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Influencers in the Audiovisual Media Landscape: Context & Regulatory Challenges

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Context

What are we talking about?



- 1) Influencers – or user-generated video creators in general – can be people of all ages, with varying levels of skills and from countries all over the world. They only need a camera and an internet connection. They can be real persons but also virtual influencers exist (CGI).
- 2) User-generated videos can take on many forms that are not necessarily like anything that one encounters on traditional television in terms of concept, language, set up etc.: there are daily vloggers, travel vloggers, make-up tutorials, gamers (so watching people play video games), toy or other product reviews, shopping hauls, talk videos, ASMR videos, pulling pranks and doing challenges, dancing and singing and many more. The videos can be live streams or on demand videos on their channels.
- 3) These creators can typically be found on video-sharing platforms such as YouTube, TikTok and Twitch. YouTube has been around the longest. Tik Tok is a more recent platform, hosting shorter videos but gradually allowing for longer videos. YouTube has introduced YouTube shorts. Twitch is a video-sharing platform largely devoted to sharing game streams both live and on demand.

Terminology

- Influencers
- Vloggers
- User-generated content creators
- User-generated video creators
- Streamers
- Branded content creators

...



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Why should we care? (1/2)

- User-generated video (UGV) = engaging and interactive nature
 - Live streams, comment section, shoutouts, donations, Q&A's,...
- Perceived as relatable, accessible and credible
 - Ideal to influence (consumption) behavior
- “Monetizing eyeballs”: controversial content generates views & revenue
 - E.g. glamourizing gambling, drug use, smoking or alcohol
 - Even more problematic in light of young audiences
- Important role in society (confirmed during pandemic)
- Lack of level playing field wrt more traditional television
 - Less strictly regulated and scrutinized
 - Advertisers are moving to video-sharing platforms

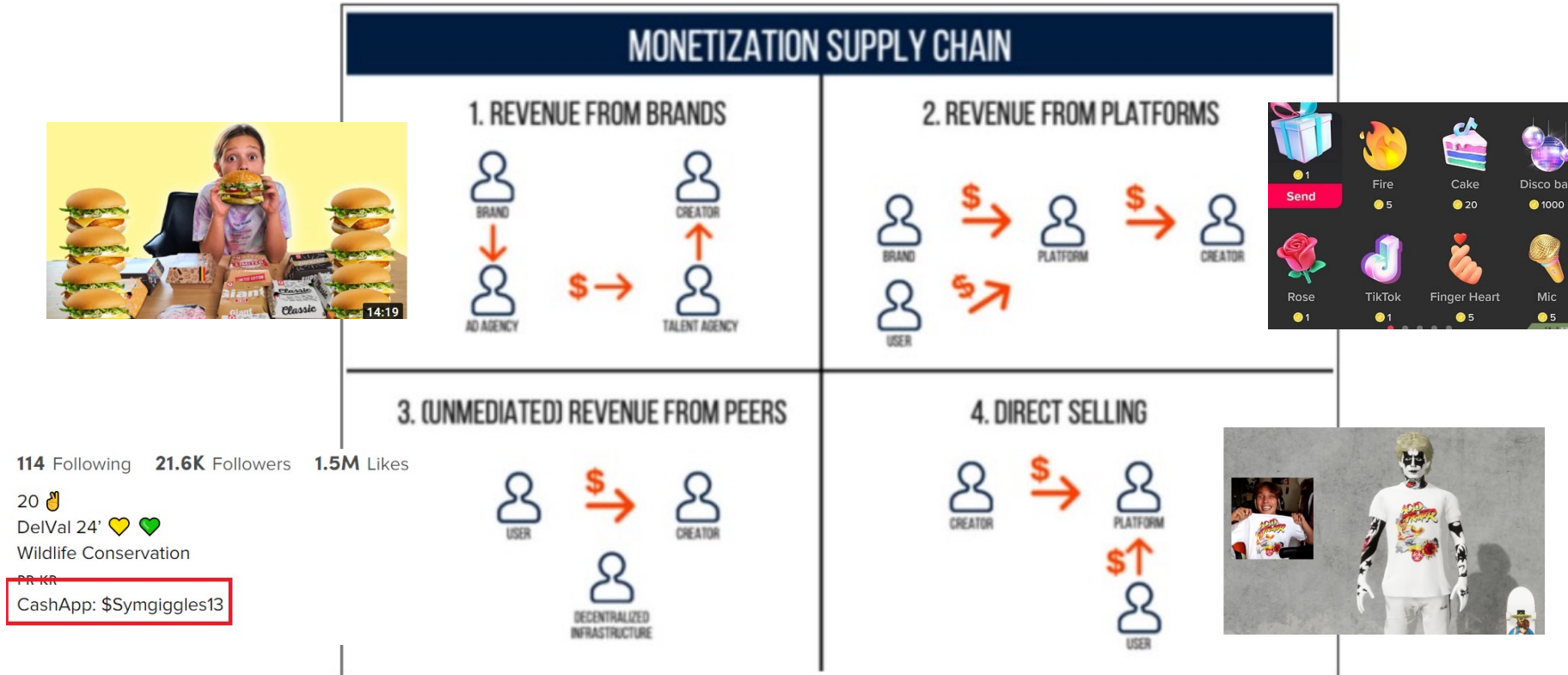


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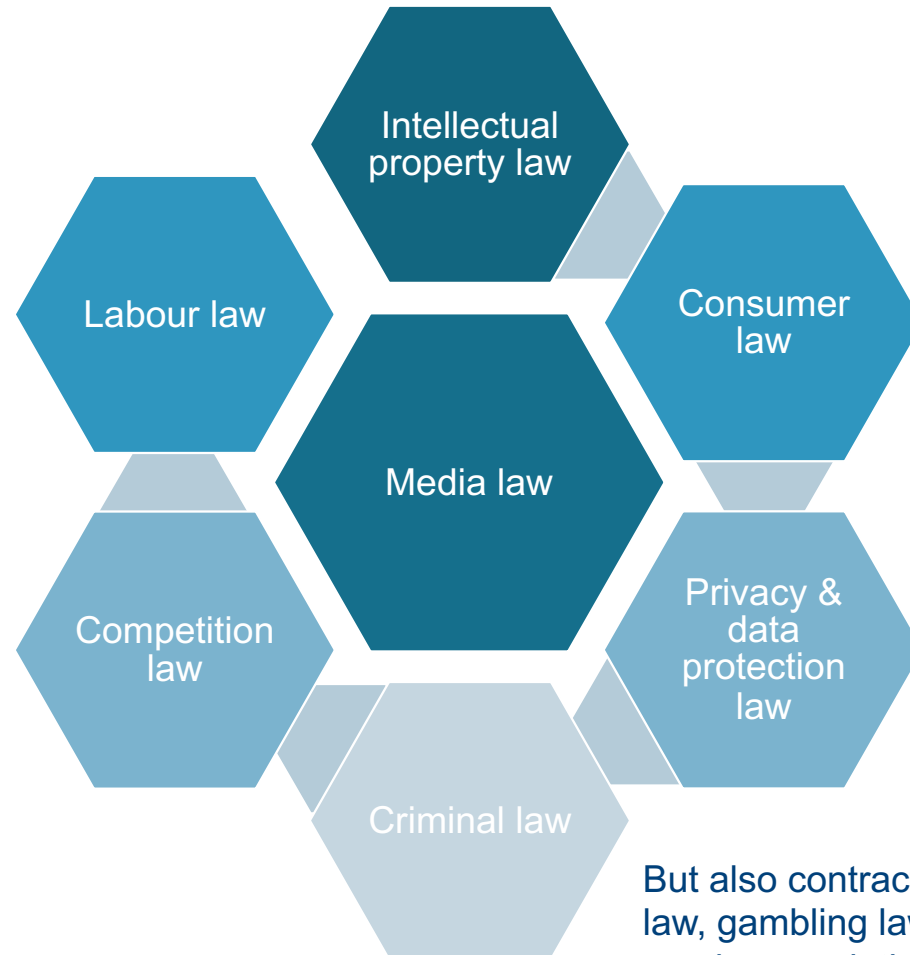
Why should we care? (2/2)

- Many ways to monetize creativity on video-sharing platforms:



Source: Goanta, C., Wildhaber, I, 2019, In the Business of Influence: Contractual Practices and Social Media Content Monetisation, SZW / RSDA 4/2019.

The regulatory framework: a complex puzzle



But also contract law, tax law, gambling law,, video gaming regulations, ...



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Regulatory Challenges

Convergence of roles

- Democratisation of content creation:
 - Broad spectrum of audiovisual content creators: *hobbyists – wannabees – (semi-) professionals – media companies*
= dynamic situation
 - Tricky demarcation between hobbyists and professionals / between traders and consumers
 - Use of notions such as ‘economic character’ (remuneration, free products, personal data ...), ‘commercial’ practices, ‘profession’, ‘labour’...
 - What should be taken into account? (e.g. # of viewers or subscribers, volume of content/channels, frequency, minimum threshold of earnings, ...?)



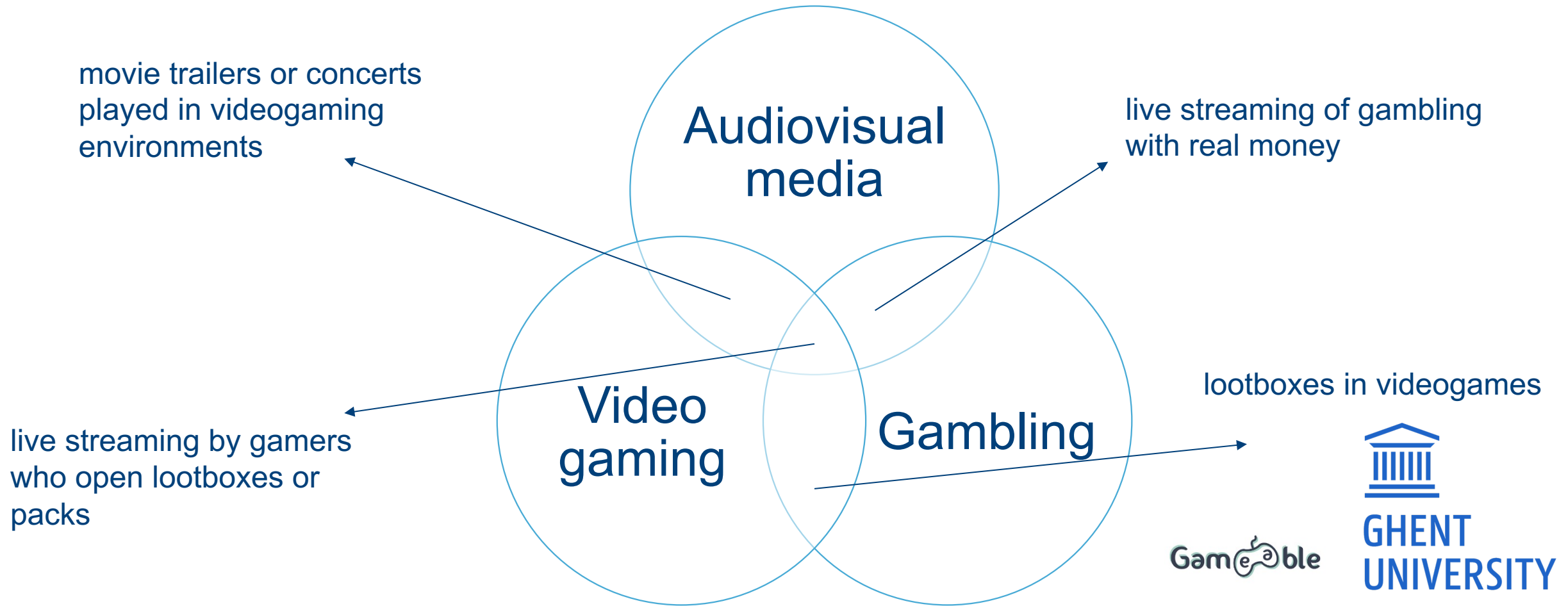
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Convergence of editorial content and commercial communication

- “Influencer marketing” = one of the most popular & effective forms of advertising worldwide
 - Creators’ relatability and trustworthiness
- Typically mixes editorial content and commercial communication
 - Challenges minors’ ability to critically assess and recognise commercial communication
 - Disclosure necessary, but ...
 - ! Effectiveness?
 - ! Other factors (e.g. peer pressure)

Convergence of different (audiovisual) activities



Compliance & enforcement

- Still few cases
 - Due to legal uncertainty? Lack of awareness?
- Many soft law and self-regulatory initiatives relating to influencers on (sub-)national level, e.g. Belgium/Flanders:
 - Flemish Media Regulator Content Creator Protocol (2021)
 - Communicatie Centrum (Communications Center): Recommendations for Influencer Marketing (2018, updated 2022)
 - Best Practices FPS Economy for content creators/influencers (2022)
 - Influencer Code: self-regulation facilitated by Flemish Government (expected in 2022)
- Many (potentially) competent enforcement bodies
- National regulatory differences ↔ cross border nature of UGV
- Scale of UGV online complicates enforcement
 - Need for digital monitoring tools?



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Take-aways

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- Time for action and more research!
- Cross-border nature of user-generated audiovisual content
→ Need for strong cooperation between media regulators!
- Convergence of different types of media (content)
→ Need for cooperation between media regulators and other regulators (*i.a. consumer authorities, data protection authorities, gaming commissions, competition authorities...*)!
- Need for dialogue with people in the field, including minors!
- Allowing creativity to flourish ↔ protecting consumers / viewers
→ Avoid overregulation!
- Existing legal instruments not designed with modern-day media actors in mind
→ Difficulties in application and enforcement



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Want to know more about our project?
Please visit: <https://www.gameable.info/>

Thank you
Any questions?



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