

WHAT ARE SOCIAL MEDIA INFLUENCERS (INFLUENCER MARKETING) AND WHY / HOW SHOULD THEY BE REGULATED?

Leaden (2017) argues that social media have enabled emergence of an entirely new genre of celebrity. The rise of social media influencers was also facilitated by technology in a less known way – by the **rise of ad blockers and the decrease of ad click through rate** (approximately at 0.05 % across all ad formats and placements) (Miles, 2018). In addition, social media influencers can be seen as a **lighthouse for many citizens/customers/voters in area of abundance of information sources**. Gladwell provided three elementary types of influencers – connectors (the people in a community who know large numbers of people and who are in the habit of making introductions), maves ("people we rely upon to connect us with new information") and salesmen ("persuaders", charismatic people with powerful negotiation skills). It is interesting to observe how closely overlap these social media influencers categories with social bots categories: **Der Überlaster (Overloader), Der Trendsetter (Trendsetter) and Der Auto-Troll (Automated Troll)**.¹

Brown *et al* (2008) developed the term connectors further in the so-called false connectors, i.e. people fascinated by contacts as a proof of their popularity, in social media environment.

Moreover, there are 'VTubers' – virtual, animated versions of YouTube's human influencers.² The first Vtuber is considered to be Kizuna AI that appeared in 2016³.

In fact, we can see that social media influencers present combination of all three types of influencers as presented in Gladwell's typology. Apparently, this synergy makes them rather important social actors.

The elementary definition offered by the Merriam-Webster dictionary is: „one who exerts influence: a person who inspires or guides the actions of others,“ and more specific social media interpretation is „**a person who is able to generate interest in something (such as consumer product) by posting about it on social media**“ (Merriam-Webster, 2019).

Although social media influencers seem to be by and large younger people, or at least those who started their influencer career at a very young age, in fact, there are some mid-age influencers who had been well-known before getting engaged in social media.

Influence or impact of social media influencers depends on the factors such as trustworthiness, expertise, attractiveness and similarity (Fastenau, 2018).

WHY IS THERE A NEED FOR REGULATING SOCIAL MEDIA INFLUENCERS?

Influencer marketing is a grey area of advertising, with complex interactions among influencers, peers/customers, agencies/platforms and brands/businesses. The influencer marketing is not new phenomenon. The Word-of-Mouth (WOM) marketing strategies were powerful way to sway opinion since 1970s (Goldsmith, 2018). Nonetheless, social media influencer marketing has

raised many new regulatory challenges. The main concerns are related to, by and large, fraud and to unethical or illegal behaviour by influencers (influencermarketinghub, 2019).

Although **advertisement regulations rules** in some countries include endorsements made on social media by social media influencers, **social media influencers often disregard these regulatory expectations**. This is highly problematic as average social media users are at an ever-greater risk of falling prey to **inconspicuous advertising practices, but also to dubious or dangerous advises**. This is particularly problematic in case of kids.



It is becoming increasingly **difficult for the average social media user to determine when a post showcasing a particular item or product is organic or sponsored**.

Some influencers are now regularly uploading posts that are designed to look like they were paid for, even though they were not. These influencers are hoping in luring other advertisers into their net.

The **monetization** of content raises legal and ethical concerns: are influencers paid for their reviews, and if so, do they disclose this information in transparent way to their followers? There is a **conflict of interests** if influencers are bound to share the sincere opinions their followers ask for, on goods and services they are paid to promote.

Some **smaller companies report that refusing to pay for social media influencers may result in retaliation** (see e.g. Owens, 2019). This ranges from categorically ignoring their products to posting faux negative reviews to hurt their image.

Moreover, **some brands offer a payment for negative reviews of their competitors**.

¹Social Bots – die Technik hinter Fake-News (25.04.18), <https://www.ionos.de/digitalguide/online-marketing/social-media/social-bots-was-koennen-die-meinungsroboter-wirklich/>

²See <https://www.youtube.com/channel/UCwOGO9gT1y0lvzPqKa4loQ>

³<http://japantrend.tv/index.php/2018/07/22/whats-is-vtuber-virtual-youtuber-2/>

Some influencers or companies reportedly **use bot apps for growing followers or purchase fake followers**. For example, the New York Times published an investigation of social media bots prevalence, which revealed that a US company Devumi has collected millions of dollars by selling social media followers (on Twitter) and retweets to celebrities, businesses and any individual with desire to spread his/her popularity (Confessore, *et al.*, 2018). Fake followers and engagement on social media have threaten good reputation and credibility of social media influencer marketing for years. This situation even triggered the reactions of influencers or celebrities themselves. For example, beauty YouTuber Chloe Morello has posted vlog on 16th November 2017. In this vlog she she criticized influencers who leveraged fake followers and engagement (Morello, 2017, mediakix.com, 2018). There are other individual initiatives of this type.⁴

The major issue with influencer marketing is the typical **lack of disclosure**. Social media influencers that use platforms like Instagram or Snapchat or Twitter bypass transparency regulations either by not adding the #ad mention, or by making it almost invisible – for example by “hiding” it among many other hashtags (Stokel-Walker, 2019). This opacity is common among brands as well. A survey of 1,173 marketers and 500 consumers in the UK and USA showed that a third of marketers regularly choose not to disclose their partnerships with influencers (Influencer Marketing 2020, 2018). This avoidance among both influencers and brands stems from the wide public perception (66% of consumers) who made no difference between paid-for content and general advertising (Influencer Marketing 2020, 2018).

There is also a **legal question whether influencers can be considered independent contractors or whether they are employed by the brands they advertise, or by the agencies**.



Some influencers complain that they have to accept **oppressive, unfair and illegal agreements**.

There was some **negative impact of using AI for automated monetization of ads pairing them with specific content, using a**

theme-guided algorithm, also including social media influencers, in the last years. In response, some companies pulled ads from YouTube after finding their content paired with hate speech and violent extremist content or child exploitation. As a result, some YouTube creators reported losses in their income (Dunphy, 2017, Alexander, 2019). These events are called YouTube Adpocalypse(s) (from the First to Fifth) or advertiser boycott on YouTube. This chain of events emerged from 2016, peaked in the March – May 2017 and continued in September 2017 and February and again May 2019 (youtube.fandom.com). As a response to these incidents there is a campaign FairTube. The aim is to achieve more fairness and transparency for all creators of YouTube content (Vinc, 2019). **The campaign’s main regulatory suggestions are to publish all criteria affecting the monetization and views of video; to provide the explanation of platforms’ decisions about demonetization – i.e. which parts of the video content are not in line with criteria stated in Advertiser-Friendly Content Guidelines; to provide to YouTube content creators a qualified and authorized contact person able to explain and discuss decision with negative consequences for YouTubers; to create an independent mediatory board for resolving emerging disputes** (FairTube, 2019).

REGULATORY APPROACHES TO THE INFLUENCER MARKETING

Increasingly, self-, co- or public regulators play certain roles in these interactions, depending on the country in question. It appears that there are huge differences among states, including EU M.S., in how they approach this regulatory area.

Social media platforms use mainly recommendations to put the hashtag #ad on sponsored posts, but they do not push sufficiently influencers to follow these these guidelines, so many of them do not practice them at all (Ng, 2019).

There is an early study on this topic covering mostly Western and Southern EU M.S. (*Influencer marketing. At-a-glance guide to regulation across Europe. November 2017*). The most advanced regulations seem to be in France, UK and Germany, and California within USA, while Eastern Europe seems to be lagging behind in this area.

For example, there is the Influencer’s Guide created by the Advertising Standards Agency (ASA) in the UK. The Influencer’s Guide sets out what are the relevant rules of influencer marketing, what does the agency consider to be an ad and how to make clear ad or what content counts as an ad, what is affiliate marketing and advertorial etc. (UK - The Internet Advertising Bureau, IAB; ISBA, The Incorporated Society of British Advertisers, 2018). These rules reflect issues of some real-life case studies when social media influencer or influencer agency proceeded improperly.

UK’s Competition and Markets Authority (CMA) and the Advertising Standards Authority (ASA) have been among the most proactive in monitoring and regulating influencer marketing, as well as making available accessible, user-friendly guidelines – like ASA’s Influencer’s Guide. The tendency towards bypassing transparency rules prompted UK’s CMA to investigate if social media influencers are transparent about sponsored ads. This resulted in pledges from the 16 UK personalities to disclose further content for which they have received payments or other benefits, as well as warning letters sent to other social

⁴<https://www.openpetition.de/petition/online/produktplatzierungen-mehr-transparenz-und-kennzeichnung>

media celebrities where problems have been identified (CMA, 23 January 2019). Additionally, CMA published in the beginning of 2019 guidelines for increasing transparency of social media endorsements, asking for upfront disclosure of any type of incentives, financial or otherwise, that an influencer has as a result of their relation with a certain brand. A disclosure that should be “transparent, easy to understand, unambiguous, timely and prominent”, as well as “apparent without the need for people to click for more information, no matter what type of device they’re using to view the post”.

The National Media Council of the UAE announced new regulations affecting anyone using social media for commercial purposes in 2018. This includes, in addition to influencers, also electronic news sites, publishers, and on-demand printing niches (Cummings, 2018). Just for illustration, among the conditions that an applicant for a licence has to meet are following:

- The applicant should have good reputation and decent conduct
- The applicant should hold a high academic qualification from a college, institute or an accredited university; however, he may be exempted from meeting such qualification requirement.⁵

SELF-REGULATION AND CO-REGULATION OF INFLUENCER MARKETING CAMPAIGNS

Social media platforms Facebook and Instagram have developed a “Branded Content” section, which discloses that a promoted brand and the influencer are co-working on a post, while influencer has been paid for this activity (SocialReport, 2018). Branded content has to tag the brand sponsoring the post and there has to be an “About this partnership” button too (SocialReport, 2018). Instagram developed new ad type called “Branded content ads”, which gives brands the opportunity to sponsor posts created by influencers and promote them just like any other ad (Hutchinson, 2019).

YouTube also updated its rules in December 2018, to ensure a clear and visible disclosure of “Paid product placements and endorsements”. If a user wants to include paid-for content in their video, they are required to notify YouTube by declaring that the video contains “Paid Promotion” – whether it be product placement, sponsorships or endorsement (support.google.com, 2018).

Moreover, there are commitments from companies/brands too: As an example, Unilever commitments are: Transparency from Influencers, not to work with influencers who buy followers, Unilever brands will never buy followers, Unilever we will prioritise partners (platform) who increase transparency and help eradicate bad practices throughout the whole ecosystem (Weed, 2018).

- Disclosures should be made in the language of the endorsement;
- Disclosures should be in close proximity to the endorsement;
- Disclosures should be specific about the brand, product, and what was given; and
- Disclosures should be clearly communicated and should be written in unambiguous language.

POLICY RECOMMENDATIONS

As we can see, regulation in the field of influencer marketing is a relatively new endeavor, subject to changes and improvements. In some cases, the existing regulations produce conflicting interpretations (like in Germany’s court case) and lead to Court cases that raise new questions on where the line is to be drawn in what qualifies as advertisement and what is not influencer marketing. A special attention is given to ads or posts that can be interpreted as containing medical, health or food advice, or targeting children, which are subject to harsher regulations.

Sooner or later, most likely, government regulators will *require* a distinction between private and business accounts. If for example creator accounts automatically inform the users that a post is sponsored, they may skip it altogether.

Schürmann, Rosenthal, Dreyer (2017) suggest that an ideal middle ground for companies and influencers **with regard to visibility of social media influencers ads would be a not-so-obvious but non-disguising hint** (as it is actually delivered by sponsored by, if approved by case law). Possible examples would be “on behalf of / on behalf of” or “with the kind support of .. / advertising, advertisement, supported by product placement”. Whichever formulation prevails depends on the frequency of use by influencers. The economic risk of reputation loss and the legal risk of warnings must be weighted by companies against the enormously high reach of some influencers.

Finally, for Schürmann, Rosenthal, Dreyer (2017) the question arises how and where exactly the reference to the advertising character must be placed. Again, **there is a trade-off between the complete loss of the advertising effect if the advertising character is given too much prominence and the legal risk of too little reference to the advertising character**. The level of influence of the company should also play a role here: **the more detailed the company’s specifications for product placement are, the clearer the reference to the company** (in exceptional cases even in the title of a post) should be. **Normally, however, the description in the caption should suffice.**

It is important that prohibited surreptitious advertising can only be assumed if the influencer actually receives a return from the company, be it in the form of money, discounts or products. **Influencers, who are simply “fans” of certain products and post without consideration, may be rare, but do not violate the principle of separation of editorial and advertising content and are therefore not covered by the ban on surreptitious advertising.**

It remains to be seen what types of regulations and with what effect will bring revised AVMSD (Directive (EU) 2018/1808) regulating certain aspects of social media, including some aspects of social media influencers.

Compiled by SCM

⁵ See more at <http://nmc.gov.ae/en-us/NMC/Documents/Electronic%20Media%20Regulation.pdf>