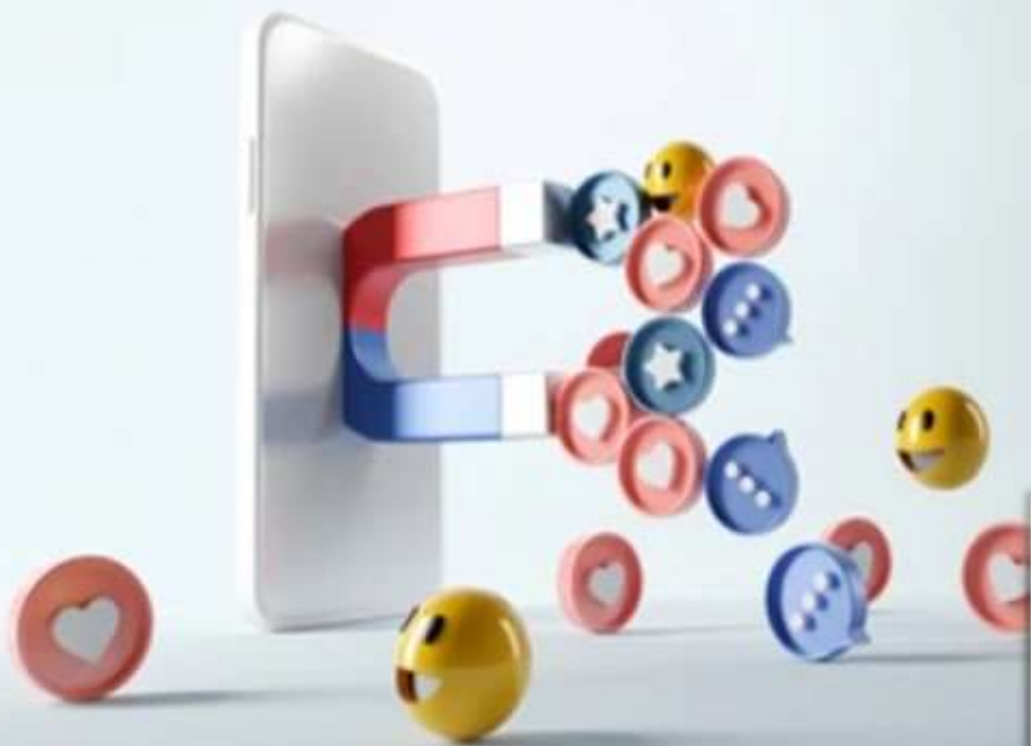




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Episode 2: Influencer rights and obligations

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The advent of social media, over the years, has paved the way for a novel category of celebrities, popularly known as influencers. These individuals have garnered a considerable following on various platforms such as Instagram, YouTube, and TikTok and have become a potent force in the advertising and marketing industry. Nevertheless, as the influencer sector continues to expand, concerns have emerged regarding their duties and rights.

There are queries about the measures influencers take when endorsing products or disclosing sponsored content. Are they being sufficiently transparent with their viewers concerning their recommendations? This article is going to delve deep into the intricate domain of influencers' rights and obligations in the digital age. We'll analyze the legal frameworks that operate in the US, UK, and France while closely examining the terms and conditions of social media platforms. Furthermore, we'll talk about the legal provisions that influencers must negotiate to safeguard their own interests. It is a riveting and quickly evolving topic, and we're thrilled to explore it with you.

I- Key requirements in France, the UK and the US:

To help better understand the legal obligations of influencers, the following table provides a side-by-side comparison of the key requirements in France, the UK, and the US:

Rights & Obligations		France	UK	US
Disclosure of Endorsements	Required to use #Partenariat or #Collaboration in captions or bio	Required to disclose through #Ad, #Sponsored or #Promotion	Required to use #Ad or #Sponsored in captions or posts	
Intellectual Property	Infringement of IP rights can lead to fines and imprisonment	Influencers own the copyright of their content, but platforms have the right to use it	Influencers own the copyright of their content, but platforms have the right to use it	
False Advertising	Influencers can face penalties and imprisonment for false or misleading advertising	Influencers can face fines and even imprisonment for misleading advertising	Influencers can be sued and face monetary penalties for false advertising	

Data Protection	Influencers must comply with GDPR rules when processing personal data	Influencers must comply with GDPR rules when processing personal data	Influencers must comply with CCPA rules when processing personal data
Taxation	Influencers are taxed on the revenue they generate from their work	Influencers are taxed on the revenue they generate from their work	Influencers are taxed on the revenue they generate from their work

Disclosing content in France:

The French Advertising Authority, ARPP, has issued guidelines for influencers on how to disclose sponsored content. The recommendations include clearly and prominently indicating the commercial nature of the content with hashtags like #ad or #sponsorisé, and avoiding language that could obscure the commercial nature of the content. Influencers are also encouraged to disclose any free products or services they received from brands and to ensure the claims they make in sponsored content are truthful and accurate. These guidelines aim to promote transparency and trust in the influencer marketing industry.

Indicating the commercial nature of the content. Influencers should clearly and prominently indicate when their content is sponsored or paid for by a brand. This can be done through (1) the use of hashtags such as #ad or #sponsorisé, or (2) through other means that make it clear that the content is an advertisement.

Avoiding misleading or confusing language. Influencers should avoid using language that might obscure the commercial nature of their content. This means being upfront and transparent about the fact that they're being paid or sponsored by a brand, and avoiding language that might confuse or mislead their followers.

Disclosing any free products or services received from brands. Influencers have a duty to disclose any free products or services they've received from brands, even if they're not being paid for their content. This helps to promote openness and ensures that their followers are aware of any possible biases.

Verifying the truthfulness and accuracy of claims made in sponsored content. As someone who holds a significant sway over their followers, influencers are bestowed with a certain level of responsibility. When promoting sponsored content, they ought to be extra diligent in ensuring that all the claims they make are backed by evidence and are indeed truthful and accurate. They should verify the information provided by the brands themselves and refrain from making unsupported claims. Influencers are looked upon as role models, and it is only right that they act with utmost integrity and honesty in their interactions with their followers.

A LAW TO REGULATE THE PRACTICES OF INFLUENCERS IN FRANCE

On Thursday, June 1st, 2023, the French Parliament definitively adopted the proposed law against the excesses of influencers, following months of controversies within the industry. The new law aims to regulate and address issues related to influencer practices. The proposed law aims to define and regulate the activity of influencers on social media platforms, particularly those targeting a young audience. Its main objective is to better combat certain harmful practices and scams, such as promoting dangerous dieting, cosmetic surgery, excessive gambling, and the sale of counterfeit goods.

The proposed law includes the following key points:

- **Definition of influencers and influencer agents:** The proposed law addresses multiple actors in the sector: influencers, including minors, influencer agents, and the platforms that host their content.

Influencers are individuals or legal entities who, for a fee, leverage their popularity with their audience to communicate electronically to the public content that aims to directly or indirectly promote goods, services, or any cause, engage in the activity of electronic commercial influence.

Agents 'activity' involves representing, for a fee, individuals or legal entities engaging in the activity of electronic commercial influence as defined in Article 1, with individuals or legal entities, and, where applicable, their representatives, with the aim of promoting goods, services, or any cause for a fee.

- **Prohibition of some types of advertisements:** The proposed law, emphasizes that influencers must comply with the legal framework regarding advertising and the promotion of goods and services by prohibiting advertisements that promote:
 - Plastic surgery and aesthetic medicine.
 - Certain financial products and services, particularly related to cryptocurrencies.
 - Therapeutic abstention.
 - Nicotine pouches (whose online sales are growing among teenagers).
 - Subscriptions for sports advice or predictions.

Advertisements involving wild animals are also prohibited, except in collaboration with zoos.

And advertising for gambling and games of chance is regulated to protect minors.

- **Improved information for subscribers/ followers:** For better information to their subscribers, influencers will have to clearly indicate the mention "advertisement" or "commercial collaboration" on their promotional content.
To protect minors, photos or videos of modified faces or silhouettes, especially using filters or created by artificial intelligence, must contain the mention "retouched images" or "virtual images".
Middle school students should be made aware of sexist content, commercial manipulation, risks of online scams, and the tools provided by platforms to report illicit content.
- **Planned sanctions and controls:** Influencers who violate the prohibitions or obligations established by the proposed law may face imprisonment and heavy fines (up to 300,000 euros in certain cases), as well as a ban on practicing.

Disclosing content in the UK:

In the UK, the Advertising Standards Authority (ASA) requires influencers to be transparent about sponsored content to ensure that consumers can distinguish between ads and organic content. Here are its requirements:

Clear disclosure of sponsored content. Influencers are required to clearly label any sponsored content as such to ensure that their audience understands when a post is part of a commercial agreement.

Accurate claims and evidence. Any claims made about a product or service in sponsored content must be truthful, accurate, and supported by evidence.

Prominent and clear disclosures. The disclosure must be prominently displayed and easily visible to consumers, regardless of the type of content being promoted.

Disclosure of free products or gifts. If an influencer receives a free product or gift in exchange for a post, they must disclose this to their audience.

Enforcement and consequences. The ASA has the power to investigate complaints about influencer advertising and take action against non-compliant influencers, including issuing fines or banning non-compliant ads.

Disclosing content in the US:

As per the regulatory body in the United States, the Federal Trade Commission (FTC), influencers are required to come clean about any material connections they may have with a particular brand or product they are promoting in their posts. These material connections pertain to any sort of monetary or other incentives that the influencer might have received, such as free products or payment, in exchange for their endorsement or promotion. To ensure that they adhere to the FTC guidelines, influencers must provide transparent and unequivocal disclosures in various forms, including hashtags, captions, or tags. The FTC has set forth some key recommendations for influencers when it comes to disclosing sponsored content, including:

Clear language. Avoiding ambiguous language or abbreviations that may confuse the audience, such as "SP" instead of "sponsored."

Early placement. Placing the disclosure at the beginning of the post, where it is easily noticed by consumers.

Easy-to-Understand Terms. Using clear and easy-to-understand terms that accurately convey the nature of the relationship between the influencer and the brand.

Comprehensive Coverage. Including disclosures in all types of content, including posts, stories, videos, and live streams.

Visible Presentation. It is imperative for influencers to make sure that the disclosure is conspicuous and noticeable even when viewed on a small screen or in a rapid-scrolling feed. Failure to abide by these guidelines can lead to regulatory actions, such as penalties and legal proceedings. Hence, it is critical for influencers to understand the FTC's requirements and to adopt suitable disclosure methods to uphold the trust of their audience and evade legal ramifications.

II- Comparing the Intellectual Property Terms and Conditions of Top Social Media Platforms

In terms of intellectual property, the terms and conditions of YouTube, Instagram, Facebook, TikTok, and Snapchat all generally state that the user or content creator retains ownership rights to the content they upload. However, each platform requires the user to grant them a license to use that content in connection with the platform and the company's business. These licenses vary somewhat in their terms and scope, but they generally allow the platform to display, reproduce, modify, and distribute the user's content. It's important for users to be aware of these engagements and licenses and to only upload content that they have the rights to use and share.

Here is a comparison of the terms and conditions for YouTube, Instagram, Facebook, TikTok, and Snapchat in terms of intellectual property:

Platform	Intellectual Property
YouTube	The platform's terms state that the user retains all ownership rights to the content they upload. However, the user grants YouTube a worldwide, non-exclusive, royalty-free, transferable license to use, reproduce, distribute, prepare derivative works of, display, and perform the content in connection with the platform and YouTube's business.

Instagram	Instagram's terms state that the user retains all ownership rights to the content they upload. However, the user grants Instagram a non-exclusive, fully paid and royalty-free, transferable, sub-licensable, worldwide license to use the content in connection with the platform and Instagram's business.
Facebook	Facebook's terms state that the user retains all ownership rights to the content they upload. However, the user grants Facebook a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use the content in connection with the platform and Facebook's business.
TikTok	TikTok's terms state that the user retains all ownership rights to the content they upload. However, the user grants TikTok a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use, display, reproduce, and modify the content in connection with the platform and TikTok's business.
Snapchat	Snapchat's terms state that the user retains all ownership rights to the content they upload. However, the user grants Snapchat a worldwide, perpetual, sublicensable, and transferable license to use, modify, create derivative works of, publish, distribute, and display the content in connection with the platform and Snapchat's business.

III- Negotiating brand deals: key clauses for influencers to focus on

When entering into a partnership and a brand deal with a company, an influencer should focus on negotiating the following clauses:

Compensation. First thing is to negotiate a fair compensation package that includes payment for the time and effort the influencer will spend creating content for the brand, as well as any additional fees for usage rights or exclusivity. For example, an influencer might negotiate a rate of \$1,000 per Instagram post, with an additional fee of \$500 for the brand to repost the content on their own channels.

Deliverables. Secondly, the influencer must make sure the deliverables are clearly defined and include specifics such as the type of content, the number of posts or videos, and the timeline for delivery. For example, an influencer might negotiate to create three Instagram posts and one YouTube video, with all content due within a two-week timeline.

Exclusivity. Thirdly, the influencer shall negotiate whether the brand deal requires exclusivity, meaning that they are prohibited from working with competing brands during the term of the agreement. For example, an influencer might negotiate to have a non-exclusive partnership with a clothing brand, allowing them to work with other clothing brands simultaneously.

Usage rights. Fourthly, an influencer must define the usage rights for their content, including whether the brand has the right to repost or use their content in advertising. For example, an influencer might negotiate to grant the brand the right to use their Instagram post in a sponsored Facebook ad, with compensation of \$1,000 for usage rights.

Creative control. Fifthly, influencers should establish the level of creative control that they will have over the content you produce, and whether they will have the right to review and approve the final product. For example, an influencer might negotiate to have final approval of all content before it is published, with the option to make changes as needed.

Termination and cancellation. Sixthly, the parties must define the circumstances under which either party can terminate or cancel the agreement, and what the consequences of termination or cancellation will be. For example, an influencer might negotiate to have the option to terminate the agreement if the brand fails to pay them within 30 days of content delivery.

Disclosure. And finally, parties should ensure that the agreement includes clear guidelines for how influencers will disclose their relationship with the brand to their followers, in compliance with relevant advertising laws and guidelines. For example, an influencer might negotiate to have the brand provide a disclosure template or language to be used in all sponsored posts, to ensure that they are clearly and properly disclosed to followers. By negotiating these key clauses in brand deals, influencers can protect their interests and ensure that they are compensated fairly for their work.

Navigating image rights as an influencer: what you need to know

In today's world, influencers hold a great deal of power in shaping consumer culture and brand messaging. One of the key areas that influencers must be mindful of when creating content is the use of images and the intellectual property rights associated with them.

In many cases, images are the lifeblood of an influencer's content. Whether it's a carefully curated Instagram feed or a vlog on YouTube, images play a critical role in capturing audience attention and building a brand's visual identity. However, it's important for influencers to understand the legal complexities surrounding image rights and to take steps to protect themselves from liability.

Public domain and copyrighted images. First and foremost, influencers must be aware of the difference between public domain images and copyrighted images. Public domain images are free for anyone to use, while copyrighted images are protected by law and require permission or licensing from the copyright holder for use. Influencers must take care to ensure that the images they use in their content are not copyrighted without permission, as this can result in significant legal consequences.

Licenses and permissions. Additionally, it's important for influencers to obtain the proper licenses or permissions for any images they use in their content. This includes obtaining permission from photographers or brands for use of their images, as well as purchasing licenses for stock photos or other copyrighted materials. Failure to do so can result in lawsuits and damage to an influencer's brand reputation.

Third parties images. Another important consideration for influencers is the use of images featuring other people, such as friends or family members. In many cases, these individuals may not want their images used publicly, and influencers must obtain their consent before including them in their content. Additionally, influencers must be mindful of any potential privacy violations that could result from sharing personal information or images of others. Overall, it's important for influencers to take a proactive approach to protecting image rights in their content. This means obtaining the proper permissions and licenses, being mindful of privacy concerns, and understanding the legal complexities surrounding the use of copyrighted materials. By taking these steps, influencers can avoid legal issues and maintain their credibility as trusted content creators.

Music rights and influencers: legal considerations for using music in content

Since music has traditionally been a potent means of expressing feelings and concepts, it is not surprising that many influencers use it in their material. Whether it's branded music for a sponsored post or background music for a video, music can significantly improve an influencer's content. Influencers must, however, be aware of the legal issues related to the use of music in their material.

Use of copyrighted music. One of the primary legal issues that influencers must consider when using music is copyright law. In general, the use of copyrighted music in content without permission or licensing is illegal and can result in legal action. This means that influencers must be diligent in obtaining the proper permissions and licenses for any music they use in their content.

Royalty-free music. There are a number of ways for influencers to obtain licenses for music use. One common option is to use royalty-free music, which is available for use without the need for licensing or permission. Alternatively, influencers can work with music publishers or copyright holders to obtain licenses for specific songs or compositions. In some cases, brands may also provide music for sponsored posts or collaborations, which eliminates the need for the influencer to obtain licensing themselves.

Proper use of music. Another important consideration for influencers is the use of music in a way that is respectful to the original artists and their work. This means avoiding the use of music in a way that is misleading or misrepresentative of the original intent of the song. Additionally, influencers should be mindful of the cultural significance of certain songs or genres, and take care to avoid cultural appropriation or insensitivity in their use of music.

Overall, the use of music can greatly enhance an influencer's content, but it's important for influencers to understand the legal and cultural considerations surrounding music use. By obtaining the proper permissions and licenses, and using music in a respectful and responsible way, influencers can create content that is both engaging and legally compliant.

⇒⇒ Next episode: Framing agreements with Influencers ⇒⇒

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