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The regulation of professional advertising practices in Spain, 1988–2013

Abstract

From the perspective of the sociology of professions, every professional activity should have its own clearly circumscribed and regulated sphere of action. Such an articulation facilitates the regulation of the production of a given profession as well as the way in which it is practiced. The purpose of the research reported here was to provide a comprehensive review and evaluation of the regulatory framework governing the advertising sector in Spain. To this end, the authors analysed external regulatory legislation and self-regulatory codes extracted from the data base of the *Asociación para la Autoregulación de la Comunicación Comercial (Autocontrol)* that had been enacted or adopted between 1988, the year that Law 11/1998 on General Telecommunications entered into force, and 2003 as well as other relevant documents retrieved from the *Boletín Oficial del Estado* (BOE) pertaining to the same period. Findings indicate that although there has been a groundswell of legislation governing advertising practices in Spain since 1988, especially at the regional level, lawmakers have focused on the content of advertising messages and shown very little interest in regulating the professions of advertising and public relations. Furthermore, Spanish legislation enacted in 2003 and EU policies appear to have encouraged the adoption of voluntary codes of ethics. Sectors traditionally subject to mandatory advertising regulation, either due to the vulnerability of their target audiences or the potential impact of their commercial messages on public health or the environment, are more likely to develop self-regulatory codes of conduct than others.

Keywords

Advertising, profession, regulation, self-regulation, deontology, ethics

1. Introduction

Every profession requires its own exclusive field of competence (Martín-Moreno & De Miguel, 1982: 39). According to Hughes (1971: 287), the boundaries of this domain are delimited, on one hand, by specialist training that gives professionals a license to engage in a specific trade

and, on the other, by mechanisms implemented to control the practice of that profession and establish a shared identity that forms the basis of a general mandate for the group to carry out their work.

Given that oversight of professional practices may be governmental (external), sectorial (self-regulatory) or the result of a joint effort (co-regulation), the axis of responsibility rests on the shoulders of government and those exercising a given profession (Fernández-Pérez, 2001; Martín-Llaguno, 2006; Martín-Llaguno & Hernández-Ruíz, 2009). On this premise, a profession may be understood to be a "self-regulated community" operating under the aegis of government regulators that enjoys the exclusive right to train prospective members or allow them to practice a given occupation and judge their performance (Fernández Pérez, 2001: 30). Self-regulation and legislation are complementary measures that jointly define a profession in that, as Cortina has observed although "laws establish minimum standards to prevent negligence, these dispositions do not provide sufficient guidelines for carrying out professions from the perspective of the services they are expected to provide society" (1997: 59). Thus,

professional ethics entail much more than compliance with minimal legal requirements; they call upon practitioners to strive for excellence. This implies a commitment on the part of professionals to those to whom they render services and a firm assumption that the work they perform benefits these people rather than themselves (Cortina, 1997: 65).

The ethical and legal regulation of a professional activity contributes to its consolidation (Hortal, 2002). Therefore, in order to gain a clear picture of the degree to which a profession has been consolidated, it is necessary to analyse the legal and ethical rules to which it is bound.

Spanish academics have demonstrated a growing interest in the consolidation of advertising as a profession, especially since the introduction of university degree programmes in this discipline (Méndiz Noguero, 2000). However, whereas there have been many studies focusing on changes in advertising curricula – many of which have dealt with the implementation of professional competences in compliance with European Higher Education Area standards (Mérida Serrano, 2006; Hernández, Díaz & Matilla, 2009; Corredor Lamas & Farfán Montero, 2010) – little attention has been paid to the role that regulatory frameworks have played in the formation of professional sector identity.

Although viewed from the perspective of Hortal, all professions are subject to three types of mediating factors: technical (in the sense of the training required to practice them), economic and organisational and institutional (2002: 55), the work of researchers devoted to the study of advertising in Spain has focused principally on the impact of the first two and given short shrift to the third (López-Berna; Papí-Gálvez & Martín-Llaguno, 2011). Nevertheless, as that professionals carry out their functions "within regulatory environments that articulate the rules and guidelines they are required to follow and what is expected of them" (Hortal, 2002: 71 ff.), determining the degree of a profession's consolidation requires a close examination of the regulatory and organisational framework within which it operates and how this affects sector conduct. Given the intellectual aspects of advertising work, the ethical responsibilities of communicators and the advertising sector as a whole must be closely examined and addressed. Advertising professionals as individuals and a group "need to have a protected margin of creative freedom, but at the same time respond (at least morally) to the consequences of their work" (Martín-Llaguno, 2006: 127).

The profusion and complexity of regulations in force concerning content attest to a strong ongoing interest in providing oversight of communication in general, and commercial communication in particular. The need for such detailed regulation stems from the dual nature of advertising messages, which are crafted to be simultaneously informative

and persuasive (Martín-Llaguno, 2006: 113). Higuera (1998) has underlined the difficulty of approaching advertising from a strictly legal point of view given that this type of communications transaction can be variably viewed from the distinct perspectives of the two parties involved –advertisers and consumers–, each of which carries a different set of legal ramifications that are difficult to reconcile. Whereas the first is rooted in corporate interest and competition law, the second is focused on consumer rights (p. 25). As a result of this dichotomy, advertising is regulated by means of diverse range of legislation, which, according to Higuera,

is far from constituting a unified, structured and autonomous body of law, a circumstance that makes it impossible to affirm that anything such as advertising law, in the fullest sense of the concept, exists. The complexity of existing regulation reflects the complexity of advertising itself (p. 14).

The "hyper-regulation" of advertising messages in Spain can be attributed to multiple processes involving a wide range of legislating bodies, approaches and interests (Martín-Llaguno, 2006; Jiménez, 2012) that have given rise to a plethora of directives, regulations, laws and standards generated at EU, national, regional and municipal levels intended to address not only general issues but also specific media, products and audiences. Given the vast scope and weight of these measures, self-regulation is being increasingly accepted as a useful complement to external oversight (Martín-Llaguno, 2006: 193 ff.).

Over the past few years, EU entities impressed by the advantages self-regulation offers have come to view it as a convenient means of covering the shortfalls of current regulatory systems and have actively promoted the concept of co-regulation as well (Muñoz-Saldaña & Gómez-Iglesias Rosón, 2013: 83). Similar attitudes were expressed in the European Commission's July 2001 White Paper on Governance, a document that laid the foundation for the European Parliament's resolution of 14 September of 2011 on "better legislation, subsidiarity, proportionality and smart regulation". Various motives have been given for advocating self-regulation, among them the possibilities it has opened up for simplifying and reducing the volume of legislative acquis, rendering the implementation of certain regulation more effective, updating the existing regulatory framework, adapting regulation to the idiosyncrasies of a wide range of business activities and, in the case of co-regulation initiatives, building on the experience of all implicated parties, especially public stakeholders (Muñoz-Saldaña & Gómez-Iglesias Rosón, 2013: 83).

Spain has a well-established system of self-regulation administered by the *Asociación para la Autorregulación de la Comunicación Comercial (Autocontrol)*, an organisation that offers an extra-judicial channel for resolving disputes related to advertising matters and issues expert opinions and reports on advertising content prior to its public dissemination.

Although a wide range of regulations and robust mechanisms are now in place, both legislation and sector deontology have heavily focused on advertising content and its impact on the public, failing in equal measure, as pointed out earlier in this paper, to address the issue of professionalization (Martín-Llaguno, 2006: 127). This circumstance implies the existence of an untested hypothesis that while advertising content has been subject to over-regulation, little attention focus has been placed on the practice of the advertising profession itself.

Parting from the above premise, the study reported in this article set out to identify and evaluate the body of legislation affecting the advertising profession in Spain, beginning with a review of external regulatory systems and legal frameworks in place at national and regional levels (Objective 1) and subsequently moving on to an exploration of the areas in which internal self-regulation has been implemented (Objective 2).

2. Materials and methods

Pursuant to these objectives, we carried out a systematic review of legislation retrieved from the *Autocontrol* online data base, a resource that offers association members access to documents dating back to 1945, continually updated information concerning regulations, legislation and jurisprudence, expert opinions issued by the organisation's jury and archived copies of its digital newsletter.

The analysis conducted in pursuit of Objective 1 was based on a search of documents falling under the general category of "advertising legislation" in the *Autocontrol* data base and classified as a "regulation with the force of law" enacted at the EU level or by national or regional legislative bodies in Spain between 1988 (the year in which General Law 34/1988 was enacted) and the end of 2013. A total of 655 relevant items were identified during this search.

These files were coded according to the following criteria:

- Year of entry into force
- Scope of application (European, national, regional, or other)
- Type of document (EU directives and other relevant types of EU documents and organic laws, ordinary laws, orders and royal decrees generated in Spain) and
- Focus of document (advertising content, media, advertising as a profession, or other.)

The regulated product or service referred to in each of the 176 legal documents retrieved (which included organic and ordinary laws as well as royal decrees) was coded in line with categories employed by *Autocontrol*, which were as follows:

Table 1. Regulated products and services

Food
Alcoholic beverages
Highways/ports
Consumer affairs
Business
Postal and courier services
Fundamental rights
Games and betting
Toys
Brand names
Media
Stock market investments and financial products
Advertising/unfair competition
Public sector advertising
Health/pharmaceutical products
Tobacco products
Telecommunications/Internet
Tourism
Vehicles
Other

Note: Based on categories developed by *Autocontrol*

To compare this data with data from another reliable source, we conducted a search of the digital archives of the BOE (Spain's official government bulletin) for all national and regional legislation in force during the period 1988–2013 bearing titles that contained either the noun or adjective form of the Spanish word for advertising (*publicidad* and *publicitario/s*). This effort yielded 476 items corresponding to national legislation and 17 corresponding to regional legislation, whose titles contained the noun form of the word (*publicidad*) and 1 item corresponding to national legislation and 3 corresponding to regional legislation whose titles contained the adjective form (*publicitario/a*). Lists of items identified in each database were then compared to detect repetitions and omissions and a master list was prepared. An additional search yielded 3 more documents (1 national and 2 regional), which were added to the master list. The year, scope of application and focus on each document on the final list was recorded.

In pursuit of Objective 2, we conducted an additional search of the *Autocontrol* database to identify documents corresponding to the period 1988–2013 that fell into the category of "códigos y textos de autorregulación" (self-regulatory codes and related documents). The following information was recorded for the 36 items identified during this search:

- Year introduced
- Scope (national, international, or other)
- Source: Institutions responsible
- Focus of document (advertising content, media, advertising as a profession, etc.) and
- Product or service regulated.

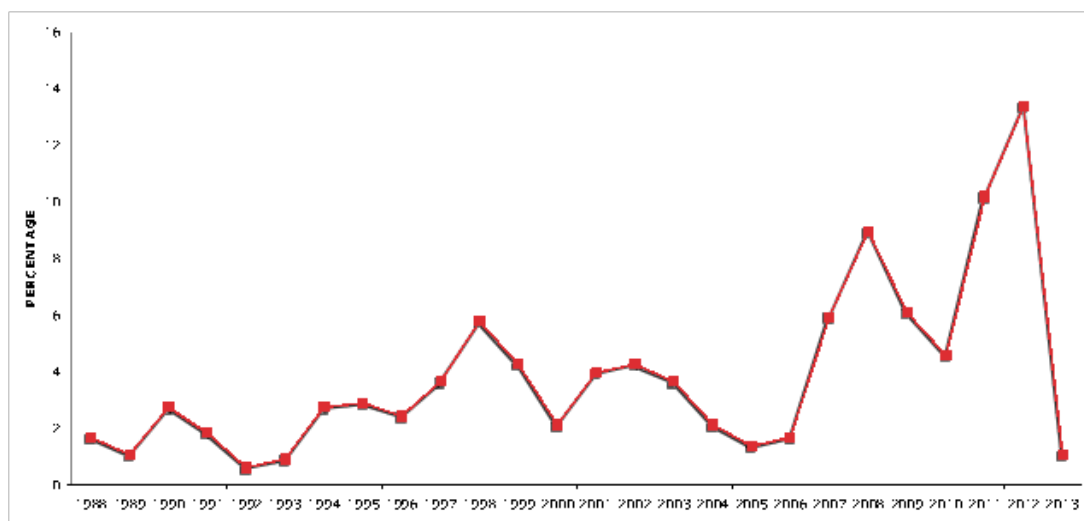
In all the cases above, data was analysed using SPSS-10 software.

3. Analysis and results

3.1. The legal framework for the regulation of advertising in Spain: external control

Of the 655 items retrieved during the first search of the *Autocontrol* database, 38 were EU directives, 9 organic laws, 267 ordinary laws, 102 royal decrees and 37 orders. The remaining 202 documents were classified as "other".

Figure 1. Diachronic evaluation of advertising legislation, 1988–2013



As can be observed in Figure 1, the first significant spike in related legislation occurred in 1998, a year for which 38 documents were recorded. The number rose dramatically after

2007 boosted by a steady stream of new EC regulations and directives and reached a maximum peak of 87 in 2012, of which 19.5% had been generated at the EU level.

Generally speaking, the greater part of the legislation in the sample studied had been generated at the national level (41%), although almost as much (40.6%) was attributable to regional governments. Of the 267 ordinary laws introduced during the period 1998–2013, 267 were regional in nature. EU regulation accounted for 18.2% of total sample items.

In terms of focus and purpose, 35% dealt with advertising content and a distant 5% concerned the media. Only one document could be identified as focusing on advertising as a profession. Although they formed a part of the *Autocontrol* database, the rest of the documents retrieved (59.5%) dealt with commerce and consumer affairs on a very general level not related to the objects of this study and were therefore classified as "other".

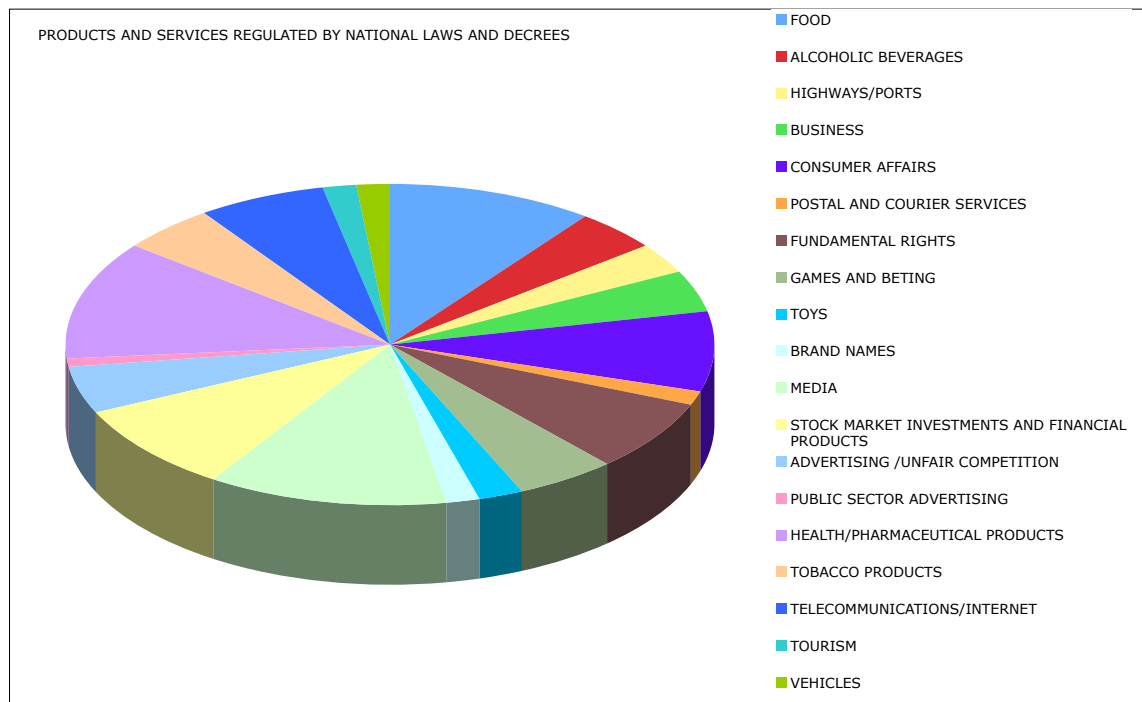
3.1.1. A breakdown of national legislation by type of product or service under regulation

Figure 2 provides a breakdown of those organic and ordinary laws and royal decrees within the sample that dealt with national regulation of a specific type of product or service (176 out of 655).

The areas on which national lawmakers focused their attention, in order of the volume of legislation generated in each category, were "media" and "health" (15 documents each) followed by "food" (13), "stock market investments and financial products" (11), "consumer affairs" (10) "fundamental rights" (9) and telecommunications and Internet (8). Between 2 and 6 related texts were registered for the rest of the categories on the list.

Legislators at the national level proved to be very interested in the regulation of audiovisual communications in general and content disseminated by means of radio, television and motion pictures in particular – a focus that underlines the highly recognised social repercussion of these media. There was also substantial regulatory legislation devoted to areas considered key to well-being such as health and food as well as consumer affairs.

Figure 2. Products and services regulated by national laws and royal decrees



3.1.2. Legislation at the regional level

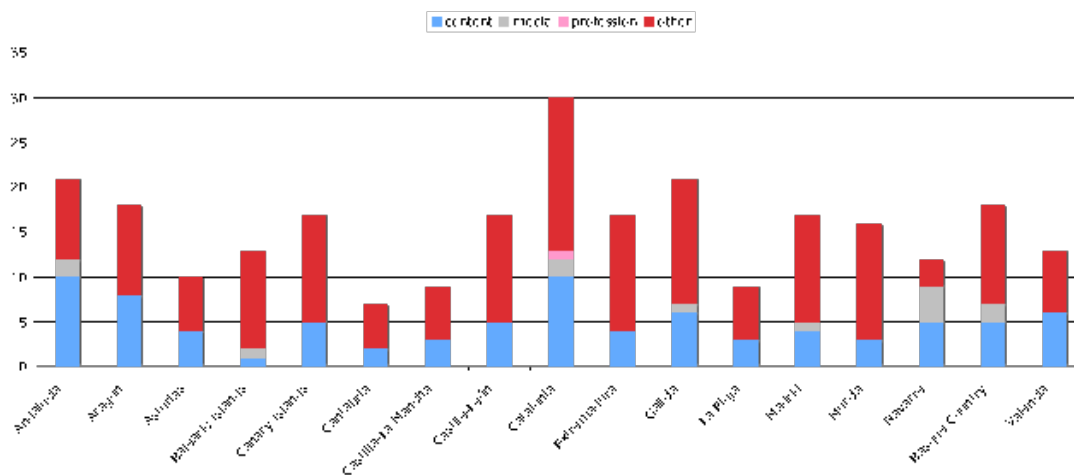
In terms of the volume of legislation generated at the regional level, Catalonia took the lead with 30 pieces of legislation, followed by Andalusia and Galicia, both of which were responsible for 21. The Basque Country and Aragon had each enacted 18. Trailing these autonomous communities in terms of legislative output were La Rioja and Castilla La Mancha with 9 each and Cantabria with 7.

Of the total number of documents generated by Spain's autonomous communities (265), 31.7% were primarily focused on advertising content. Another 4.9% dealt with media and only one (corresponding to Catalonia) focused on the professions of advertising and public relations.

Of the 655 sample units analysed, this text (Law 12/1998 of 5 November on the founding of the Colegio de Publicitarios y Relaciones Públicas de Cataluña, a sector professional organisation) proved to be the sole legislative document to have dealt with advertising as a profession. Like their national counterparts, regional legislators demonstrated little or no interest in regulating the profession.

Echoing legislation at the national level, laws and regulations enacted by autonomous communities focused in large measure on advertising messages (content). This was especially the case of legislation enacted by Andalusia and Catalonia, almost 50% of which (10 documents each) focused on this issue. It was particularly interesting to note that although every autonomous community in Spain has its own regional television network, regional lawmakers (unlike their counterparts at the national level) did not enact legislation concerning media. Navarre, which had generated 4 pieces of legislation on that topic, was the exception. Figure 3 provides a breakdown of the types of topics addressed in legislation by each of Spain's autonomous communities

Figure 3. Aspects of advertising addressed by lawmakers in Spain's autonomous communities



3.1.3. Organic laws

Organic laws are, by definition, related to the exercise of fundamental rights. Such laws in force in Spain pertaining to advertising can be divided into three distinct categories: those regulating advertising messages from the perspective of the right to information, those regulating advertising from the perspective of business law and, lastly, those regulating political messages (see Table 2).

Table 2. Organic laws pertaining to advertising

Organic law	Year
ORGANIC LAW 3/2007 of 22 March on Substantive Equality between Women and Men	2007
ORGANIC LAW 1/2004 of 28 December on Integrated Protection Measures against Gender-based Violence	2004
ORGANIC LAW 8/2003, of 9 July on the Reform of Bankruptcy Proceedings, which amended Organic Law 6/1985 on Judicial Power	2003
ORGANIC LAW 15/1999 on the Protection of Personal Data	2003
ORGANIC LAW 1/1996 of 15 January on the Legal Protection of Minors, partially modifying both Civil and Civil Procedural Codes	1996
ORGANIC LAW 10/1995, of 23 November (Penal Code)	1995
ORGANIC LAW 14/1995, of 22 December regarding political advertising during election campaigns via local cable television stations	1995
ORGANIC LAW 10/1991 of 8 April regarding political advertising during electoral campaigns via local public radio stations	1991
ORGANIC LAW 2/1988 of 3 May regulating political advertising during electoral campaigns via private television stations	1988

The first category includes Law 3/2007 on Substantive Equality between Women and Men. Title III of this legislation, which addresses equality and the media, states that "State-owned media will take care to portray an egalitarian, plural and non-stereotyped image of women and men in society, and will further the understanding of and propagate the principle of equality between men and women". This principle underpins the regulation of RTVE (the Spanish public television and radio broadcasting company), the news agency EFE, privately owned media outlets, authorities enforcing compliance and the advertising sector. Articles of this document devoted to RTVE and EFE contain specific references to self-regulation. According to Law 3/2007, the General Advertising Law 34/1988 and the Law for Advertising and Institutional Communication of 2005, any advertising violating these standards shall be considered illicit.

Similarly, Law 1/2004 on Integrated Protection Measures against Gender-based Violence specifically states "advertising material that uses the image of women in a degrading or discriminatory manner shall be deemed to be illegal". This legislation, which like the Law of Equality regulates the media, also contemplates self-regulation.

Finally, a section of Organic Law 1/1996 on the Protection of Minors that deals with the right to information, states "advertising and other types of messages targeting minors may be regulated by means of special laws designed to ensure that they do not cause material or material harm to this audience", noting further that "without prejudice to other entities entitled to do so, the responsibility for actions intended to ensure the withdrawal or

rectification of illicit advertising lies with the Public Prosecutor's office and other competent public authorities".

There are three organic laws that address advertising from the perspective of business law.

Organic Law 8/2003 of 9 July on the Reform of Bankruptcy Proceedings establishes that mercantile courts "will have full jurisdictional competence to handle cases related to unfair competition, industrial and intellectual property, and advertising", and Organic Law 15/1999 on the Protection of Personal Data stipulates that advertising and marketing firms may only make use of personal data "available from public sources or facilitated by interested parties and obtained with their consent". Organic Law 10/1995 contemplates fines and prison sentences for "manufacturers or merchants that include false allegations or untrue statements in their advertisements or offers for goods and services . . . if consumers are put into serious and plain jeopardy".

The last group of three, which comprises laws that regulate political parties' use of radio, television and other audiovisual media during election campaigns, is meant to ensure respect for pluralism and equality. These laws prohibit public and private television and radio broadcasters alike from selling airtime for political advertising during electoral campaigns. The law draws no distinction between public and private television on this particular issue (see Table 2).

A search of the BOE archives yielded three other relevant texts. All fell thematically into the category "advertising and public relations as professions", bringing the sum total of sample items related to this topic to 4, one of which was national in scope and three of which concerned the profession at the regional level.

The sole item in the first category was a national collective bargaining agreement negotiated between advertising companies and workers' representatives. This agreement, which established minimum conditions of employment in firms engaging in one or more of the activities defined as related to advertising in article 2 of the General Law of Advertising of 1988 and appeared in the BOE on 24 February 2010, contained a higher number of references to advertising and public relations as professions than any other text in the sample.

As might be expected, this document focused heavily on aspects of employment such as the types of contracts offered within the sector, working hours, wages, occupational health and union rights. However, it also provided a detailed list of job titles that broke down general categories (directors, managers, technical, administrative and general office staffers, non-qualified workers and direct marketing personnel) into a total of 63 distinct professional profiles. Three profiles contained in this agreement (director, manager and technical staffer) coincided with three of the four professional profiles laid out for advertising and public relations majors in the Spanish government's White Paper on Communication Degrees in Communications (*Libro blanco de las titulaciones de Grado en Comunicación*): communications director; researcher and/or strategic advertising and public relations consultant; and researcher, media planner/buyer and creative/designer (ANECA, 2004: 271–272).

The regional documents identified during this search were two of the three pieces of legislation enacted to date in Spain related to the creation of official trade associations in specific autonomous communities: Law 5/2001 on the Creation of an Official Association of Advertising and Public Relations Professionals in the Community of Valencia and Law 13/2006 on the Creation of an Official Association of Advertising and Public Relations Professionals in the Balearic Islands.

The results of this search confirmed our starting hypothesis that, in general and relative to other aspects of sector activity, there have been few attempts to regulate the profession in Spain and also established that the majority of such initiatives have been

undertaken in autonomous communities situated along the country's southern Mediterranean flank.

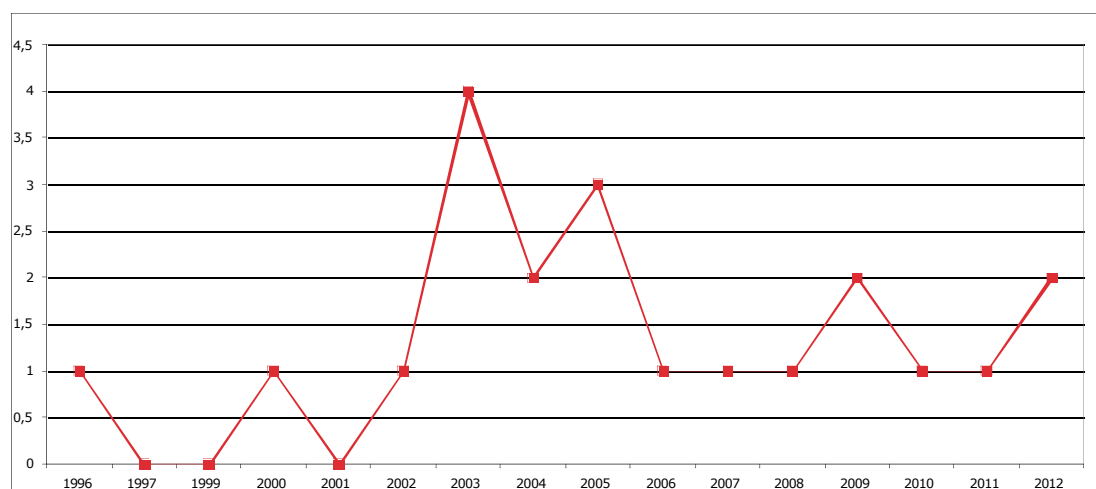
3.2. The deontological framework: an internal or self-regulatory mechanism

Of the 36 documents retrieved in this category, 34 were self-regulatory codes of conduct: 20 generated in Spain and in force nationwide, 1 generated at the European level but in force throughout Spain and another 13 of international origin and scope. The other two, which pertained directly to *Autocontrol*, were the by-laws that entity approved and adopted in 1995 and a set of procedural rules established in 1997 for its "jury", a governing body that in addition to other organisational functions is responsible for reviewing and emitting non-binding expert opinions regarding advertising content.

An analysis of the specific points in time at which the 21 self-regulatory codes identified for the period were introduced reveals that activity reached a peak in 2003 with the introduction of 4 new codes: one established by the Spanish Association of Toy Manufacturers concerning toy advertising targeting children, another focusing on advertising introduced by the Brewers Association of Spain, an advertising code adopted by the Spanish Federation of Alcoholic Beverages and a code of conduct developed by the organisation *Confianza Online* (online trust). The *Autocontrol* annual report for this year noted yet another landmark in self-regulation: the signing of an agreement between *Autocontrol* and the Spanish Ministry of Science and Technology to promote the self-regulation of television advertising by means of a pre-clearance "copy advice" review of advertising content carried out by *Autocontrol* experts prior to its public release.

The year 2004, during which only two new codes were adopted, marked the lowest point of self-regulation activity. However, this was followed by a rebound in 2005, a year in which three new codes were introduced: the Good Practices Code of the Spanish Federation of Health Technology Companies (FENIN), Best Practice Guidelines for the Advertising of Interactive Software, and PAOS, a self-regulatory code that covered food advertising targeting young people, the need to check the growing problem of obesity and the promotion of healthy lifestyles. On the average, between one and two new codes were introduced between 2006 and 2012 (see Figure 4).

Figure 4. Introduction of nationally applicable self-regulatory codes over time (1996–2012)



As previously noted, *Autocontrol* monitors compliance with the 21 codes advertising applicable throughout Spain. Table 3 provides a list of these codes as well as the names of

the organisations that adopted them, the area of commerce to which they apply and the type of product or service they cover.

Sectors engaged in self-regulation include toy manufacturing, food processing, alcoholic beverage production and the automotive industry, although the list also contains codes applicable to energy, fuel, software and pharmaceutical companies, online businesses and a number of professional associations (see Table 3).

Table 3. Self-regulatory codes of national scope in Spain as of the end of 2013

	Code	Year	Organisation	Subject	Product or service regulated
1	Code of ethics and best practices for the marketing of infant food and related products	2012	National Association of Infant Food Manufacturers (ANDI)	Advertising content	Food
2	Code of conduct regarding commercial messages related to gaming activities	2012	Agreement between DGOJ and SETSI. (Modified in 2013)	Advertising content	Gaming and betting
3	Self-regulatory advertising code for businesses providing online dating, friendship, contact and matchmaking services based on shared interests and compatibility	2011	E-DARLING	Advertising content	Telecommunications/ Internet
4	Spanish code of best practices for the marketing of pharmaceutical products and relations between the pharmaceutical industry and health professionals	2010	FARMAINDUSTRIA	Advertising content	Health/ pharmaceutical products
5	Code of best practices regarding the use of environmental arguments in advertising	2009	CEPSA, REPSOL, ACCIONA Y ENDESA; KIA, CHRYSLER, CITROËN, PEUGEOT Y RENAULT	Advertising content	Various
6	Self-regulatory code for wine advertising and marketing	2009	FEV Spanish Wine Association (Modified in 2012)	Advertising content	Alcoholic beverages
7	Spanish code of practice on relationships between the pharmaceutical industry and patient organisations	2008	FARMAINDUSTRIA (Modified in 2011)	Advertising content	Health/ pharmaceutical products
8	Code of good practices for the advertising and marketing of non-prescription medicinal products not funded through the national health system and other self-care health products	2007	ANEPF Association for Self-Care in Health	Advertising content	Health/ pharmaceutical products
9	Self-regulatory code of ethics of the Spanish Association of Manufacturers and Distributors of Enteral Nutrition Products	2006	AENE Spanish Association of Manufacturers and Distributors of Enteral Nutrition Products	Advertising content	Food

10	Best practices code of the Spanish Federation of Healthcare technology Companies	2005	FENIN Spanish Federation of Healthcare Technology Companies	Advertising content	Health/ pharmaceutical products
11	Best practice guidelines for the marketing of interactive software	2005	ADESE Spanish Association of Distributors and Editors of Entertainment Software	Advertising content	Telecommunications/ Internet
12	PAOS- self-regulatory code for food advertising targeting young people aimed at preventing obesity and promoting health	2005	FIAB- Spanish Ministry of Health and the Spanish Food and Drink Industry Federation (Modified in 2012 and 2013)	Advertising content	Food
13	Code of Ethics of the National Association of Market Research and Public Opinion Companies	2004	ANEIMO National Association of Market Research and Public Opinion Companies (Modified in 2008)	Other	Consumers
14	Code of Ethics of the National Association for the Defence of Brands	2004	ANDEMA National Association for the Defence of Brands	Other	Brand names
15	Self-regulatory code for advertising toys to children	2003	AEFJ Spanish Association of Toy Manufacturers (Modified in 2011)	Advertising content	Toys
16	Self-regulatory advertising code of the Brewers Association of Spain	2003	Brewers Association of Spain (Modified in 2009)	Advertising content	Alcoholic beverages
17	Self-regulatory advertising code of the Spanish Federation of Alcoholic Beverages	2003	FEBE Spanish Federation of Alcoholic Beverages (Modified in 2013)	Advertising content	Alcoholic beverages
18	Ethical Code of Confianza Online	2003	CONFIANZA ONLINE (Modified in 2014)	Advertising content	Telecommunications/ Internet
19	Common Principles and Operating Standards of Best Practice	2002	EASA European Aviation Safety Agency	Other	Consumers
20	Ethical code for motion picture advertising	2000	AUTOCONTROL Association for the Self-Regulation of commercial Communication	Advertising content	Media

21	General Code of Advertising Practices	1996	AUTOCONTROL Association for the Self-Regulation of commercial Communication (Modified in 2011)	Advertising content	Consumers
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Although the organisations noted above have little in common, the sectors they represent are subject to regulatory oversight for a number of different reasons. Whereas the purpose of regulation in some sectors is to protect the rights of vulnerable audiences such as children (as is the case for the toy and children’s food industries), in other instances it is prompted by concern for public health. The greater part of the codes listed above pertain to the latter category: 4 are devoted to pharmaceutical products, 3 to food products and an additional 3 to alcoholic beverages. Other types of self-regulation are focused on environmental claims and concerns (a common theme in automobile, energy and motor fuel advertising) or consumer rights in lightly regulated environments such as the Internet (a major issue for online businesses). However, the overriding issue and primary focus of the majority of the codes examined for this study (17 out of 21) was self-regulation of advertising content.

Most of the codes of conduct and ethics listed above were the result of collaborations between private companies and *Autocontrol*. However, PAOS was an integral part of the Spanish Ministry of Health and Consumer Affairs' 2005 NAOS strategy, and the 2012 Code of Conduct Regarding Commercial Communications of Gambling Activities was the result of a co-regulation agreement between *Autocontrol* and the Directorate General for the Regulation of Gaming of the Spanish Ministry of Finance (DGOJ) forged on the basis of relevant national legislation and favourable reports issued by the Secretary of State for Telecommunications and the Information Society (SETSI) and the Office of the Secretary of State for Finance and Budgets (Ministry of Economy and Finance).

4. Discussion and conclusions

Findings indicate that, in general terms, the volume of legislation related to advertising rose during the period under study. The pace of this increase, however, picked up considerably as of 2007, the year that the European Commission began to issue regulations and directives on this subject. The impulse for this new wave of legislation may well have been the EC's Audiovisual Media Services without Frontiers Directive of 2007, which replaced the Commission's earlier Television without Frontiers Directive issued in 1989. This new directive, which advocated self- and co-regulation, marked a step in the direction of a more flexible regulatory approach to advertising (Campos Freire, 2007).

Legislators at every level, be it regional, national or European, focused their attention on advertising content. However, the professions of advertising and public relations generated less interest: only 4 out of the 658 documents in the sample analysed addressed this topic. Findings support our starting hypothesis that legislation would place a stronger emphasis on advertising content and its impact on public audiences than on the processes involved in advertising and professionals performing this work (Martín-Llaguno, 2006).

The first piece of legislation in the sample identified as related primarily to the professions of advertising and public relations had been generated at the regional level. It was a 1998 law establishing the creation of the *Colegio Oficial de Publicitarios y Relaciones Públicas de Cataluña*. This organisation, which was the first official association of advertising and public relations professionals established in Spain, is still active today. Catalonia has enacted more legislation related to advertising than any other autonomous community in Spain (11% of the overall total), a fact perhaps explainable by this region's pioneering and

ongoing contributions to the development of advertising in Spain (Méndiz, 2000). Spain's other two official associations for advertising professionals were founded in the Community of Valencia and the Balearic Islands. Regional laws concerning the creation of these organisations make up the bulk of Spanish legislation focusing on advertising as a profession. It is therefore clear that legislation on this topic in Spain has not only been regional in nature but also highly concentrated along the country's Mediterranean coast. The creation of a professional association serves as an indicator of sector employees' interest in officially normalising their activities and contributing to the consolidation of their professions (Fernández-Pérez, 2001). The fact that only three such associations have been founded in Spain is a sign that such interest is minimal within the overall sector.

The fourth item in the sample related to advertising as a profession was generated at the national level and primarily concerned employment conditions. It was a collective bargaining agreement reached in 2009. What distinguishes this document from earlier agreements and constitutes a real contribution to the profession is the detailed list of specific job profiles and their individual functions it provides. Certain profiles described in this agreement coincided with three of the four career profiles defined in the government's White Paper on Communication Degrees in Communications, an indication that there is a reasonable degree of consonance between degree programmes in advertising and public relations offered by Spanish universities and sector demand for trained professionals. Nonetheless, the breadth of the profiles listed in the agreement suggests that other positions could possibly require university-level training as well.

The fact that the bulk of regulatory legislation enacted at the national level concerned products and services offered by the media and health sectors can be read as a sign of legislators awareness of the power of the media, their ongoing concern regarding its impact on audiences and their interest in matters of public welfare such as health. More surprising was the depth of their interest in regulating stock market investments and financial products, which accounted for 12.3% of the national legislation analysed. Such a high percentage is most likely attributable to the socioeconomic climate of the period examined, as much of the regulatory legislation in question was enacted in the wake of the financial crisis of 2009.

Legislators were less interested in enacting laws regulating communication via the Internet, which made up only 9% of the laws examined. Despite the rising importance of new forms of communication, their regulation remains a pending issue.

Organic laws enacted during the period studied related to advertising addressed commercial communications from two distinct perspectives: the right to information and commercial law.

In terms of legislation drafted from the perspective of the right to information, two laws reflecting the political platform of the ruling Socialist Party 2004–2008 stand out: Organic Law 1/2004 of 28 December on Integrated Protection Measures against Gender-based Violence and Organic Law 3/2007 of 22 March on Substantive Equality between Women and Men, the latter of which was followed a year later by the establishment of Spain's first Ministry of Equality since the country's return to democracy. Both pieces of legislation promote the concept of self-regulation and call upon public and private institutions alike to create and uphold codes of conduct designed to ensure compliance with regulatory principles.

In terms of commercial law, legislators were above all interested in addressing unfair competition and illicit advertising. One particularly important action taken in this area during the period studied was a modification of the 1995 Penal Code that made advertisers criminally liable for their acts and contemplated prison terms for guilty parties. This was an important step, as advertisers had previously been only subject to civil liability. The inclusion of the concept "advertising crime" in the revised Penal Code, which marked the

first appearance of this term in Spanish jurisprudence, has stoked debate concerning the complexity of addressing issues related to advertising from a juridical point of view. The fact that the Penal Code places liability on manufacturers and merchants rather than advertising agencies or media outlets makes it difficult to establish who is the actual perpetrator of this kind of offense (Higuera, 1998: 13).

In addition to organic laws conceived to protect fundamental rights and regulate commercial advertising content, the sample contained three others that dealt with political advertising. These laws limit the use political parties and politically motivated organisations may make of audiovisual media during electoral campaigns. Unlike other types of legislation previously discussed, these laws were conceived to ensure that parties across the political spectrum have access to the same amount of air time during official electoral periods rather than to control the content of such messages.

Analysis shows that legislation concerning self-regulation peaked in 2003. This high point coincided with the signing of an agreement between *Autocontrol* and the Spanish Ministry of Science and Technology conceived to promote self-regulation in the area of television advertising. At that time, the Ministry of Science and Technology was the country's highest authority on matters related to audiovisual communications, and its mandate, as stated in Law 25/1994 on Television without Frontiers, included the power to monitor, investigate and sanction television stations and networks. This agreement followed an earlier pact signed in 2002 between the Federation of Regional Organizations of Radio and Television (FORTA), *Autocontrol*, the Spanish Advertisers Association (AEA) and television broadcasting companies Radio Televisión Española, Publiespaña (Telecinco), Antena 3 Televisión and Sogecable (Canal Plus) that allowed adhering television broadcasters to submit advertisements to *Autocontrol* for a pre-clearance "copy advice" evaluation prior to their public release (Autocontrol, 2003). Of the four self-regulatory codes introduced in 2003, two dealt with alcoholic beverage advertising, one addressed toy advertising and another covered online businesses. Self-regulatory codes may be seen by sectors that rely heavily on seasonal television advertising campaigns such as those involved in toy and alcoholic beverage manufacturing, distribution and sales, as a convenient means of disuading television networks from routinely requesting *Autocontrol* pre-broadcast audits of their commercials.

Furthermore, EU policy on advertising, best exemplified by the work carried out by the Commission's Advertising Roundtable, a programme launched by the EC's Directorate-General for Health and Food Safety (DG SANCO) as part of a greater "Better Regulation" initiative (Autocontrol annual report for 2006), has proved to be a fundamental driver of self-regulation in Spain. Of the 21 codes of ethics in force nationwide, 11 contain references in their preambles to sector counterparts within the EU that have previously adopted such codes or cite EU legislation that promotes the concept of self-regulation.

In terms of action at the national level, a modification of Law 3/1991 on Unfair Competition carried out in 2009 has encouraged the adoption of self-regulatory codes for commercial communications. As modified, this law now contains a completely new chapter specifically devoted to codes of conduct comprised of three articles titled "Promotion of codes of conduct", "Actions with regard to codes of conduct" and "Preliminary actions taken against entrepreneurs and professionals who are signatories of codes of conduct". The first of these articles establishes that "codes of conduct shall respect protection of competition regulations", "public authorities shall promote the participation of business and professional organisations in the drafting of codes of conduct for the same purpose at the community level" and "self-regulation systems shall be provided with independent control bodies to ensure that the signatory companies effectively comply with their commitments". It further states "codes of conduct may include, inter alia, prior individual or collective self-check measures on advertising content" and that corporations, associations and other

organisations that develop codes of conduct "must set up effective extra-judicial settlement systems" (BOE, 2009). Most importantly, article 5.2 of the updated law adds a new infraction to the existing catalogue of acts constituting unfair competition: the failure to adhere to commitments assumed in a code of conduct (Massaguer, 2011). Broadly speaking, in the wake of this modification, any violation of the codes of conduct described in this article on the part of advertisers and media organisations claiming to adhere to them could automatically be construed as an act of unfair competition. Therefore, the modification of Law 3/1991 on Unfair Competition raises the bar on self-regulation to the point that it borders on constituting a hybrid between external and self-regulation.

That said, the quantity and quality of the codes now in force –the majority of which have been developed and implemented by private entities without direct government implication– indicate that government has by no means been the prime mover in the shift towards self-regulation in Spain. The expansion and acceptance of the concept owes more to ideas put forward by the European Advertising Standards Alliance (EASA) in its Advertising Self-Regulation Charter of 2004, which has been widely embraced by the European advertising industry (Autocontrol annual report, 2006). It should not be forgotten that the majority of codes of conduct in force have been developed in direct or indirect response to the threat of government regulation. Many of the codes that have been adopted apply to organisations or industries that could, through their business practices, violate fundamental rights, take advantage of vulnerable audiences or have a negative impact on public health or the environment. Viewed from this perspective, self-regulation can be construed as either a form of pre-emptive defence, a complement to external regulation or a combination of both.

At this juncture, two things appear to be abundantly clear. On the one hand, the product of advertising activity (advertising messages) –particularly in terms of its impact on fundamental rights– is not only subject to state (external) regulation, but, above all, to sector (self) regulation as well. On the other hand, the idea of regulating the activity itself –in other words, of exercising control over advertising as a profession– has not, to date, sparked the interest of either legislators or sector professionals.

In light of the assertion underlying the sociology of professions that the attainment of professional excellence implies practicing a profession as "a service to society" (Cortina, 1997: 59), further studies focusing on the degree to which legislators and members of the advertising community seek to oversee and regulate the profession as well as its output and examining any new mandatory control mechanisms that may be implemented by governments and/or professional associations going forward would be of great interest. Given that advertising is a form of social communication, its content must be regulated to ensure public welfare. Nonetheless, it is both feasible and necessary to attain equilibrium between the regulation of advertising messages and the regulation of the practices and the professions of those responsible for their production.

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