



São Paulo, 14th March 2014

To
Special Rapporteur of United Nations in the field of cultural rights
Ms. Faridah Shaheed

Ref.: Answers to the questionnaire on the impact of advertising and marketing practices on the enjoyment of cultural rights.

Dear Ms. Shaheed,

Alana Institute, by its **Children and Consumption Project**, would like to present its answers to the Questionnaire on the impact of advertising and marketing practices on the enjoyment of cultural rights available on United Nations Human Rights webpage (<http://www.ohchr.org/EN/Issues/CulturalRights/Pages/impactofadvertisingandmarketing.aspx>) as follows.

I. **Alana Institute (Instituto Alana).**

Alana Institute is a Brazilian nonprofit organization that works on several fronts to find ways to honor childhood, ensuring their full potential in an environment of well-being. Our projects varies from direct action in early childhood education to investment in training of educators to promote discussions to raise awareness of society, considering the future of children as a top priority [<http://www.alana.org.br>].

As a way to accomplish this goals, **Alana Institute** today represents civil society in two Brazilian Rights Councils: (i) Conanda - National Council for the Rights of Children and Adolescents and (ii) Consea - National Council for Food and Nutrition Security .

To disseminate and discuss ideas on issues related to children's rights in the context of consumer relations and consumerism which kids are exposed as well to point out ways to minimize and prevent losses due to marketing communication aimed at children, **Alana Institute** created the **Children and Consumption Project (Projeto Criança e Consumo)**.

Through **Children and Consumption Project**, **Alana Institute** seeks to provide supporting tools and information about consumer rights in consumer relations involving children and the impact of consumerism in their development, promoting reflection about the power that the media, advertising and marketing communication directed at children have in life, habits and values of these people which are still growing up.

The major concerns of the **Children and Consumption Project** are with the results presented as consequence of massive investment in the commercialization of childhood, as an example: consumerism and the alarming incidence of childhood obesity, youth violence; premature and irresponsible eroticization; excessive materialism and erosion of social relations, among others.

II. Questionnaire.

1. Has your country adopted specific regulations on advertising and marketing methods and contents aimed at protecting human rights? If so, please specify the content of such regulation. Does the regulation apply both to off-line and on-line advertising?

The defense of the consumers is provided by the Brazilian Federal Constitution - known as "Citizen Constitution" ('Constituição Cidadã')¹ - in article 5th - which declares the fundamental rights of the individual - item XXXII obligating Brazilian State to promote the protection of the consumer; as well in the article 170, item V, which declares that Brazilian economic polices will be funded in the protection of the consumer. This two principles are funded on the right of respect to the human dignity, elected as one the main foundational aspects of the Brazilian State².

In addition, Brazil adopted State advertising regulation by Consumer Protection Code ('Código de Defesa do Consumidor'- CDC – Federal Law N. 8078/1990³) which can be applied both to on-line and off-line advertising.

Consumer Protection Code (CDC)

Deriving from the article 5th, item XXXII, of the Brazilian Federal Constitution, Consumer Protection Code was promulgated in 1990 to equalize the relationship between consumers and suppliers, guaranteeing protection for the security of the consumers comprehending their physical and psychological integrity; freedom of choice, health, safe information and economic protection. Each principle mentioned in CDC protects a fundamental right of the human being.

The Code regulates marketing practices, and seeks to protect consumers against harmful or dangerous methods of persuasion. The principle of Identification of the advertise message intents to protect the freedom of choice of the consumer, obligating the advertiser to present advertising as clearly as possible, in a way that the consumer could easily and rapidly identifies it.

¹ http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Access on 6.3.2014.

² Article 1st of the Brazilian Federal Constitution: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm . Access on 6.3.2014.

³ Consumer Protection Code: http://www.planalto.gov.br/ccivil_03/leis/l8078.htm. Access on 6.3.2014.

Another Brazilian marketing principle given by the Code is the principle of the clearness of the announcement, which demands a substantiation of all its alleged on it.

In its article 37, CDC establishes principles of **veracity** (article 37th, par. 1st) and **non-abusively** (37, par. 2nd) of the advertising. It is important to assert that a misleading advertising do not respects the self-determination of the consumer, leading him to a decision of consumption that in normal circumstances he would not take.

The Code evaluates marketing under two standards: objective and subjective. The objective evaluates the publicity plot, measuring its potential of dubiousness, ignoring the motivations of the announcer, and the second standard considers the type of consumer that is aimed by the announcement. It is also important to say that the veracity or dubiousness of the advertising it is settled by its potential to cause damage, and not if effectively occurred a damage.

A non-abusive advertising (art. 37, § 2nd) respects some essential social values that are sampled by the article (in a non-exhaustive way). The article defines abusive advertising as discriminatory; that explores fears or superstitions to persuade consumer to acquire some product or service; the one which stimulates aggressively reactions, frequently associated with fights, death or war; anti-environmental; that induces the consumer to take dangerous or non-safe behaviors and finally advertising that take any advantage from the lack of experience or deficiency on judgment thoughts of the children.

Federal Law n. 9294/1996: tobacco, alcohol, medications, therapies and pesticides

Brazilian Constitution also adopted other instruments to keep the consumer safe from market abuses. Article 220, item II, § 4th, item II, obligates Brazilian State to establish a law to provide legal defense against products advertising or commercial practices that can be harmful to environment or consumer's health (tobacco, alcohol, medications, therapies and pesticides).

Deriving from these previously mentioned constitutional statements, complementary laws were created to regulate this articles. Firstly, to protect the health of the consumers, marketing of tobacco and alcohol were restricted due to the dangerousness of the products announced. Federal Law N. 9294/1996⁴ regulates the range of this restrictions, prohibiting tobacco

⁴http://www.planalto.gov.br/ccivil_03/leis/l9294.htm. Acces on 6.3.2014.

marketing in any form and in any media, unless in the places that those products are sold⁵.

Alcoholic beverages advertising is permitted on radio and television only in the period between 9 PM to 6 AM⁶. Additionally, is also prohibited to associate - in the advertising - alcoholic beverage with a Olympic sport or competition, as well with a good and healthy performance in any activity and mainly in the conduction of vehicles as well with ideas of a higher success or sexual appealing⁷.

Although the weakness of this legislation resides on the definition of what is an alcoholic beverage, the law applies only for those which have an alcoholic strength superior than 13 degrees Gay Lussac – as a result vast majority of wines and beers does not suffer the effects of this legislation⁸.

Other restrictions for alcohol and tobacco is the mandatory labeling of warnings in the packages of tobacco, bottles and cans of alcoholic beverages. Federal Law number 9294/1996 also regulates the advertising of medications, in its 7th article, which also obligates the announcers to put warnings in the packages of medications, as well at the end of a advertising conveyed on television and radio. Additionally, some medications cannot be announced because of it dangerousness.

Federal Law n. 11.265/06⁹: infants food regulation

Another State marketing regulation is the regulation for foods for infants and children at the early childhood. Federal Law N. 11.265/2006 regulates commercial promotion and the proper use of food for infants and children during the early childhood, also willing to protect and incentive the exclusive breastfeeding till 6 months and it continuity till 2 years old.

This public police applies to commercialization and advertising of baby powder formula for infants and children during early childhood, powder milk, transitioning foods indicated for children in the early childhood and bottle, nipple and pacifiers.

⁵This exception was made by the 3rd article of the 9294/96 act.

⁶ Article 4th of the law number 9294/96.

⁷ Article 4th, 1st§ of the law number 9294/96.

⁸ 1st article, 1st§ of the law number 9294/96.

⁹ http://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2006/Lei/L11265.htm. Acces on 6.3.2014.

Firstly, article 4 prohibits advertising of baby powder formulas indicated for babies, children's at early childhood and for newborn babies with health problems. Furthermore, article 6 prohibits acting of sellers inside hospitals.

It is also important to mention that for all the products previously mentioned, there are some restrictions related to the labeling of such products¹⁰, which prohibits usage of the image of children to humanize the product, and also announcers must avoid to use phrases or expressions that can lead mothers to believe that those products are better than breastfeeding or that can even diminish its benefits. It is also an obligation of the announcer to put warning messages in packages, praising breastfeeding and its benefits.

Other regulatory initiatives

Finally, some considerations are important to be made, in respect to some initiatives took by Federal Executive Power and by Municipality of São Paulo City.

Regarding to the Federal initiative, regulatory agency called National Agency of Health Surveillance (Agência Nacional de Vigilância Sanitária - ANVISA), tried to regulate production, distribution and commercialization of products that can be potentially harmful to the health¹¹. According to its regulatory mission, the agency performed the Resolution N. 24/2010 (RDC 24/2010¹²), willing to establish minimum nutritional parameters for the offering and advertising of food products, and also warning messages to be announced after the advertising of those products considered unhealthy. However, the provision had been contested by 11 business associations, alleging that the competence to legislate about advertising belongs exclusively to the National Congress. As a result RDC 24/2014 has been suspended until final judicial decision.

Another public police¹³ took by São Paulo City Municipality (which will be detailed afterwards) willing to provide a cleanest environment for its citizens, prohibited any outdoor advertising, which invades public spaces and obliterate the view of the city architectural beauties and heritage.

¹⁰ Articles 10 to 17 of the law nº 11265/06.

¹¹ According to the article 6 of the law number 9782/99: http://www.planalto.gov.br/ccivil_03/leis/L9782.htm Access on 6.3.2014.

¹² RDC 24/10: http://189.28.128.100/nutricao/docs/legislacao/resolucao_rdc24_29_06_2010.pdf . Access on 6.3.2014.

¹³ Clean City Law number 9294/96: http://www.planalto.gov.br/ccivil_03/leis/l9294.htm . Access on 6.3.2014.

2. Please indicate whether specific categories of the population are protected by such regulation, such as children, women, minorities and indigenous people.

Provisions mentioned seeks to protect all the population, but there are some specific regulations that are directed specifically for some specific groups.

Initially Consumer Protection Code (CDC) presumes that consumer is a vulnerable part of the consumption relation, but there are some groups of individuals that are considered even more vulnerable due to their biological or social condition, like children, elderly people and minorities.

Regarding to the children's protection, Brazilian Federal Constitution summed with the Children and Adolescents Statute ('Estatuto da Criança e do Adolescente' – ECA - Federal Law N. 8069/1990)¹⁴ and the Consumer Protection Code (CDC) provide a special protection to children¹⁵ due to the concept of absolute priority and integral protection.

Following these special protection and absolute priority guarantees Consumer Protection Code, in its article reserved to the abusive advertising, specifically article 37 Par. 2nd protects children as hypervulnerable consumers due to their peculiar development phase and credulity. On the other hand, minorities are protected against any kind of discrimination linked to race, sex, sexual orientation, social condition, nationality, profession or political convictions as well as religion.

Article 76, item IV, letter b of Consumer Protection Code¹⁶ specially protects consumers considered highly vulnerable due to their ages, physical or social conditions, as elderly people, children and those mentally or physically disabled, factory workers and farmers when victims of abusive advertising.

¹⁴ Children and Adolescents Statute: http://www.planalto.gov.br/ccivil_03/leis/l8069.htm. Access on 6.3.2014. It establishes in its 4th article sole paragraph: '(...) Sole Paragraph: The guarantee of priority comprehends: precedence to receive help and rescue at any circumstance; primacy in the attendance on public services or with public relevance; preference during the formulation and execution of social public policies; privileged destination of public resources in the areas related to the protection of childhood and youth.'

¹⁵ Brazilian Federal Constitution in its article 227 indicates: 'It is a duty of the family, society and State to assure to the children, adolescent and to the youngsters, with absolute priority, the right to life, health, feeding, education, leisure, professionalization, culture, dignity, respect, liberty, social and familiar acquaintanceship, and furthermore, keep them safe from any kind of negligence, discrimination, exploitation, violence, cruelty and oppression.'

¹⁶ Article 76 :Are exasperating conducts of the consume crime: (...)
IV – When committed: (...)

b) against a factory worker or farmer; as well as individuals with ages under 18th or older than 60 years old and people with mental disabilities or diseases.'

Another legislation previously mentioned in question number 1 is Federal Law N. 11.265/2006, directed to infants and children in the early childhood. This regulation intend to protect breastfeeding till the age of 2 years old and asserting the necessity of it till the age 6 months, discouraging commercial practices that diminish its value and contrarily raises the values and qualities of such products.

3. Is advertising covered by the general provisions of freedom of expression and/or does your country differentiate between commercial speech and non-commercial speech? Does specific regulations distinguish between advertising and other contents, and If so, which are the criteria used to make this distinction?

Article 5th of Federal Brazilian Constitution lists the fundamental rights of the individuals, including protection of the liberty of thoughts and expression, in its itens IV and VI¹⁷. There is also a chapter in Federal Constitution about ‘Social Media Communication’, iniciated by the article 220, that asserts:

‘Art. 220: Manifestation of though, creation, expression and information, under any form, process or vehicle will not suffer any restriction, oserved what is disposed by this Constitution.’ (...)

3rd § Compete to the federal law: (...)

II – To stablish legal manners that guarantee that individuals and families a possibility to defend theirs selfs from radio and television programs or schedules that are contrary to the standards stablished by the article 221 of the Constitution, as well advertising of products, practices and services that can be harmful to health or environment.’

The definition of advertising as a commercial speech and its absence in the constitutional text follows into a controversial by legal doctrine.

There are some researchers who allege that advertising is not covered by freedom of expression due to the fact that Brazilian Constitution does not includes a specific right to guarantee this practice. On the other hand part of the doctrine¹⁸ asserts that commercial practice is guaranteed by the rights of free enterprise and free-competition. This theory is sustained by the idea that advertising is a pre-contractual stage of buy and selling transaction, that induces and stimulates consumption by the seduction of the consumer. There are also

¹⁷Brazilian Federal Constitution: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Acess on 6.3.2014.

¹⁸Publicidade Comercial: proteção e limites na Constituição de 1988’ Vidal Serrano Júnior – São Paulo: Editora Juarez de Oliveira, 2001.

theories – supported by the announcers – that accepts advertising as a consequence of the right of free expression.

Independently of the arguments presented it is true that there is not an absolute right to free expression - or even to advertising - as it can suffer some restrictions when conflicts with another fundamental right. In this case Judicial Power can apply proportional criteria to decide between the restricted right and that one which is restricting it, culminating with the total or partial suppression of the right.

As a result advertising even being a licit activity must respect individual fundamental rights under penalty of it being considered illegal in each particular case.

4. Please provide a brief summary of any important decisions relating to advertising/ marketing/ sponsoring and human rights adopted by judicial authorities over the last ten years.

A relevant judicial decision took by Brazilian Judiciary Power was the one related to the São Paulo City 'Clean City Law' (mentioned below). The law was considered constitutional by the Court of São Paulo State¹⁹ in 2008. Brazilian Supreme Court also gave a decision in the case²⁰ in 2007.

The controversy lied on the competence to legislate about advertising, conceded by the Federal Constitution exclusively to the Federal Legislators²¹ and also about the violation of the rights of free enterprise and property.

On the contrary of what was alleged by outdoor advertising companies, Court decided to limit the rights of property and free enterprise of these companies claiming that Brazilian economic order is founded in the protection of the environment and the property must be used according its social role²². Court also decided that the competence to legislate about the protection of the environment and the historical, architectural, artistic and touristic public

¹⁹Decision declaring the constitutionality of the São Paulo's Clean City Law: <http://esaj.tjsp.jus.br/cjsg/getArquivo.do?cdAcordao=3178884&v1Captcha=qrNaX>. Access on 6.3.2014.

²⁰<http://www.stf.jus.br/portal/jurisprudencia/listarJurisprudencia.asp?s1=%28SL%24%2ESCLA%2E+E+161%2ENUME%2E%29&base=basePresidencia&url=http://tinyurl.com/cw2y2vb>, Access on 6.3.2014.

²¹ According to the article 22, item XXVIII of the Brazilian Federal Constitution: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm . Access on 6.3.2014.

²² Article 170, itens III and VI of the Brazilian Federal Constitution: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm . Access on 6.3.2014.

patrimony according to the Brazilian Federal Constitution²³ is shared by Cities, States of the Federation and the Union, despite the assert which says that advertising regulation is a private competence of the Union.

It can also be mentioned a legal action took by public prosecutors in 2007 related to Pandurata (a Brazilian food company) that announced its products associated with the animation character 'Shrek'. Additionally, the products were announced with a remembrance, a watch, whose acquisition was conditioned to the bought of the food products.

Advertising aimed directly to the child public, abusint their natural credulity and confidence to sell the announced product. Additionally, announced products contain a high percentage of sugar in the formula, as a result, this marketing action induced the exaggerated intake of poorly nutritional products.

The company was condemned in 2013 by Sao Paulo State Court to a payment to restore the social damage caused by an advertising aimed at children and also the prohibition of advertising direct to children including by conditioning the acquisition of toys and another remembrances by the buying of a food product. The disobedience of such imposition will culminate in a fine. This is not a final decision because the company appealed to Supreme Court that have not given a decision yet.

5. Which authority (governmental and/or self regulatory body) monitors the advertising sector? Are specific mechanisms in place to receive complaints from citizens on advertising methods and content?

Brazilian legislation created the National System for the Protection of the Consumer headed by National Office of the Consumer of Justice Ministry (Secretaria Nacional do Consumidor do Ministério da Justiça- SENACON/MJ)²⁴, which regulates how government will proceed with the protection of the consumer and which state bodies participates of the protection.

The system is composed by: SENACON and its Department of Protection and Defense of the Consumer (DPDC-MJ), Procons²⁵, 'Ministério Público' (public

²³ Article 24, itens VI and VII of the Brazilian Federal Constitution: http://www.planalto.gov.br/ccivil_03/decreto/D2181.htm. Acess on 6.3.2014.

²⁴ Decrete number 2181/97: http://www.planalto.gov.br/ccivil_03/decreto/D2181.htm . Acess on 6.3.2014.

²⁵ A public body called Procon is responsible for the defense of the consumers, and to guarantee and protect the rights of the consumer enacted by the Consumer Protection Code and to monitor the offer and marketing of goods and services in the States of the Federation and in brazilian cities. The organ can impose a fine to companies in case of abusive commercial practices. 'Procon' can be warned by such

prosecutor), Public Attorneyship ('Defensoria Pública') which have the function to represent the economic vulnerables even to defend their public and collective rights, regulatory agencies²⁶ and some civil societies organizations.

In general, state bodies may impose a fine to the companies, propose Conduct Adjustment Declaration to be complied by the companies, and also take enforcement actions against them.

The self-regulatory system is headed by a non-governmental institution called CONAR (Conselho Nacional de Autorregulamentação Publicitária - National Self-Regulation Council of Advertising). It is composed by advertisers, companies and mass media. Complaints can be made by a formal document presented to CONAR with a brief description of the advertising²⁷.

The effectiveness of CONAR is questioned due to its lack of plurality and the effect of its decisions. Be part of CONAR is voluntary and as a result it is not composed by all Brazilian companies and does not involves civil society or government. In addition decisions imposed to the members - based on provisions made by companies to themselves - are just recommendations and not compulsory penalties.

6. Has your country adopted legislation on certain advertising or marketing practices such as neuromarketing or behavioral targeting? What challenges have been encountered in doing so?

We are not aware of any specific legislation to regulate such practices.

7. Is the use of data for commercial purposes regulated in your country? If so, please describe briefly such regulation.

Brazilian Constitution willing to protect the individual intimacy of the citizens created an action called 'Habeas Data'²⁸, providing a protection to personal information, enabling a control of what it is done with these information by preventing abusive uses; the introduction of personal data in

practices by receiving reports from the customers, this reports can be transformed into a procedure that will evaluate the campaign and decide if it disrespects any consumerist law.

²⁶ Regulatory agencies have the task to regulate specific markets such as the aviation (ANAC), telephonic (ANATEL) and also the production and offer of goods and services to the general public which can be potentially harmful to the consumer like the National Agency of Health Surveillance (ANVISA), and they also can receive complaints.

²⁷ <http://www.conar.org.br/> . Acces on 6.3.2014.

²⁸ Article 5, item LXXII of the Brazilian Federal Constitution.

private or public records, like religious or political positioning's; and the maintenance of false data.

This action is normally used to correct wrong data and to assure the right of the individual to know the exactly content of the information possessed by governmental or non-governmental institutions, also the right to suppress, correct or to update those information. Another use for these action is to take out from these database, information that the individual didn't allow to be possessed by a company or the government.

Another important bill that was produced on behalf of the individuals was the database act (Federal Law n. 12.414/2011²⁹) which regulates the storage of data related to credit historical, used by companies to measure the risk of a loaning operation.

This law limits the content of the database, prohibiting the storage of excessive information, mainly those which have nothing to do with a credit operation, also requiring a previous authorization of the individual or company. The registered must have full access to your registers and can cancel, or correct the database at any time.

8. Does your country have regulations on marketing research standards? How is this sector regulated in particular for marketing research involving human beings?

We are not aware of any Brazilian regulation about marketing research standards, even if it involves human beings.

9. Please describe rules relating outdoor advertising including the use of billboards or screens in your country. Have enforcement mechanisms being established in this respect? Please indicate whether other forms of communication, such as public interest messages and artistic creation, can also be displayed outdoors, including on billboards and screens, and how these are regulated.

The pioneer legislation in Brazil treating about outdoor advertising is the São Paulo City Law N. 14.223/2006 known as the 'Clean City Law', willing to ordinate the urban landscape, to attend the public interest and at the same respect the fundamental rights of individual and its necessities of a healthy environment. Article 3rd asserts exactly which fundamental rights this public

²⁹ http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2011/Lei/L12414.htm. Access on 6.3.2014.

police wants to protect, emphasizing esthetic, environmental and cultural wellness of the population, as well safety of citizens, preservation of cultural and historical heritages, also intending to coordinate all interests to build a democratic space.

Accordingly to those previously mentioned principles some restrictions were made to limit space designated to outdoor advertising in São Paulo's public spaces. 8th and 9th articles provide general commandments to outdoor advertising positioning, taking in account security, environmental and cultural parameters. Some examples of this restrictions are prohibitions to locate outdoor advertising that limits visualization of traffic signs and destined to public orientation or those that do not attend to securities guidelines, also advertising that impairs visualization of a cultural patrimony³⁰ and finally it prohibits installation of outdoor advertisings in any public space, mainly in parks and playgrounds³¹.

Urban landscape ordination is regulated by articles 12th to 23rd. Main restrictions refers to visible sings, even those located inside buildings but visible³² for those who are passing by it.

The law imposes serious restrictions for banners located in facades, by limiting its sizes in comparison to the area of the front of the building³³. On the other hand it prohibits placement of any outdoor advertising in any public or private building.

It is important to mention some exceptions made by original text of the law and by some changes recently made by the current city government. Firstly, announcements classified as especial are not included on those restrictions. These exceptions are enrolled by article 19, allowing existence of cultural announcements allusive to historical, cultural or architectonical heritages of the city and also allowing those announcements with educative or informative finalities – in cases of plebiscite or referendum - and electoral finality. Additionally, electoral outdoor messages must be taken out 15 days after the election and cultural messages cannot be exposed in public spaces more than 30 days.

Lastly, it is also important to add that advertising published in public clocks, public busses and public bicycles are allowed to be made, due to recently

³⁰This commandment is also found in article 10th, item I, which prohibits the colocation of an advertising that obliterates, even partially, the vision of a historical or architectural heritage.

³¹ Article 9th, item II of the São Paulo's city law number 14.223 of 2006.

³² Article 12th, § 2º of the the São Paulo's city Clean City Law.

³³ Article 13th of the the São Paulo's city Clean City Law.

modifications in the law³⁴. Profits provided by this public policy will finance free public transport for students. Another modification made 2013 was the change on the width of the announcements destined to promote theaters and museums³⁵

10. Does national legislation regulate advertising, sponsoring and commercial practices in public and private schools (including on school busses and within the schools immediate surroundings)? Do companies engaging in sponsoring of schools?

There are no provisions about advertising, sponsoring and commercial regulation in schools in Brazilian legislation, but Brazilian Federal Constitution asserts some principles for the exercise of education in Brazil, which can be transported for this present argumentation.

Schools must take pains to create a curriculum for children which is not at the service of commercial interests, where education and culture are meshed with market values and exploit children's fantasies and desires. The communications media supply people with symbols and myths that help build a common culture.

The force of brand penetration in the child's imagery is undeniable and, consequently, the brand controls and manipulates their emotions. It is up to the school to come face up to this reality and take a different stand from that of the marketing media culture, by safeguarding the children and perceiving them as students, rather than consumers or mere spectators.

The possibility of private companies interfering in educational establishments is even more worrisome in the case of public schools, since besides interfering with the values transmitted to the students, the schools are harassed by the existing confusion between the public and private spheres. As a result, it is not only the school which will be seen as a sponsor of the advertising company; the state will as well, and the State is expected to provide elementary, compulsory and free education with "a freedom to learn, teach, research and disseminate ideas, art and knowledge", with a view to the individual's full development (arts. 205, main section and item II, and 208, I, of the Brazilian Federal Constitution).

³⁴ Access in 2.28.2014 <http://g1.globo.com/sao-paulo/noticia/2013/09/camara-de-sp-aprova-projetos-que-flexibilizam-lei-cidade-limpa.html>

³⁵ Access in 2.28.2014: <http://g1.globo.com/sao-paulo/noticia/2013/02/haddad-torna-lei-cidade-limpa-mais-flexivel-para-teatros-e-museus.html> .

There are some examples of marketing practices inside schools that have been denounced to **Children and Consumption Project** and resulted in formal complains to companies and public State bodies as Justice Ministry and Education Ministry: Ronald McDonald Show³⁶, Tang Olympic Games and Music Classes³⁷, Companies Gifts inside School Lockers³⁸, Duratex Rhino Parade³⁹, Bayer and United Nations Environment Programme (UNEP) Children Painting Competition⁴⁰, Alagoas State Advertising in Public School Uniforms⁴¹ among others.

In conclusion, it is clear that the intervention of the announcers on public school didactic materials and public school spaces are illegal and deviates the constitutional commandments which establishes a free and democratic school, without the interference of any brand or company, but mainly a school free from the appeals of consumerism.

But independently of the lack of regulation about advertising on schools, the Legislation previously mentioned on question number one, such as the comandments of the articles 227 of the Brazilian Federal Constitution, the article 4th of the Child and Adolescent Statute and the article 37, 2nd paragraph of Consumer Protection Code, could secure, at least, children protection against any kind of marketing actions.

11. Does national legislation regulate advertising in Universities as well as cooperation between research institutes/universities and business, in particular regarding research sponsorship?

We are not aware of any specific legislation that regulates advertising in Universities, nor the relations between universities and research institutes with the private initiative.

12. Are there specific measures such as inter alia, tax incentives to encourage private sponsorship of artistic creation? Please provide a brief

³⁶ <http://biblioteca.alana.org.br/biblioteca/CriancaConsumo/AcaoJuridica2.aspx?v=1&id=95>. Access on 6.3.2014,

³⁷ <http://biblioteca.alana.org.br/biblioteca/CriancaConsumo/AcaoJuridica2.aspx?v=1&id=257>. Access on 6.3.2014,

³⁸ <http://biblioteca.alana.org.br/biblioteca/CriancaConsumo/AcaoJuridica2.aspx?v=1&id=300>. Access on 6.3.2014,

³⁹ <http://biblioteca.alana.org.br/biblioteca/CriancaConsumo/AcaoJuridica2.aspx?v=1&id=233>. Access on 6.3.2014,

⁴⁰ <http://biblioteca.alana.org.br/biblioteca/CriancaConsumo/AcaoJuridica2.aspx?v=1&id=289>. Access on 6.3.2014,

⁴¹ <http://biblioteca.alana.org.br/biblioteca/CriancaConsumo/AcaoJuridica2.aspx?v=1&id=232>. Access on 6.3.2014,

description of these measures. Is the private sponsorship for cultural institutions receiving public funding regulated and if so please provide details. Do such regulations also apply to monuments and national heritage buildings?

Brazilian legislation about this topic was created in December 23rd of 1991 with the Federal Law N. 8.313/1991⁴² (known as 'Lei Rouanet'), but it started to be effective in 2009, after some changes that were made in text of the act.

Firstly, the article instituted the National Program for the promotion and support of national Culture ('Pronac'). This national plan, in its 2nd article, created three forms to implement this plan, the National Fund of Culture (FNC), which has resources derived from governmental budget; the second form is a Private fund of Investments ('Ficart') destined to finance Culture and Art and finally the Incentive to Cultural Projects. Additionally, these projects must suit to the standards and objectives settled by the 3rd articles of the bill, which are incentive to artistic and cultural instruction, promotion to cultural and artistic production, preservation and diffusion of artistically, historic and cultural heritage, stimulate the knowledge related to cultural patrimony and other forms of support to artistic and cultural activities.

Among these three public polices, there are several benefits that are granted to particulars. The first benefit is instituted by the 8th article of the law, which authorizes the creation of particular funds of investment to incentive cultural and artistic activities, such activities are defined by the 9th article of the law. The incentive for those funds consist on tax exemption to incomes and profits provided from this patrimony.

Finally, the incentives to Cultural projects consist on private contributions to the National Fund of Culture (FNC) and the donations or sponsorships to individuals or institutions. In its 18th article, the law defines the nature of this contributions, permitting individuals and companies to donate and contribute directly to artistic and cultural projects, which attends the criteria's established by 3rd paragraph of the mentioned article.

Those projects benefitted by the individual donations or sponsorships, must be approved by the Minister of Culture, which will evaluate if the project attend the **objectives of the program**⁴³. The beneficial's⁴⁴ introduced by the law are deduction's on income tax for individuals and companies. The benefit to individual's respond to 80% and 60%, respectively, of all spent in donations and

⁴² http://www.planalto.gov.br/ccivil_03/leis/l8313cons.htm. Access on 6.3.2014.

⁴³ 1st article of the bill 8313/1991.

⁴⁴ The benefits are described on article 26th of the law number 8313/1991.

sponsorships, on the other hand, for companies the benefit diminish to 40% for donations and 30% to sponsorships.

Finally, the bill also benefits the preservation of monuments and national heritage buildings by asserting as a parameter for donation's and sponsorship's, in the article 18th, 3rd paragraph, letter g; the preservation and maintenance of the material and immaterial cultural patrimony.

III. Conclusion.

Alana Institute, by its **Children and Consumption Project**, expects that these brief appointments and contributions about Brazilian marketing regulation scenario and the impact of advertising and marketing practices on the enjoyment of cultural rights were usefull for further actions of **United Nation Organization**, hoping to contribute for the protection of important fundamental rights, specially those related to children.

Yours faithfully,

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