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Article

(Un)disclosed brand partnerships: How platform policies and interfaces shape commercial content for influencers

Internet Policy Review

Provided in Cooperation with:

Alexander von Humboldt Institute for Internet and Society (HIIG), Berlin

Suggested Citation: Annabell, Taylor; Aade, Laura; Goanta, Catalina (2024) : (Un)disclosed brand partnerships: How platform policies and interfaces shape commercial content for influencers, Internet Policy Review, ISSN 2197-6775, Alexander von Humboldt Institute for Internet and Society, Berlin, Vol. 13, Iss. 4, pp. 1-32,
<https://doi.org/10.14763/2024.4.1814>

This Version is available at:

<https://hdl.handle.net/10419/312560>

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(Un)disclosed brand partnerships: How platform policies and interfaces shape commercial content for influencers

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DOI: <https://doi.org/10.14763/2024.4.1814>

Published: 15 November 2024

Received: 25 April 2024 **Accepted:** 1 July 2024

Funding: Luxembourg National Research Fund PRIDE19/14268506; ERC Starting Grant HUMANads ERC-2021-StG No 101041824.

Competing Interests: The author has declared that no competing interests exist that have influenced the text.

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Citation: Annabell, T. & Aade, L. & Goanta, C. (2024). (Un)disclosed brand partnerships: How platform policies and interfaces shape commercial content for influencers. *Internet Policy Review*, 13(4). <https://doi.org/10.14763/2024.4.1814>

Keywords: Monetisation, Advertising law, Consumer protection, Platforms, Influencer marketing

Abstract: Social media platforms mediate and regulate how influencers engage in monetisation practices. In this social-legal paper we examine one form of monetisation, influencer marketing, to understand how platform policies and interfaces shape commercial content for influencers. We situate our inquiry of governance by platforms within the governance of platforms, by focusing on the legal obligation to disclose commercial content under European consumer law. Combining an analysis of platform documentation for Instagram, TikTok, Snap, and YouTube, with insights from a walkthrough of each platform, we present five findings. First, we explore the terminology used by platforms to refer to influencers. Second, we outline how platforms frame commercial content and situate business models of influencer marketing. Third, we analyse how platforms present the duty to disclose commercial content and assign responsibility for compliance. Fourth, we examine how platforms facilitate disclosure through their in-app tools. Finally, we look at the articulation regarding the moderation of undisclosed commercial content by platforms. Our analysis unveils tensions between the law (governance of platforms) and what platforms do (governance by platforms). Overall, as platforms hold significant power in shaping monetisation practices, we argue that enforcing influencers' disclosure practices must be contextualised within the dynamics of platform governance.

Introduction

The commercial orientation of social media platforms has intensified and diversified in recent years. This is evident in the “platformisation” of content monetisation in which platforms seek to leverage and capitalise on the growing creator economy. The term “dynamic of platformisation” captures how the “rise of the platform as the dominant infrastructural and economic model of the social web” (Helmond, 2015, p. 1), which reconfigures cultural practices around platforms (Poell et al. 2019). For example, platforms like TikTok have developed “creative marketplaces” that bring brand-influencer collaboration into their platform ecosystem. In the case of the creator economy, influencers rely on platforms to reach audiences, distribute content, and generate revenue. In other words, platforms mediate and regulate the production, distribution, and monetisation of content. This fosters a dependency on platforms, compounded by the power of platform companies to unilaterally update their policies, programmes, and interfaces (Duffy et al., 2021).

In this socio-legal paper, we examine how four platforms – Instagram, Snap, TikTok and YouTube – govern influencer monetisation practices within the governance of platforms through their policies and interfaces. Just as influencers are subject to the private governance of platforms, platforms are subject to legislative frameworks such as consumer protection laws in the European Union. Our empirical study seeks to advance work in the field of platform governance (Gillespie, 2017; Gorwa, 2019) that examines how creators are regulated by platforms (Caplan & Gillespie, 2020; Cunningham & Craig, 2021; Joseph & Bishop, 2024; Kopf, 2020). The paper also complements qualitative empirical work on influencer labour (Are & Briggs, 2023; Duffy & Meisner, 2023; Duffy et al., 2021; Glatt, 2022) demonstrating how influencers experience and perceive platform precarity and (unequal) distributions of visibility. We offer an alternative perspective to these insights by focusing on how platforms shape monetisation for influencers drawing on the conceptualisation of platforms as mediators (Bucher, 2018; van Dijck, 2013), by exploring how the requirements and legal obligations articulated by platforms are operationalised through their interface design. In the analysis, we question the presumption of coherence between policies and interfaces as interconnected layers of platform governance.

We narrow the scope of platform regulation of monetisation to examine one form, influencer marketing, in which influencers share promotional content in exchange for value from a third party, including their own brands. Given the wide range of legal regimes applicable to influencer marketing, we choose to focus on the legal duty of influencers to disclose commercial content. In the European Union, this

obligation derives from the Unfair Commercial Practices Directive (UCPD) and applies to any content that is “directly connected with the promotion, sale, or supply of a product to consumers” (Directive 2005/29/EC). Although a plethora of other national and European legislation can be particularly applicable to influencer marketing, our focus on the UCPD is motivated by the scrutiny from regulatory authorities concerning the disclosure practices of influencers, which has exponentially increased in the past years, as evidenced by the European Commission’s (2023) Influencer Legal Hub initiative. Further evidence of the increased interest in the regulation of influencer marketing is reflected by the Commission’s recent investigation in 22 member states revealing that only 20% of influencers consistently disclosed the commercial nature of their content (European Commission, 2024), complementing existing research in this area (Goanta & Bertaglia, 2023; Kim et al., 2021; Mathur et al., 2018).

This paper opens by introducing the theoretical framework underpinning our empirical study. We identify how the literature on the role of platforms in influencer marketing can be brought into dialogue with that of platform governance, distinguishing between research addressing governance *by* platforms and governance *of* platforms in terms of disclosing commercial content. To operationalise our framework, we collect data from four platforms in two forms. First, we draw on a larger data set of platform documentation to identify policies that address commercial content. Second, we carry out a walkthrough (Light et al., 2018) of each platform to identify processes of creating “influencer” accounts and disclosing commercial content. Our analysis is guided by the following questions:

- How do platforms refer to influencers, classify commercial content, and situate different business models of influencer marketing?
- How do platforms present the duty to disclose commercial content and facilitate disclosures?
- How do platforms articulate the moderation of undisclosed commercial content?

Following our analysis, we reflect on the implications of our empirical insights. We propose that our findings can inform legislation and public policy on regulatory and enforcement strategies regarding commercial content disclosures.

1. Theoretical framework

a. The role of platforms in influencer marketing

The rise of platforms has enabled the development of the creator economy, offer-

ing influencers new avenues for cultural production, consumption, and monetisation. A critical form of monetisation for influencers is sharing original content in exchange for payment from third parties, known as influencer marketing. This payment is not necessarily monetary, as confirmed by the Court of Justice of the European Union (CJEU) in the *Peek & Cloppenburg* case (Case 371/20). This reflects the classification of commercial content business models (Goanta & Wildhaber, 2019) and empirical research on influencer practices (Christin & Lu, 2023; Hund, 2023).

Goanta and Wildhaber (2019) identify three models of influencer marketing: barter transactions, where influencers receive goods or services for promotion; affiliate marketing, where they earn commissions from sales; and paid endorsements, where brands pay influencers for specific deliverables or ongoing representation as brand ambassadors. To these, we also add giveaways, as either transactions whereby an influencer provides gamified advertising services to brands against remuneration, or where the influencer advertises themselves to grow engagement and reputation. In both instances, followers often enter the competition by liking, sharing, following or commenting on content, thereby gaining the opportunity to win a prize (either paid for by brands or influencers) while increasing the engagement of the influencer.

What unifies these business models is a process of commodification, which can be traced back to transactions taking place between influencers, brands, and their potential representatives. Instead of brands rending space in the flow of content as would be the case under Smythe's work on audience commodification, Ørmen and Gregersen (2023) theorise that brands rely on the emotional labour of creators to incorporate advertising into their content. Consequently, although the different models of influencer marketing shape the production of content (i.e. influencers not only refer to and tag brands but also include promo codes in their captions and explain to followers giveaway entry rules), rendering commercial content with these brands and disclosure cues as recognisable (Boerman & Müller, 2022), the boundaries between commercial content and organic content can be blurred. Commercial content is highly personalised and emulates "organic" content in which the narration of their personal lives and lifestyles is relatable, authentic, and gives the impression of intimacy (Abidin, 2016a). It is not only, then, that commercial content is dispersed among organic but the lack of disclosures coupled with consistency of modes of self-presentation complicate its visibility.

Platforms play a pivotal role in how influencers share and distribute their commercial content arising from influencer marketing. As multi-sided markets, platforms cater to multiple user groups, including influencers, and shape interactions be-

tween groups (Rochet & Tirole, 2003). To enter the platform market, influencers must align their work and business models within the economic framework of platforms, which are constantly subject to change. As such, platforms exercise considerable cultural and economic power, particularly in cases where there is reliance on the platform by the content creator for distribution, marketing, and monetisation (Poell et al., 2021).

The role of platforms has become more prominent in influencer marketing through their facilitation of connections between brands and influencers. In the early stages of influencer marketing, the conclusion of agreements between brands and influencers took place off-platform. However, over the last years, platforms have developed “creator marketplaces” to bring the influencer marketing process within the boundaries of their ecosystem (Duivenvoorde & Goanta, 2023). In 2020, TikTok started testing the TikTok Creator Marketplace (TTCM) (Pappas, 2020) and YouTube launched YouTube BrandConnect (Scott-Green & Sobel, 2020), which was followed by Snap’s announcement of its Creator Marketplace in 2021 (Snap, 2021) and then Instagram in 2022 launching its Creator Marketplace (Instagram, 2022). Such developments exemplify the way that platformisation entails a “reorganisation of cultural practices around platforms” (Poell et al., 2019) because the interaction between other sides in the market, primarily advertisers and brands with influencers, become mediated by platforms. The platform becomes the site through which brand partnerships are advertised, negotiated, and concluded. This not only solidifies the role that platforms play in governing influencer marketing but also marks how another aspect of the creative economy intersects with platform’s expansionary tendencies and enclosure of ecosystems (Srnicek, 2017).

b. Platform governance

The conditions set by the platform as it mediates influencer marketing can be theorised as one component of platform governance. This concept is understood as “layers of governance relationships structuring interactions between key parties in today’s platform society” (Gorwa, 2019, p. 855). As articulated by Gillespie (2017), platform governance entails both the governance *by* and *of* platforms: platforms function as private governors (Klonick, 2018) within their ecosystems while being subject to legal and societal constraints. Cunningham and Craig (2021) further elaborate on this notion in the context of the creator economy, by describing the forms of institutional power exerted over creators by authorities and platform policies as “creator governance”. Consequently, influencers must adhere to a plethora of rules governing their activities, which are established by platform companies and regulatory bodies.

i. Governance by platforms

Governance *by* platforms, also called private governance (Balkin, 2018), refers to the regulation of user behaviour and content by platforms through contractual rules. These rules, commonly referred to as terms and conditions, are then operationalised and implemented through algorithmic and human enforcement. Scholars have discussed governance *by* platforms, exploring topics including the regulation of online content (Gillespie, 2018; Medzini, 2021) and the impact of private governance on fundamental rights (De Gregorio, 2020; Kuczerawy, 2015; Leerssen, 2015). Moving beyond its relationship with freedom of expression and fundamental rights, governance *by* platforms also has implications for monetisation practices.

This theoretical framework is deployed in work focused on understanding how YouTube (Caplan & Gillespie, 2020; Joseph & Bishop, 2024) and TikTok (Annabell et al., forthcoming) regulate monetisation. In the case of influencers, the examination of platform documentation shows how YouTube and TikTok impose specific restrictions and requirements for how monetisation can take place. Building on this, we propose a broader understanding of governance approaches across platforms rather than through their distinct articulations, similar to the cross-platform analysis conducted on copyright-protected expression (Quintais et al., 2023). Cross-platform insights are necessary given influencers work across platforms (Abidin, 2016a), as they seek to mitigate the risk of precarity due to the imbalance of power with platforms (Glatt, 2022; Duffy et al., 2021).

Our paper explores how platform governance is operationalised through platform architecture and interface design, echoing prior research highlighting the impact of design choices on platform governance framework (DeNardis & Hackl, 2015; Gillespie, 2018). We aim to expand on work exploring how Queer women experience “patchwork governance” on Tinder, Instagram, and Vine, and more specifically, the argument put forward that “a platform’s entire architecture shapes the governance of user content and activity” (Duguay et al., 2020, p. 248). In our analysis, we focus on the relationship between the platforms’ formal policies and design of the interface to understand how platforms regulate commercial content and advertising disclosure across these interconnected forms of governance. Put another way, our empirical research problematises the assumption of a coherent governance framework by focusing on two analytical dimensions: rhetoric and functionalities.

Although not always explicitly framed as platform governance, scholars have studied how influencers experience platforms (Are & Briggs, 2023; Duffy & Meisner,

2023; Duffy et al., 2021; Glatt, 2022), drawing attention to “platform precarity” of updating platform features and algorithms (Duffy et al., 2021) and the lack of platform accountability towards creators (Glatt, 2022). Our focus on governance of influencers and their commercial content through platform documentation and interface seeks to enrich this qualitative work by offering insights into the perspective of the platform shaping the working conditions for influencers.

ii. Governance of platforms

Governance of platforms involves the influence of mandatory legal frameworks on platform behaviour. In the case of influencer marketing, there is a diverse array of legal obligations applicable to platforms, brands, and influencers (see Ducato, 2020; Pflücke, 2024; Riefa & Clausen, 2019). Our study delves into one legal aspect of influencer marketing, namely the duty to disclose commercial content from a platform perspective.

Disclosures, or the action of informing consumers, endeavours to ensure market transparency and consumer information in online advertising, where sponsored content blurs the line between personal and promotional material (Campbell & Grimm, 2019; Evans et al., 2017). In EU consumer protection, advertising disclosures stem from the UCPD, a legislative instrument pre-dating influencer marketing as a content monetisation business model, which has been applied to other forms of native advertising such as product placement and advertorials.

According to this legal instrument, failure to disclose commercial content constitutes an unfair commercial practice. In terms of influencer or brand responsibility, creators participating in influencer marketing, such as endorsements, barter, affiliate marketing, or giveaways, must transparently disclose any commercial content to their audience (Luzak & Goanta, 2022). Such disclosures must be clear and appropriate, as well as consistently displayed throughout the entire promotion, using labels such as #paidpartnership or #advertising depending on national rules and guidelines. However, this obligation only applies to influencers legally qualifying as traders, meaning that they “act for purposes relating to their trade, craft or profession”. Determining whether an influencer qualifies as such must be assessed on a case-by-case basis, considering several criteria developed by the CJEU in the *Kamenova* case (Case C-105/17). Still, the European Commission (2021) specifies that creators frequently engaging in influencer marketing practices may be classified as traders, regardless of their audience size, and relevant authorities advise creators to err on the side of compliance (European Commission, n.d.).

While this obligation has traditionally been linked to influencers and brands, the

UCPD also applies to platforms. As platforms control architectures such as interfaces or reporting, they communicate and facilitate disclosures to protect consumers from the economic manipulation harms of hidden advertising. Thus, platforms hosting commercial content hold significant power in shaping the disclosure practices of influencers (Ducato, 2020; Pflücke, 2020). Recognising that influencers may face constraints in meeting their disclosures obligations due to platform limitations (Cauffman & Goanta, 2021), the European Commission (2021) asserts that platforms have the implied duty under the UCPD of enabling third parties to comply with European consumer law, by for instance providing “specific and appropriate disclosure tools in their interface” (§ 4.2.7). The current review of the UCPD through the Digital Fairness Fitness Check is expected to enhance platform responsibilities and introduce explicit obligations for influencer marketing.

Consumer protection obligations incumbent on platforms, such as the UCPD, need to be understood as regulatory limitations to platform business practices, particularly when these obligations are mandatory. From a legal perspective, legislation can lead to default rules (e.g. rules that can be deviated from), or mandatory rules (e.g. rules that cannot be deviated from). European consumer protection reflects the latter category. Consequently, the governance of social media platforms under European consumer law is an essential theoretical angle worthy of further exploration in the context of understanding how legal compliance trickles down in platform ecosystems. We argue that this can be examined through platform policies in which the rules for influencers concerning commercial content are articulated as well as in the design of features for influencers. In doing so, we extend Pflücke’s (2020) empirical investigation of how platform policies comply with the law by using a different sample of platforms with updated documentation and examining an additional layer of governance through the interface which enables us to consider connections and tensions between these different sites of regulation by platforms.

2. Methods

To examine how platforms shape influencer marketing and the duty to disclose commercial content for influencers, we carry out a qualitative analysis of platform policies and interfaces. Our selection of TikTok, Instagram, and YouTube is due to their position as the top three platforms in influencer marketing (Geyser, 2024) with the addition of Snap due to their rise following their new revenue programmes (McCoy, 2023). To identify and collect platform policies on influencer marketing, we draw on a larger dataset of platform documentation (n=172). Platform documentation refers to the range of terms, policies, and guidelines that con-

stitute the contractual agreement between platforms and users (Annabell et al., forthcoming; Goanta, 2023). As outlined in Table 1, our dataset comprises 28 policies (Instagram $n=7$; TikTok $n=11$; Snap $n=5$; YouTube $n=5$) in which commercial content is either the main subject or mentioned in a policy with a wider focus.

To understand platform governance of influencer marketing through the interface, we carry out a technical walkthrough (Light et al., 2018) of Instagram (personal and creator account), TikTok (personal and business account), Snap (user account), and YouTube (user account). As Light and colleagues (2018, p. 882) explain, by directly engaging with the interface and documenting the screens, features, and flows of activity, this method enables us to “examine its technological mechanisms and embedded cultural references to understand how it guides users and shapes their experiences”. In doing so, we are inspired by the integration of the walk-through into critical explorations of algorithmic inequalities in influencer management tools (Bishop, 2021a) and the role of advertising in the governance of the platformisation of cultural production (Joseph & Bishop, 2024)

The different strands of data collected by walking through the interface or platform documentation are brought together in our analysis to highlight their interconnections and divergences. We analyse how platforms (1) classify influencers and account types, and (2) define and regulate commercial content with a focus on disclosure obligations and access to platform-facilitated disclosure tools. Our focus on regulation *by* platforms remains sensitive to regulation *of* platforms through the lens of European consumer protection, together with case law issued by the CJEU.

3. Analysis

a. Qualifying influencers

We first address the terminology used by platforms to refer to influencers. This is vital because, from a consumer protection perspective, influencers must comply with advertising disclosure provided they legally qualify as traders. Our study demonstrates how influencers are positioned, outside of this legal framework, by platforms as they (1) distance influencers from business and commercial activities, and (2) seem to subject all users producing commercial content to commercial content policies and consequently, advertising disclosures, irrespective of whether they legally qualify as traders.

First, there is a tendency among platforms to undermine the professional identity

and activity of influencers. Across the examined platform documentation, platforms refer to influencers as creators, a practice criticised for minimising their commercial orientation (Bishop, 2021b). This is reinforced by the types of accounts influencers are required to use. Not only do some platforms insist influencers use personal accounts to access monetisation features only available through these profiles, but all selected platforms discourage influencers from using “business” accounts. This distancing of influencers from businesses is also asserted in TikTok’s Business Terms, where influencers are explicitly referred to as consumers:

If you are a consumer who posts content on the Platform that promotes a third party brand or its products or service in exchange for payment or any other incentive, this is governed by the relevant provisions of the Terms of Service (as defined below) and the Branded Content Policy not by these Terms. (TikTok, 2023a)

This distinction between influencers and businesses is also noticeable on Instagram. When changing from a personal to a professional account, users are required to choose between a creator or business account (see Figure 1). As such, Instagram recognised the professional identity of creators described as “best for public figures, content producers, artists and *influencers*” (emphasis added), but similarly reinforces a distinction between influencers and businesses, which we suggest is misleading.

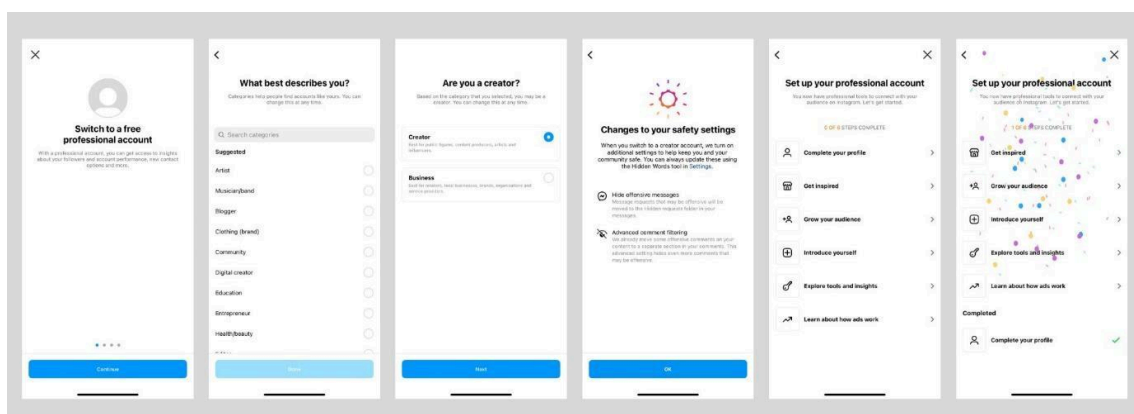


FIGURE 1: Process of changing from a personal to a professional creator account on Instagram.

We argue distancing influencers from businesses and insisting they share content from personal accounts not only undermines their professional identity but may also be misleading, given that some influencers will legally qualify as traders. This divergence in terminology between the law and associated platform policies may

result in influencers misunderstanding their legal status and failing to fulfil their advertising disclosures.

Second, platforms treat all users who produce commercial content the same, regardless of whether they qualify as traders. Platforms enable any user to share commercial content and do not provide eligibility criteria, except for on-platform influencer marketing programs such as TTCM.¹ Consequently, the applicability of commercial content policies is based on identifying what constitutes eligible commercial content as exemplified by Snap:

This Commercial Content Policy applies to (...) content you have been incentivized to post by receiving monetary payments or free gifts. (Snap, 2023a)

Across all platforms in our study, we note that the in-built platform disclosure tool is available across account types, fostering the expectation that this form of monetisation is enacted by all users.

We argue this blanket approach imposes consumer protection obligations on influencers who may not fall within the legal definition of a trader. It not only places unfair burdens on some creators, but also fails to acknowledge the different legal rules applying to influencers depending on their legal qualification under consumer protection. In doing so, platforms risk overregulating some users because of the way they approach the governance of commercial content.

b. Classifying commercial content

We also address how platforms classify commercial content and situate different business models of influencer marketing within their commercial content policies. Our focus on the framing of commercial content is motivated by the way advertising disclosures extend beyond traditional endorsements. Our findings draw attention to how conceptualisations of commercial content by platforms overlook certain monetisation business models.

Commercial content is referred to as “branded content” (Instagram, TikTok), “commercial content” (Snap), and “paid product placements, sponsorships and endorsements” (YouTube). Within their respective specific policies, each platform clarifies what constitutes commercial content by articulating a definition that establishes how content (1) shaped (2) by a commercial actor (3) for an exchange of value is commercial content (see Table 2). The wording across these three elements of the

definition is consequential for the construction of parameters around commercial content.

TABLE 2: Breakdown of the definition of commercial content in policies from selected platforms

| | INSTAGRAM | SNAP | TIKTOK | YOUTUBE |
|---|--|--|--|---|
| | Meta Branded Content Policy | Snap Commercial Content Policy | TikTok Branded Content Policy | YouTube Paid Product Placements, Sponsorships and Endorsements Policy |
| PART 1: VERB(S) TO DESCRIBE IMPACT ON CONTENT | “features or is influenced” | “sponsored by, promotes or advertises” | “promotes” | “created for” “promote” |
| PART 2: LABEL GIVEN TO COMMERCIAL ACTOR | “business partner” | “brand, products, good or service” | “third party or its products or services” | “third party” “advertiser” |
| PART 3: FRAMING OF EXCHANGE OF VALUE | “for an exchange of value, such as monetary payment or free gifts” | “incentivized to post by receiving monetary payment or free gifts” | “in exchange for payment or any other incentive” | “exchange for compensation” “financed in whole or in part by” |

Platforms also include scenarios and examples in their policies, clarifying the different forms of exchange of value. In Table 3, we map these scenarios to the different business models. Except for TikTok, platform documentation minimises the range of commercial content, with YouTube notably not including gifting or free products in their policy. There is also an overemphasis on monetary remuneration in the naming of labels assigned to commercial content when using platform-facilitated disclosure tools: “paid partnership” (Instagram, Snap, TikTok) or “paid promotion” (YouTube).

TABLE 3: Acknowledgment of different business models through commercial content definitions or scenarios in policies from selected platforms

| | INSTAGRAM | SNAP | TIKTOK | YOUTUBE |
|---------------------|-----------------------------|--------------------------------|-------------------------------|---|
| | Meta Branded Content Policy | Snap Commercial Content Policy | TikTok Branded Content Policy | YouTube Paid Product Placements, Sponsorships and Endorsements Policy |
| AFFILIATE MARKETING | | | ✓ | |
| BARTER | ✓ | ✓ | ✓ | |
| PAID ENDORSEMENT | ✓ | ✓ | ✓ | ✓ |
| BRAND AMBASSADOR | | ✓ | ✓ | ✓ |

We argue the narrow framing through the lens of payment by platforms minimises the broader nature of commercial content. In the *Peek & Cloppenburg* case (Case C-371/20), the CJEU considered that a trader has “paid” for promoting its products, even with non-monetary compensation, such as free products, trips, or experiences provided by brands to influencers. Consequently, the type of payment does not impact the applicability of consumer protection rules to influencer marketing practices (Luzak & Goanta, 2022). We argue the prevailing emphasis on monetary transactions by platforms potentially obscures their legal requirement to disclose regardless of payment type, which could lead influencers to overlook their obligation to disclose commercial relationships.

Interestingly, the business model of giveaways is not explicitly addressed in platform documentation. In their respective policies for Promotions (Instagram and Snap) and Contests (YouTube), platforms focus on influencers clearly stating participation rules and the platform’s lack of responsibility for administration. The three documents do not refer to “giveaways” or address the possibility that promotion or contest may be a form of commercial content requiring disclosure under the UCPD. An exchange of value in this context may take the form of increased engagement if users participate by tagging other users in comments, liking, or sharing the original content. It is less clear whether this may violate Snap Promotion Rules given what is listed as prohibited:

Encourage spammy behavior, such as asking participants to send Snaps to friends. (Snap, n.d.)

Although not in Instagram’s Promotion Guidelines, in Community Guidelines, the platform explicitly mentions giveaways as part of their value “foster meaningful and genuine interactions”:

Don’t offer money or giveaways of money in exchange for likes, followers, comments, or other engagement. (Instagram, n.d.a)

The promotion of the influencer’s own product or brand within content is another business model of monetisation in which platforms diverge. Snap classifies this as “commercial content”, but Instagram does not because “there is no brand or business partner involved here, so it isn’t considered branded content” (Meta, n.d.). YouTube’s Paid product placements, sponsorships and endorsements policy states

disclosure is required “only if the relationship between creator/brand is not clear” (YouTube, n.d.). While TikTok’s Branded Content Policy does not address this scenario, when navigating the in-app content disclosure tool, creators choose between “branded content” or “your brand” (TikTok, 2023b). TikTok’s Community Guidelines further specify that disclosures are required for “your own business, when it might not otherwise be clear from the context that you may benefit from future commercial transactions” (TikTok, 2023c), echoing the wording of the UCPD.

It is problematic that Instagram overtly discourages influencers from using the paid partnership label because not disclosing content promoting their own products or businesses could constitute an unfair commercial practice. The UCPD considers that falsely claiming or creating the impression that traders are acting for purposes relating to their trade or falsely representing themselves as consumers is unfair in all circumstances. Consequently, as confirmed by the European Commission (2021), influencers presenting themselves as regular consumers of their own brand, without revealing their professional interest, mislead their audience about the authenticity of their content and breach their consumer protection obligations.

Platforms also establish restrictions and prohibitions when it comes to what types of brands, products, and services can be promoted through commercial content, further demonstrating their power in influencer marketing. For example, Snap and TikTok prohibit political advertising such as election-related content or issue-based content connected to political debates. Within the Commercial Content Policy, Snap justifies this exclusion as part of its efforts to be “responsible to our community and to maintain transparency” (Snap, 2023a). TikTok clarifies they prohibit political commercial content and advertising (TikTok, 2023b, 2023c, n.d.) to balance organic expression of beliefs with protecting their identity as “first and foremost an entertainment platform” (Chandlee, 2022). As such, we observe how platform values shape and, in this instance, limit monetisation opportunities that go beyond legal restrictions for commercial content.

c. Contractual communication on the duty to disclose commercial content

Building on our analysis of platform terminology, we further consider how platforms operationalise their obligation to facilitate the disclosure of commercial content as well as how they outsource responsibility to different actors. Our examination of platform documentation reveals an insistence that influencers (and sometimes brands) must comply with legal obligations, including advertising disclosures, with platforms minimising their accountability. During our analysis, we

examined whether platforms made any distinction in assigning the responsibility to disclose commercial content between off- and on-platform influencer marketing, to understand whether platforms perceive their accountability to be higher when they are involved more directly in influencer marketing transactions.

Documentation across platforms emphasises sharing commercial content is contingent upon compliance with the platform's own documentation, which sometimes includes references to specific policies and applicable legal frameworks. In other words, there is a recognition of how platform governance spans regulation *by* platforms and regulation *of* platforms. On all studied platforms, we see consistent elaboration on the obligation to disclose commercial content not only in commercial content policies (Meta, n.d.; Snap, 2023a; TikTok, 2023b; YouTube, n.d.), but also in documentation governing platforms use more generally (see Instagram, 2024; Meta, 2023; Snap, 2023b, 2024a, 2024b; TikTok, 2023a, 2023b, 2023d; YouTube, 2022). These policies stipulate that platform disclosure tools must be used when sharing commercial content. In other words, platforms dictate for influencers how they must fulfil their legal obligation.

TikTok and Instagram distinguish between the parties responsible for advertising disclosures in off- and on-platform influencer marketing. For the former, the obligation to disclose is solely attributed to the influencer, as exemplified by Instagram:

You must also comply with all applicable laws and regulations, including by ensuring that you provide all necessary disclosures to people using Facebook or Instagram, such as any disclosures needed to indicate the commercial nature of content posted by you. (Instagram, n.d.b)

Regarding on-platform influencer marketing, both TikTok and Instagram attribute joint responsibility between the brand and the influencer in disclosing commercial content. Interestingly, YouTube and Snap do not seem to make such a distinction in the documentation collected in our dataset.

Snap adopts a similar approach to Instagram and TikTok for off-platform influencer marketing, holding only the influencer accountable for complying with advertising disclosures. YouTube, however, constructs joint responsibility between the brand and influencer:

You and the brands you work with are responsible for understanding and

complying with local and legal obligations to disclose Paid Promotion in their content. Some of these obligations include when and how to disclose, and to whom to disclose. (YouTube, n.d.)

The language used by platforms carefully positions them as informing influencers about their legal obligations without assuming responsibility for ensuring compliance with them. As such, there is a continuation of platforms using the frame of neutrality to construct themselves as intermediaries (Gillespie, 2018) coupled with a strategic enactment of assistance. This is most clearly articulated by TikTok:

While the rules in this Branded Content Policy are intended to help you to comply with relevant laws and regulations, they are not exhaustive and you should be aware of any other applicable legal requirements. (TikTok, 2023b)

We argue that this positioning of platforms overshadows their role in the necessary compliance with European consumer law, giving the impression that platforms as intermediaries do not have any responsibility in managing hidden advertising. At a minimum, in the EU, platforms have the consumer protection obligation, implicit in the UCPD, of informing their trader users about the platform's facilitation of disclosures – a duty fulfilled by each platform examined in this article. However, one could argue that the role played by platforms in influencer marketing extends beyond mere intermediation, especially in cases where influencer agreements are concluded on-platform. In this context, disclosure duties could also fall on platforms as part of their duty to exercise professional diligence, described in the UCPD as “the standard of special skill and care that a trader [a platform in this case] may reasonably be expected to exercise towards consumers, corresponding to honest market practices and/or the general principle of good faith in the trader's field of activity”.

d. On-platform mechanisms to disclose commercial content

Our next findings concern how influencers disclose commercial content across platforms using built-in tools. We find that the visibility and access to disclosure tools differ across platforms despite the ease through which platforms claim in their documentation that the toggle can be activated. Interestingly, Instagram stands out by offering additional mechanisms to support disclosure duties.

Each platform insists that influencers use their tool, referred to as branded content

tool (Instagram), commercial content disclosure toggle (TikTok), paid partnership tool (Snap), or paid promotion box (YouTube), to disclose commercial content. Thus, they fulfil their implied legal obligation to provide in-app disclosure features to influencers. Our comparative walkthroughs demonstrate how accessing the platform-facilitated disclosure tool is more complex than documentation suggests. For example, access to the “branded content tool” on Instagram differs between the personal and creator accounts, with the latter being displayed more prominently, and the steps taken to access the tool change based on the type of content being posted (i.e. story, reel, or post). Figure 2 demonstrates the step-by-step process for disclosing commercial content through the tool on an Instagram post from a creator account.

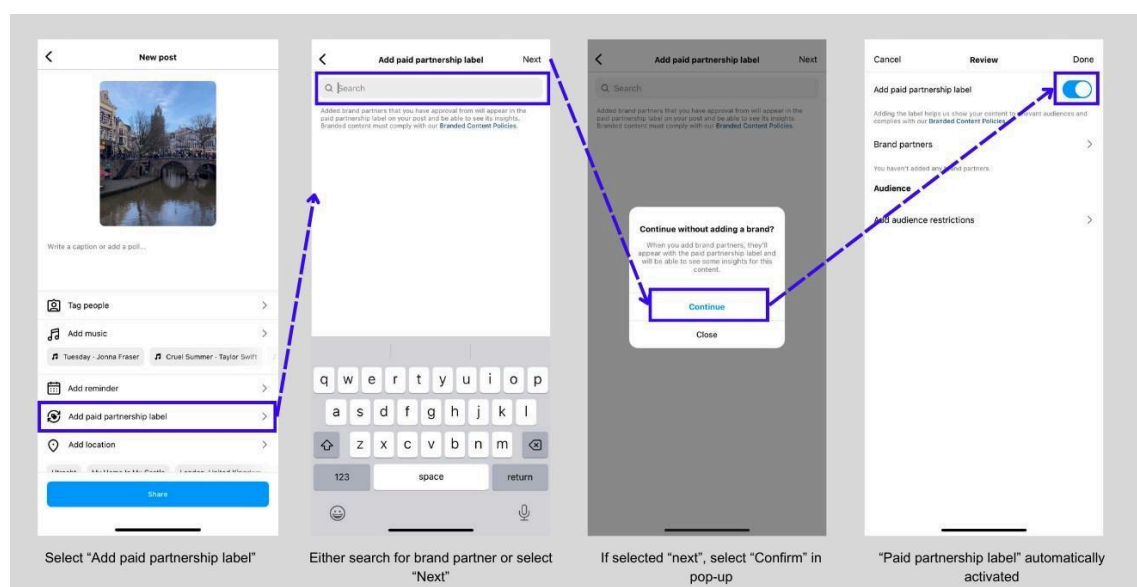
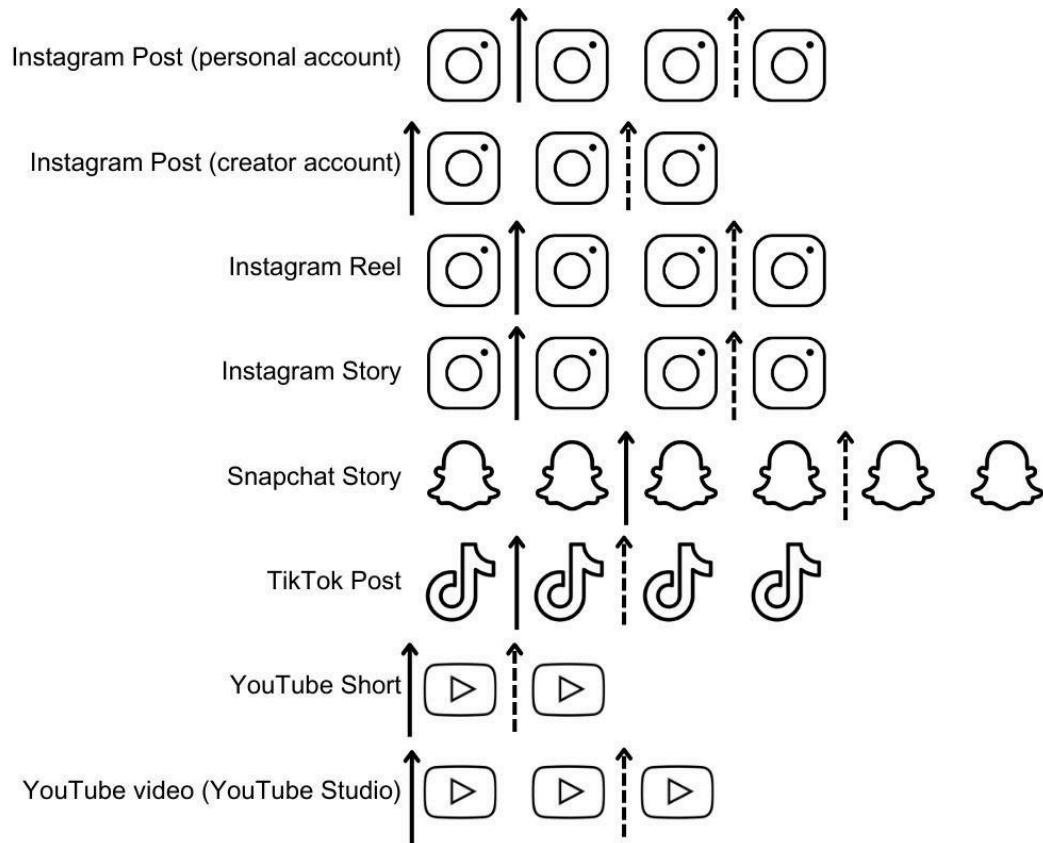


FIGURE 2: Step-by-step process for disclosing commercial content on Instagram post from a creator account.

There are also differences between platforms in the visibility of the tool. Figure 3 shows the steps required to navigate to the correct part of the interface and then enable the toggle or label. For example, the Snap interface offers no indication to the creator that selecting the three-dot menu before they share their Snap Story publicly will be the only way through which they can access “add paid partnership” disclosure pages (see Figure 4). Relatedly, on TikTok influencers need to scroll down to see “content disclosure” listed under “more options” to access the disclosure pages, but this step could be bypassed due to its low position on the menu, which requires the user to choose to scroll down, rather than selecting “post”.



Note: Each icon signifies an action the creator needs to take an action; solid arrow demonstrates when commercial content is first referenced; dotted arrow demonstrates when policy is first hyperlinked

FIGURE 3: Visualisation of step-by-step processes for activating platform-facilitated disclosure labels across platforms and types of content.

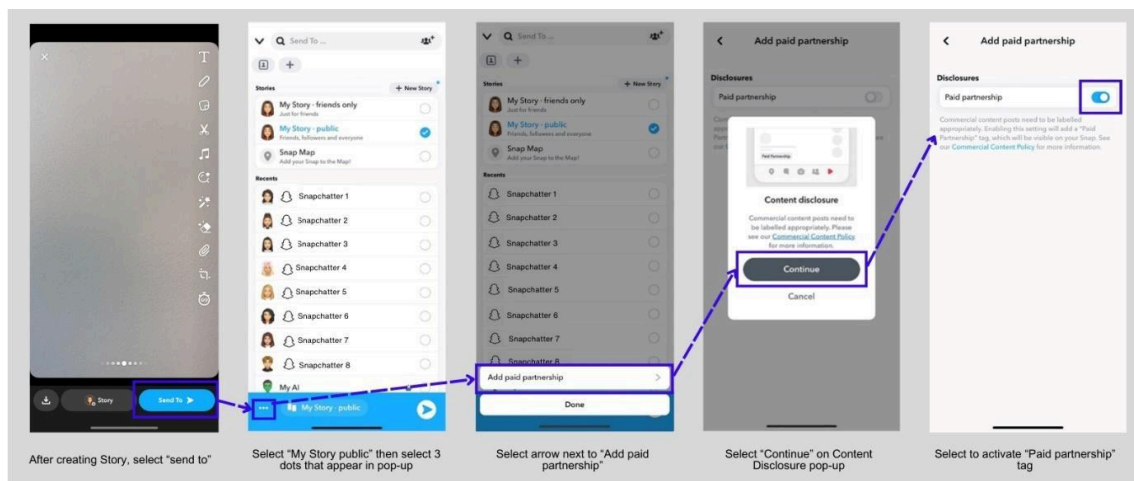


FIGURE 4: Step-by-step process for disclosing commercial content on Snap.

Instagram is the only platform where the label is automatically activated once the influencer clicks through the steps in "add paid partnership". By comparison, on

YouTube, the influencer must tick the “yes” box after they select “add paid promotion label”. However, unlike the opt-in “paid promotion” disclosure, it is mandatory on YouTube Studio to self-disclose whether content is “made for kids”. Although these approaches grant influencers control over their disclosure, they also speak to a broader issue around the active role the platform plays in mediating disclosures through their interface design. The (in)visibility of the disclosure tool compared with options to tag other users or locations indicates the underlying values and priorities of the platform. Namely to encourage creators to increase their discoverability rather than facilitate the protection of consumers.

In limited circumstances, Instagram prompts disclosure. Figure 5 illustrates how the tagged brand and words “sponsored by” trigger a pop-up message asking whether the content should be disclosed as commercial. The absence of a pop-up window for alternative wording (“sponsoring” instead of “sponsored by”) indicates a narrow list of keywords are used in the detection of, as Instagram puts it, what “looks like a branded content post”. This indicates a level of monitoring by Instagram that we did not observe across any of the other platforms during our walk-throughs.

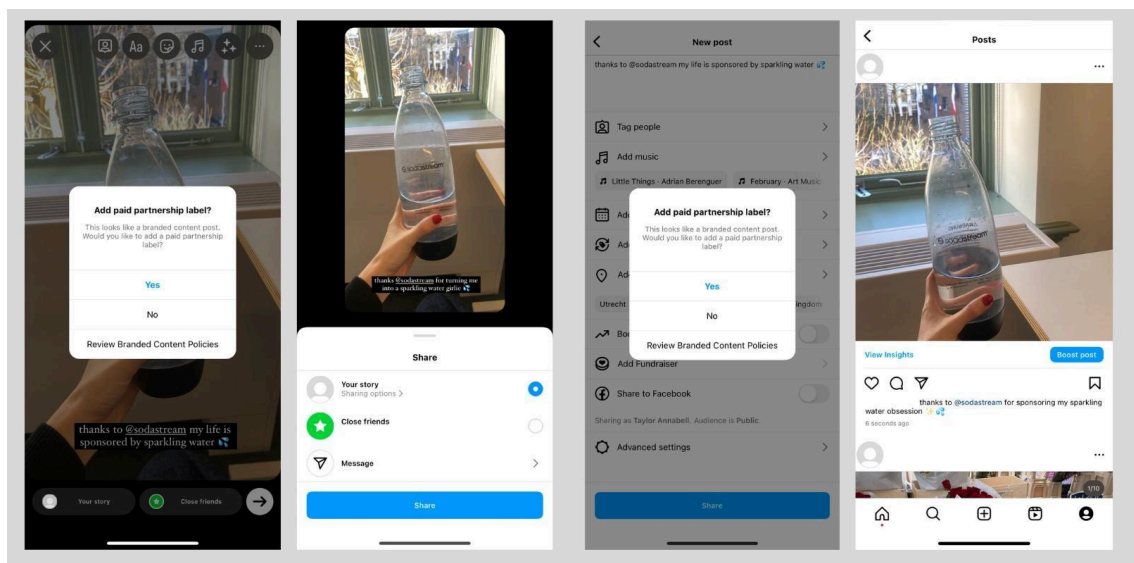


FIGURE 5: Comparison of text that triggers pop-up window for commercial content disclosure on Instagram.

Instagram, (Meta, n.d.), TikTok (2024) and Snap (2023a) stipulate some commercial content needs to be age-gated and country-restricted. For example, commercial content promoting dating services can only be delivered to users over 18 on Snap while promoting infant food is prohibited in the EU, Oceania and Southeast Asia but permissible for over 18s in North America and Latin America. Our walkthrough

reveals that only the platform-facilitated disclosure tools on Instagram facilitate restrictions. Instagram allows influencers to set minimum age, minimum age by country, and location restrictions to prevent their commercial content from being delivered to audiences and so violating platform policies.

e. Moderation of undisclosed commercial content

Our final observation is based on how platforms articulate the moderation and enforcement of their rules for commercial content. This is necessary for understanding how platforms approach disclosure non-compliance and connect commercial content policies with content moderation. Drawing on our dataset, we highlight the lack of clarity around enforcement, which we argue is indicative of a lack of monitoring, and in turn, becomes potentially consequential for not incentivising influencers to fulfil their legal obligations.

Platforms offer little transparency in their documentation of how non-compliance with commercial content policies is monitored or enforced. It is not addressed by Instagram. Snap's Recommendation Guidelines states non-approved creators' commercial content is ineligible for recommendation, which implies a level of monitoring without transparency regarding enforcement. TikTok hints at possible consequences for non-compliance:

To the extent that your Branded Content does not comply with any of these rules, we may remove the content or impose other restrictions. (TikTok, 2023b).

Employing the modal verb “may” imbues vagueness to TikTok's actions and responsibility, which contrasts with the declarative language employed to attach obligations to influencers. YouTube is the only platform in which its documentation outlines how violations of its policy are handled and how influencers are notified of violations.

Hidden advertising, whether reported by users or voluntarily identified by platforms, reflects a grey category of content for moderation purposes. Historically, platforms have placed little focus on consumer protection implications for the moderation of content, limiting themselves to the policing of e.g. the sale (and seldom the advertising) of illegal goods or consumer scams (Goanta & Ortolani, 2021). This is also reflected in categorisation of illegal content in the Digital Services Act (DSA) Transparency Database, designed to facilitate the tracking of content moderation decisions issued by online platforms, and in transparency reports

published by platforms as required by Articles 15, 24 and 42 DSA. The consumer categories in reporting and moderation tend to focus on criminal activities, which overlooks how failing to meet disclosure requirements constitutes illegal content (Duivenvoorde & Goanta, 2023). More research is required to shed light on what platforms do with undisclosed content, whether from an internal operational perspective or the point of view of moderation transparency.

By drawing attention to the absence of details about consequences for non-compliance at the level of platform documentation, we question the relationship between monetisation policies like commercial content and processes of moderation as pointed out by Meta's Oversight Board concerning Instagram (Oversight Board, 2023). If there is a lack of moderation, and therefore few consequences for non-compliance (at the level of the platform), this may contribute to low rates of disclosures by influencers. This is potentially facilitated by the de-prioritisation of disclosure tools by some platforms, at the level of the interface, and amplified by algorithmic gossip among influencers that disclosing negatively impacts the algorithmic recommendation of their content.

Conclusion

Our socio-legal research addresses how platform policies and interfaces shape commercial content for influencers, particularly their duty to disclose commercial content. The approach of the selected platforms (Instagram, Snap, TikTok, and YouTube) to regulating commercial content provides empirical evidence to Poell and colleagues' (2021) argument that platforms exercise considerable power over content distribution, marketing, and monetisation. In this instance, platforms not only dictate how disclosures must take place for influencers to fulfil their legal obligations but also at times make this process more complex and opaque.

Our study reveals a disparity between platform terminology and European law when it comes to defining influencers. First, platforms distance influencers from businesses, sometimes insisting on the use of their personal accounts and labelling them as consumers. This contradicts the legal reality that under certain regulatory frameworks, such as consumer protection, some influencers are considered traders. Consequently, we argue that platform terminology may mislead influencers into believing that they are exempt from disclosing commercial content, in turn breaching consumer protection laws. Conversely, platforms treat all users producing commercial content equally by subjecting them to their commercial content policies and hence advertising disclosures. We suggest that this blanket approach may lead to overregulating influencers who might not legally qualify as

traders under the UCPD. These findings demonstrate how platforms undermine the professional identity and activity of influencers through their language use and features, tapping into wider public rhetoric that devalues content creation as work (Abidin, 2016b; Duffy & Sawey, 2021; Duffy et al., 2022). The influencer as a specialist, professional worker is subsumed into the broader end-user category. While this recognises how influencers tend to emerge from ordinary users (Cunningham & Craig, 2019), it also serves to construct the platform as a social space rather than workspace, in which influencers engage in labour.

Our analysis of how platforms frame commercial content as “branded content”, “commercial content”, or “paid partnerships” indicates a diversity of terms across platforms. However, they all tend to emphasise monetisation models that involve a remuneration element (e.g. endorsements, sponsorships), reinforced by the labels “*paid* partnership” or “*paid* promotion” assigned to content when users disclose using platform-facilitated tools. We argue this narrow framing may obscure the requirements for influencers to disclose all commercial content. There are inconsistencies in how platforms inform influencers of their duty to disclose their own products. This means disclosure requirements for the same content is platform-dependent; promotion of an influencer’s own brand falls both within and outside the boundaries of commercial content. In a similar vein, platforms exercise power in dictating what forms of commercial content are permissible beyond legal requirements, which we argue limits influencer marketing for influencers based on platform’s specific values.

Through platform documentation, platforms unanimously distance themselves from disclosure duties, even in cases where influencer agreements are concluded on-platform. We argue this might contradict their expected role under European consumer law, particularly the UCPD platforms mandate the use of their in-app disclosure tools, but access and visibility at the level of the interface indicates friction between different governance layers. Our walkthrough of each platform demonstrates that Snap requires influencers to undertake the most actions. We identify Instagram as the platform that best facilitates disclosure through prompts based on keywords and age-gated and country-restricted options. To complement our findings focused on the level of the platform, we propose future research with influencers on how they perceive and experience the process of disclosure as well as the governance of commercial content.

Finally, we observe a lack of clarity surrounding the moderation and enforcement of commercial content rules by platforms. YouTube is the only platform that outlines how violations of its commercial content policy are handled, implying ongoing

ing moderation. By comparison, this is only vaguely addressed by TikTok and absent in Instagram and Snap's policies. We suggest that this ambiguity may reflect a lack of emphasis on moderating undisclosed commercial content, compounded by the de-prioritisation of disclosure tools on some interfaces. It hints at disconnection between different governance layers of platforms, which we propose necessitates future research to examine the coherence of governance arrangements regarding influencers and commercial content. Namely, how content moderation policies and mechanisms relate to the regulation of commercial content and obligation to disclose. In addition, we propose a research agenda addressing the relationships, tensions, and connections between platform policies and interface design (governance by platforms) with different legal instruments that govern platforms.

In conclusion, the inconsistencies in terminology across platforms, coupled with different approaches to regulating and moderating commercial content, attributing responsibility for disclosures and providing access to disclosure tools present a challenge for influencers to fulfil their legal obligations. This might also disincentivise disclosures of commercial content and contribute to low rates (European Commission, 2024; Goanta & Bertaglia, 2023; Kim et al., 2020; Zarei et al., 2020). Given that influencers' disclosure practices are coming under scrutiny from regulatory authorities, we argue that it is vital for the role of the platform as active mediator of disclosures and regulator of commercial content to be taken seriously especially because of the ways in which they shape for influencers how influencer marketing takes place. As such, we argue disclosure practices among influencers must be contextualised within the dynamics of platform governance, where platforms hold power in shaping the monetisation landscape.

Recommendations

Based on our findings, we encourage strong collaboration between authorities and platforms to ensure the effective implementation of advertising disclosures. While influencers predominantly bear responsibility for these duties, enforcement must also consider the terminology used in platform policies and the design of platform interfaces that shape monetisation practices for influencers. Our findings can catalyse the development of soft-law instruments, guidelines and best practices for platforms regarding the duty to disclose commercial content. For instance, platforms could adjust their terminology to align with the nuanced approach of European legal frameworks, including consumer protection. Influencers are subject to a plethora of rules arising from various contracts with brands, agents, representatives, as well as platforms. Since the latter serve as influencers' primary work en-

vironments, they can (and should) play a significant role in helping them comply with their legal obligations. Additionally, we recommend increasing the involvement of platforms in advertising duties to enhance visibility and prioritise the accessibility of disclosure tools, simplifying the process for influencers. We argue that doing so will considerably help influencers who currently must navigate two contradicting governance structures: the governance *by* and *of* platforms. For that reason, we invite policymakers and enforcement authorities to prioritise engagement with the biggest stakeholder in the influencer marketing ecosystem – platforms – by relying on their emerging duties under the DSA, in particular the governance of illegal content, as well as the legal consequences that can arise when fulfilling to take the necessary steps to curtail it.

ACKNOWLEDGEMENTS

The authors wish to thank Frédéric Dubois, Paola Sedda, Matthew Marinett, and Julia Pohle for their thoughtful reviewing of this article.

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Appendix

TABLE 1: Overview of the dataset

| PLATFORM | NAME OF DOCUMENT | LAST UPDATED (IF KNOWN) | AREA | URL | PERMALINK |
|-----------|--|-------------------------|-------|---|---|
| Instagram | Instagram Branded Content Discovery Feature Terms for Brands | No date | Focus | https://help.instagram.com/48872339299445 | https://perma.cc/ZJ3T-9K4V |

| PLATFORM | NAME OF DOCUMENT | LAST UPDATED (IF KNOWN) | AREA | URL | PERMALINK |
|-----------|--|-------------------------|--|---|---|
| Instagram | Instagram Partnership Ad Specifications for Creators | No date | Focus | https://help.instagram.com/1022082264667994 | https://perma.cc/293K-HTSW |
| Instagram | Instagram Promotion Guidelines | No date | Focus | https://help.instagram.com/179379842258600 | https://perma.cc/LLM9-7EMG |
| Instagram | Meta Branded Policies | No date | Focus | https://www.facebook.com/business/help/221149188908254 | https://perma.cc/GE7F-SMQC |
| Instagram | Meta Advertising Standards | No date | Mention (ref to branded content within ads format) | https://transparency.fb.com/policies/ad-standards/ | https://perma.cc/FN3J-JCHD?type=image |
| Instagram | Instagram Terms of Use | 6 March 2024 | Mention (ref to branded content) | https://help.instagram.com/581066165581870 | https://perma.cc/45XF-XSNV |
| Instagram | Meta Privacy Policy | 3 November 2023 | Mention (ref to sponsored or commercial content) | https://privacycenter.instagram.com/policy | https://perma.cc/H767-LM6B |
| Snap | Snap Commercial Content Policy | 14 December 2023 | Focus | https://snap.com/en-US/terms/commercial-content | https://perma.cc/8WRB-2P6V |
| Snap | Snap Promotion Rules | No date | Focus | https://help.snapchat.com/hc/en-us/articles/7047502545044-Promotions-Rules | https://perma.cc/25EQ-Q7HE |
| Snap | Snap Content Guidelines for Recommendation Eligibility | 15 March 2023 | Mention (ref to commercial content) | https://snap.com/en-US/content-recommendation-guidelines | https://perma.cc/UP5G-CT36 |
| Snap | Snap Group Limited Terms of Service | 26 February 2024 | Mention (ref to commercial content) | https://snap.com/en-US/terms#sgl-terms | https://perma.cc/7TY9-96Y7 |
| Snap | Snap Community Guidelines | January 2024 | Mention (ref to undisclosed sponsored content) | https://values.snap.com/privacy/transparency/community-guidelines | https://perma.cc/5R2B-X4HN |
| TikTok | TikTok Branded Content Policy | August 2023 | Focus | https://www.tiktok.com/legal/page/global/bc-policy/en | https://perma.cc/CX9D-27NA |
| TikTok | TikTok Branded Content Policy – | March 2024 | Focus | https://ads.tiktok.com/help/article/ | https://perma.cc/9KG7-BLEJ |

| PLATFORM | NAME OF DOCUMENT | LAST UPDATED (IF KNOWN) | AREA | URL | PERMALINK |
|----------|--|-------------------------|--|---|---|
| | Country-specific requirements | | | branded-content-policy-country-specific-requirements?lang=en | |
| TikTok | TikTok Creator Marketplace – Creator Terms and Conditions | 26 May 2022 | Focus | Only accessible through app | https://perma.cc/X553-G34F |
| TikTok | TikTok Creator Marketplace Agreement for Services in UK, Europe & Israel | March 2022 | Focus | https://creatormarketplace.tiktok.com/protocol/transaction/US | https://perma.cc/6GKP-DPZ7 |
| TikTok | TikTok Creator Marketplace Brand Terms of Use | January 2023 | Focus | https://www.tiktok.com/falcon/tcm/h5/tcm_term/?file=https://lf16-tiktok-creator-market.ibytedtos.com/obj/tiktok-creator-market-us/ad/star_fe_i18n_h5/pdf_files/transactions/cancel_policy/20220527/UK.pdf | https://perma.cc/W7F6-J258?type=image |
| TikTok | TikTok Creator Marketplace Cancellation Policy | May 2022 | Focus | https://creatormarketplace.tiktok.com/protocol/conduct/US | https://perma.cc/QN6G-NJR7 |
| TikTok | TikTok Creator Marketplace Code of Conduct | No date | Focus | https://creatormarketplace.tiktok.com/protocol/terms/PH | https://perma.cc/4MF5-G7F3 |
| TikTok | TikTok Business Terms of Service | August 2023 | Mention (ref to branded content) | https://www.tiktok.com/legal/page/global/business-terms-eea/en | https://perma.cc/3QAN-MUVS |
| TikTok | TikTok Community Guidelines | March 2023 | Mention (ref to branded content) | https://www.tiktok.com/community-guidelines/en/ | https://perma.cc/G9XL-7U3V |
| TikTok | TikTok Terms of Service EEA/UK/CH | August 2023 | Mention (ref to branded content) | https://www.tiktok.com/legal/page/eea/terms-of-service/en | https://perma.cc/3ALF-92ZF |
| TikTok | TikTok Political Ads Policy | No date | Mention (reinforces political advertising is banned) | https://support.tiktok.com/en/using-tiktok/growing-your-audience/ | https://perma.cc/N277-UYT3 |

| PLATFORM | NAME OF DOCUMENT | LAST UPDATED (IF KNOWN) | AREA | URL | PERMALINK |
|----------|---|-------------------------|-------------------------------------|---|---|
| | | | | government-politician-and-political-party-accounts | |
| YouTube | YouTube paid product placements, sponsorships and endorsements policy | No date | Focus | https://support.google.com/youtube/answer/154235 | https://perma.cc/39SR-6Y2G |
| YouTube | YouTube third-party embedded sponsorships policy | No date | Focus | https://support.google.com/youtube/answer/3364658 | https://perma.cc/UEF5-RCM5 |
| YouTube | YouTube's contest policies and guidelines | No date | Focus | https://support.google.com/youtube/answer/1620498 | https://perma.cc/3VUJ-S7J8 |
| YouTube | YouTube Illegal or regulated goods or services policies | No date | Mention | https://support.google.com/youtube/answer/9229611 | https://perma.cc/Y2SU-TCJW |
| YouTube | YouTube Terms of Service | 5 January 2022 | Mention (ref to commercial content) | https://www.youtube.com/t/terms | https://perma.cc/RN52-84X9 |

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