

## **CHILDREN, EMBEDDED DIGITAL ADVERTISING, AND CONSUMER PROTECTION: EVALUATING THE ADEQUACY OF DISCLOSURE MECHANISMS UNDER INDIAN LAW**

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### **ABSTRACT**

Advertising has moved on from predetermined slots in commercial broadcasts and into incorporated digital spaces-influencer posts, branded vlogs, advergimes, social content driven by algorithms-fusing commercial persuasion with entertainment by having erased boundaries and markers that indicated the signal of commercial breaks. That this shift is aligned with a developmental issue-the ability to identify the persuasive commercial intent behind and above the mere identification of advertisements, as a skill acquired with age during childhood and therefore not robust before the early adolescent age-matters to the law because the present consumer-protection framework in India, along with in several other jurisdictions, continues to take a purely disclosure-based stance where labels such as "Ad" or "Sponsored" depend for their effectiveness on the presence of a mature adult-level reasonable consumer capable of acting upon such disclosures. It inquiries into how disclosure serves as a suitable device for child consumer protection given these embedded digital advertising characteristics among child consumers.

By employing doctrinal, comparative and normative methods, the article dissects the existing consumer-protection law framework in India-such as the Indian Consumer Protection Act, 2019, the 2022 CCPA Guidelines, FSSAI regulations, ASCI codes-and compares it to existing models operating in the UK, USA and the EU, using the field of child-targeted food advertising as a

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prime case. This analysis reveals that not only is there no reliable uptake of disclosures as a means to child comprehension of persuasive intent but even there, in the presence of it, disclosure alone doesn't reduce persuasive pull, especially among young child consumers and among child consumers who share a parasocial relationship with the discloser.

These observations stand vindicated in parallel and independent routes explored across other comparative jurisdictions- audience-relative recalibration of disclosures in the UK, supplemental provisions structure around disclosure in the EU, and clear admission of the inadequacies of disclosure in the USA. Finally, it concludes that despite the intent, the Indian 2022 guidelines establish a disclosure-based model unsuitable for children. Therefore, it recommends child-centric disclosures, particular protection of younger children and for child consumers with parasocial links, structural limits imposed upon embedded commercial content, particular rules for child-targeted food advertising sector, reformative use of self-regulation and supplementation of disclosure-based methods in creating and strengthening the layered system of child-consumer protection in India.

## **CHAPTER 1: INTRODUCTION AND RESEARCH FRAMEWORK**

### **1.1 Background of the Study**

Advertising has moved away from linear, time-bound formats such as the scheduled television commercial or the print insertion. It now appears inside digital environments where commercial messages sit alongside entertainment itself: influencer posts, branded vlogs, in-game placements, and social content that looks the same as ordinary user-generated material. This shift matters most for children. They now meet brands mainly through social media feeds, video-sharing platforms, and interactive games rather than through scheduled broadcast slots that an adult could reasonably be expected to see and mediate.<sup>3</sup>

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<sup>3</sup>World Health Organization Regional Office for Europe, Tackling Food Marketing to Children in a Digital World: Trans-Disciplinary Perspectives 6-11 (2016).

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The scale of this exposure is difficult to overstate. One estimate suggests that many 14-year-olds are exposed to as many as 1,260 advertisements a day on social media alone.<sup>4</sup> Research commissioned by the European Commission confirms that marketing practices of this kind now run through nearly every part of a child's online life, from social media feeds to the games they play and the influencer videos they watch.<sup>5</sup> The same research points out that the growing commercial use of children's personal data, for profiling and personalisation, puts pressure on several of their rights at once: development, freedom of thought, play, privacy, and protection from economic exploitation.<sup>6</sup>

Three features set embedded digital advertising apart from its broadcast predecessor. First, it removes the temporal and spatial break, the old "commercial break", that once signalled a move from editorial to commercial content. Second, it is often delivered by a trusted intermediary, usually an influencer, whose perceived authenticity and closeness to a child viewer increases persuasive effect while reducing the outward appearance of a commercial pitch.<sup>7</sup> Third, algorithmic and platform-driven distribution means a child can encounter this content with no adult present to explain it. Taken together, these features produce a form of content that does commercial work while looking like ordinary entertainment.

This structural shift lands on a pre-existing developmental limitation. Foundational consumer-socialisation research shows that the ability to recognise a communication as an advertisement, and separately, to understand the persuasive and commercial intent behind it, develops in stages through childhood and is not reliably present before early adolescence.<sup>8</sup> Children are a distinctly vulnerable class of consumer for this reason, not because a label is

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<sup>4</sup>UNICEF, Children and Digital Marketing (2026), <https://www.unicef.org/childrightsandbusiness/workstreams/responsible-technology/digital-marketing> (citing the Federal Trade Commission's staff estimate; see FTC Staff Perspective, 19).

<sup>5</sup>Valerie Verdoort & Eva Lievens, (Manipulative) Digital Marketing Practices Targeted at Children and Youth Online: Rights and Responsibilities Under the Existing EU Legal Framework 9 (European Schoolnet & European Commission, 2024) [hereinafter AdWiseOnline Report].

<sup>6</sup>AdWiseOnline Report, *supra* note 3, at 9.

<sup>7</sup>Sophie C. Boerman & Eva A. van Reijmersdal, Disclosing Influencer Marketing on YouTube to Children: The Moderating Role of Para-Social Relationship, 10 *Frontiers Psych.* 3042, 2-3 (2020) [hereinafter Boerman & van Reijmersdal].

<sup>8</sup>Deborah Roedder John, Consumer Socialization of Children: A Retrospective Look at Twenty-Five Years of Research, 26 *J. Consumer Res.* 183, 187-95 (1999); see also Marian Friestad & Peter Wright, The Persuasion Knowledge Model: How People Cope with Persuasion Attempts, 21 *J. Consumer Res.* 1, 3-6 (1994).

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invisible to them, but because the cognitive machinery needed to turn that label into an understanding of persuasive intent is still under construction.

## 1.2 Statement of the Legal Problem

Digital advertising now delivers commercial persuasion without looking like commercial content. Consumer-protection doctrine, however, still rests on an old assumption: that a reasonable consumer can identify commercial communication once it carries a label or a flag. This assumption drives the disclosure-based model used in most jurisdictions, including India, where the standard regulatory response to blurred advertising is to require a label such as "Ad" or "Sponsored" rather than to restrict the underlying practice.<sup>9</sup>

The legal tension can be stated plainly. Can a regulatory model build mainly on disclosure protect consumers who lack the developmental capacity to recognise commercial intent, even when a formal label sits in plain view? This is not simply a question about label design. It is a question about whether the legal standard of "identifiability" is being applied to an audience that, as a matter of cognitive development, may never be able to satisfy it.

## 1.3 Literature Review and Research Gap

The existing literature agrees on several points. Children face extensive and growing exposure to digital marketing.<sup>10</sup> They struggle to recognise persuasive commercial intent in newer, integrated formats such as vlogs and advergames.<sup>11</sup> Embedded and influencer advertising blurs the line between content and commerce. Disclosures do raise explicit advertising recognition in some experimental settings,<sup>12</sup> but disclosure does not reliably reduce the persuasive pull of the underlying commercial message, particularly for younger children and where a parasocial bond exists between the child and the discloser.<sup>13</sup> Indian consumer law offers

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<sup>9</sup>CCPA Guidelines for Prevention of Misleading Advertisements and Endorsements, 2022, Gazette of India, pt. III, § 4 (India) [hereinafter CCPA Guidelines 2022]; ASCI, Guidelines for Influencer Advertising in Digital Media (effective June 14, 2021) [hereinafter ASCI Influencer Guidelines].

<sup>10</sup>WHO, *supra* note 1, at 6-9.

<sup>11</sup>Rhianne W. Hoek et al., Testing the Effectiveness of a Disclosure in Activating Children's Advertising Literacy in the Context of Embedded Advertising in Vlogs, 11 *Frontiers Psych.* 451, 2-4 (2020).

<sup>12</sup>Steffi De Jans et al., The Development and Testing of a Child-Inspired Advertising Disclosure to Alert Children to Digital and Embedded Advertising, 39 *Int'l J. Advertising* 1, 3-7 (2020).

<sup>13</sup>Boerman & van Reijmersdal, *supra* note 5, at 6-9.

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general prohibitions on misleading advertisements and endorsements, and since 2022 has added child-specific guidance.<sup>14</sup>

A large multi-country literature review commissioned by the European Commission adds useful precision here. It identifies four persuasive tactics that digital marketers use on children: integration, meaning the blending of a commercial message into ordinary content; interaction, meaning the active involvement of the child in the marketing process itself, as in advergames; personalisation, meaning the tailoring of a commercial message using a child's own data; and emotion, meaning the deliberate use of affective content to bypass critical evaluation.<sup>15</sup> The same review found that children's advertising literacy does improve with age, and that children under twelve remain the most vulnerable group, but that digital marketing practices create real vulnerabilities across all age groups, including teenagers who are often assumed to be more media-savvy.<sup>16</sup>

What the literature has not settled is a legal, rather than purely empirical, question of adequacy. Plenty of empirical work exists on children's advertising recognition and on how disclosures function. Far less legal analysis asks whether a disclosure-centred consumer-protection framework can actually defend a child audience once commercial content is embedded inside digital entertainment, specifically under Indian law. That is the gap this study addresses.

#### 1.4 Significance of the Study

The study has academic value in connecting child-development scholarship, digital advertising law, and consumer-protection theory. It has legal value in testing whether the established concepts of disclosure and fairness still work in a digital ecosystem. It has policy value in offering practical regulatory guidance to Indian authorities, including the Central Consumer Protection Authority, the Advertising Standards Council of India, and the Food Safety and Standards Authority of India. And it has comparative value in setting India's legal response

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<sup>14</sup>Consumer Protection Act, No. 35 of 2019, § 2(28) (India); CCPA Guidelines 2022, *supra* note 7, § 8.

<sup>15</sup>AdWiseOnline Report, *supra* note 3, at 6-7.

<sup>16</sup>*Id.* at 6.

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against the mechanisms already developed in the European Union, the United Kingdom, and the United States.

### 1.5 Research Question

**Primary Research Question:** To what extent is disclosure an adequate consumer-protection mechanism for children exposed to embedded digital advertising?

### 1.6 Research Objectives

This study sets out to examine the legal and developmental implications of embedded digital advertising for children as consumers; to analyse the adequacy of India's existing consumer-protection framework with respect to disclosure rules and child-directed digital advertising; to compare the legal and regulatory approaches adopted by the EU, the UK, and the US; and to formulate narrowly tailored recommendations for strengthening regulatory protection in India where formal disclosure alone falls short.

### 1.7 Research Methodology

The study follows three connected methods. Doctrinal analysis examines primary legal sources directly: the Consumer Protection Act, 2019, the CCPA Guidelines of 2022, FSSAI regulations, and ASCI codes, along with the administrative orders available. The comparative method then places India's approach next to the EU, the UK, and the US, using a common set of evaluation criteria so the comparison is not simply descriptive. Finally, normative assessment tests each framework against standards of consumer fairness and child protection, in order to justify reform that is targeted rather than sweeping.

### 1.8 Scope and Limitations

**In scope:** digital advertising; child consumers; consumer-protection law; disclosure requirements; embedded commercial content; influencer marketing; and digital food advertising as an illustrative case study. **Out of scope:** general childhood obesity and nutrition policy; comprehensive data-protection and privacy law; broad AI and algorithmic governance; general

online-safety regulation; political advertising; and online gambling. These fields intersect with the present inquiry, but they sit outside its primary analytical scope.

### 1.9 Structure of the Paper

Chapter 2 carries the substantive legal analysis. It defines children as consumers in the digital environment, treats embedded advertising as a regulatory problem through the lens of digital food marketing, works through the Indian doctrinal framework, separates formal disclosure from meaningful disclosure, and compares the EU, UK, and US models before answering the central research question. Chapter 3 draws the findings into tailored recommendations for India, sets out the study's limitations, and closes with an assessment of what role disclosure should properly play within a layered scheme of child-consumer protection.

## CHAPTER 2: LEGAL ANALYSIS, COMPARATIVE STUDY, AND CORE ARGUMENTS

### 2.1 Children as Consumers in the Digital Environment

Indian consumer law has no separate legal category for a "child consumer". Children fall within the general definition of "consumer" under Section 2(7) of the Consumer Protection Act, 2019, and receive heightened attention only in specific instruments such as the CCPA Guidelines and FSSAI regulations.<sup>17</sup> This creates a real analytical gap, because the ordinary legal standard of the "reasonable consumer" was never built with a cognitively developing audience in mind.

Developmental research separates two capacities that regulatory drafting often runs together: commercial recognition, meaning the ability to identify that a communication carries a label such as "Ad", and understanding of persuasive intent, meaning the ability to grasp that the communication is designed by an economically interested party to shape attitudes or purchase behaviour.<sup>18</sup> A regulatory scheme can achieve the first without achieving the second, particularly among younger children and in immersive, parasocial formats. The right analytical standard, then, is not whether children can be shielded from all commercial content, since a blanket prohibition is unworkable in a digital media environment. The right question is whether disclosure, as currently designed, actually closes the gap between recognition and understanding for the audience it is meant to protect.

This is not only a consumer-law question. The UN Committee on the Rights of the Child, in its General Comment on children's rights in relation to the digital environment, has said that a clear distinction between commercial and non-commercial content is necessary, and that children should be protected from marketing that is misleading or opaque about its commercial purpose.<sup>19</sup> That broader rights framing supports the same conclusion reached from a consumer-law starting point: a formal label is not, by itself, proof that a child audience has understood what it is looking at.

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<sup>17</sup>Consumer Protection Act, No. 35 of 2019, § 2(7) (India); CCPA Guidelines 2022, *supra* note 7, § 8.

<sup>18</sup>John, *supra* note 6, at 189-91; Friestad & Wright, *supra* note 6, at 3-6.

<sup>19</sup>UN Committee on the Rights of the Child, General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment, UN Doc. CRC/C/GC/25, paras. 40, 42 (Mar. 2, 2021); see also AdWiseOnline Report, *supra* note 3, at 51-52.

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## 2.2 Embedded Digital Advertising as a Regulatory Challenge

Embedded advertising takes several forms that matter for children: influencer endorsements folded into ordinary content, sponsored vlogs, branded entertainment, and advergames where the product is built into the mechanics of play rather than interrupting it. Each form removes the same contextual cue, the one that used to signal a shift in register from editorial to commercial content. The European Commission's own research on this point identifies influencer marketing and in-game marketing as the two most prominent forms of digital marketing aimed at children, each involving its own chain of actors, from the brand and the platform to the influencer or game developer and, ultimately, the child.<sup>20</sup>

The illustrative case study here is food-influencer marketing directed at, or routinely seen by, children. A typical example is a child- or family-oriented content creator who features a branded food product inside an otherwise ordinary piece of entertainment, such as a "day in the life" vlog or an unboxing video. Regulators have started treating exactly this pattern as a live concern. The US Federal Trade Commission has flagged embedded food and toy content on children's platforms as a recurring compliance issue,<sup>21</sup> and Indian self-regulatory data tell a similar story. ASCI's half-yearly complaints report for April to September 2025 found that of 1,173 influencer advertisements it reviewed, 98 per cent required modification, with food and beverage among the more frequently flagged categories.<sup>22</sup> A separate ASCI dipstick study of Forbes India's Top 100 Digital Stars for 2024 found that 76 per cent of these leading creators had failed to meet disclosure norms, up from 69 per cent the year before.<sup>23</sup>

From these sources, a working legal test can be drawn: is the commercial nature of the communication sufficiently identifiable to the child audience, given the format, the degree of integration with entertainment content, and the child's likely stage of cognitive development? This test goes beyond formal compliance and asks a question of audience-relative adequacy, which is exactly the question a purely disclosure-based regime is least equipped to answer.

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<sup>20</sup>AdWiseOnline Report, *supra* note 3, at 34-41.

<sup>21</sup>Fed. Trade Comm'n, Bureau of Consumer Protection, Protecting Kids from Stealth Advertising in Digital Media: A Staff Perspective 3-8 (Sept. 2023) [hereinafter FTC Staff Perspective].

<sup>22</sup>ASCI Half-Yearly Complaints Report, discussed in Over 75% of Influencer Ads Flagged Linked to Betting and Personal Care: ASCI Report, Exchange4Media (Nov. 11, 2025).

<sup>23</sup>Influencer Marketing Sector Demands Attention: ASCI, Storyboard18 (year-end statement, 2025).

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### 2.3 Indian Consumer-Protection Framework

The Consumer Protection Act, 2019 supplies the basic architecture. Section 2(28) defines a "misleading advertisement" to include one that falsely describes a product, deliberately conceals important information, or conveys a representation that would amount to an unfair trade practice.<sup>24</sup> Section 10 establishes the Central Consumer Protection Authority, and Section 18 gives the CCPA power to issue guidelines preventing unfair trade practices and misleading advertisements.<sup>25</sup> Acting under that power, the CCPA notified the Guidelines for Prevention of Misleading Advertisements and Endorsements, 2022, effective from June 9, 2022.<sup>26</sup>

Section 8 of the 2022 Guidelines contains the main child-specific rules. An advertisement that addresses, targets, or uses children must not condone or encourage behaviour dangerous to children, exploit their inexperience or credulity, exaggerate product features to build unrealistic expectations, or show practices harmful to their physical or mental well-being.<sup>27</sup> The Guidelines also forbid claiming health or nutritional benefits without adequate scientific substantiation, and bar advertisements aimed at children from featuring sports, music, or film personalities for products that legally require a health warning or that children cannot lawfully buy.<sup>28</sup>

These provisions govern the content of child-directed advertising. They do not, on their own, solve the identifiability problem that embedded formats create. That problem falls, incompletely, to the ASCI Guidelines for Influencer Advertising in Digital Media, effective June 14, 2021, which require influencers to disclose any "material connection" with an advertiser through prominent, upfront labels, such as "Ad", "Sponsored", or "Collaboration", that must not be buried inside a string of hashtags.<sup>29</sup> These Guidelines apply one labelling standard to adult and child audiences alike. They contain no enhanced or age-differentiated disclosure requirement of the kind developed under UK self-regulation, discussed at Section 2.5.2 below.

The food sector adds a further layer. The Food Safety and Standards (Advertising and Claims) Regulations, 2018 require advertisements and claims to be truthful, unambiguous, and

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<sup>24</sup>Consumer Protection Act, No. 35 of 2019, § 2(28) (India).

<sup>25</sup>*Id.* §§ 10, 18.

<sup>26</sup>CCPA Guidelines 2022, *supra* note 7.

<sup>27</sup>CCPA Guidelines 2022, *supra* note 7, § 8 (1).

<sup>28</sup>*Id.*

<sup>29</sup>ASCI Influencer Guidelines, *supra* note 7; see also ASCI Code of Self-Regulation cl. 1.4-1.5.

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not misleading, and bar claims inconsistent with the product label.<sup>30</sup> FSSAI has also circulated draft Food Safety and Standards (Labelling and Display) Regulations, 2018 that would bar the advertisement of high fat, sugar, and salt (HFSS) foods to children in any form. That proposal, however, remains substantially in draft, with no settled enforcement mechanism.<sup>31</sup>

**Central Question:** does Indian law require that advertising be technically labelled, or that it be meaningfully recognisable to the intended child audience? A close reading of the CPA 2019, the CCPA Guidelines, and the ASCI framework suggest the former. The architecture specifies the form and placement of a label, but it does not make the sufficiency of a disclosure depend on whether the audience it is meant to protect actually understands it.

## 2.4 The Disclosure Problem: Formal versus Meaningful Disclosure

It helps to separate formal disclosure, meaning technical compliance through devices such as "#ad" or a platform's built-in sponsorship tag, from meaningful disclosure, meaning the extent to which the target child audience actually notices the disclosure, understands it, and connects it to the persuasive intent of the surrounding content.

The empirical picture is mixed, but it is instructive. Controlled studies find that a sponsorship disclosure can activate children's advertising literacy and improve their explicit recognition of a vlog as advertising, at least in some conditions.<sup>32</sup> The same body of work, though, shows that this effect depends on the child's existing advertising literacy, their age, and, importantly, the strength of the parasocial bond with the discloser. Children who feel closely attached to an influencer are less likely to turn a disclosure into a genuine understanding of persuasive intent.<sup>33</sup> Separate work building a child-oriented disclosure format found that even a purpose-designed, simplified disclosure needed several rounds of testing with children before it achieved reliable recognition, which suggests that the generic textual disclosures currently

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<sup>30</sup>. Food Safety and Standards (Advertising and Claims) Regulations, 2018 (India), reg. 4

<sup>31</sup>Food Safety and Standards Authority of India, Draft Food Safety and Standards (Labelling and Display) Regulations, 2018 (India) (notice dated Apr. 11, 2018).

<sup>32</sup>Hoek et al., supra note 9, at 5-9.

<sup>33</sup>Boerman & van Reijmersdal, supra note 5, at 6-9.

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required in India and comparable regimes were never optimised for a child audience in the first place.<sup>34</sup>

The strongest evidence on this point comes from a study of adolescents specifically. Researchers tested early adolescents aged twelve to fourteen and middle adolescents aged fifteen to sixteen and found that the mere presence of a sponsorship disclosure had no measurable effect on either group's intention to buy the advertised product.<sup>35</sup> In other words, even where a disclosure succeeds in helping a child identify a video as an advertisement, that act of identification does not necessarily do anything to blunt the advertisement's persuasive effect. This finding cuts to the heart of the present study. Recognition and resistance to persuasion are not the same thing, and a regulatory framework built only around the first cannot claim to have secured the second.

The same body of European research also confirms an older finding from advertising-literacy studies: children recognise a traditional television commercial as advertising far more easily than they recognise the newer, integrated formats, such as advergames, sponsored content, and brand placement, that dominate the digital environment.<sup>36</sup> Children can readily identify a banner advertisement as an advertisement. They are considerably less able to grasp the persuasive intent behind an advergame or a piece of sponsored content, even when they can tell, in the abstract, that a difference exists between the two formats.<sup>37</sup>

The normative point follows directly. A legal requirement cannot be treated as effective simply because a label sits in the right place, in the right typeface. Effectiveness, for a rule meant to protect a vulnerable class, has to be measured against that class's real capacity to use the information given to it, and that is a standard the current, uniform, adult-calibrated disclosure rules in India do not build in.

## 2.5 Comparative Analysis (EU, UK, US)

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<sup>34</sup>De Jans et al., *supra* note 10, at 8-12.

<sup>35</sup>Eva A. van Reijmersdal & Sophia Van Dam, How Age and Disclosures of Sponsored Influencer Videos Affect Adolescents' Knowledge of Persuasion and Persuasion, 49 J. Youth & Adolescence 1531, 1538-42 (2020).

<sup>36</sup> Laura Hazard Owen et al., \*Is Children's Understanding of Nontraditional Advertising Comparable to Their Understanding of Television Advertising? \*, 32 J. Pub. Pol'y & Marketing 1 (2013)

<sup>37</sup>De Jans et al., *supra* note 10, at 151.

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The table below sets out the main points of comparison before the jurisdiction-by-jurisdiction discussion that follows.

| Evaluation Criteria                        | India                                                          | European Union                                                                          | United Kingdom                                                           | United States                                                         |
|--------------------------------------------|----------------------------------------------------------------|-----------------------------------------------------------------------------------------|--------------------------------------------------------------------------|-----------------------------------------------------------------------|
| Primary Legislation / Authorities          | CPA 2019; CCPA Guidelines 2022; ASCI; FSSAI                    | AVMSD (Dir. 2010/13/EU, as amended); UCPD (Dir. 2005/29/EC); Digital Services Act; GDPR | Consumer Protection from Unfair Trading Regulations 2008; CAP Code / ASA | FTC Act § 5; FTC Endorsement Guides, 16 C.F.R. pt. 255                |
| Standard of Advertising Identification     | Explicit disclosure of material connection (uniform standard)  | Prohibition of hidden commercial intent; platform-level structural duties               | Ads must be "obviously identifiable as such" (CAP Code r. 2.1)           | Disclosure must be "clear and conspicuous"                            |
| Child-Specific Rules                       | CCPA Guidelines 2022, § 8                                      | AVMSD art. 6a, 28b (minors' protection and data)                                        | CAP "enhanced disclosure" guidance for under-12s (2017)                  | FTC Staff Perspective on Stealth Advertising to Kids (2023)           |
| Treatment of Embedded / Influencer Content | Mandatory upfront disclosure tags (ASCI Influencer Guidelines) | Platform-level obligations; structural separation encouraged                            | Strict ASA enforcement on native and influencer formats                  | Endorsement disclosures; specific guidance on "blurred" child content |

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|------------------------------------------|-----------------------------------------------|-----------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|
| Protections<br>Beyond Pure<br>Disclosure | Limited;<br>primarily<br>disclosure-<br>based | Restrictions on<br>profiling minors;<br>structural<br>placement rules | Heightened,<br>audience-<br>relative standard<br>where disclosure<br>fails to clarify<br>intent | "Do not blur"<br>recommendation;<br>unfairness standard<br>under FTC Act § 5 |
|------------------------------------------|-----------------------------------------------|-----------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|

### 2.5.1 European Union

The EU framework stands out for being structural rather than purely disclosure based. The Audiovisual Media Services Directive, as amended by Directive (EU) 2018/1808, bars media service providers from processing the personal data of minors for commercial purposes such as profiling or behaviourally targeted advertising,<sup>38</sup> and places distinct duties on video-sharing platforms under Article 28b to take appropriate measures, which may include age verification and parental controls, to protect minors from content, including commercial communications, that could impair their development.<sup>39</sup> The Unfair Commercial Practices Directive treats the use of editorial content to promote a product, where the trader has paid for that promotion without saying so, as unfair in all circumstances,<sup>40</sup> and Article 5 applies a modifies the benchmark wherever a commercial practice targets a clearly identifiable group, such as children, who are particularly vulnerable because of their age.<sup>41</sup> The Digital Services Act adds a further structural layer, prohibiting online platforms from showing targeted advertising to a user based on profiling that uses a minor's personal data, where the platform is aware with reasonable certainty that the user is a minor.<sup>42</sup>

<sup>38</sup>Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on Audiovisual Media Services, as amended by Directive (EU) 2018/1808 of 14 November 2018, art. 6a (2), 2018 O.J. (L 303) 69 [hereinafter AVMSD].

<sup>39</sup>Id. art. 28b (1); id. art. 28b(3)(f), (h).

<sup>40</sup>Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 Concerning Unfair Business-to-Consumer Commercial Practices, annex I, item 11, 2005 O.J. (L 149) 22 [hereinafter UCPD].

<sup>41</sup>UCPD, supra note 38, art. 5(3).

<sup>42</sup>Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act), art. 28(2), 2022 O.J. (L 277) 1.

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The Ghent University research prepared for the European Commission places this legislative picture in context. It finds that the EU framework for protecting children from digital marketing has been strengthened over recent years mainly through the interaction of the UCPD, the AVMSD, the DSA, and the General Data Protection Regulation, with the forthcoming Artificial Intelligence Act likely to add a further layer.<sup>43</sup> It also notes, usefully, that the EU does not treat self-regulation as a rival to this legislative structure but as a complement to it, since the marketing industry has long been active in producing its own guidance.<sup>44</sup> The question this raises for the EU model is what structural obligations it places on platforms and advertisers beyond individual content disclosures, and the answer is that EU law increasingly treats the platform itself, not just the advertisement, as the object of regulation.

### 2.5.2 United Kingdom

UK regulation works through the Consumer Protection from Unfair Trading Regulations 2008 and the co-regulatory Committee of Advertising Practice (CAP) Code, enforced by the Advertising Standards Authority. Rule 2.1 of the CAP Code requires marketing communications to be "obviously identifiable as such".<sup>45</sup> What sets the UK apart is how CAP and the ASA read that standard against the audience in front of them. Since 1 December 2017, dedicated guidance has applied an "enhanced disclosure" test to advertising aimed at under-12s that is highly immersive or deeply woven into surrounding content and unlikely to be identified from context alone, requiring any disclosure to be prominent, interruptive, and sufficient to identify both the marketer and the commercial intent.<sup>46</sup> ASA rulings applying this guidance have found that disclosures embedded inside an advertisement's own graphics, or styled to match the surrounding branding, fail the enhanced standard even where an adult audience would notice them without difficulty.<sup>47</sup> The question this raises for the UK is how its rules account for the higher standard needed for children to recognise commercial intent in integrated formats. The UK's answer is to

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<sup>43</sup>AdWiseOnline Report, *supra* note 3, at 8.

<sup>44</sup>*Id.*

<sup>45</sup>UK Code of Non-broadcast Advertising, Direct & Promotional Marketing (CAP Code) r. 2.1 (12th ed.).

<sup>46</sup>Committee of Advertising Practice, *Recognition of Advertising: Online Marketing to Children Under 12* (Dec. 2017; reviewed 2020).

<sup>47</sup>See Advertising Standards Authority, *Recognising Ads: Children* (advice note on enhanced disclosure requirements for under-12s)

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make the adequacy of a disclosure turn on the audience's developmental stage rather than on a fixed formal checklist.

### 2.5.3 United States

US regulation rests mainly on Section 5 of the Federal Trade Commission Act, which prohibits unfair or deceptive acts or practices in commerce,<sup>48</sup> supplemented by the FTC's Guides Concerning the Use of Endorsements and Testimonials in Advertising, revised in June 2023, which require that any disclosure of a material connection between an endorser and a brand be "clear and conspicuous", meaning difficult to miss and easily understood by ordinary consumers.<sup>49</sup> The revised Guides go further and acknowledge directly that research on children's cognitive development suggests disclosures are unlikely to work for younger children, and that marketers should take particular care with endorsements aimed at them.<sup>50</sup> The FTC staff built on this in its 2023 paper on "stealth advertising", recommending that advertisers avoid blurring advertising with content altogether and, where blurring does occur, provide prominent, just-in-time disclosures rather than relying on a single upfront label.<sup>51</sup> The question this raises for the US is how far regulatory practice has gone in admitting the legal limits of disclosure for younger audiences, and the FTC's own guidance is arguably the most direct admission, among the four jurisdictions studied, that disclosure alone is not enough.

## 2.6 Comparative Evaluation

India's framework does reasonably well at setting a baseline requirement of disclosure and at extending general child-protection principles into its 2022 Guidelines. It does less well where the EU, the UK, and the US have each, through different routes, moved toward audience-relative or structural standards.

The EU gets there through platform-level and profiling restrictions that operate independently of any single advertisement's disclosure. The UK gets there by reading its existing "obviously identifiable" standard against the audience actually watching. The US gets there

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<sup>48</sup>Federal Trade Commission Act, 15 U.S.C. § 45(a)(1) (2018).

<sup>49</sup>Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. pt. 255 (2023); Fed. Trade Comm'n, FTC Publishes Final Updated Endorsement Guides (June 29, 2023).

<sup>50</sup>16 C.F.R. pt. 255, Statement of Basis and Purpose (2023).

<sup>51</sup>FTC Staff Perspective, *supra* note 19, at 3-6.

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through an express regulatory acknowledgment, inside its own endorsement guidance, that disclosure is an inherently limited tool for younger children. The European research reaches a similar conclusion from the empirical side, arguing that the right response is a balanced one: children need to be shielded from misleading or manipulative marketing, but they also need to be given the media-literacy tools to make their own commercial decisions as they grow older.<sup>52</sup> That balance, however, cannot be reached through disclosure alone. It needs the structural measures described above as a genuine supplement, not a substitute.

None of these mechanisms transplants directly. The EU's platform-obligation model assumes a regulatory relationship with large platforms that India's institutional structure, still built around the CCPA and the self-regulatory ASCI, has not yet developed. The UK's enhanced-disclosure test works because the CAP Code sits with a single co-regulatory body that can issue detailed, evolving guidance and enforce it through published rulings, a function ASCI could plausibly take on, given how closely it resembles CAP structurally, without any new primary legislation. The US model shows the value of a formal regulatory statement that disclosure has limits, something that could be folded into future CCPA guidance without disturbing the existing statutory framework.

## **2.7 Answer to the Central Research Question**

Pulling the doctrinal, empirical, and comparative threads together, disclosure is a necessary but not sufficient consumer-protection mechanism for children exposed to embedded digital advertising. It is necessary because it sets a baseline of commercial transparency and remains the only mechanism that can signal persuasive intent at the point a child actually encounters the content. It is not sufficient for three reasons. First, the empirical evidence shows that formal disclosure does not reliably turn into an understanding of persuasive intent among children, and even where it does, it does not reliably reduce the resulting purchase intention, as the adolescent disclosure study discussed in Section 2.4 demonstrates directly. Second, the Indian legal standard for disclosure adequacy is calibrated to an undifferentiated, adult-equivalent consumer rather than to the audience it actually protects. Third, comparative jurisdictions have each reached, through independent routes, the same underlying conclusion:

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<sup>52</sup>AdWiseOnline Report, *supra* note 3, at 9.

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disclosure needs either audience-relative recalibration, as in the UK, structural supplementation, as in the EU, or an express acknowledgment of its limits, as in the US. Disclosure, in short, works well enough as a floor. It does not work as a ceiling.



## CHAPTER 3: RECOMMENDATIONS AND CONCLUSION

### 3.1 Summary of Key Findings

Four findings come out of the analysis above. Embedded digital formats systematically erase the old boundary between entertainment and commercial promotion, taking away the contextual cues that earlier consumer-protection doctrine quietly relied on, and they do so through a small, identifiable set of tactics: integration, interaction, personalisation, and the use of emotion.<sup>53</sup> Cognitive-development research shows that formal disclosure tags do not reliably guarantee that children recognise persuasive intent, that this depends heavily on age and on parasocial attachment, and that even successful recognition does not reliably translate into resistance to the advertisement's persuasive pull.<sup>54</sup> India's CCPA Guidelines of 2022 mark a genuine advance by introducing child-specific provisions, but they remain built mostly on formal disclosure mechanisms calibrated to an adult-equivalent audience.<sup>55</sup> And internationally, the direction of travel is toward structural restrictions and audience-relative recognisability standards wherever content targets children, whether through the layered legislative approach seen in the EU, enhanced disclosure testing in the UK, or an express regulatory acknowledgment of disclosure's limits in the US.

### 3.2 Tailored Recommendations for India

**Recommendation 1, Child-Centric Disclosure Standards:** the CCPA and ASCI should refine existing guidance to require enhanced disclosure design for content reasonably likely to reach children: prominent visual and audio cues, age-appropriate language in place of generic terms such as "Ad", and continuous rather than single-instance placement through embedded content, following the UK's enhanced-disclosure precedent.<sup>56</sup>

**Recommendation 2, Heightened Protection for Younger Audiences:** regulatory guidance should state plainly, as the FTC's 2023 Endorsement Guides now do, that formal disclosures are inherently inadequate for younger age groups, and should require structural

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<sup>53</sup>AdWiseOnline Report, *supra* note 3, at 6-7.

<sup>54</sup>Boerman & van Reijmersdal, *supra* note 5, at 6-9; Hoek et al., *supra* note 9, at 5-9; van Reijmersdal & van Dam, *supra* note 33, at 1538-42.

<sup>55</sup>CCPA Guidelines 2022, *supra* note 7, § 8.

<sup>56</sup>See Committee of Advertising Practice, *supra* note 44.

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separation of commercial content from entertainment content on platforms known to carry a substantial child audience.<sup>57</sup> This should be paired with the kind of balanced, media-literacy-oriented approach the European research recommends, so that older children are gradually equipped to interpret persuasive content rather than being treated identically to a six-year-old.<sup>58</sup>

**Recommendation 3, Contextual Limits on Embedded Content:** the CCPA Guidelines should be amended to make clear that deep integration of commercial persuasion within children's entertainment content, where the product functions as the content rather than as an interruption to it, cannot be cured by textual tagging alone, and should instead call for the platform-level or contextual separation measures found in Article 28b of the AVMSD.<sup>59</sup>

**Recommendation 4, Sector-Specific Guidance for Digital Food Advertising:** given the public-health stakes of digital food marketing, FSSAI should finalise and operationalise its long-pending restriction on advertising high fat, sugar, and salt foods to children, extending it explicitly to embedded and influencer formats, as an immediate, sector-specific priority.<sup>60</sup>

**Recommendation 5, Industry Engagement and Self-Regulatory Reform:** Indian industry bodies should build on UNICEF's Industry Toolkit on Children's Rights and Digital Marketing, which sets out a three-step process for businesses to understand, assess, and act on the child-rights risks in their own marketing activities.<sup>61</sup> ASCI and industry associations are well placed to adapt this toolkit for brands, agencies, ad-tech providers, and platforms operating in India, turning a global framework into something usable on the ground.

### 3.3 Research Limitations

This study is limited by the small body of reported Indian case law and CCPA enforcement orders that deal specifically with digital embedded advertising to children, which pushes the doctrinal analysis toward guidelines and secondary regulatory commentary rather than adjudicated interpretation. Platform mechanics change quickly, and the comparative

<sup>57</sup>16 C.F.R. pt. 255, supra note 48; FTC Staff Perspective, supra note 19, at 3-4.

<sup>58</sup>AdWiseOnline Report, supra note 3, at 9.

<sup>59</sup>AVMSD, supra note 36, art. 28b (1).

<sup>60</sup>See Draft Food Safety and Standards (Labelling and Display) Regulations, 2018, supra note 29.

<sup>61</sup>UNICEF, Industry Toolkit on Children's Rights and Digital Marketing (2<sup>nd</sup> ed .2026), <https://www.unicef.org/childrightsandbusiness/workstreams/responsible-technology/digital-marketing/toolkit>.

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analysis reflects the regulatory position as of each jurisdiction's most recent published guidance, so later developments, particularly under the EU's Digital Services Act and any future Indian digital-advertising rules, may shift parts of this assessment.

The study also draws heavily on international, mostly European and American, empirical literature on how children process disclosures, since India-specific empirical work in this area remains scarce, and self-regulatory enforcement data such as ASCI's complaint statistics carry their own limits of scope and independence. The European research relied on throughout this study is itself candid about comparable gaps: it notes a persistent focus on narrow age bands that makes generalisation difficult, a shortage of research on newer platforms such as Snapchat and TikTok, and a heavy concentration on unhealthy food, beverage, and toy marketing rather than the fuller range of products children now encounter online.<sup>62</sup> These are gaps in the underlying evidence base, not just in this study, and they should temper how confidently any of the four jurisdictions extrapolate from existing research to new formats.

### 3.4 Final Conclusion

Disclosure remains a necessary baseline for commercial transparency in digital advertising, and none of the jurisdictions examined here proposes doing away with it. But its effectiveness cannot be judged solely by whether a label sits in the right place, worded correctly. Meaningful consumer protection for children requires legal standards judged against actual audience comprehension, and, just as importantly, against whether that comprehension actually changes behaviour. The UK is beginning to build the first through enhanced disclosure testing, the EU through structural and platform-level obligations, and the US through an explicit regulatory acknowledgment of disclosure's limits. None of the three has fully solved the second problem, which the adolescent disclosure study discussed in Chapter 2 makes clear is a live and unresolved question everywhere, not only in India.

India's 2022 Guidelines are a genuine step forward, but they remain, for now, a disclosure-only regime applied to an audience for whom disclosure alone is legally and empirically inadequate. The recommendations in this chapter are not meant to replace disclosure. They are meant to supplement it with audience-relative and structural safeguards that fit India's

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<sup>62</sup>AdWiseOnline Report, *supra* note 3, at 5.

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own regulatory architecture, while also building the media-literacy side of the equation that the European research treats as equally important.<sup>63</sup> A child who can neither spot an advertisement nor resist one once spotted is not meaningfully protected by a rule that only asks whether a label was present. That is the standard Indian law should now move toward.



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<sup>63</sup>AdWiseOnline Report, supra note 3, at 9.

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