

Regulating Influencer Marketing: A Comparative Analysis of Laws Across the World

Article By:

Bianca Ascolese

In today's digital era where social media is at the core of all business, influencers have emerged as pivotal players in the world of marketing, wielding significant influence over their followers and the brands they represent. Governments around the world have recognized the importance of regulating influencer activities to safeguard consumers and ensure transparency of promotional activities. This article provides an in-depth comparison of influencer laws in five key countries – Brazil, France, Italy, the United Kingdom, and the United States - and highlights the specific measures each has adopted to address challenges associated with influencer marketing.

Disclosure and Transparency in Posts

Transparency in influencer marketing is paramount to ensure that consumers are aware of any sponsored content or paid partnerships. In France, influencers are legally required to use specific hashtags like #ad or #sponsored to disclose sponsored posts clearly. Italy also mandates influencers to disclose when a post contains paid content, ensuring that the audience is well-informed as to the commercial benefit the influencer is receiving in exchange for content creation. Similarly, the U.S. Federal Trade Commission (FTC) has laid out guidelines that necessitate the use of informative hashtags such as #ad or #sponsored to disclose paid partnerships, enabling consumers to make informed choices. In the U.K., the Advertising Standards Authority (ASA) expects influencers to be transparent about advertising content, but the guidelines on disclosure may vary depending on the influencer's relationship with the brand and the level of control the brand exerts over the content. On the flipside, Brazil still lacks comprehensive guidelines regarding disclosure, which might lead to ambiguity and potential consumer deception.

Misleading Advertising and False Claims

Preventing misleading advertising practices is a significant concern for all countries involved. The U.S. and U.K. have robust regulations in place to tackle this issue. The FTC in the U.S. requires influencers to truthfully represent their experiences with products or services, while the U.K.'s ASA strictly prohibits influencers from making unsubstantiated claims or misleading statements (a level of standard akin to conventional U.S. advertising laws). France and Italy also address misleading advertising, but with a primary focus on traditional media channels, such as television, print, and radio. However, both countries have indicated areas for updating regulations to encompass the digital

landscape. Brazil is actively working on developing clearer guidelines to address issues such as unsubstantiated claims, exaggerations, and misleading product endorsements, but nothing is in place as of yet.

Intellectual Property

The protection of intellectual property is of utmost importance in influencer marketing, as it protects the rights of creators and fosters a climate of creativity and innovation. Intellectual property encompasses various elements of an influencer's work, including copyright, trademarks, and patents, which play a significant role in influencer content creation and branding.

In France and Italy, influencers are subject to existing copyright laws, which offer robust protection against the unauthorized use of copyrighted material such as photographs, text copy, and other creative works. These laws ensure that influencers have exclusive rights to their original work, preventing others from using it without permission. This includes protecting against unauthorized reproduction, distribution, public display, and adaptation of copyrighted content. Likewise, the U.S. and U.K. have established copyright frameworks that apply to influencers. These frameworks include provisions for fair use, allowing limited use of copyrighted material for specific permissible purposes such as criticism, comment, news reporting, teaching, scholarship, or research. Fair use exceptions enable influencers to incorporate copyrighted material within their content while respecting the rights of the original creators.

However, despite having general copyright laws in place, Brazil has yet to fully address the specific issues related to influencers and intellectual property. This presents a challenge as influencer marketing continues to gain significant momentum in the country. The absence of clear and tailored regulations may lead to uncertainties and potential intellectual property disputes within the industry.

To ensure a level playing field and foster creativity within the influencer industry, harmonizing intellectual property regulations across countries is essential. A unified approach would provide consistent guidelines for influencers and brands engaging in cross-border collaborations, creating a more stable and predictable environment for all stakeholders.

Influencer marketing regulations are gaining momentum globally as governments strive to create a fair, transparent, and accountable landscape. The influencer laws in Brazil, France, Italy, the U.K., and the U.S. share common goals of protecting consumers and fostering a responsible influencer ecosystem. By addressing disclosure, misleading advertising, and intellectual property, these countries aim to strike a delicate balance between promoting influencer creativity, commercial activity, and safeguarding consumer rights. As the influencer industry continues to evolve, it is vital for governments to adapt and update their laws to address emerging challenges and ensure a sustainable and trustworthy influencer marketing landscape.

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