying that influencers must:

- Use clear labels like "advert" or "advertising" to denote sponsored content.
- Place disclosures at the beginning of captions or prominently on the first screen of content.
- Avoid ambiguous terms such as "gifted," "partner," or "ambassador."
- Utilize platform-specific disclosure tools, like "paid partnership" tags. (Baldachinno 2024; Vella 2024)

The MCCAA enforces consumer protection laws and can initiate legal action against influencers or brands that fail to comply with disclosure requirements.

New influencer marketing guidelines have also been introduced in Finland in 2025. On 31 January 2025, the Finnish Competition and Consumer Authority (KKV 2025) adopted revised guidelines on influencer marketing. The guidelines require explicit, upfront disclosures for influencer marketing (e.g. #Mainos) and platform-specific labelling requirements. Social media platforms now share responsibility for enforcing compliance. Finally, in Germany, national legislation was changed in 2022 to create a presumption of remuneration for the commercial communication, unless the influencer proves otherwise (§ 5a para. 4 Unfair Competition Act; EC 2024: 171).

Public service media and BC governance

Many of our 32 systems maintains strict regulatory protections for public service media, including detailed rules and editorial guidelines on commercial references in content, sponsorship, advertiser-funded

programmes and other BC governance issues. The UK has strong statutory regulation for PSMs as well as self-regulation by the BBC and by the commercial PSMs (ITV, Channel 4 and Channel 5). The BCGP has made submissions to the BBC on its editorial guidelines (Hardy and MacRury2024) including a call for stronger identification of sources and for sponsors announcements in podcasts, and for the prohibition on advertising-funded programmes.

Ireland's main PSM, RTÉ operates under clear editorial-commercial separation rules outlined in the Broadcasting Act 2009, reinforced by the Future of Media Commission's 2022 Action Plan, protecting editorial integrity from commercial influences. As of 2024, the Irish media system and regulatory landscape are undergoing significant changes, with a focus on strengthening public services, and plans towards unifying rules, striving towards platform neutrality, to assure non-broadcast public service output is regulated as tightly as traditional broadcasting. PSM is an example of governance arising from 'positive' regulation and provision, not just regulatory compliance. The provision of PSM services whose standards and governance arrangements support editorial independence, aesthetic integrity, transparency in the use of sources and separation between editorial output and advertising creates a public communications space but also can influence practices and norms in the wider media-marketing ecology.

Protection for journalism and BC governance

The provision of strong PSM governance tends to include strong rules for the disclosure of advertising, sponsorship and commercial interests. Similarly, strong provisions to protect editorial integrity and journalistic standards in publishing correlate with stronger BC governance. However, the field of commercial journalism is in flux and standards of clear separation between editorial and advertising operative in many systems in the mid-20th century have come under increasing pressure since the 1970s (Hardy 2022; Hardy 2023a, Lynch 2018; Ferrer-Conill et al. 2020; Carvajal and Barinagarrementeria 2021).

Denmark is a good example of a country where strong funding for the press and a focus on editorial independence leads to high quality journalism and, as per example above, directs the public towards protected editorial content. As for PSM, such provision can create a valued and trusted, 'public good' communications space but also influence market behaviour across the national, and transnational, media-marketing ecology.

Principles-based and platform neutral regulation

Estonia's Advertising Act (2008) contains an explicit and comprehensive prohibition of hidden advertising, with rules that have uniform applicability across platforms. This prevents loopholes typically exploited in more

fragmented regulatory environments. Estonia's consistent cross-platform governance sets it apart from many EU states, especially those in Eastern Europe which tend to have complex, overlapping legislation.

Mexico's Federal Consumer Protection Law (FCPL) enacted in 1976 and subsequently amended mandates that all advertising must be truthful, verifiable, and not misleading. This applies to all forms of advertising, including content disseminated by influencers, although as stated above, the Federal Consumer Protection Office issued specific guidance for influencer marketing in 2023 based on the enforceable legal provisions of the Federal Consumer Protection Law.

Statutory oversight

The importance placed on statutory oversight in some systems has already been mentioned above, in respect to Austria, Belgium, Estonia, France and Mexico. The Austrian Federal Competition Authority (Bundeszweibewerbsbehörde) monitors misleading practices in advertising across all media. The Communications Authority Austria (KommAustria), though the enforcement of the Media Act (Mediengesetz), covers all media, although many of the rules regulating branded content come from other acts and are not platform neutral, with extra specifications aiming to adjust the requirement for commercial content identification and editorial independence to particular technologies.

Advertising self-regulatory organisation codes

The Australian Association of National Advertisers (AANA) Code of Ethics requires advertising to be distinguishable, contains explicit warnings against marketers 'camouflaging' commercial messaging, prohibits misrepresentation of commercial content as other type of content, and includes specific influencer disclosure rules, including guidelines on clear labelling.

The Greek Advertising Self-Regulation Council (SEE) produced a comprehensive code covering hidden advertising in all its forms. The updated version, published in 2023, emphasises the importance of 'distinguishing between advertising communication and editorial content or content that comes from users'. The distinct attention to hidden advertising as an issue and a focus on responding to challenges posed by new technologies and marketing practices are stand-out features. However, the enforcement of branded content rules, particularly in digital and influencer marketing, is severely limited. The Greek Ministry of Development and Investments is the government authority responsible for monitoring advertising activities and consumer protection laws, while the Advertising Self-Regulation Council (SEE) enforces the Hellenic Code of Advertising and Communication Practice (HCACP), updated to address influencer marketing (Syssilas 2024). However, SEE's voluntary compliance leads to low disclosure rates among influencers, while the National Council for

Radio and Television lacks sufficient resources, , and independence, for effective oversight and enforcement in digital media sectors (International Press Institute 2024)

Advertising SRO influencer marketing codes and guidance

The advertising SRO for Cyprus, CARO addresses influencer marketing through its Influencer Marketing Code, which is based on the European Advertising Standards Alliance (EASA) guidelines. CARO's Influencer Marketing Code explicitly defines influencer advertising and mandates clear disclosure of sponsored content. Influencers must use specific, unambiguous labels in their posts, such as #ad, #advertisement, #sponsored, or #paidpartnership, and platform-specific tags like "Paid Partnership" on Instagram/TikTok and "Includes Paid Promotion" on YouTube. Hidden advertising and misleading promotional practices are strictly prohibited, and all endorsements must be based on genuine experience.

In the UK the SRO (CAP-ASA) has issued and updated various guidance notices on influencer marketing and presented many of these as joint guidance between the SRO and the Competition and Markets Authority, a non-Ministerial government department.

Advertising SRO enforcement powers

The Advertising Standards Authority for Ireland (ASAI) has strong enforcement powers. In addition to naming and shaming and asking the members to modify or withdraw the advertisement, ASAI is also able to impose fees on its members, which is a rare, stand-out feature within the European system dominated by SROs with voluntary compliance and no such powers to levy fines themselves, such as the UK ASA. The ASAI Code also covers 'recognisability' of advertising in detail, reinforcing the principles of identification, disclosure, separation and transparency.

Co-regulation

Bulgaria's co-regulatory approach involves the National Council for Self-Regulation (NCSR) working with the main statutory authority enforcing the Audiovisual Media Services Directive (AMSD), the Council for Electronic Media (CEM). The NCSR has backstop enforcement powers within the areas covered by the AMSD (broadcasting, video-sharing platforms), unlike the weaker (or developing) and unsupported self-regulatory organizations (SROs) in many post-communist states. The NCSR's Code of Ethics covers advertising, branded content, influencer marketing, and digital media, providing a comprehensive framework for advertising transparency. Cyprus' co-regulatory approach involves close collaboration between the main self-regulatory body in advertising, the Cyprus Advertising Regulation Organisation (CARO) and statutory regulators. CARO works with the Cyprus Radio-Television Authority (CRTA) and the Consumer Protection Service

(CPS) to enforce advertising compliance. CARO's decisions influence legal enforcement, as both CPS and CRTA recognise its rulings, ensuring better alignment with advertising ethics and consumer protection laws. This well-integrated approach combines the swiftness of CARO's adjudication process with the statutory enforcement powers of the relevant authorities, resulting in a unique co-regulatory system, with some resemblance to the system in Australia.

Ireland's regulatory model combines statutory bodies with self-regulatory mechanisms. Key statutory authorities include Coimisiún na Meán (Media Commission), overseeing broadcasting and online platforms, the Competition and Consumer Protection Commission (CCPC), addressing misleading advertising, and the Data Protection Commission (DPC), managing GDPR compliance. The Advertising Standards Authority for Ireland (ASAI) provides self-regulation via the Code of Standards for Advertising and Marketing Communications, covering sponsorships, influencer marketing, and transparency across media. In 2024, ASAI and the Media Commission signed a cooperation agreement to enhance oversight and enforcement, particularly for online platforms and social media. This partnership aims to promote regulatory compliance, protect vulnerable groups, and foster consumer trust through joint initiatives and robust complaints processes.

Australia has a strong co-regulatory model, where industry-developed codes of practice are backed by statutory oversight from the Australian Communications and Media Authority (ACMA). The Broadcasting Services Act 1992, Telecommunications Act 1997, and Online Safety Act 2021 provide ACMA with the authority to intervene if self-regulatory bodies fail to enforce their own rules. This hybrid system allows the industry to develop their own codes while addressing breaches through a statutory framework. However, there are limitations. ACMA's powers remain reserved for cases when industry self-regulation proves insufficient, leaving enforcement largely reliant on industry compliance (ACMA 2015).

Australia's advertising self-regulation system relies on industry cooperation for enforcement, which limits its deterrent effect against repeat offenders. For instance, Honey Birdette, a lingerie retailer, has breached advertising rules over 70 times without facing significant penalties (Roper 2024). Ad Standards can request for adverts be modified or removed but lacks the power to impose fines. AiMCO established best practice guidance on influencer marketing that influenced other guidance, including that of the BCMA, an IRO. Yet, AiMCO, an IRO, lacks enforcement powers (Wilkinson 2021).

Advertising SRO-legal integration

Belgium's main self-regulatory organisation, the Jury for Ethical Practices in Advertising (JEP), is strongly embedded into the system. JEP enforces a code based on the ICC Advertising Code, ensuring that advertising is legal,

decent, honest, and socially responsible. JEP has a legal harmonization code, aligning advertising standards with statutory law while providing industry-specific guidance and compliance mechanisms (Association of Communication Companies n.d.)

Ad Standards Canada (ASC) is a highly developed self-regulatory body that oversees compliance with the Canadian Code of Advertising Standards. ASC operates as a Legal Harmonization Code, aligning industry standards with statutory law and ensuring compliance with advertising transparency rules. ASC operates as an independent self-regulatory body that complements statutory regulation, but without formal co-regulatory arrangements, working parallel to the Competition Bureau, Canadian Broadcast Standards Council (CBSC), and provincial regulators. ASC is established and generally respected by industry players, and responsive to technological developments, including digital advertising and influencer marketing. However, the number of cases it handles, especially regarding commercial content disclosure rules, is low. In 2019, ASC received 6 complaints under clause 7 (Influencer Marketing and Testimonials (ASC 2020).

The Advertising self-regulator in Cyprus, CARO, plays a central role in ensuring transparency of commercial communications, with a comprehensive legal harmonisation code covering hidden advertising in all its forms, and with extra protections for children.

Addressing broader and emergent issues across digital communications

The Australian Competition and Consumer Commission (ACCC) is investigating digital advertising transparency and platform accountability through inquiries: the Digital Platform Services Inquiry (2020–2025) and the Digital Advertising Services Inquiry (2020–2021). The ACCC has recommended stronger consumer protection measures, including mandatory verification processes for businesses and advertisers on digital platforms, public reporting on platform content moderation efforts, and a notice-and-action mechanism to handle complaints about misleading content. This proactive regulatory scrutiny and rich research can inform global discussions on regulating advertising transparency and deceptive influencer practices.

Recent developments relevant to best practice recommendations

In January 2025, Italy proposed a draft law to combat fake and paid-for online reviews, especially in the hospitality sector. The law would require reviewers to provide verifiable ID and proof of visit, and would ban sponsored or incentivized reviews. Italy's antitrust watchdog would oversee enforcement.

In March 2025, Spain approved a bill imposing significant fines on companies that use AI-generated content without proper labelling. The measures aim to curb the use of 'deepfakes' and align with the EU's AI Act. Non-compliance with correct labelling of AI-generated content is regarded as a serious offence with powers to fine up to €35 million or 7% of global annual turnover (Reuters 2025).

7. Summary and Recommendations

7.1 Summary of Findings

BCGP 32-country comparative study

- First comprehensive cross-national study of branded content governance across legal, regulatory, and self-regulatory frameworks.
- Establishment of a standardised governance dataset, providing a central resource for policymakers, industry, and researchers.
- Identification of best practices and problems in governance, supporting evidence-based policy recommendations.

Our focus on branded content governance, an area which exists across multiple regulatory areas and encompasses various types of commercial content (including sponsorship, product placement, search advertising, influencer marketing, and others), creates an umbrella categorisation, which allows for capturing hidden advertising in all its forms, forming the basis of the comprehensive and unique contribution we offer through the project.

Our 32 country reports and analysis achieve the overall aim of the BCGP to '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 by stakeholders. It achieves the first project objective to 'determine the current regulation and governance arrangements for branded content through systematic cross-national comparison'.

7.2 Summary of Analysis: Problems and Mitigations

Deconvergence

A process of regulatory convergence to match communications convergence has been underway for more than half a century, at national and supranational levels. Yet, this process is underdeveloped when it comes to issues at the interface of media and marketing communications. Both national media systems 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 format) forms
- Extensions of rules to 'new' digital media that can lack scope and reach, clarity 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 in 'online harms' agendas.

The explanations for why include;

1. The continuing influence of historical arrangements (drawing on new institutionalism and discursive institutionalism)

2. The 'relative' neglect of media-advertising governance issues (partly arising from 1 but also other factors)
3. The relative strength of arguments and 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 de-limited in scope by application to specific media forms or practices.
5. Regulatory risk management – this is an essential and ongoing activity for those whose activities are affected by regulatory action. Our analysis focuses on the specific forms this can take by actors, particularly those businesses or enterprises that are affected by governance of media-marketing.
6. Corporate lobbying power
7. Disincentives for expenditure of 'political (governance) capital' by politicians.

All these tendencies can generate gaps, omissions, anomalies in formal governance. These tendencies can also be mutually reinforcing, exacerbating problems of 'deconvergence'. They can also influence and be manifested in the examples of 'compartmentalisation' we examine. We give the example of EU disinformation policy which initially set out a broad mapping of the problem that included brand sponsored content. However, the EU supported an industry-led Code that removed 'misleading advertising' from the scope of disinformation as a policy issue. The full analysis of the influence and effectiveness of corporate lobbying by key actors in the media-marketing ecology is a task for future research. However, we can identify compartmentalisation as part of a strategy of regulatory risk management. 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.

There are gaps and anomalies in governance. **The BCG project argues that, overall, the governance architecture needs to be overhauled.**

Reach of Regulation

The contemporary media-marketing ecology involves a much greater and more diverse range of actors than were involved in the period of professional mass media (from early 20th century to 1980s) when some of the key institutional arrangements for advertising governance were first formed. We examine this as a shift from a triad of institutionally interlinked professionals (marketers, marketing agencies and media) to a sextet, with a greater range of actors some of whom, across the pro-am spectrum, are less embedded in, and less supported by, inter- and intra-institutional and professional system. The self-regulation of advertising has been based upon formal and informal mechanisms to encourage and uphold compliance amongst closely interacting market actors. Those conditions

have come under increasing strain with the expansion of transnational digital media platforms and services, the adtech system, automation and socio-technological innovation in marketing tools, the challenges for marketing agencies and transformations in marketing service provision, all of which have increased marketing opportunities and access for marketers. We examine these changes in Mapping the Media-Marketing Ecology. These changes have also influenced policy deliberation on whether existing governance arrangements need to be revised and updated. The BCGP has examined such policy debate in the UK including the Online Advertising Programme consultation (Hardy et al 2023*, Hardy 2024). The ability of all existing governance systems to reach across all relevant activities and actors is under question and scrutiny. The problems are arguably most acute for voluntary, self-regulatory arrangements, although these systems have also worked to bring new actors into the system as marketing expands, from digital marketers, for those operating in the 1990s, to influencer marketers today.

Compliance

A discourse of ‘responsible’ versus ‘rogue’ marketers is evident in the arguments of those seeking to retain the primary role for advertising self-regulation in the UK (Hardy et al 2023, 2024) and in wider policy discourse. This seeks to distinguish, and delimit, the case for stronger regulatory action to specific non-legal activities carried out by rogue actors, while arguing 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 platforms and publishers, to marketing agencies and other intermediary service providers including relevant adtech systems, as well as the client/sponsoring brands or other marketers, and the creators or others involved in the production, circulation of marketing communications. Also, undeveloped in governance systems, are the compliance responsibilities for users including those producers involved in the recirculation or repurposing of the communications. The BCGP has only conducted its own limited studies of compliance 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 compliance, such as the study by Annabell, Aade and Goanta (2024) on platform compliance discussed above, and others cited in our country reports, including Goanta (2020). Important questions about the levels of compliance in specific industry sectors and contexts lie beyond our study, but 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.

Weak enforcement

There are problems of enforcement across all forms of governance. Some general reasons for this include the 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 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. Problems of enforcement are not limited to self-regulatory Organisations, some of whom, like the ASA, have developed AI tools for very extensive, proactive monitoring to underpin enforcement. However, most SROs lack ready access to legal enforcement and lack powers to impose fines. SROs also comprise the media-marketing industries they seek to regulate and so their capacity for enforcement action varies.

Definition indeterminacy

Branded content involves the merging and hybridisation of elements that have been treated as separate: 'advertising' and 'media'. As we discuss above, this is not a new phenomena, nor a new issue for governance and critical debate as both have origins in the growth of newspapers and early mass media from the 17th century. However, the hybridisation of media-marketing has expanded in the digital age, with ever evolving forms and formats. There is a problem of indeterminacy in respect of identifying and regulating branded content. This is present with different, but cumulative, effects across actors in the media-marketing ecology: creators, marketers, marketing agencies, governments, regulators, courts, communication users, complainants.

Low consumer/user awareness

Given the indeterminacy of branded content, including for users and actual/potential complainants (who may be individuals, groups, market competitors or other actor), governance problems are increased by lack of awareness. As discussed above, research shows a low level of EU consumer awareness of consumer protection. One important aspect is low awareness of SRO complaints mechanisms, which may account for the relatively low number of complaints to the 26 European SROs in EASA's (2024) study: 55,790 complaints related to 35,096 advertisements in 2023 (see Appendix x).

Summary of Governance Problems

Table 9: Summary of Governance Problems

Governance	Problems
Deconvergence	Legacy of different rules/treatment of media
	...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, complainants and courts.
Low consumer/user awareness	Low awareness of governance tools and processes available to users

7.3 Towards ‘Mitigation’ of Problems and ‘Solutions’

Building on EU attention to regulatory convergence

The EU has articulated policy goals that include not only convergence in the sense of harmonisation across members states but also what we term regulatory convergence, the establishment of rules applied across converging communications forms and practices. The European Commission’s (2022) proposal for the EMFA describes how ‘[a] common EU approach, promoting convergence, transparency, legal certainty and a level playing field for the relevant media market players is the best way to advance the internal media market’ (European Commission 2022a).

The EC sets out concerns about ‘insufficient cooperation among national media regulators’ and how ‘insufficient regulatory convergence affects media market players’ (European Commission 2022*). They claim that the focus on Audiovisual services is too strong and comes at a cost to other areas of regulation (for example ERGA only being able to act within this narrow scope). They conclude that the ‘problem’ of unevenness in levels of editorial independence and quality of media services ‘is driven by fragmented safeguards to prevent interference in the editorial freedom of all media and uneven independence guarantees for public service media’ (European Commission 2022a). Two of the four specific objectives of the proposal are (2) ‘increasing regulatory cooperation and convergence through cross-border coordination tools and EU-level opinions and

guidelines'; and (3) 'facilitating provision of quality media services by mitigating the risk of undue public and private interference in editorial freedom' (European Commission 2022a)

The EMFA is a regulation rather than a Directive, designed to ensure consistent implementation: 'In view of the issues to be addressed and given the economic, social and political context, a regulation is more suitable than a directive to ensure a consistent level of protection throughout the EU and reduce regulatory divergences that would hamper the independent provision of media services in the internal market' (European Commission 2022a). However, the EMFA itself fails to pursue a convergence agenda in areas relevant to advertising and branded content (as outlined in section 6.1 above). The only attention to advertising is state subsidy with no statement or measures on protecting media freedom from the commercial interests of advertisers or owners.

Leveraging the EMFA's focus on Very Large Online Platforms (VLOPs)

VLOPs play a crucial role in disseminating branded content and an increased focus on their activity resulting from the EMFA's targeting them for increased regulatory scrutiny shines a light on how opaque advertising practices on platforms contribute the spread of disinformation and erode trust in media. This creates opportunities to argue for a continuous application of stricter rules on transparency and accountability and considering the role and prominence of BC in this context. The EMFA already created some interesting and indicative anomalies such as Google's decision to halt political advertising in the EU. Google claims that political advertising lacks a clear definition, indicating possible blurring of the distinction between commercial and political ads, the intertwining of the issues, and a need for greater clarity in content labelling, putting identification at the forefront of the discussion (Weatherbed 2024). Given the continually growing role of digital platforms in content distribution, the EMFA's provisions on platform accountability and transparency will be critical in shaping the future governance of BC, opening a space for actors opposing commercial influence to provide valuable insights into ongoing developments, helping to inform policy recommendations that balance market innovation with ethical governance and consumer safeguards.

Promoting convergence and cooperation: The EMFA can serve as an instructive example of 'converged' legislation as it concerns all types of media (to counter the previous focus on audiovisual media services) and treats the issue of 'uneven' regulation in the areas of media plurality and freedom as a harmonisation issue (Sjökvisst 2024: 46; 51). This emphasis on regulatory cooperation and convergence offers opportunities to advocate for common standards across Member states, and to argue that irregular application of media regulations, particularly in the digital realm, creates gaps allowing for exploitative uses of BC.

Building on the EMFA's principle-led approach: the principle-led nature of EMFA provides a flexible framework for addressing challenges in the media sector and creates opportunities to advocate for the integration of commercial content regulation into existing frameworks, emphasising its relevance to broader issues like media pluralism, consumer protection, and disinformation. The shift away from the prioritisation of business interests and towards the protection of fundamental rights also aligns with a broader ideological turn against big tech and big business, both posing significant threats and benefiting from deregulation and commercialisation. The exploitative uses of BC can become an integral part of this debate, appearing as one of the symptoms of their dominance.

7.4 Recommendations

Our mapping: Four problem areas and mitigations

Problems

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)

Mitigations

1. Clearer labelling/ identification b) Better awareness; tools for users and reg monitoring/ enforcement
2. Supported standards for media integrity
3. Restrictions on advertising inc. a) source/paid identification; b) separation of advertising-media; c) action to remove deception and disinformation in ad formats/placement
4. Professional capacity- building. Increased confidence, support, agency
5. Better ensuring that media literacy programmes explicitly link alertness to commercial intents as a principle and highlight commercial-branded content communications as a risk/ harm

Consumer responses to the European Commission's 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' (EC 2024:170) with the same response described elsewhere in the report as '74% experienced a lack of disclosure regarding paid promotions by social media influencers' (EC 2024: 130) . The report adds:

In the consumer survey for this Fitness Check, 45% consumers noticed that the content they were viewing seemed to be a paid promotion or advertisement, but the website or app did not make this clear. This was particularly high amongst those in the younger age groups (28% of 18-25 year-olds, and 29% of 26-35 year-olds, compared to 11% of 55-64 year olds, and 10% of those aged 65+).

The European Commission Fitness check on consumer protection acknowledges that disclosure requirements impose comparatively low costs for compliance, stating (EC 2024: 66)

For example, there is a major difference between the costs faced by a social media influencer that simply needs to add an advertising disclosure (e.g. hashtag) in a sponsored post and refrain from unfair advertising practices, in comparison to the costs of operating an e-commerce webshop that entails processing the returns of physical goods

Comprehensive legal foundation

Principles-based, technology and platform-neutral

The terms ‘technology neutral’ and ‘platform neutral’ are sometimes used interchangeably but they have different origins and foci. The term ‘platform-neutral’ entered EU policy debate in the 2010s. Platform neutrality was popularized after a report issued by the French National Digital Council (Conseil National du Numérique 2014). ‘Platform neutrality’ expresses the idea that products or services that function as platforms should not unreasonably discriminate against complements’ (Stylianou 2021) and developed in the context of ‘net neutrality’ debates focused on tackling discrimination in the provision of internet services to users, extended to internet platforms including search engines and social media apps.

The concept of technology neutrality has been described as ‘one of the key principles of the European regulatory framework for electronic communications’ and originates from the early 2000s’ (Maxwell and Bourreau 2014: 1). The meaning of technological neutrality most relevant to the BCGP is that ‘the same regulatory principles should apply regardless of the technology used. Regulations should not be drafted in technological silos (Maxwell and Bourreau (2014:1). Two other, overlapping meanings are that enterprises should be free to adopt technologies to meet technical standards set by regulators and that regulators should refrain from promoting the adoption of specific technologies: ‘picking winners’ (Maxwell and Bourreau 2014: 1). The European Framework Directive of 2002/11 made ‘technology neutrality’ one of the guiding principles for telecommunications regulation’. As Maxwell and Bourreau (2014:3) note, technological neutrality allows regulators ‘to adapt to new technologies without having to be concerned with jurisdictional boundaries’, providing flexibility that can ‘help them put pressure on regulated entities to find self-regulatory solutions’ in place of command and control regulations.

The AVMSD is described as according with the principle of ‘technological neutrality’; the Directive ‘covers all services with audiovisual content, irrespective of the technology used to deliver the content. The rules apply whether you watch news or other audiovisual content on TV, the Internet, cable or your mobile device’ (European Commission 2024c).

In more recent EU communications policy discourse the terms ‘technology neutral’ or ‘platform-neutral’ have been supplanted by terms such as ‘omni-channel neutrality’ (EC 2024: 129). Summarising responses from national authorities to its consumer protection fitness check, the European Commission report (EC 2024: 129) stated that

National authorities additionally highlighted the need for a holistic and principle-led approach together with specific blacklists for legal certainty. On the business’ side, they noted that there is an insufficient focus on the ethical and legal limitations of the use of persuasive techniques. There was support for omni-channel neutrality but also the need to anticipate in legislation the effects of more immersive digital spaces on consumer choices, and an awareness of the differences across platforms and digital ecosystems.

National authorities considered that ‘[c]autiousness is needed when adding new information disclosure requirements, as they are not always effective, and the simplification of information provision to consumers should be further explored’. Those general comments cover a wide range of information notifications required for consumer protection but do also serve as a warning concerning disclosure requirements for sponsored content. The BCGP considers that disclosure requirements should be clear and standardised but that any such measures need to be subject to ongoing assessment of effectiveness and should be adapted for different platforms and services where there is a strong, independently-verified, evidence-based case and with sensitivity towards the views of service users, as well as operators, media-marketing actors, regulators, civil society interests and other stakeholders.

Respondents to the European Commission’s public consultation of consumer protection endorsed the need for a strong and coherent legal framework across the EU. ‘92% of 221 respondents agreed that a strong legal framework is required to protect consumer interest in the digital environment. 82% agreed that there needs to be uniform legislation across the EU’ (European Commission 2024a: 131). Just under half (48%) agreed that ‘The existing legal framework sufficiently protects consumers in the digital environment’ while 52% agreed that ‘There are some legal gaps and/or uncertainties in the current EU consumer law framework’ (European Commission 2024a: 131).

In the EC consultation targeting stakeholders, including traders and business associations, a majority (58%), albeit under two-thirds of respondents, agreed that ‘clarifying the concept of an influencer and the obligations of such traders towards consumers would be beneficial’.

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

A comprehensive legal foundation would set out both a clear principle and enforceable requirement that marketing communications should be clearly distinguishable as such. Achieving that identification through more ‘traditional’ means of advertising formats and separation of advertising and non-advertising, or through effective labelling and disclosure are matters that need greater consideration, specification and context-sensitive adaption than can be effectively addressed in legislation or in statutory regulation alone. That is one reason why we advocate for an approach that recognises the value of governance agency across the spectrum from statutory to self-regulation and governance-in-practice. This is developed in our proposal for integrated polycentric governance.

Integrated Polycentric governance

The concept of ‘polycentric governance’ (Cairney et al. 2019; Cairney 2020) 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, each with some autonomy. The concept invites consideration of the complex, multi-agency production of governance arrangements and of their interdependencies and interactions, characterised by formal but also more informal engagement. The concept of polycentric governance originates in the description and analysis of complexity in governance systems. This includes finding an optimal balance between state and market centred solutions.

A key argument, and contribution, of the BCGP is to propose a normative model of ‘integrated polycentric governance’. This argues that there is normative value across the range of centres of governance, from the most informal forms of governance-in-practice’ to the ‘command and control’ governance of legal and statutory enforcement. 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, oversight and enforcement. ‘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. Across the various linkages a stronger level of governance is needed ‘beneath’ to provide a ‘backstop’ but the ‘higher’ level can exercise its autonomy and demonstrate its benefits, subject to independent accountability and auditing mechanisms designed to uphold the core governance principles of the system as a whole.

The proposal for integrated polycentric governance has a number of aims.

It seeks to move beyond the terms of an argument that has structured discussion of advertising governance, setting ‘self-regulation’ against ‘statutory regulation’

Industry self-regulation of advertising developed as an effort to prevent or at least delimit statutory regulation and 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 in most of the countries examined in this report. All systems 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 ‘integrated [polycentric] governance’ may help in articulating that new ‘regulatory space’. The BCGP was established to assess how governance is changing for dynamic, adaptive systems such as ‘digital communications’ and the media-marketing ecology. The evidence examining branded content governance bears out broader studies of ‘polycentric governance’ to show a dynamic and complex interaction of governance agencies, governance ‘tools’ and governance effects and outcomes.

It is a false choice to set self-regulation vs statutory as these need to interconnect so that the benefits of both can be strengthened and combined.

It also seeks to reflect insights from the wider conception of governance so that ‘support’ mechanisms are given due attention as well as ‘control’ mechanisms.

The BCGP mapping of four key ‘problems’ in branded content practices includes factors that diminish the capacity of professionals and creators across the media-marketing ecology to act in an informed, ethically-reflexive and suitably autonomous and ‘unconstrained’ manner. Such capacities may be impacted by precarity in employment/remuneration arrangements, actual/perceived 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.

It seeks to provide a flexible framework that supports the case for ‘context sensitive’ policymaking and policy advocacy.

The evidence of this report shows 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. 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 that 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.

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 within communications are of the utmost importance but such measures do not require the separation of advertising from ‘editorial’ or non-advertising content.

The four key problem areas identified by the BCGP (section 2.11) include

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.

As discussed in section two, the principle of the identification of advertising was historically aligned with the principle of separation of advertising and non-advertising content. Across different media forms this arose through a different, ever-changing, mix of business, professional, technological, cultural and regulatory influences. With the expansion and intensification of media-marketing integration, especially since the ‘digital explosion’ of the mid-1990s, the principle of separation has been under ever-increasing strain. On the whole, 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. Drawing on the language of Raymond Williams (1977), concern about the implications of branded content for the quality and integrity of media remains present 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’. By this we mean that it is not articulated within the ‘regulatory space’ (Hancher and Moran 1989) within which core policy actors interact: governmental, regulators and lead industry actors.

We do not offer any overall proposal that would reestablish the principle of separation across contemporary media. Instead, we seek to highlight the need for discussion, to reincorporate ‘separation’ into stakeholder debate and policymaking. There needs to be wide debate 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 supported and where necessary protected? What are the communication environments that should be kept free from marketing communications?

Integrated governance, convergence and harmonisation

The harmonisation of laws and regulation has long been a goal of transnational corporate actors across the media-marketing ecology;

‘International brands need harmonisation of both legislative and professional regulations to simplify compliance and reduce the costs associated with international advertising campaigns’ (Conseil de l’Éthique Public 2024).

The BCGP proposals recognise and seek to build upon common ground. We share goals for simplification and standardisation. There are also shared goals in the recognition that effective, consistent regulation, that is recognised and valued by citizen-consumers is vital for building consumer trust and confidence and in turn to build consumer markets for products and services. Some key points of difference are making public welfare the guiding values. Critical governance analysis recognises that the significant asymmetries of power influence policy processes and outcomes. The common ground is the drive to create responsible and responsive regulation that provides for the interests of both the actors involved in any given market transaction and those affected by the externalities, such as the effect on the quality and trust of content providers or communication services. Another key difference is that for some advocates of harmonisation, with better, responsible regulation is a valued goal, so too is the reduction of costs and risks associated with legal compliance and so the call for harmonisation is often associated with calls for greater liberalisation of formal regulations. For the European Commission and Parliament, harmonisation is influenced by the range of interests and values shaping policy and so, in general, the key goals are harmonisation to promote market integration, for economic and social development, and for the setting and guaranteeing of standards.

The BCGP proposal for a comprehensive legal framework is a call for publicly accountable enforcement for converged media. Such a foundation would operate across national jurisdictions but would be subject to international agreement and supranational law where possible to achieve suitable harmonisation. Our proposal for integrated polycentric governance is also a call to shift the discussion from ‘self-regulation vs. statutory’ towards a greater focus on both the ‘benefits’ of different governance arrangements, their positive interlinking to extend and maximise those benefits and the need for interlinking as underpinning, to ensure that the disbenefits of any specific governance arrangement is mitigated by others in the integrated system. That is vital to ensure that the limitations of voluntary governance established by industry actors are mitigated by statutory powers to ensure 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, for multiple modes and types of governance. Our central call is for integrated polycentric governance. We hope that our report and work will stimulate further discussion on what the interlinking of these centres requires so that better governance is nurtured, supported and achieved. This report has focused on governance issues and problems but the BCGP sets out a broader mapping of problems and mitigations across

both branded content practices and governance. This is presented and discussed in our report *Branded Content: Problems and Mitigations*. We have included a summary of the key recommendations in the ‘solutions’ section below.

Table 10: 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 a) 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	

7.5 Further Research

A source of information and inspiration for the BCGP has been the building up of cross-national comparative research in communications over recent decades. We now have initiatives such as the Media Plurality Monitor and the work of the European Audiovisual Observatory and European Digital Media Observatory, all supported by the European Union. Many of these initiatives have steadily built up capacity, reach and ambition over many years and we take inspiration and guidance from their development paths. One example is the Worlds of Journalism project which has built up capacity to assess the state of journalism throughout the world. This began with a pilot project to interview journalists from 21 countries in 2007-2011, extended to 62 countries in a second phase (2012-2016) and then 75 in the more recent phase (2022-24) supported by a network of academics and partners including the IFJ and UNESCO.

The resource base for the comparative analysis of marketing communication practices and governance is very small in comparison with those for the study of journalism. Graham Murdock co-wrote a study for UNESCO (Murdock & Janus, 1985), which drew together research from selected countries to provide one of the first comparative studies of media and advertising interrelationships. However, The first academic comparative study of advertising self-regulation was not produced until 1988 (Boddewyn 1988, 1992). More recent multi-country studies of advertising regulation include Shaver, M.A. and An (2014). In recent years, research commissioned or support by the EU or Council of Europe has been an important source for independent, academic, comparative studies, such as those of the European Audiovisual Observatory. Yet, the majority of larger-scale comparative studies of advertising regulation have been produced by legal practitioners, such as GALA, or by corporate researchers providing proprietary research. Nevertheless, the academic study of marketing communications, promotional industries and legal-regulatory and ethical issues is growing strongly and does include in-depth comparative research, albeit usually among a small group of countries and in specific areas of practice.

Evaluating effectiveness

The BCGP's first objective included assessing 'indicators of governance effectiveness and industry and stakeholder support'. We have examined this in our comparative studies of the UK and Spain, but we also intended to assess governance effectiveness in our 32-country studies. For the reasons set out in section 3 above, we have modified our work. The principal reason was the challenge of compiling data on regulatory arrangements which reduced our capacity to carry out the extensive work needed to assess effectiveness ourselves to a sufficient standard to support systematic, comparative claims. Instead, we have sought to preserve the quality and integrity of the work we have published rather than risk incorporating less verified and reliable claims. As originally planned, we have included references to effectiveness where these come from credible sources. It must be recognised that there is a significant structural

imbalance in the commentary on the effectiveness of governance. It is an integral and essential task of self-regulatory organisations, industry regulatory agencies and all industry/trade bodies to self-promote and advocate for their merits. The scope for independent assessment is limited by comparison. Consumer bodies such as the European consortium BEUC have addresses advertising governance and their reporting on influencer marketing is an example of a detailed study highlighting problems in governance that support recommendation. However, such studies are rare. In the UK, for example, the National Consumer Council, established in 1975 to promote the concerns of consumers, was abolished by Government statutory order in 2014 and its powers transferred to the network of citizens advice bureau whose wide remit and focus on consumer support are contributory factors in the reduced role for policy advocacy on marketing communication issues.

Academic researchers can therefore play an important role, both directly and in wider collaboration with civil society, industry and legal-policy actors in seeking to investigate.

That has been the aim of the BCRP and also shapes our wider network, the Branded Content Research Network.

We identify key research tasks as including;

- Wider debates about the role and effectiveness of regulation
- The capacity and effectiveness of ‘command and control’ mechanisms
- The balance of negative and positive regulation
- Role for encouragement and, more concretely, incentives for better (self-)governance versus action to impose and enforce rules.
- Further examination of lobbying and policy influence

We agree that better research underpins better regulation. Proposed changes in all governance, but ‘formal’ regulation in particular, should be supported by research. It is important that impact studies are conducted and that, once implemented, changes are subject to monitoring and review. Mechanisms for publicly accountable, periodic review by regulatory organisations themselves or independent review are also necessary. However, the call for policymaking to be evidence-based needs to be accompanied by a fair assessment of capabilities and efforts to mitigate conditions that can concentrate such resources within the industries, and supporting interests, that are subject to regulation. As we have discussed, there are significant resource inequalities concerning the relevant sectors for branded content: marketers, marketing agencies; media; platforms and adtec. It is not that actors have identical interests, far from it, and there is a huge spectrum of resource capabilities within these grouping, most especially when creators/practitioners are added. However, the access of media-marketing groups to industry research data and capacity, advocacy expertise, political capital and access (for the large platforms in particular) makes for an inherently uneven playing field across the research-policy

nexus. While some consumer organisations have comparable access, such as BEUC (Bureau Européen des Unions de Consommateurs), the majority of consumer and civil society organisations lack comparable resources to address media-advertising policy issues in a sustained manner. This again highlights the important role independent academic researchers can play through their own research and in support and dialogue with industry and civil society actors and stakeholders. The BCGP is especially grateful for public research funding for our work, from UK Research and Innovation, and recognises the responsibility to assist in building up independent, academic research capacity. This capacity can provide an intellectual and inter-institutional foundation to support this growing, multi-disciplinary field of promotional industries studies.

Branded Content Research Network

The Branded Content Research Network brings together international researchers interested in all aspects of branded content and media-marketing integration. The BCRN also welcomes interested participants from industry and policy actors and stakeholders and promotes dialogue and exchange to support research and education across these domains. As the Branded Content Governance Project completes its funded work in 2025, we invite all those interested in our work to join the mailing list for the Branded Content Research Network. To do so, or for any other enquiries, please email bcgproject@arts.ac.uk.

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9. Appendices

Appendix 1: Summary and Mapping of other BCG outputs

Report/output	Publication Date	Description
Branded Content Governance: 32-country comparative analysis	June 2025	This is the current publication. 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. We may publish a revised version before the end of the BCGP in November 2025
Individual country reports	Interim versions of most reports were published between June-October 2024. Final versions will be published between June-November 2025	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.
Branded Content Governance: Problems and Mitigations	June 2025	This report sets out the summary analysis and recommendations made by the Branded Content Governance Project (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 <i>Branded Content Governance: 32-country comparative analysis</i> (June 2025).
Mapping the Media-Marketing Ecology	Interim version published June 2024. The final version will be published by Routledge in early 2026.	<i>Mapping the Media-Marketing Ecology</i> 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.

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-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
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.
Online Advertising Regulation Policy Briefing (Branded Content Governance Project, June 2023). Hardy, Jonathan; Kubicka, Hanna; MacRury, Iain; Núñez-Gómez, Patricia; Rangel, Celia https://doi.org/10.25441/arts.25225259.v1	2023	This <i>Online Advertising Regulation Policy Briefing</i> 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.
Short Commentary and Report on UK online advertising regulation https://doi.org/10.25441/arts.25251211.v1	2024	This short commentary and report on UK online advertising regulation is written by the BCGP Principal Investigator, Jonathan Hardy and the views expressed as 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.

The BCGP has also produced submissions including a 2023 Submission to Ofcom consultation on Media Literacy by Design (<https://doi.org/10.25441/arts.28553723.v1>) and a submission in 2024 to the BBC consultation on its editorial standards (<https://doi.org/10.25441/arts.28553666.v1>). These and other outputs, including the project newsletter, can be accessed at https://figshare.arts.ac.uk/BCG_Project.

**Appendix 2: General
Branded Content SRO
Codes Identification Rules
by Country**

Identification: Marketing communications, regardless of format or medium, should be easily identifiable

Transparency: Marketing communications should be transparent about their true commercial purpose, and not misrepresent it.

Disclosure: 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.

Separation: Allowing consumers to clearly distinguish between commercial and non-commercial content.

Table 11: 32-country analysis of branded content in SRO codes

Country	The Rules
Australia	The AANA Code of Ethics Section 2.7 (Distinguishable advertising): ‘Section 2.7 requires that advertising must be clearly distinguishable as such’ (AANA 2021). The Australian Association of National Advertisers (AANA) also published the Clearly Distinguishable Advertising Best Practice Guidelines, which warn advertisers not to allow their drive to create ‘engaging’ marketing communications to lead them towards ‘camouflaging’ the fact that what they are presenting is advertising, and emphasising that marketing communications should not be disguised as ‘news, current affairs, independent market research, user-generated content, private blogs or independent reviews’ (AANA 2021). ITDS
Austria	The 2021 version of the Austrian Advertising Council Code of Ethics contains rule 1.1.9: ‘Advertising shall be clearly recognisable as such’ (Austrian Advertising Council 2021a). However, the Code prioritises Taste and Decency rules. ITD
Belgium	ICC rules. ITDS
Bulgaria	The National Council for Self-Regulation’s (NCSR’s) National Ethical Rules for Advertising and Commercial Communication in Bulgaria, includes the general commercial content identification rule under Article 9, Identification, with 9.1 stating, ‘marketing communication should be clearly distinguishable as such, irrespective of form and the medium used’ (NCSR 2020). Article 17, Children and Adolescents, reiterates the identification rule regarding children, with 17.4 stating, ‘marketing communications directed at children should be clearly identifiable to them as such’. Additionally, Article 5, Truthfulness, 5.2 states, ‘marketing communications cannot be hidden and act at a subconscious level’ (NCSR 2020). The Code also prohibits ‘misleading’ advertising, including misleading by omission, a legal category which tends to cover undisclosed commercial content (5.1, 5.5). ITD

Canada	Advertising Standards—Canada (ASC) produced the Canadian Code of Advertising Standards containing Provision 2, ‘Disguised Advertising Techniques’, which states: ‘No advertisement shall be presented in a format or style that conceals the fact that it is an advertisement’ (ASC 2019b). ITD
Croatia	The Croatian Association of Communications Agencies’ (HURA’s) Code of Advertising and Marketing Communication (Kodeks oglašavanja i tržišnog komuniciranja) was revised in 2020 (HURA 2020) to focus on, amongst other issues, the ‘clear distinction between commercial, editorial, and user-generated content’ [Google Translate] (HURA 2020: 4). Article 7 is dedicated solely to identification and transparency, stating: ‘Marketing communications should be clearly distinguishable as such, regardless of their form or the medium used. When an advertisement appears in media containing news or editorial content, including so-called "native advertising," it should be presented in a way that makes it easily recognizable as an advertisement and, if necessary, labelled as such. The true commercial purpose of marketing communications must be transparent and must not be misrepresented. For instance, communications promoting the sale of products must not be disguised as market research, consumer surveys, user-generated content, private blogs, personal social media posts, or independent reviews’ (HURA 2020: 10). ITDS - (ICC)
Cyprus	The Cyprus Advertising Regulation Organisation (CARO) Advertising Code contains three relevant articles regarding identification of marketing communications: Article 9 prohibits undisclosed advertising, Article 10 requires transparency of information about the advertiser, and the Annex on Children, Article 1 (a) recognises minor's special vulnerability to hidden advertising and demands extra protection (CARO n.d.a). Article 9, Recognition of Advertisements, states: (a) ‘Advertisements must be distinguishable as such, regardless of their form, the means employed, or the medium used. In case they appear in a medium containing news or other editorial content, they must be presented in such a way that they are easily recognized as advertisements, and the identity of the advertiser must be apparent’ (CARO n.d.a); (b) ‘Advertisements must not mislead about their actual purpose. They should not be presented, for example, as market research or consumer research when their purpose is commercial, such as the sale of a product’ (CARO n.d.a). ITDS (ICC)
Czech Republic	Part One, Section II of the Advertising Code (Kodex Reklamy) lists the general principles of the Code regarding decency, honesty, truthfulness and social responsibility of advertising. Subsection 2, Honesty of Advertising, states that advertisements must not ‘be designed so as to misuse the trust of consumers or take advantage of their credulity or a lack of experience or knowledge’ (2.1), prohibits advertising based on subliminal perceptions (2.2), and contains the key statement: ‘advertisements shall not be disguised. In particular, an advertisement shall not falsely act as a different form of communication, such as a scientific report, editorial content, etc. (2.3)’ (Rada Pre Reklamu 2013: 4). This is a general rule. However, Part Two, Section VI, contains an extension of that rule as it applies to editorial content, with provisions applicable predominantly to publishing (Rada Pre Reklamu 2013: 14). ITDS
Denmark	N/A
Estonia	N/A

Finland	ICC rules. ITDS
France	ARPP published in its recommendations the General Provisions of the consolidated ICC Code of Advertising and Marketing Communication Practices which state that marketing communications should be clearly identifiable and that their commercial purpose should be evident (Autorité de Régulation Professionnelle de la Publicité 2024d). And, in the case of digital advertising, it makes 2 distinctions: if a standard advertising format is used, nothing is needed because the user identifies the advertising as such; or if it is not clearly identified as advertising, the advertiser/agency must include some audible or visual message, legible and intelligible (Autorité de Régulation Professionnelle de la Publicité 2022). ITD
Germany	Out of Scope - Taste and Decency rules only.
Greece	The Greek Code of Advertising and Communication (??Δ-?), or the Hellenic Code of Advertising and Communication Practice (HCACP) (???????? ???? Δ????μ???? – ?r?????) applies to all commercial communications across all formats (SEE 2023: 5). The updated version of the Code, published in 2023, puts an extra emphasis on ‘on distinguishing between advertising communication and editorial content or content that comes from users’ which they see as a necessary adjustment in the face of new technologies and marketing practices (SEE 2023: 6). Article 7 of the HCACP 2023 contains rules regarding identification of advertisements, stating: (1) ‘Advertising communications must be clearly identifiable as such, in any form and through any medium. When an advertisement, including so-called "native advertising," appears in a medium containing news or editorial content, it must be presented in such a way that it is immediately recognizable as advertising and, where required, be clearly labeled as such’ (SEE 2023: 12). (2) ‘Advertising communications must be transparent in their commercial purpose and must not mislead as to it. Therefore, advertising communication for the promotion of a product must not be presented, for example, as market research, consumer research, user-generated content, a private blog, a private social media post, an independent review, etc.’ (SEE 2023: 12). ITDS (ICC)
Hungary	The Hungarian Code of Advertising Ethics (Magyar Reklámetikai Kódex) applies to ‘all commercial practices directed at consumers, including all forms of marketing communication (hereinafter referred to as advertising), regardless of the form, place or manner in which they are displayed’, which also includes influencer marketing, in any form, and online behavioural advertising (Article 1.5, ÖRT 2023: 6). The Code follows the Advertising Act in banning subliminal advertising (Article 3.17), and misleading advertising (Article 10, under 2. Specific Rules) and dedicates an entire article to identification of advertising (Article 4) (ÖRT 2023: 9, 10, 17 - 19). Article 4.1, states: ‘advertising must be clearly identifiable as such, irrespective of the place where it is published and the technical means by which it is published and sent’ (ÖRT 2023: 10). Advertising cannot ‘mislead’ by being disguised as a study, analysis, or market research (Article 4.5) (ÖRT 2023: 10). Additionally, ‘economic advertising’ must reveal its nature, even while referring to its non-profit activities (Article 4.4) (ÖRT 2023: 10). ITD

Ireland	The ASAI's Code of Standards for Advertising and Marketing Communications in Ireland is broad in its scope and encompasses commercial communications across all types of media (for a full list, please see the Code, Section 2, 2.2). Section 3: General Rules contains a subsection titled 'Recognisability', which lists 5 transparency rules (3.31 – 3.35), including, 'a marketing communication should be designed and presented in such a way that it is clear that it is a marketing communication' (3.31), and 'marketing communications should not misrepresent their true purpose. Marketing communications should not be presented as, for example, market research, consumer surveys, user-generated content, private blogs, or independent reviews if their purpose is marketing, i.e. the promotion of a product' (32). The Code also contains a section about Misleading Advertising (4) (ASAI 2016). ITD
Italy	The Institute for Self-Regulation in Advertising's Code of Marketing Communication Self-Regulation (IAP's SR Code), Article 7, Identification of Commercial Communication, states: 'commercial communication must always be recognizable as such. In media and forms of commercial communication where content and information of another kind are disseminated, commercial communication must be distinctly separated by suitable means' [ChatGPT translation] (IAP 2023a: 2). The rule applies across media formats, with extra guidelines included the Digital Chart regulating the recognisability of commercial communication over the internet (IAP 2023b; Tardiolo 2019). The Chart was last updated in 2023 to include new rules for influencers (Stucchi 2023). ITDS
Latvia	The Latvian Advertising Professionals' Code of Ethics (Latvian Advertising Association 2014): at the end of the section 7.1.3. (entitled 'advertising must be truthful and objective') the Code specifies that 'advertising must not be presented as news' (Latvian Advertising Association 2014: 5). This is the only rule concerning branded content in the Code, beyond the general principles banning misleading or dishonest advertising. S
Lithuania	The Lithuanian Advertising Code applies widely, including 'to any advertising object, regardless of whether it is paid for or not, as well as self-promotion', which suggest an inclusion of hidden forms of advertising (Lithuanian Advertising Bureau 2019). However, the Code does not contain any specific clause relating to hidden advertising and only lists restrictions regarding identification of the sponsor/advertiser. IT – D?
Luxembourg	The Luxembourg Commission for Ethics in Advertising (CLEP) serves as the self-regulatory body tasked with enforcing the national Code of Ethics. Its responsibilities encompass overseeing all forms of commercial communication, including those disseminated online, on video-sharing platforms (VSPs), and by influencers. The Luxembourg Commission for Ethics in Advertising (CLEP) was established in March 2009 by the Conseil de la Publicité du Luxembourg (CPL). Although it was set up by the CPL, (The industry body) The Advertising Council CLEP operates independently of it. The scope of CLEP's codes covers commercial communications on VSPs. and alongside ALIA encourages the adoption of codes of conduct (Article 35 (2) i) of the Law on electronic media (ref European Audiovisual Observatory 2022)

Malta	N/A
Mexico	No. The Advertising Ethics Code of CONAR provides brief and general guidelines on transparency and honesty in advertising practices, without addressing the identification of commercial content. Its primary objective is to ensure that information about products and services remains truthful and verifiable, while preventing misleading claims that could create confusion among consumers. The code emphasizes key principles such as legality, truthfulness, honesty, respect, dignity, fair competition, comparative advertising, health, well-being, environmental care, and the protection of children. While these general principles partially align with ICC guidelines, they do not fully adopt their requirement that all marketing communications must be clearly identifiable.
Poland	The main self-regulatory code, issued by the Advertising Council (Rada Reklamy), the Advertising Ethics Code (Kodeks Etyki Reklamy or KER) contains general rules requiring the identification of branded content (Rada Reklamy 2023). III. Basic Principles of Advertising, Article 9, states: ‘advertiser, promoter, operator and media, each of them only within the scope of its activities related to advertising, will obey the rule that every recipient of advertising made or distributed with its participation should be able to identify that a particular message is an advertisement’ [Official Translation] (Rada Reklamy 2023: 4). Additionally, the Code prohibits the abuse of the trust of the recipients or their lack of experience (Article 8) (Rada Reklamy 2023: 4). ITD
Portugal	The SRO entity in Portugal, Auto Regulação Publicitária (ARP), establishes a primary guide on advertising transparency and consumer protection in alignment with ICC standards. Although its code does not explicitly mention the term Branded Content, Article 13 addresses identification, stating that any commercial communication must be clearly distinguishable as such, regardless of its format or medium. Additionally, the dissemination of advertising content within news media or editorial materials must be appropriately marked. Furthermore, commercial intent should not be disguised through parallel narratives, such as personal blogs, user-generated content, or independent reviews, whether the commercial purpose is full or partial. Beyond the official code Código de Conduta em matéria de Publicidade e outras formas da Comunicação Comercial (ARP 2017), ARP provides two guidelines that take into account digital communication trends and Branded Content. The first is the Guide to Best Practices in Digital Marketing Communications and Online Behavioral Advertising, and the second is the Guide to Best Practices on Influencer Marketing and Native Advertising, called Guia 3 i’s – influenciar os influenciadores que são influenciados (ARP 2024). Within this latest guide, several key terms are defined, including real digital influencers, virtual digital influencers (referring to fictional characters), and influencer marketing, which is described as a collaboration between an advertiser and a content creator on social media who influences a digital community with the goal of promoting or endorsing products or services within that community. Additionally, the guide addresses native advertising on social media and its various formats, such as news feeds, messaging applications, articles, stories, videos, music, and design related content.

Romania	RAC's Code of Advertising Practice, Article 1 (Basic Principles in Communication), 1.6, states: 'communication must not be masked or subliminal', and 1.9 that 'advertising messages must be designed and presented in such a way that they can be recognized as such' (RAC 2016, amended in 2021). The prohibition against undisclosed advertising is then repeated in Art. 5, Native Advertising, which contains multiple rules requiring transparency: Article 5(a) states that native advertising must be 'easily recognized as a commercial communication by the consumer' and (c) the symbols used to mark advertising as such must be 'visible and easy to understand by consumers' through the use of consistent, agreed upon conventions (RAC 2016, amended in 2021). Article 15, Identity and Identification, contains multiple relevant rules including the requirement that 'marketing communication must be clearly differentiated, regardless of the form or medium in which it is used' (15.3), and 'the communication must not be concealed in marketing research, market research, consumer study, etc.' (15.5) (RAC 2016, amended in 2021). ITDS
Slovakia	Anonymous advertising is defined in the Advertising Standards Council's Ethical Principles of Advertising Practice under Act 4 (4), which discusses liability for advertising (Slovak Advertising Standards Council 2019). Part 2, Title 1 (Basic Requirements for Advertising), Article 10 (7) states: 'advertising that is anonymous or non-transparent is inadmissible' (Slovak Advertising Standards Council 2019). Part 2, Title 1 (Basic Requirements for Advertising), Article 12 (2), which discusses honesty of advertising, states: 'advertising must not be hidden, in particular it must not pretend to be information of a non-advertising nature, especially if it is presented in the form of a scientific article, reportage, interview or news information. Advertising is not hidden if the information about a charitable, humanitarian or philanthropic project intended for consumers, names or identifies the entity that implements the project, namely its name, trade name, trademark or trademark, contact details, and the like' (Slovak Advertising Standards Council 2019). Article 14 (Truthfulness in Advertising) bans misleading advertising, a category which traditionally includes undisclosed commercial content. Article 22 focuses on identification and states: '(1) Advertising must be clearly identifiable as such, whatever form it takes or what medium of communication it uses; However, the assessment will take into account the form of advertising, the communication medium and the advertising technique used' [Google Translate]. '(2) Where a medium of communication containing news information or other editorial content is used for advertising, the advertisement must be distinguished in such a way that it is recognisable as advertising to the average consumer; The average consumer must also be able to identify hybrid forms such as infomercial or advertorial as advertising' [Google Translate] (Slovak Advertising Standards Council 2019). ITDS (ICC)

Slovenia	The Slovenian Advertising Code (SOZ) contains both general and media-specific rules concerning identification of branded content in Article 6, which states: '6.1 Advertising must be immediately recognizable as such. It must be clear and clearly separated from editorial news, comments and other columns or submissions and may not be referred to hereafter, regardless of the medium in which it is published. All advertisements in print media which, in terms of style or form, may mislead the reader into thinking that it is editorial material, must be labelled accordingly. All advertisements in audiovisual media must be announced as a special program or otherwise audiovisually separated. 6.2 Advertisements may not feature persons who are recognised for their journalistic work. Exceptions are made for journalists promoting their own media houses. 6.3 Advertising written and designed in the style of editorial content, often referred to as "advertorial", and ordered and paid for, or published in exchange for other compensation, is bound to comply with all relevant provisions of this Code. Advertisers and media must ensure that that this type of advertising is clearly recognizable as such, so it must be labelled accordingly. 6.4 Advertising, the primary purpose of which is a response from the consumer in the form of an order that obligates them to pay (e.g. publication of the client's data in a publication), must be designed in such a way that this is clearly and unequivocally evident. 6.5 The advertiser must be unambiguously identified. The exception is ads whose sole purpose is to attract and direct the consumer's attention to future advertising (so-called teaser ads). Where the form of advertising and the media allow it, a contact address should also be provided where the consumer can obtain additional information or contact the advertiser' (SOZ 2009: 12). ITDS
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Spain	According to the official source of AUTOCONTROL (2025), its Advertising Code of Conduct (2023) is based on the International Code of Advertising Practice of the International Chamber of Commerce (ICC). Since the revision of the code in 2019, Article 13 establishes that commercial communications must be identified as such, regardless of their form, format, or medium used. Furthermore, the presentation of a commercial communication, including native advertising, within a medium that contains news or editorial content must be easily recognizable or, if not, must be appropriately labeled, ensuring that the objective of any form of advertising is to guarantee transparency. Under no circumstances shall a communication that promotes the sale of a product or the contracting of a service be disguised as another type of narrative content, such as a market study, survey, user-generated content, private blog, social media post, or independent analysis. It is worth noting that the data included in the main code is complemented by the Code of Conduct on the Use of Influencers in Advertising (AUTOCONTROL, 2020), which establishes ethical guidelines applicable to this new professional profile, directly related to Branded Content practices. In this context, any mention or audiovisual content intended to promote products or services, as well as disclosures made within the framework of collaborations or reciprocal agreements, shall be considered advertising communications. This applies when the content is subject to payment or other compensation by the advertiser or their representatives, or when the advertiser exercises any form of editorial control over the disclosed content, either by fully or partially producing it or by approving it. To comply with the transparency requirement through immediate identification of advertising content, in cases where its nature is not self-evident, it is recommended to include generic, easily recognizable indications for followers, such as "advertising," "ad," "in collaboration with," or "sponsored by." Alternatively, descriptive indications related to the specific collaboration may be used, such as "Brand ambassador," "Thanks to [brand]," "Gift from [brand]," or "Sponsored by," among others. Moreover, the use of unclear language or indications requiring user action, such as information hidden under a hyperlink, is discouraged. Additionally, influencers must include this information when reposting content. See Núñez-Gómez, Rangel-Pérez and Rivero 2025. ITD
Sweden	ICC rules ITDS
The Netherlands	The Stichting Reclame Code's (SRC's) the Dutch Advertising Code (Nederlandse Reclame Code), Article 11, Recognizable Advertising, contains a general rule requiring identification of marketing communications, stating: 'an advertisement shall be recognizable as such by virtue of its lay-out, presentation, content or otherwise, taking into account the public for which it is intended' (Article 11.1) (SRC 2023). ITD

United Kingdom	The advertising self-regulatory system stands on the principle that ‘marketing communications must be obviously identifiable as such’ (Rule 2.1 CAP Code) (CAP 2014). The Committees 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). However, the CAP Code does not apply the ICC code directly. The CAP rules state that 2.1 Marketing communications must be obviously identifiable as such. 2.2 Unsolicited e-mail marketing communications must be obviously identifiable as marketing communications without the need to open them (see rule 10.6). 2.3 Marketing communications must not falsely claim or imply that the marketer is acting as a consumer or for purposes outside its trade, business, craft or profession; marketing communications must make clear their commercial intent, if that is not obvious from the context. 2.4 Marketers and publishers must make clear that advertorials are marketing communications: for example, by heading them "advertisement feature" The BCAP Code Rule 2.1 states Advertisements must be obviously distinguishable from editorial content, especially if they use a situation, performance or style reminiscent of editorial content, to prevent the audience being confused between the two. The audience should quickly recognise the message as an advertisement BCAP is ITDS CAP Code is ITD
United States	The self-regulatory organization, National Advertising Division, applies the rules of the Federal Trade Commission on the disclosure of marketing communications. The FTC rules require disclosure but do not mandate the separation of editorial and advertising. ITD

Appendix 3: Advertising Self-Regulatory Systems in 32 Countries

Table 12: Advertising Self-Regulatory Systems in 32 Countries

Country	Main Ad. SRO	SRO Est. date	SRO Org. Age	Code last revised	Based on ICC	BC ID rule	SRO Jury Indep.	Enforcement Mechanisms	System Transp.
Australia	•(•)	1998	27	2021	Yes	•	Jury of legal experts	Adjudication and co-regulation.	▲
Austria	•	1974	51	2023	Yes	•	Mixed Jury (industry and experts)	Adjudication and co-regulation.	▲
Belgium	•	1974	51	2024 (ICC)	Fully	• (ICC)	Mixed Jury (industry and experts)	Adjudication.	▲
Bulgaria	•	2009	16	2020	Yes	•	Measures taken	Adjudication and co-regulation.	◆
Canada	•	1957	68	2019	Yes	•	Mixed Jury (industry and experts)	Adjudication.	▲
Croatia	•	~	~	2020	Yes	•	~	~	▼
Cyprus	•	2013	12	2021	Yes	•	Mixed Jury (industry and experts)	Adjudication and co-regulation.	◆
Czech Republic	•	1994	31	2013	Yes	•	Mixed Jury (industry and experts)	Adjudication and co-regulation.	◆
Denmark		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Estonia		N/A	N/A	N/A	N/A	N/A	N/A	N/A	▲
France	•	1935	90	2017	Yes	•	Jury of legal experts	Adjudication and co-regulation.	▲
Finland	••	2001	24	2024 (ICC)	Fully	• (ICC)	~	Adjudication.	▲
Germany	•	1972	53	2007	Yes	No (OOS)	No (industry only)	Adjudication.	▲
Greece	•	2003	22	2023	Yes	•	No (industry only)	Adjudication.	◆
Hungary	••	1996	29	2023	Yes	•	Political interference	Adjudication and co-regulation.	▼
Ireland	•	1981	44	2016	Yes	•	Mixed Jury (but majority independent experts)	Adjudication and co-regulation. Sanctions and fees.	▲
Italy	•	1966	59	2023	Yes	•	Jury of independent experts	Adjudication and co-regulation.	▲
Latvia	•	1996	29	2014	No	No	~	Adjudication and co-regulation.	▼
Lithuania		N/A	N/A	2019	Yes	No	N/A	N/A	▼
Luxembourg	•	2009	16	2015	Fully (plus extra rules)	• (ICC)	~	Adjudication and referral.	◆
Malta		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Mexico	•	1997	28	N/A	Yes	No	◆	Adjudication. Sanctions and fees (limited information)	▼
Poland	•	2006	19	2023	Yes	•	No (industry only)	Adjudication.	◆
Portugal	•	1991	34	2017 (Adaptati	Yes	•	▲	Adjudication.	▲

				on from v. 2014)					
Romania	•	1999	26	2021	Yes	•	Political interference	~	▼
Slovakia	•	1995	30	2019	Yes	•	Mixed Jury (industry and experts)	Adjudication (co-reg dev.).	◆
Slovenia	•	1994	31	2009	Yes	•	~	Adjudication.	▼
Spain	•	1995 (1977)	30	2019	Yes	•	Mixed Jury (but majority independent experts)	Adjudication. Sanctions and fees.	▲
Sweden	•	2009	16	2024 (ICC)	Fully	• (ICC)	Mixed Jury (but majority members of industry)	Adjudication.	▲
The Netherlands	•	1963	62	2023	Yes	•	Mixed Jury (industry and experts)	Adjudication and co-regulation.	▲
United Kingdom	•	1962	63	2014; 2010	Yes	•	Mixed Jury (but majority independent experts)	Adjudication and co-regulation.	▲
United States	•	1971	54	NAD (2025)	No	–	Mixed Jury (but majority members of industry)	Adjudication and referral to Gov (FTC).	▲

●● (Multiple), ● (Present), _ (Absent), ~ (No data)

▲ (Strong), ◆ (Moderate), ▼ (Weak)

SRO Table Classifications

Branded Content Identification Rule in SRO Code (BC ID Rule):

Present: The Code contains some version of the basic ICC Identification rule stating that marketing communications, regardless of format or medium, should be easily identifiable.

Absent: The Code lacks a basic identification rule.

SRO Jury Independence:

Political Interference: Sources mention state involvement in SRO activities.

Measures taken: Independence explicitly discussed as a concern; the Code contains rules enforcing independence.

Not Independent: the entire Jury is made up of representatives of the industry (advertising or other).

Mixed Jury: The Jury includes both representatives of the industry and independent experts such as academics, psychologists, etc. This is a measure to strengthen independence but the proportion of industry actors vs. independent experts usually leans towards the industry or is not specified.

Jury of Independent Experts: The Jury includes independent experts only, usually lawyers.

Enforcement Mechanisms:

Adjudication: the SRO has a system in place for evaluating complaints and a jury/committee/panel; it uses standard enforcement powers such as naming and shaming, and/or recommending that the advertisement is modified or withdrawn.

Adjudication and co-regulatory measures: there is an official cooperation arrangement between the main SRO and one or more of the statutory regulatory bodies.

Sanctions and fees: the SRO can impose financial penalties on its members.

Transparency:

Low: key information is hard to find; main regulators don't have a functioning page; documents are outdated or not dated; sources are inconsistent.

Moderate: basic information accessible, but some elements missing; institutions have functioning pages with limited information; some items in the report remain unanswered because sources are difficult to locate.

High: the system is transparent, information accessible and well-explained; clarity is a priority and sometimes there are additional materials such as guidelines that aid understanding.

Appendix 4: Advertising
Self-regulation
Complaints: notable
variation and differences
across and between
systems

Table 13: SRO Complaints, adapted from EASA (2024)

Country	Flag	Abbreviation	Regulatory Authority (Full Name)	2023	2022	2021	2020	2019
» United Kingdom		UK – ASA	Advertising Standards Authority	39,427	33,324	43,190	36,297	37,056
» Germany		DE – Total	Germany - Total (combined authorities)	6,827	6,008	7,444	6,943	12,827
» Netherlands		NL – SRC	Stichting Reclame Code	4,866	4,198	6,157	4,015	4,255
» Republic of Ireland		IE – ASA Ireland	Advertising Standards Authority for Ireland	1,399	1,187	1,422	1,614	1,858
» France		FR – ARPP	Autorité de Régulation Professionnelle de la Publicité	552	567	736	714	792
» Italy		IT – IAP	Istituto dell'Autodisciplina Pubblicitaria	544	2,378	577	1,797	794
» Sweden		SE – Ro.5	Reklamombudsmannen	511	617	660	688	621
» Austria		AT – ÖWR	Österreichischer Werberat	334	503	413	411	338
» Spain		ES – AUTOCONTROL	Asociación para la Autorregulación de la Comunicación Comercial	258	214	209	239	293
» Poland		PL – RR	Rada Reklamy	240	165	245	221	488
» Romania		RO – RAC	Romanian Advertising Council	155	93	81	102	125
» Switzerland		CH – CSL/SLK6	Commission Suisse pour la Loyauté / Schweizerische Lauterkeitskommission	152	122	51	110	139
» Slovakia		SK – SRP	Slovak Advertising Standards Council	108	59	73	79	107
» Finland		FI – MEN & LTL	Mainonnan eettinen neuvosto & Liiketalautakunta	103	129	145	132	161
» Belgium		BE – JEP	Jury voor Ethische Praktijken inzake Reclame / Jury d'Éthique Publicitaire	97	155	151	123	465
» Turkey		TR – RÖK	Reklam Özdenetim Kurulu	91	175	160	202	207
» Greece		EL – SEE	Council of Communication Control	57	59	74	84	77
» Cyprus		CY – CARO	Cyprus Advertising Regulation Organization	28	15	24	22	24
» Czech Republic		CZ – CRPR	Rada pro reklamu	22	15	Unavailable	38	40
» Hungary		HU – ÖRT	Önszabályozó Reklám Testület	8	13	29	31	16
» Bulgaria		BG – NCSR	National Council for Self-Regulation	6	11	13	28	34
» Portugal		PT – ARP	Auto Regulação Publicitária	5	6	4	11	8
» Slovenia		SI – SOZ	Slovenska oglaševalska zbornica	0	10	24	14	16
» Luxembourg		LU – CLEP	Commission Luxembourgeoise pour l'Éthique en Publicité	0	1	1	0	5
» Serbia		RS – NAESO	National Association for Ethical Standards in Advertising	0	0	0	0	N/A

Complaints against advertising or other marketing communications content remains a central component in most self-regulatory authority systems and a fundamental element in the processes of advertising governance. Consumers must feel confident in being able to identify ads as advertisements in order to then deploy the complaints mechanisms associated with advertising regulation. This is a potential challenge in the system as currently configured. Nevertheless, there is a strong and continuing dependence on complaints procedures within the broader scope of governance processes. Complaints provide a key tool within most systems of enforcement. For that reason, we have spent some time reflecting on available secondary data in respect of complaints including a focus here on data from EASA's report European trends in advertising complaints, copy advice and pre-clearance 2023 (EASA 2024).

Below, we review reported data from the European advertising standards alliance, a body that brings together EU-based self-regulatory authorities to collect and collate self-reported data. We acknowledge that this reflects general advertising complaints rather than those linked specifically to branded content – there is no reliable mechanism for capturing the latter within the available data on complaints. However, this brief reflection and analysis does give some insight into the functional differentiation between how systems operate at the national level. EASA supports the view that there is considerable national variation in terms of enforcement and also in terms of the relationship between consumers and the media-marketing material that they notice. In their analysis of trends in advertising complaints, EASA provide a helpful picture of the self-reported complaints operations from within their member organisations, of which there are 25.

One general observation is to that use of the complaints processes is relatively rare. Across the whole of Europe in 2023 there were, according to EASA (2024: 4) '55,790 complaints related to 35,096 advertisements... received by 26 European SROs'. This is relatively small in comparison to the total advertising served. In the UK alone, the Advertising Standards Authority (ASA) reported that its Active Ad Monitoring system processed an estimated 500,000 ads per month by the end of 2023. The total number of advertisement treatments, let alone ad impressions in the EU area, not to mention branded content, is inestimable. It is certainly in the multi-millions.

Complaints serve as a form of 'downstream' governance, while an 'upstream' form is the encouragement of compliance and embedding the principles, values and requirements of codes into practices including the production and dissemination of marketing communications. We examine 'upstream' governance in our Governance-in-Practice report, which draws on interviews with practitioners.

EASA offers one important and helpful source of secondary data for us in the task of understanding the actual operation of regulatory systems in terms of complaints and complaints management. EASA, the European

Advertising Standards Alliance does not cover all of our 32 countries, but it does reach and receive data from the majority (see figure x).

Significant national differences in complaints cultures and processes

There are considerable differences between the numbers of complaints received in each of the national self-regulatory authorities. This variation can only be partly, and indeed minimally, explained by comparing the relative populations of countries, or even the size of the advertising markets. The UK and Germany together accounted for 83% of all complaints received across the 26 European SROs. Even within this pair of high-complaint nations, there is a notable gap: the UK, through its Advertising Standards Authority, accounted for around 40,000 complaints, while Germany, across its various combined regulatory authorities, typically had between 6,000 and 7,000 complaints.

Only the Netherlands and Ireland also recorded and reported sizable numbers of complaints, with the Netherlands around 5,000 and the ASA in Ireland reporting just over 1,000 complaints in 2023. Annualised reporting allows for the observation of relative stability in each nation's reports, although there are occasional fluctuations; for instance, Italy shows a notable pattern where the number of complaints tends to rise every two years. However, across the board, there is generally a stable pattern of complaints in the various countries. It is for surprising that both France Italy as well as Spain despite their significant populations and large advertising markets have considerably fewer complaints.

This suggests that the difference is a function of culture and institutional organisation rather than simple quantitative or proportional market and population size.

It is stark to note that while the UK, Germany, the Netherlands, and to a lesser extent Ireland, can show quite sizeable numbers of complaints—with the UK routinely far in front and consistently accounting for the majority of all complaints across Europe—the typical profile is to see relatively small numbers of complaints year on year in most countries. Around a third of countries have fewer than 100 complaints per year, and, for example, Slovenia, Luxembourg, and Serbia have sometimes had zero complaints in recent periods. Many countries often register merely double figures or even single figures of complaints in their annual reporting cycle to the European Advertising Standards Alliance. Thus, complaints and approaches to complaints show significant variation across several European countries.

What types of complaints?

The majority of complaints (between 80% and 90%) come directly from consumers, although occasionally significant complaints are submitted by special interest groups or competitors. Less than 1% of complaints come from authorities and public entities. According to the European Advertising Standards Alliance, over the period 2019 to 2023, typically around a

third of complaints are finally upheld when taken as an average mean across Europe. A similar proportion of complaints are not upheld, with the remainder being resolved either informally or through a different authority. The majority of complaints concern misleading advertisements, with a notable tranche linked to taste and decency and social responsibility. Within the large category of misleading advertising, the largest area of complaint—constituting 35% of the whole—is incorrect or lack of disclosure. This is significant for the BCGP as this category includes complaints about the failure to identify marketing communications within forms of branded content, including influencer marketing. However, misleading advertising covers a wide range of issues including false or inaccurate claims about products or services, as well as the omission of important information or misleading use of imagery. It includes false claims or impressions, misrepresenting the price or service offered, or mispresenting consumer rights. As the Irish Competition and Consumer Protection Commission summarises national and EU law: ‘Under consumer law, an ad is misleading if it has false or deceptive information. Ads can also be misleading if important information is left out. Misleading advertising covers claims made to consumers by manufacturers, distributors and retailers’ (CCPC n.d.). According to EASA (2024) most complaints about misleading advertising now relate to online advertising, typically around half of all complaints, with television (including both linear and non-linear TV) accounting for most of the remaining half. Outdoor, direct marketing, radio, press, and magazine advertising together account for less than 5% of complaints, and sometimes less than 1 or 2% overall.

Complaints against online advertising in 2023 were primarily targeted at marketer-owned websites, although influencer marketing was also a major focal point. Different types of social media advertising, including marketer-owned social media pages, accounted for the remainder. Retail is most often the focus of complaints, closely followed by leisure services and health and beauty. Together, these sectors account for more than half of all complaints. Other notable areas, accounting for around 10% of advertising complaints, include food and financial services.

Complaining across borders

There has been a relative decline in the number of cross-border complaints between 2019 and 2023, although there was a slight increase between 2022 and 2023. Overall, consumers in the UK were responsible for most of the complaints that were also explored abroad, particularly relating to leisure services, clothing, accessories, and health and beauty.

It is notable that various national authorities provide considerable levels of copy advice and pre-clearance, with the number of ads receiving copy advice approaching 100,000 in most years and pre-clearance applied in many instances. This typically reflects both the maturity of the regulator and the size of the market. From the point of view of the study, this disparity shows that the large variability in the frequency and types of complaints in

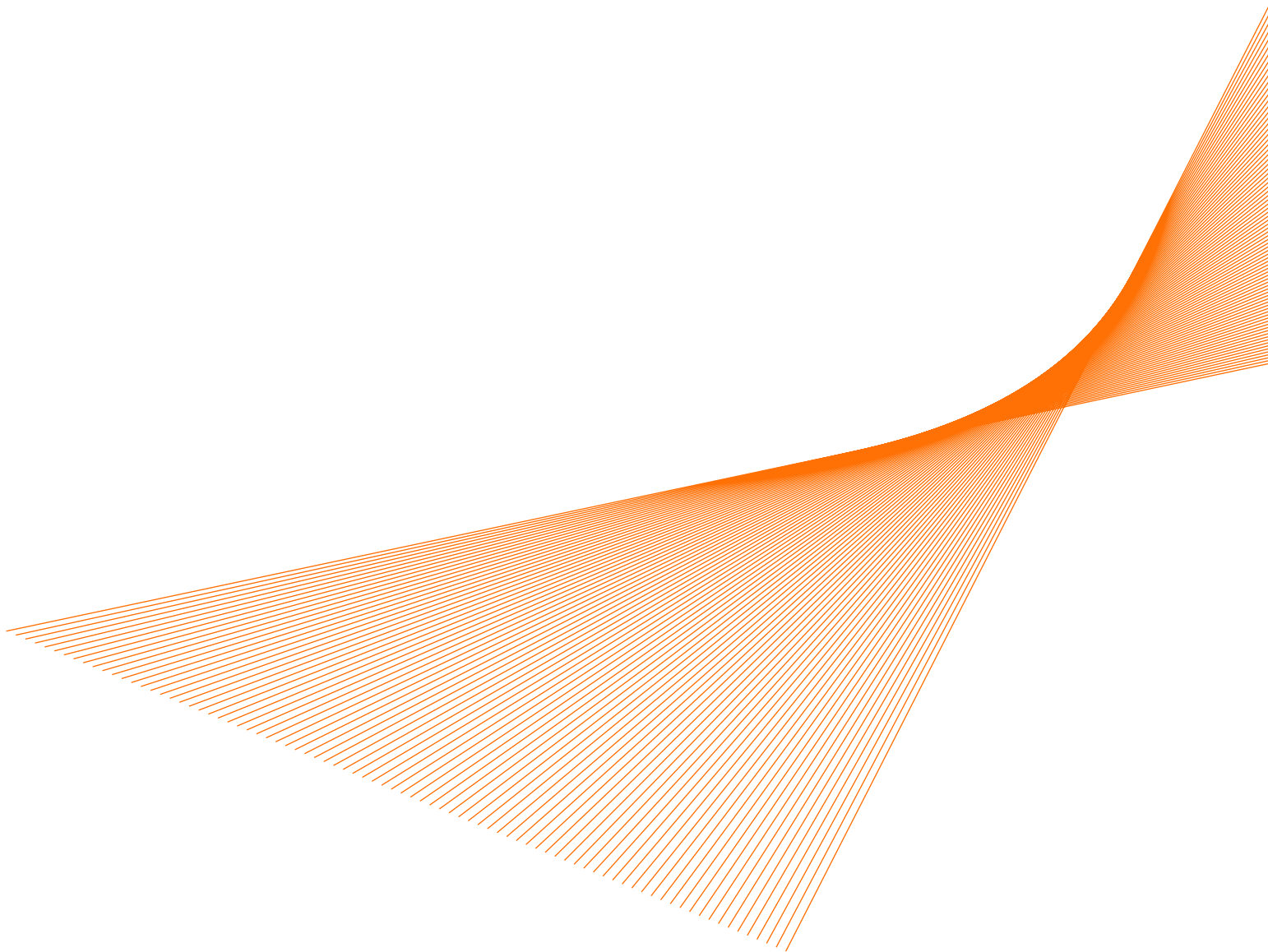
different nations reflects quite different cultures, traditions, and institutional setups for advertising complaints. Where an advertising standards authority such as the UK's ASA is actively visible and of long standing, it is likely to be in receipt of large volumes of complaints and to work effectively in relation to pre-clearance and other areas. The UK and Germany have a strong ethos of commercial clarity and consumer rights.

Active outreach: the ASA has had a long-standing commitment to advertising its services - and accessible mechanisms for complaints further explain these differences. There is also an influence connected to the levels of institutional trust applied by consumers in respect of complaints. Linking to the analysis of the length of time authorities have been functioning and in place, it is clear that those countries with relatively more recently set up self-regulatory authorities are among those with the very fewest complaints. While mechanisms may be firmly in place to support complaints against, for instance, advertising non-disclosure, there is not an established culture and familiar routine for doing so in these areas.

Most complaints (80-90%) originate from consumers, with misleading advertising being the primary concern; incorrect or lack of disclosure constitutes 35% of this category. Complaints related to taste, decency, and social responsibility also form a notable portion. Online advertising, particularly marketer-owned websites and influencer marketing, now attracts about half of all complaints, followed by television. Outdoor, direct marketing, radio, press, and magazine advertising together account for less than 5% of complaints. Retail, leisure services, and health and beauty are the most complained-about sectors, together accounting for more than half of all complaints. Other areas, such as food and financial services, account for around 10% of complaints.

Between 2019 and 2023, roughly one-third of complaints across Europe were upheld, with a similar proportion not upheld and the remainder resolved informally or through other authorities. There has been a relative decline in cross-border complaints during this period, with a slight increase between 2022 and 2023. UK consumers were responsible for most cross-border complaints, particularly in leisure services, clothing, accessories, and health and beauty.

National authorities provide substantial levels of copy advice and pre-clearance, with nearly 100,000 ads receiving copy advice in most years. The frequency and types of complaints reflect differences in national cultures, traditions, the maturity and visibility of regulatory bodies (such as the UK's ASA), and the accessibility of complaint mechanisms. Countries with newer self-regulatory systems tend to have fewer complaints, suggesting a less established culture of lodging advertising grievances, even when mechanisms are in place.



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