

Online Behaviour

Influencer Marketing



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

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EXECUTIVE SUMMARY

The development and expansion of social media platforms has changed the way people consume news and radically modified how they experience advertising in their daily lives.¹ In January 2022, it was estimated that there were approximately 3.95 million “social media users” in Ireland.² From targeted advertising by social media platforms to brand promotion by influencers, social media has altered the way in which products are being advertised in Ireland and internationally. In line with this development, there is a greater need for consumer protection authorities to understand how consumers react to online marketing versus traditional offline marketing and the risks therein.³

In October 2021, the Competition and Consumer Protection Commission (CCPC) commenced a research project on online consumer behaviour and influencer marketing. This research coincided with a growing focus on influencers and misleading content internationallyⁱ and was conducted in advance of significant changes in the European and domestic regulatory landscape.ⁱⁱ

The central objective of this project was to examine consumer engagement with social media platforms and influencers. To better understand this, the research focused on how influencer marketing can affect consumer behaviour and consumers’ ability to recognise influencer marketing, and the role of self-regulation organisations (SROs) and statutory bodies in this area.

This project used a combination of desk-based research, qualitative (focus groups and interviews) and quantitative (consumer survey and observational analysis of social media) research methods.

ⁱ This project aligns with increased focus at an international level on the relationship between consumers and influencers. Legislation and guidance is constantly evolving. Both the European Commission and individual EU Member States are taking steps to protect consumers in this area, while countries outside of Europe, including U.S.A., are also increasing attention in this area. ⁱⁱ E.g. the finalisation of the Digital Services Act, the establishment of a new Media Commission and the commencement of the Consumer Rights Act.

IRISH CONSUMERS TEND TO OVERESTIMATE THEIR ABILITY TO IDENTIFY INFLUENCER MARKETING

Over three quarters (78%) of consumers surveyed as part of this research reported being familiar with the term 'influencer' and almost one third (29%) stated that they follow influencers on social media. The proportion of consumers following influencers was higher for the under 24 age category, with 67% reporting that they follow an influencer. In the focus groups and interviews, both consumers and influencers expressed a degree of negativity regarding the term 'influencer'. The majority of consumers in these groups reported that they do not follow influencers. Instead, consumers were more likely to refer to the influencers they follow as "interactive celebrities" or "people of interest" and did not readily agree that these were interchangeable with the term 'influencer'. As such, there is a risk when conducting research in this area of underestimating the number of individuals who follow influencers and by extension the level of impact on consumer outcomes. Whilst the majority (77%) of Irish consumers consider it "easy" to identify influencer marketing, this ability was less clear when explored in more depth in focus groups. Several influencer marketing examples shown to consumers caused them confusion in identifying the actual nature of the post. This suggests that consumers may be overconfident in their ability to recognise when posts by influencers are in fact marketing and they may be more vulnerable to misleading marketing than they think.

TRUST IN INFLUENCERS IS LOW, BUT NUANCED

Just 10% of consumers trust the information provided by influencers. However, while consumers do not trust influencers in general, they do appear to trust the influencers that they follow – bearing in mind that 'influencer' may not be the term they use for those people. Relevant qualifications held by influencers were not considered essential by a large portion of consumers. Rather, ethical credentials such as being 'ethically conscious' and 'environmentally friendly' were considered very important. This, coupled with consumers overestimating their ability to identify influencer marketing, raises concerns regarding the potential for influencers to mislead consumers, particularly through practices such as greenwashing.

ALMOST A QUARTER OF CONSUMERS WHO PURCHASED A PRODUCT AS A RESULT OF AN INFLUENCER PROMOTING IT SUBSEQUENTLY FELT MISLED

Despite reporting low levels of trust overall in influencers, 66% of consumers who follow influencers reported purchasing a product as a result of an influencer mentioning it (direct influence). An important follow-on finding is that nearly 24% of consumers who purchased a product as a result of an influencer promoting it stated that they subsequently felt misled about the product that they had purchased. This equates to 4.6% of the adult population.

Of the consumers that follow influencers, 60% stated that they recommended a product to family and friends as a result of an influencer mentioning it (indirect influence). This finding in particular may have wider implications for the overall impact of influencer marketing on consumers given that the consumers who were surveyed expressed the highest level of trust for “recommendations from family and friends” when purchasing a product.

CONCERN AMONGST CONSUMERS ABOUT INFLUENCER MARKETING OF CRYPTO

During the focus groups conducted as part of this research, consumers raised specific concerns regarding influencers promoting crypto and other financial products, particularly when the influencer had no experience in these areas. Concerns around these “finfluencers” are starting to emerge internationally and this rise of concern is relevant from an Irish perspective, as 51% of the consumers surveyed stated that most of the influencers they follow are based outside of Ireland. This suggests that even if the finfluencing phenomenon is not yet a big factor amongst Irish influencers, it may still be affecting Irish consumers who consume financial content produced by international influencers.

IRISH INFLUENCERS ARE INCONSISTENT IN LABELLING MARKETING CONTENT AND CLEAR GUIDANCE IS NEEDED

Influencers in Ireland have an explicit responsibility to label commercial content under the Consumer Protection Act 2007 (the 2007 Act). Commercial content includes commercial communication, marketing or advertising.⁴ A significant portion of the posts with commercial content that was analysed as part of this research were either not labelled at all or not sufficiently labelled when considered in the context of the 2007 Act, the current Advertising Standards Authority for Ireland (ASAI) guidance and international practice.

In particular, specific issues were identified with the labelling of posts relating to own brand products,ⁱⁱⁱ the reposting of content from partner brands, and links directing consumers to external sites with marketing. There were also inconsistencies in the style of labelling used by influencers, suggesting that they may be taking direction on labelling from brands rather than the guidance provided by the ASAI.

This was further supported in the interviews with influencers and agents where the difference in the standard of labelling direction given by brands was noted.

There was widespread agreement amongst both consumers and influencers in qualitative research that clear guidance would be beneficial for everyone, particularly for consumers considered to be more vulnerable on social media (e.g. children/teenagers and older persons). This research indicates that there is a need for clarity around aspects such as own brand and reposted content, custom tags (e.g. #iworkwith[company]), and posts containing links to pages owned by influencers (e.g. blogs, websites) that contain advertised content. This research also suggests that the

ⁱⁱⁱ Where the influencer has a direct financial interest.

introduction of new, clear directions regarding the use of a small number of tags, such as #advertisement (#AD) and #PaidPartnership, would reduce inconsistencies in labelling methods amongst influencers.^{iv}

In the analysis of these findings, the CCPC recognises the work of the ASAI in promoting good practice by influencers through both its Code,⁵ a sector specific Guidance Note⁶ and its complaints process. It is intended the future actions for the ASAI and CCPC identified in this report will assist in closing the gaps identified.

SIGNIFICANT VARIATION IN INTERNATIONAL APPROACHES TO REGULATING INFLUENCER MARKETING

The Unfair Commercial Practices Directive 2005/29/EC (UCPD), which underpins the 2007 Act, provides an important legal framework for tackling misleading practices in Ireland. Provisions within the UCPD are broad enough to encompass influencer marketing. However, it cannot describe every scenario where influencer marketing may be in potential breach of consumer protection law.

As a result, the regulation of influencers may vary across the European Union and indeed internationally (in terms of the role of regulators and/or self-regulatory organisations (SROs) and enforcement). The potential for variation is important from a consumer protection perspective as almost half of consumers in this research who stated that they follow influencers reported that the majority of influencers they follow are based outside of Ireland.

Due to this, any efforts in an Irish context to regulate influencer marketing will only go so far in protecting consumers. As such, international collaboration in this area is of increasing importance. In a recent example of successful collaboration, the CCPC co-led an action in this area, in conjunction with the Swedish Consumer Agency (Konsumentverket) and the European Commission on behalf of the European Consumer Protection Cooperation (CPC) Network, in relation to commercial content on the social media platform TikTok.⁷ As a result, TikTok has made a number of commitments regarding the publishing of branded content on its platform.⁸

INCREASED ATTENTION IS NEEDED ON THE EDUCATION AND AWARENESS OF INFLUENCERS, BRANDS AND AGENTS

This research identified that macro and mega influencers with a large reach (i.e. greater than 100,000 followers) are just as likely as influencers with a smaller following to engage in poor practice when it comes to labelling marketing communications.^v The influencers who were spoken to as part of this research were more likely to take direction on how to identify commercial content from brands as

^{iv} For example, countries such as Australia and the UK provide clear guidance for the use of a small number of well-defined labels such as #advertisement/#AD, "paid partnership" and #gifted (See Appendix E for relevant links). The use of less specific labels such as "brand ambassador" and #collaboration and abbreviations such as #ba, #sp and #af are prohibited. See, for example, a case taken against an influencer in Sweden in 2019 where the court ruled that it not enough to just say that the post is made "in collaboration" with a company, it needs to be clear whether or not the collaboration is paid. See discussion at: Bird & Bird (2020) Swedish case law: Influencers have to properly identify marketing content, but only if it is marketing.

opposed to consulting official guidelines. As the requirements from brand owners are often inconsistent, this scenario can lead to confusion for influencers and potentially increases the risk of insufficient disclosure.

In addition, as influencers may use their channels to sell their own brand products they must know and comply with the laws on disclosure. Influencers who post commercial content (including gifted items) must ensure they learn about their legal obligations, regardless of the size of their following. This will help them negotiate with brands, maintain trust with their followers, and avoid breaches of the law. Traditional education options such as accredited courses and training are currently limited in Ireland. However, the South East Technological University (SETU) has indicated its intent to launch a new Level 8 degree course in content creation and social media in 2023/24. This is an area of increasing focus in other countries such as France where the French advertising self-regulatory organisation, Autorité de régulation professionnelle de la publicité (ARPP), offers an accredited course in Responsible Influence.⁹

Similarly, brands have a legal responsibility to ensure paid social media content is in line with the law. Increased attention on the education and awareness of influencers, brands and agents who represent influencers in this space is needed in Ireland.

REGULATORY COMPLAINTS PROCESS COULD BE SUPPLEMENTED WITH ADDITIONAL MONITORING AND COMPLIANCE MECHANISMS

To date, very few consumers have contacted the CCPC with complaints directly related to influencer marketing. The ASAI has been the most active in this space in dealing with complaints from consumers and publishing a Guidance Note on Recognisability of Influencer Marketing Communications¹⁰ to supplement their self-regulatory Code. However, compared to scale of the issue observed in this research, the total number of complaints to the ASAI and CCPC relating to the area is minimal.^{vi 11}

The qualitative research demonstrated that consumers are unlikely to make a complaint to regulatory bodies such as the CCPC and ASAI even in instances where they encounter hidden or misleading advertising on posts. This is particularly the case if they feel that an influencer they follow has made “some kind of effort”. In instances where influencers are repeat offenders, consumers are more likely to ‘unfollow’ the influencer than report the issue.

Available at: <https://www.twobirds.com/en/insights/2020/sweden/swedish-case-law-influencers-have-to-properly-identify-marketing-content-but-only-if-it-is-marketing>. ^v This research examined in detail commercial content posted by mega-influencers, macro-influencers and micro-influencers in Ireland. A mega-influencer is an influencer with more than 1 million followers, a macro-influencer has between 100,000 and 1 million followers and a micro-influencer has between 10,000 and 100,000 followers. See definitions in section 1.2 for further information.
^{vi} ASAI figures show a lower level of complaints reporting in recent years versus 2017-18.

PLATFORMS' APPROACHES TO IDENTIFYING AND RESPONDING TO UNLABELLED CONTENT VARY

If a consumer wishes to report an issue regarding content posted by an influencer to the platform concerned rather than a regulator, there is a variance in the reporting functions available on different social media platforms. This research indicates that there is a need for a simple reporting mechanism for hidden advertising on social media platforms to allow users to report misleading content.

The practicalities of this will need to be explored over time to ensure that any new reporting mechanisms implemented by platforms achieve the desired result, particularly as the legal framework changes with the entry into force of the Digital Services Act (DSA). TikTok is the only platform to date to implement a specific reporting function^{vii} for users to report suspected undisclosed branded content as a result of the recent joint action taken by the CCPC, the Swedish Consumer Agency and the European Commission. The learnings from this will help inform the CCPC's engagement with other platforms in the future.

^{vii} i.e. separate from other categories such as spam.

RECOMMENDATIONS AND ACTIONS

In light of the findings from this research, it is recommended that the most appropriate approach to regulating influencer marketing in the Irish context is hybrid in nature encompassing: strengthened guidance; education of consumers, influencers, brands and agents; increased responsibility for platforms and compliance and enforcement.

When analysing our findings to inform recommendations, the CCPC undertook extensive engagement with a number of important stakeholders in this area including social media platforms (Google, Meta and TikTok), the ASAI, the Broadcasting Authority of Ireland (BAI) and Media Literacy Ireland. From this engagement, a number of recommendations and actions were identified.

RECOMMENDATION 1: Guidance on influencer marketing in Ireland should be strengthened

Actions:

- In 2023, the CCPC and ASAI will work collaboratively to deliver clear joint guidance on areas such as labelling, own brand products and reposts (outlined in more detail in Section 5 of this report).
- The CCPC will advocate for a more harmonised approach to guidance at EU and international level for social media influencers that can better support the education, compliance and enforcement efforts of international regulators and SROs.¹²
- In relation to financial content (e.g. crypto) shared by influencers which is often international in nature, the CCPC intends to launch a series of educational videos aimed at consumers to explain crypto and outline factors to consider before investing in them.

RECOMMENDATION 2: Brands, influencers and the agents who represent them have a responsibility to inform themselves of their legal responsibilities and to ensure that brand requirements for paid social media content are in line with the law

Actions:

- The CCPC will write to agents who represent influencers and brands to make them aware of any future updated guidance relating to influencer marketing and to remind them of the responsibilities of the influencers and brands under consumer protection legislation.
- The ASAI will lead on engagement with educational institutions to ensure that compliance material developed by the CCPC and the ASAI is included in relevant courses (i.e. influencer marketing and digital marketing) offered by educational institutions.

RECOMMENDATION 3: Social media platforms should assume greater responsibility for informing and educating users (i.e. influencer, brands, consumers) on the risks of hidden or misleading advertising by influencers.

Actions:

- As a result of engagement with the CCPC, social media platforms such as TikTok^{viii} and Meta (Instagram) have committed to build upon existing educational content by developing educational campaigns around their branded content for both influencers and consumers. The CCPC will continue to engage with other social media platforms to secure similar commitments relating to educational activities.

RECOMMENDATION 4: Social media platforms should support users in appropriately labelling content and facilitate the deterrence and reporting of hidden or misleading advertising content

Actions:

- Monitoring and reporting functions can vary across platforms.^{ix} Therefore, in the interests of supporting users in reporting misleading advertising, the CCPC will work with relevant parties so that the Digital Services Act can be an effective tool with appropriate processes for monitoring and reporting illegal content, including misleading/hidden advertising, across social media platforms.
- The CCPC, as part of our work with the Consumer Protection Cooperation (CPC) Network in Europe, co-led the co-ordinated action against TikTok. The CPC Network will monitor the outcomes from TikTok's new reporting function for misleading content and this will inform future engagement, either at national level or as part of cross-border cooperation activities, with other platforms in terms of the potential implementation of simple reporting mechanisms.
- The CCPC will monitor "branded content" policies on social media platforms to ensure that they contain clear disclosure requirements in line with developments in legislation and guidance, and that the "terms of service" unambiguously require users to comply with platforms' branded content policies and that these are strictly enforced.
- The ASAI will engage with social media platforms to explore ways to utilise the platform as a deterrent mechanism whereby non-compliant influencers are "named and shamed".

^{viii} TikTok has made a number of commitments regarding the publishing of branded content on its platform following engagement with the CCPC, Swedish Consumer Agency (Konsumentverket) and the European Commission on behalf of the European Consumer Protection Cooperation (CPC) Network. See, European Commission (2022) EU Consumer protection: TikTok commits to align with EU rules to better protect consumers. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_3823.

^{ix} See section 5 of this report for further details.

RECOMMENDATION 5: Relevant authorities should continue to actively pursue enforcement through existing and new mechanisms

Actions:

- The CCPC will monitor how its new powers granted under new legislation in 2022 are working over time. Where there is evidence that these new powers are ineffective at tackling breaches of consumer protection law, including by influencers, the CCPC will advocate for the strengthening of its enforcement powers. This may include administrative powers to impose fines for national breaches of consumer protection.
- As influencer marketing is a rapidly evolving medium of communication, the CCPC will continue to consider the potential for consumer detriment in influencer communications in its prioritisation of enforcement activities.
- The CCPC is aware the ASAI is currently trialling artificial intelligence based monitoring technology to support its existing complaints system. The CCPC welcomes the ASAI's commitment to rolling out this type of technology to support the ASAI's own monitoring and enforcement activities.
- As the degree of reported enforcement by consumer protection authorities to date varies substantially across jurisdictions, the CCPC will actively engage with international initiatives to share our experience towards developing common standards and best practice for regulatory development, guidance and enforcement where necessary on influencer marketing.^x

^x The CCPC participated in a Consumer Protection Cooperation (CPC) Network workshop on disclosure of commercial content in influencer marketing in June 2022. Furthermore, at the European Consumer Summit on 10 February this was voted as one of the top two joint actions for the year ahead, along with "additional research on influencer marketing (e.g. behavioural studies)" at the workshop on transparency of online markets.

1. INTRODUCTION

The development and expansion of social media platforms has changed the way people consume news and radically modified how they experience advertising in their daily lives.¹³ From targeted advertising by social media platforms to brand promotion by influencers, social media has altered the way in which products are being advertised in Ireland and internationally. The continued expansion of new forms of advertising on social media has coincided in recent years with significant international events such as Brexit and the COVID-19 pandemic. As a result, the ways and the degree to which Irish consumers utilise online services has changed significantly in the last number of years.¹⁴ Recent research by the CCPC shows that in addition to increased shopping activity online in the area of non-essential goods and services, more consumers are going online to seek out information on products.^{xi}

This report focuses on consumers' ability to recognise the different forms of influencer marketing they are exposed to and the impact it has on their online purchasing behaviour. This report also examines the ways in which influencers identify (label or tag) the commercial content they produce and assesses the role of relevant actors (i.e. influencers, brands, agents, social media platforms and regulatory bodies) in this space.

1.1 CONTEXT AND PROJECT DESCRIPTION

This report is based on research conducted by the CCPC between October 2021 and August 2022. This project was undertaken to develop a comprehensive understanding of the key issues in this sector in advance of forthcoming changes in the European digital market (i.e. the Digital Services Act), the Irish advertising landscape (i.e. the establishment of a new Media Commission) and consumer protection law (i.e. the Consumer Rights Act).^{xii} This work aligns with a current international focus on influencers and potentially misleading content. Both the European Commission and individual member states have taken considerable steps to protect consumers in this area, while countries outside of Europe, including the Federal Trade Commission (FTC) in the USA have also increased attention in this area.

In addition, a commitment was made in the 2020 Programme for Government, which referred to a movement away from what it described as the "current self-regulatory regime in this area" and stated an intent to "to focus on ensuring that there is full disclosure in relation to partnerships, sponsorships and other advertising relationships between media influencers and brands, and that the obligations on social media influencers and the consequences for non-compliance are clearly set out and enforced".¹⁵

^{xi} In 2021, 20% of consumers reported going online more often to get advice/guidance about a product. See, CCPC (2022) CCPC research shows increase in shopping from Irish based sites post Brexit. Available at: <https://www.ccpc.ie/business/ccpc-research-shows-increase-in-shopping-from-irish-based-sites-post-brexit/>.

^{xii} For further information, see Appendix A.

The central objective of the CCPC's project was to examine consumer engagement with social media platforms and influencers, with particular emphasis on:

1. Examining how influencer marketing can affect consumer behaviour.
2. Identifying potential issues in terms of consumers' ability to recognise influencer marketing.
3. Identifying the role of self-regulation organisations (SROs) and statutory bodies including regulators, both in Ireland and internationally.

To address these research aims, this research project was structured into four elements:

Element 1: Scoping

- Review of the Irish influencer market and the attendant legislative/regulatory environment.
- Review of international approaches to the regulation of social media influencers.

Element 2: Quantitative Research – Survey and Observation Analysis

- A national representative consumer survey (1,000 respondents) covering areas such as online behaviour, social media use, recognition of influencer marketing, trust and transparency was conducted by Ipsos MRBI between 21 October and 29 November 2021.
- An observational analysis was conducted between 1 and 14 of November on the content produced by a selection of 70 Irish influencers (a representative mix of micro, macro and mega influencers were selected with follower numbers ranging from 16,000 to 44 million) to gain insights into the approaches influencers use to identify advertised content and the degree to which these posts are tagged in line with areas highlighted under the Consumer Protection Act 2007 (the 2007 Act), Unfair Commercial Practices Directive 2005/29/EC (UCPD), as well as self-regulatory Code¹⁶ and Guidance Note¹⁷ issued by the ASAI^{xiii}.

Element 3: Qualitative Research^{xiv} – Focus Groups and In-depth Interviews

- Consumer focus groups were facilitated by Behaviours & Attitudes Research (B&A) to analyse perception, bias and the ability to identify commercial content. These sessions took place on 1 and 2 December 2021.
- In-depth interviews were conducted by B&A with micro and macro influencers (as defined below) in January 2022 to understand their perception knowledge of their responsibilities under the CPA 2007 and under the self-regulatory code¹⁸ and guidance note¹⁹ issued by the ASAI.^{xv} An interview with an agent representing influencers active in the area of sport was also conducted.

^{xiii} Discussed in Section 3. ^{xiv} See Appendix C for methodology. ^{xv} Discussed in Section 3.

Element 4: Development of Recommendations and Future Actions

- Data from the market research (quantitative and qualitative) and observational analysis was extracted and analysed.
- The market research data, the results from the observational analysis and information garnered through desk research were aggregated to support the CCPC's extensive engagement with relevant stakeholders including the ASAI and social media platforms. This engagement in combination with the findings from this research inform the future actions contained in this report.

1.2 DEFINITIONS

There are six central terms that are utilised frequently in this report; 'social media', 'trader', 'influencer', 'content', 'influencer marketing', and 'tagging'.

Social media can be understood as referring to "digital technologies emphasising user-generated content or interaction".²⁰ These online social platforms can be "media-centric" (i.e. focused on "publishing, sharing, and accessing media and user-generated content") or "profile-centric" (i.e. focused on "social interaction"). These platforms are generally free to use. However, in exchange, they may "collect and process information about users' socio-demographic profiles, interests and preferences".²¹ Examples of popular social media platforms include Instagram, Facebook, Twitter, TikTok and YouTube.

A **trader** is defined under the UCPD Article 2(b) as "any natural or legal person who, in commercial practices covered by this Directive, is acting for purposes relating to his trade, business, craft or profession and anyone acting in the name or on behalf of the trader". In the context of this report the term "brand" is used to refer traders engaging with influencers. However, influencers themselves can be categorised as traders.^{xvi}

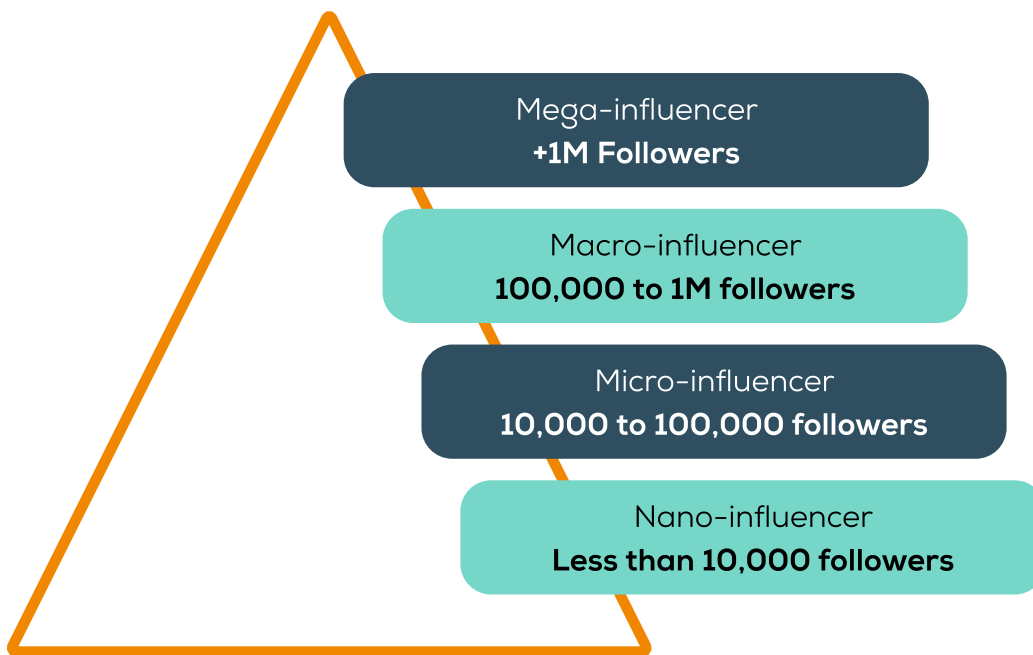
There is no universally accepted definition for an **influencer**. However, in the context of this report (and for the purpose of the research) it is defined as a "a social media content creator who often promotes or recommends items on social media, often in exchange for compensation".^{xvii}

They are synonymous with online personalities who have a following on one or more social media platforms and who "have an influence on their followers". They can carry influence due to their achievements or fame outside of social media (sports stars, actors, musicians, etc.) but often they are individuals who have become online celebrities through the regular upload of material on social media.

The content posted by influencers most often focuses on "healthy living, travel, food, lifestyle, beauty, or fashion".²² Influencers may be categorised according to the number of people who follow them:²³

^{xvi} Charity organisations are not specifically dealt with as part of this report but influencers do interact with the sector. The UCPD Guidance 2021 section 2.2 states that "Organisations which pursue charitable or ethical goals may qualify as traders under the UCPD when they engage in commercial activities (e.g. the sale of products meeting certain ethical standards) towards consumers. Whenever they act as traders, they should comply with the UCPD insofar as their commercial activities are concerned. For instance, information about the origin of the product or its ethical aspects should not be misleading.

Figure 1: Influencer Categorisation



Source: CCPC graphic, data sourced from CMS Wire

It should be noted that there are also “virtual influencers”, who are computer-generated artificial intelligence (AI) influencers that are not real people,²⁴ and “kidfluencers”, who are children that post content or who are the focal point of content posted by their parents.²⁵ These two specialised categories of influencer are outside the scope of this research.

It is also worth noting that industry platforms have moved towards referring to influencers as “content creators”. This language is also being adopted by some statutory and self-regulation bodies across Europe. For the purposes of this project we will continue to refer to ‘influencers’ as the standard terminology.

Content is “video, audio, text, images or some combination of the four that holds value for someone”.²⁶ In essence, it includes varied means of presenting information, the format of which can differ depending on the social media platform on which it is published. When influencers produce content on behalf of brands or market their own products, this content may be referred to as “commercial content”, content with a “commercial element”, “influencer marketing”²⁷ or a “marketing communication”.²⁸

Influencer marketing relates to “the promotion of specific brands or products through influencers using the positive impact that influencers are likely to have on consumer perceptions”.²⁹ It involves an influencer producing and posting specific content on their social media platform of choice which “features specific brands or products, with the aim of tapping into the positive impact influencers are likely to have on consumer perceptions of what is being promoted”.³⁰ The influencer may be promoting their own products or may be advertising the products of another brand in exchange for

The fact that an organisation is structured as ‘non-profit’ is not decisive to the assessment of whether it qualifies as a trader”. Any interaction between an influencer and a non-profit organisation should be carefully considered in this context. xvii This definition was utilised for the consumer survey as part of this research.

compensation (monetary or a benefit in kind such as free products, services, trips, or experiences). In contrast to other forms of advertising, it may be more challenging for consumers to identify influencer marketing as it may often appear “as a spontaneous, non-commercial post” rather than a direct, planned advertisement.³¹

Labelling/tagging refers to the process of identifying commercial content. It may be identified by the use of the # symbol, which is employed on social media platforms to categorise a post, so that content with the same theme or information can be found together. An influencer might also link a brand to their content by using the @ symbol, followed by the brand’s social media username. Examples of tags^{xviii} that are used by influencers include #AD, #sponsored, #brandambassador, which indicates the influencer is marketing a product for a brand in exchange for some degree of compensation or financial gain, and #affiliated, which usually entails an influencer providing a link to another website through which they can earn a commission from a consumer purchase. An influencer might also use #gifted, which would suggest that they may not have been paid monetarily to promote a brand but may have been provided with that product or experience for free.³² Gifting creates a commercial relationship as an influencer may post content³³ on this specific brand as a consequence.³⁴

1.3 STRUCTURE OF INFLUENCER MARKET IN IRELAND

In January 2022, it was estimated that there were approximately 3.95 million “social media users” in Ireland.³⁵ Social media is a growing market, with platforms such as Facebook, Instagram and YouTube being among the most popular.³⁶ In 2022, it is reported that there are approximately 2.6 million Instagram users and 2.7 million Facebook users in Ireland.³⁷

TikTok is also a growing platform among Irish people under 25, with a total of 2.1 million Irish users and with more Irish users under 25 than Facebook and Instagram combined.³⁸ In terms of marketing, Facebook and Instagram are considered the leading platforms for product/brand promotion. In 2020, almost 93% of purchases made through social media internationally originated from advertisements on the Facebook News Feed and a significant proportion of consumers (75%) bought products “at a later date” after seeing them on Instagram.³⁹

Instagram is considered to be a “very important platform” for influencer marketing.⁴⁰ According to one study conducted in 2020, 36.3% of Irish influencers on Instagram had between 1,000 and 5,000 followers and 42.9% had between 5,000 and 20,000 followers. The remaining 20.8% had over 20,000 followers (with 0.16% having over 1 million followers). Overall, 56.08% of the influencers were female and most were aged between 18-34. In terms of content, “lifestyle” and “beauty” were the most popular types of content produced by Irish influencers (amounting to 12.57% and 9.83% respectively of all content posted).⁴¹

^{xviii} These tags are illustrative of common tags used by influencers. It should not be inferred from their inclusion in this section that they are appropriate tags (or that they comply with law and or guidelines in this area).

According to the latest figures available, influencer marketing makes up only a small portion of the overall estimated money spent on advertising in Ireland. In 2017, approximately €6 million was spent by advertisers on influencer marketing, equating to just 2% of total advertising spend.⁴² Analysts, however, predict that this proportion will increase, particularly given the capacity that influencers have to reach a specific target audience and given the changing nature of the advertising landscape. Ireland also has a large proportion of social media usage (66% of the Irish population in 2019)⁴³ giving the country strong potential for influencer marketing growth.⁴⁴

Influencer marketing is an important revenue stream for influencers as companies and advertising agencies may seek out influencers in order to “reach specific audience demographics”.⁴⁵ However, influencer marketing is only one form of potential revenue stream for influencers in Ireland and there is a broader industry expanding around influencing. The way in which influencers can engage with consumers is continuing to expand, as new means of interaction are being developed on different social media platforms, such as Amazon Live, Patreon and Twitch.⁴⁶ Furthermore, influencers may also receive their income directly through their followers through payments made through “tokenisation, subscription/crowdfunding, ad revenues, or direct payments”.^{xix} On gaining a following, influencers can also build their own brands and sell their products instead of simply promoting other brands or products.⁴⁷

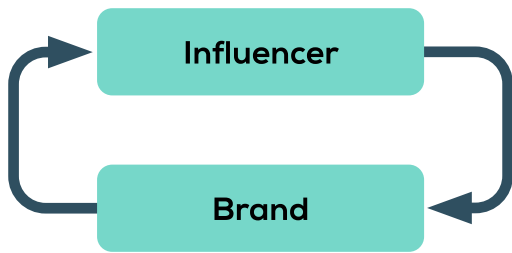
In addition to these influencers, there is also a growing industry of individuals and companies who may be involved with influencers who may seek to benefit from this market. This may include video production and data analytics companies, management/talent agencies, advertising companies as well as companies and public bodies who may hire influencers to promote them or to deliver a public message.⁴⁸ Social media platforms may also seek to attract consumers to their platforms by financing influencers through “creator funds” which may offer payment to an influencer in proportion to the number of views they receive for their content.⁴⁹

As a single influencer can have a number of revenue streams, the content they produce may be impacted by a number of other actors within the influencing industry. However, the central cornerstones of the influencer industry are generally considered to be influencers, brands, agents and social media platforms.⁵⁰

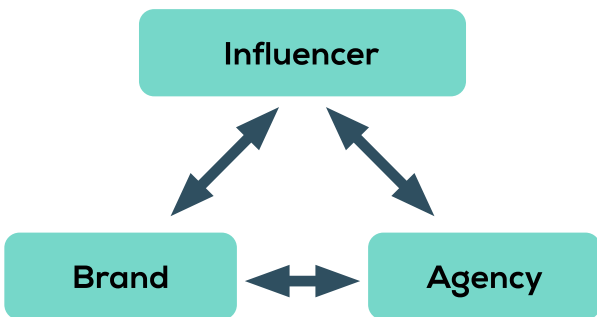
The role played by each of these players in the influencer market may have implications for who may be responsible for any potential harm that is suffered by a consumer that engages with an influencer’s content.

^{xix} Subscription/crowdfunding refers to influencers who offer a “premium” and/or restricted version of their content to followers who pay a set fee or who make a “donation” in exchange for access. Tokenisation involves users of online content paying for online “tokens” which they can “spend” when engaging with their favourite influencers. Examples include a “Super Sticker” on YouTube which a follower can attach to their message on a live stream so that their message can be spotlighted. See Michaelsen, F. et al. (2022) The impact of influencers on advertising and consumer protection in the Single Market. Luxembourg: Policy Department for Economic, Scientific and Quality of Life Policies. Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703350/IPOL_STU\(2022\)703350_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703350/IPOL_STU(2022)703350_EN.pdf).

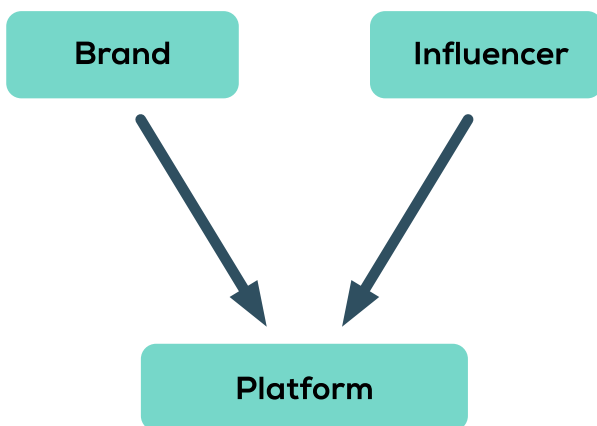
Currently the relationships between brands, influencers, platforms and agents does not appear to follow one standard format and any of the following pathways below may be a possible route for commercial content to be posted:



Direct: A brand and influencer may connect without any intermediaries. This can be initiated by either side. Posts arising from this could be formal contracts or agreements (paid partnerships and brand ambassadors) or just a one-off financial benefit (e.g. gifting).



Agent facilitated: Agents and/or agencies representing influencers can play a role in facilitating commercial content. They may just provide a contact point for a brand to send merchandise (i.e. gifting) or they can place influencers in contact with relevant and interested brands for longer term engagement.



Platform facilitated: This is a new area which may see growth in the future. Platforms can facilitate contact between brands and influencers. Instagram has launched the Instagram marketplace in the USA⁵¹ Influencers can put themselves forward and list brands they are interested in working with or list their preferred topics or interests. Brands will then see these in their own search results when exploring potential partners. It is currently only open to beauty/ fashion brands and creators. Google also offers

a brand and influencers connection service for YouTube creators through YouTube Brand Connect.

A variation on this is the facilitation of direct contact between sellers and customers such as that provided on Amazon Live.⁵² This is not yet available in Ireland but the site provides a channel for sellers to talk about their products direct to consumers in a style similar to YouTube or Instagram live, or older media such various shopping channel outputs. The platform specifically refers to those posting videos as “creators” not “sellers”.

1.4 LEGISLATION

In Ireland, influencer marketing is subject to both Irish and EU legislative requirements under the Consumer Protection Act 2007 and Unfair Commercial Practices Directive 2005/29/EC (UCPD)⁵³ as well as a self-regulatory code⁵⁴ and guidance note⁵⁵ issued by the ASAI.^{xx} There are also changes forthcoming in the legal framework in this area due to legislative developments including the Digital Services Act⁵⁶ and the Online Safety and Media Regulation Bill 2022,⁵⁷ which will transpose the revised Audio-visual Media Services Directive 2018/1808/EU⁵⁸ into Irish law.^{xxi} Under the current legal framework, enforcement measures may be taken in the event that influencers do not comply with their obligations under consumer protection law.

The Unfair Commercial Practices Directive 2005/29/EC (UCPD)⁵⁹ is the overarching piece of EU legislation regulating unfair commercial practices in business-to-consumer transactions including misleading advertising. The UCPD broadly encompasses an array of practices and “sales methods”⁶⁰ and is not specific to influencer marketing. However, per the updated guidance on the interpretation and application of the UCPD⁶¹ (UCPD Guidance) issued by the European Commission in 2021, the UCPD applies to online intermediaries including social media platforms, traders and individual influencers on social media platforms who engage in “commercial practices”.⁶² It is Articles 6 and 7 and Annex 1 of the UCPD that are particularly relevant to influencer marketing.⁶³

- Article 6 relates to “misleading actions”. Under this article, an influencer’s commercial content “shall be regarded as misleading if it contains false information...or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct...and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise”. This may occur if an influencer misleads consumers regarding the “the motives for the commercial practice and the nature of the sales process” or “in relation to direct or indirect sponsorship or approval of the trader or the product”.⁶⁴
- Article 7 relates to “misleading omissions”. Under this article, an influencer’s commercial content “shall be regarded as misleading if, in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise”. An influencer may possibly breach this article if that influencer “hides or provides in an unclear, unintelligible, ambiguous or untimely manner such material information...or fails to identify the commercial intent of the commercial practice if not already apparent from the context”.⁶⁵

^{xx} Discussed in Section 3.

^{xxi} See Appendix A for further details.

- Annex 1 outlines a list of “commercial practices which are in all circumstances considered unfair”. Under this annex, if an influencer does not identify that they have been paid for the promotion of a product⁶⁶ or if they “falsely” present themselves as a consumer, they may have engaged in a prohibited commercial practice.⁶⁷

According to the UCPD Guidance, an influencer’s content is “commercial” in nature if they receive “any form of consideration for the endorsement, including in case of payment, discounts, partnership arrangements, percentage from affiliate links, free products (including unsolicited gifts), trips or event invitations etc”.⁶⁸ The UCPD Guidance states that an influencer who fails to disclose the “commercial” nature of their content when promoting a product or business (including their own products and businesses)^{xxii} may breach the UCPD provisions outlined above.⁶⁹

The main piece of legislation governing commercial practices in Ireland is the Consumer Protection Act 2007 (the 2007 Act) which transposed the UCPD into Irish law.⁷⁰ The purpose of the 2007 Act is to prevent consumers from being exploited or harmed. The 2007 Act protects consumers from “misleading”, “aggressive” and “prohibited” commercial practices.⁷¹ The relevant provisions of this Act for influencers are sections 43, 46, and 55.^{xxiii}

- Section 43 relates to “false, misleading or deceptive information”. An influencer’s commercial content “is misleading if it includes the provision of false information” or “if it would be likely to cause the average consumer to be deceived or misled” and “to make a transactional decision that the average consumer would not otherwise make”. This includes if an influencer misleads a consumer regarding “the existence, extent or nature of any approval or sponsorship (direct or indirect) of the product by others” or in relation to their “motives” for posting the content.⁷²
- Section 46 relates to “withholding, omitting or concealing material information”. An influencer’s commercial content is misleading under this section if the influencer “omits or conceals material information that the average consumer would need, in the context, to make an informed transactional decision” and this “would be likely to cause the average consumer to make a transactional decision that the average consumer would not otherwise make”. This includes if the influencer provides information that is “unclear, unintelligible, ambiguous or untimely” or if he/she “fails to identify the commercial intent of the practice (if such intent is not already apparent from the context)”.⁷³
- Section 55 outlines “prohibited commercial practices”. Under this section, an influencer who posts commercial content “shall not” use “editorial content in the media to promote a product (if a trader has paid for that promotion) if it is not made clear that the promotion is a paid promotion, whether in the content itself

^{xxii} The UCPD guidance states that “In case the influencer is endorsing its own products or business, the same rules will apply. The commercial intent of the communication must always be declared in such cases”. See UCPD Guidance, sub-section 4.2.6.

^{xxiii} Section 2 of the 2007 Act defines a trader as “as a person who is acting for purposes related to [their] trade, business or profession” or “a person acting on behalf” of a trader. Individuals who promote goods or services on behalf of a business are considered to be a trader under the 2007 Act and this would include social media influencers. To this end, a social media influencer who engages in a “misleading commercial practice” or in a “prohibited commercial practice” (as outlined above) would be in breach of the 2007 Act.

or in any oral, written, visual or descriptive representation in the promotion”.⁷⁴ In addition, under this section, an influencer who posts commercial content “shall not” “[make] a representation or [create] an impression that the trader” (who in this case is the influencer)^{xxiv} “(i) is not acting for purposes related to the trader’s trade, business or profession, when the trader is so acting, or (ii) is acting as a consumer, when the trader is not”.⁷⁵

As mentioned above, there are a number of changes forthcoming to the law in this area. These include the Digital Services Act⁷⁶ and the Online Safety and Media Regulation Bill 2022.⁷⁷ The Digital Services Act (DSA) will be particularly relevant to this space as it will introduce new obligations for digital service providers and online platforms that operate in the EU. In particular, the DSA will introduce new requirements regarding online advertising, notice mechanisms for illegal content and internal complaint-handling systems.^{xxv} The DSA was finalised on the 16 November 2022 and once in effect it will have important implications for influencer marketing (for a more in-depth discussion of the DSA, please see Appendix A).⁷⁸

1.5 ENFORCEMENT

The CCPC has powers to enable it to determine if a breach has occurred for prohibited and misleading commercial practices. These include the power to require the production of business information and additional information if necessary. When the CCPC has established a breach has occurred it can use its enforcement powers. The CCPC also has a range of interventions, which it can use in addition to or instead of its enforcement powers.

The use of enforcement and intervention are intended to provide a proportionate response to particular breaches with the principle aim being to provide a flexible and proportionate approach in line with the CCPC’s prioritisation principles.⁷⁹ Enforcement options include compliance notices, fixed payment notices, undertakings, prohibition orders and criminal proceedings.⁸⁰

Fines and penalties may be levied by the Courts. In addition, the Court can also require a trader to take corrective action or publish a corrective statement.⁸¹ The 2007 Act also allows for consumers to take civil action against traders.⁸² There are other ancillary orders, such as consumer redress covering the costs of the proceedings and compensation orders for affected consumers available to the Courts.⁸³

^{xxiv} As noted above, under Section 2 of the 2007 Act individuals who promote goods or services on behalf of a business are considered to be a trader under the 2007 Act and this would include social media influencers.

^{xxv} DSA, Article 16, 20 and 26.

2. THE RISKS OF INFLUENCER MARKETING

International research undertaken to date in relation to influencer marketing and consumer protection has highlighted a number of areas of concern relating to: (i) recognisability; (ii) lack of transparency; (iii) specialisation and trustworthiness. The relevant literature is discussed below and the findings from this research are considered under these themes.

2.1 RECOGNISABILITY

Unlike traditional forms of marketing, any individual can potentially become an influencer. This change has meant that a diverse range of individuals can offer their perspectives on products and brands.

Influencer marketing has been likened to user-generated marketing as it can lead to a word-of-mouth sales promotion.⁸⁴ Successful influencers have the ability to shape the opinions and purchasing decisions of consumers⁸⁵ and it is for this reason that brands increasingly look towards influencers to increase brand exposure.⁸⁶

Influencer marketing is also similar to “native advertising” as the commercial content is within the everyday media content and does not interrupt it.⁸⁷ The consumer response to online marketing is not the same as the consumer response to traditional forms of advertising or marketing.⁸⁸ Individuals using the internet are “more averse to overt advertising” and as a result, online advertising has to be “softer, less overt, and more authentic”.⁸⁹ In this respect, the perceived greater subtlety of influencer marketing makes it more acceptable to consumers and promotes their engagement with the content (in contrast to banner advertisements, which may be off-putting to consumers and which they may choose not to engage with).⁹⁰ As a result, consumers are exposed to advertising embedded within their social media content which impacts their perception of products and brands.

Some international research suggests that consumers who are familiar with social media feel “confident” that they can identify when an influencer is engaging in marketing.⁹¹ However, a study conducted by the Danish Competition and Consumer Authority (DCCA) found that 56% of adults did not readily recognise commercial content on Instagram, while 38% of the children across age 6-12 were unable to recognise video-based commercial influencer content as advertisements.⁹²

Both Irish and European law specifically prohibits advertising that amounts to a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them. Another study focusing on adolescents found that early adolescents did not understand the persuasive intent of influencers’ commercial content when the information was not stated in a disclosure. Middle adolescents were able to recognise advertising and understand the persuasive intent only when this was disclosed. Adolescents are still developing

the cognitive processing skills which are necessary to apply and activate literacy skills for advertising.⁹³ Thus, they may be potentially vulnerable to influencer marketing.

CCPC FINDINGS ON RECOGNISABILITY

In the case of Ireland, almost 3-in-10 individuals follow an influencer, with those under the age of 35 (60%) and women (39%) more likely to do so. Instagram is the most popular platform for following influencers across all demographic categories. Indeed, 89% of respondents who follow influencers do so on Instagram, almost three times the number of people who follow influencers on Facebook (which is the third most popular platform for following influencers).

When asked about their familiarity with the term “influencer”, approximately 4-in-5 respondents stated that they were familiar with the term (78%). Familiarity varied by age, with 96% of 18–24 years old reporting being familiar with the term. This familiarity gradually decreased across the age categories from age 25 to 64 (dropping from 91% amongst 25–34 year olds, to 76% in the 55–64 category). The lowest percentage familiarity was reported in the category 65+, with only 50% of the respondents in this age group stating that they were aware of this term. Gender did not seem to impact the awareness of influencers with 77% of men and 80% of women reporting familiarity.

The focus group research shows that consumers’ understanding of what constitutes an influencer is not universally well understood. There were negative feelings associated with the term influencer with many consumers hesitant to refer to the individuals that they followed as influencers.

“I don’t like the term influencer, I don’t think it’s helpful. I don’t see myself in those terms, I see myself as an author, a coach.” **Influencer**

“Influencer is almost a negative term I think, they’re very like, ‘buy this product, oh it’s great’, and they’ve never used it. That’s what I think of them, a lot of them, yeah but the people I follow, I wouldn’t call them influencers.” **Male Consumer, 18–24**

“There is so much advertising content on it, but it’s not exactly like TV or whatever because you choose to engage with these people, you can stop if it gets too annoying.”

Female Consumer, 25–34

“Other people follow influencers, I follow people that are of interest to me.” **Female Consumer, 25–34**

Rather they saw themselves as having a more genuine, personal and trust-based relationship with the individuals that they choose to follow, using alternative terms such as “interactive celebrities” or “people of interest”. They did not readily agree that these terms were interchangeable with “influencer”. Influencers themselves see their accounts as presenting specialised information or allowing them to interact with the public on their own terms. In their minds their profession or interest (sports star, media personality, life coach, etc.) is the primary function of the account.

This view raises concerns around the degree of control that consumers perceive they have in their exposure to influencer marketing, and by extension their ability to recognise it. Consumers think they can curate their own timelines and remove influencers who they do not like or who they perceive to be over-commercial. In general, the consumer will have a high level of trust in the influencer they choose to follow. This sense of control can be an illusion, built on the overestimated ability to distinguish commercial from organic content. These factors mean that consumers can fail to notice commercial content if it is not tagged, and even if content is noticed their first action might be to unfollow the influencer rather than report the content.

Most Irish consumers claim to be aware of advertising by influencers, with 77% stating that they found it easy to tell the difference between regular content and advertised content.^{xxvi} However, this was not as clear cut when explored in the focus groups as several influencer marketing examples shown to consumers caused confusion around the actual nature of the post. When traditional tags such as #AD were included, these posts were easily identifiable. However, in instances where no tags were present, where tags were not immediately visible, or where custom tags were used, this caused confusion amongst participants as to the nature of the content.

2.2 TRANSPARENCY

To limit issues in differentiating between influencer marketing and traditional content, commercial content should be clearly identified and responsibility for the disclosure should rest with “the party that publishes the content”.⁹⁴ However, this research indicates that influencers do not always clearly label or tag posts to state that they are promoting a brand or product. In cases where an influencer does attach a hashtag, the meaning may not always be evident to consumers. As a result, consumers may not be aware that the content they are engaging with is commercial in nature.⁹⁵ Therefore, they may potentially place more reliance on the accuracy of the information provided than they would if they knew that the content was the result of a commercial relationship.

As set out above, influencer marketing is often considered a form of “native advertising”, in that it may blend to match other non-advertising content.⁹⁶ Where content is not clearly labelled, this can put consumers at risk of confusing an “advertisement...with consumer word of mouth”. This can particularly be the case for influencer marketing, as consumers may be less guarded toward a post made by an influencer they follow (with whom they feel they have a connection) rather than if a post was directly put

^{xxvi} 73% of consumers in a recent online study commissioned by the Advertising Standards Authority for Ireland (ASAI), stated that they were “familiar with the practice of influencer marketing”. See ASAI (2021) Over half (51%) of people in Ireland say they are concerned by a lack of transparency in influencer marketing according to research conducted by the Advertising Standards Authority for Ireland. Available at: <https://www.asai.ie/press-releases/over-half-51-of-people-in-ireland-say-they-are-concerned-by-a-lack-of-transparency-in-influencer-marketing-according-to-research-conducted-by-the-advertising-standards-authority-for-ireland/>.

up by a brand.⁹⁷ As a result, consumers may potentially be more susceptible to the advertising by an influencer than traditional forms of advertising.

Transparency through clear labelling is important for consumer cohorts that may be “particularly vulnerable” to unfair practices or the specific product that is being advertised by virtue of their “mental or physical infirmity, age or credulity”.⁹⁸ International studies have highlighted transparency issues related to discrepancies in the labelling of influencer content. For example, the French advertising self-regulatory organisation, ARPP (Autorité de Régulation Professionnelle de la Publicité), utilised artificial intelligence (AI) to review influencer posts to evaluate disclosure compliance.⁹⁹ The results showed 47% conformity with the guidelines.

It is important to note that actions related to transparency can be influenced by other ethical issues such as autonomy. A recent study noted that “in collaborations, the paying party may feel entitled to make demands on the conduct of the contracted party”.¹⁰⁰ Any such interference into autonomy of influencers by brands can influence the content and labelling of sponsored posts. This can also extend to the relationship between influencers and agents.

CCPC FINDINGS ON TRANSPARENCY

The CCPC identified a number of issues relating to the transparency of commercial content during its observational analysis of 70 Irish influencers.^{xxvii} Of the commercial posts that were reviewed, 48.4% (39.9% Advertisement and 8.4% Gift) were not tagged in any way. Over two-thirds of these non-tagged posts were related to the promotion of own brand (where products are manufactured specifically for the influencer) content, while the rest were associated with general brand partnerships. The findings of the observational analysis are discussed in greater detail in Section 3.

“If you’re being paid for something or gifted it or whatever, then yes you need to declare it. It would be dishonest to your followers not to, I think everyone would agree with that.”

Male Consumer, 35+

Focus groups participants considered transparency to be important. There was universal agreement among participants of the focus groups and interviews that where an influencer is paid to promote a product/service or is gifted the product/service then either situation should be clearly tagged^{xxviii}.

Consumers expressed a preference for a small number of very clear tags such as “advertisement”, “paid partnership” and “gifted”. They also highlighted custom tags

^{xxvii} Discussed in greater detail in Section 3. ^{xxviii} The current ASAI Guidance Note only requires gifts to be labelled if there is an element of brand control whereas the Consumer Protection Act 2007 requires full disclosure. However, reference is made to the fact that the Consumer Protection Act 2007 requires gifted products/services to be disclosed. See ASAI (2021) Guidance Note: Recognisability of influencer marketing communications. Available at: <https://www.asai.ie/wp-content/uploads/ASAI-Guidance-Note-Recognisability-of-Influencer-Marketing-Communications-Feb-21.pdf> and Consumer Protection Act 2007 ss 43 and 46.

and abbreviated tags as something to be discouraged as they can be confusing for some consumers. In the interviews with influencers, the influencers who consider social media to be a main source of income also expressed a desire for simple and clear guidance on tagging. Accuracy with tagging commercial content was seen as less important by those influencers who have alternative sources of income.

In relation to the placement of tags, participants acknowledged that tags should be included at the top of the post where they are clearly visible but overall it was not an issue that they are particularly concerned about. For many, an influencer demonstrating that they have made some kind of “effort” is the most important thing. However, there was agreement that it was in everyone’s interest for there to be greater clarity around this issue in the longer term.

The inconsistencies in the style of labelling used by Irish influencers suggest that they may predominantly be taking direction on labelling from brands rather than guidance provided by the ASAI. This was further supported in the interviews with influencers and an agent, where the difference in the standard of labelling direction given by brands was noted.

2.3 INFLUENCER SPECIALISATION AND TRUSTWORTHINESS

The success of influencer marketing is often linked to consumers placing a high level of trust in influencers.¹⁰¹ However, it seems that this trust is specific to the influencers that consumers themselves follow and not influencers in general as this profession regularly receives the lowest trust score in surveys.¹⁰²

Consumers may develop what is termed as a “parasocial” relationship with an influencer, meaning that they develop a “one-sided” connection with an influencer which they can identify with.¹⁰³ As a result, a consumer may feel a sense of closeness with an influencer and this may make them more vulnerable to persuasion as they may place more value on their recommendations.¹⁰⁴

In order to build recognition, influencers tend to produce content in relation to one specific area, e.g. beauty, health & fitness, etc. By influencers “specialising” in one area, consumers tend to be “more likely to accept or trust influencers’ opinions when those influencers collaborate with brands that correspond well to their personal areas of expertise”.¹⁰⁵ As a result, consumers may be potentially misled into buying products that are promoted by influencers that they follow in the belief that the influencers themselves use them and that they are a worthwhile purchase as a consequence. Consumers may not realise that, in some instances, influencers are paid to promote some of these products.

Specific concerns for consumer welfare have been raised in the context of “finfluencers”, who are influencers that produce financial content on a range of money-related matters including investments and crypto.¹⁰⁶ Specifically, individuals

who engage in investment online in response to watching content by influencers may feel as if they “can relate” to them and that if they locate the right information that they can make money through their investments.¹⁰⁷ However, there are important issues in relation to the transparency of financial content that is posted by influencers. Influencers may fail to highlight the financial “risks” that are linked with specific financial investments or they may not clearly identify to consumers that their content is a commercial representation that is a source of revenue for them (i.e. through affiliate links, sponsorships, etc).¹⁰⁸ This may result in particular detriment for consumers, who may suffer financial loss as a result of their investment in financial products such as cryptocurrencies. In March 2022, the Central Bank of Ireland published a warning about the risks of investing in crypto-assets, stating that consumers need to be aware of the risks posed by misleading advertisements in this area, particularly on social media.¹⁰⁹ Previous research by the CCPC found that “1 in 3 under 35s use social media for investment information”.¹¹⁰

Similar concerns about influencers and their potential negative implications for consumers are now starting to emerge internationally. The Dutch Authority for the Financial Markets (AFM) conducted an exploratory study of 150 influencers in 2021. This study indicated that influencers are often not protecting the interests of consumers and are not acting transparently when they are promoting companies for their own financial gain. The AFM has since contacted influencers to advise them of their obligations under Dutch law and in their report, they stated their intention to conduct “follow-up investigations” in 2022.¹¹¹ In 2021, the financial market regulator in Spain (Comisión Nacional del Mercado de Valores) publicly requested influencers and public figures to be responsible and to protect individuals from suffering losses from “fraudulent” transactions.¹¹²

As of January 2022, the Comisión Nacional del Mercado de Valores has introduced new rules for influencers who advertise crypto, requiring them to attach warnings to their promotions (if they have more than 100,000 followers) and requiring them to notify the Comisión Nacional del Mercado de Valores 10 days prior to publishing any content promoting “crypto assets”.¹¹³ In November 2021, the Australian Securities and Investments Commission (ASIC) also established their position on influencers by issuing a statement advising companies to be “cautious when engaging influencers as their promotion may breach Australian law if influencers are perceived as providing financial advice without an appropriate licence.¹¹⁴ Furthermore, the Financial Markets Authority (FMA) in New Zealand released a guide for influencers entitled “A guide to talking about money online” in 2021.¹¹⁵ The U.S. Securities and Exchange Commission (SEC) has taken action against a number of influencers for not disclosing that they had been paid to promote cryptocurrency on social media. The most recent case was in October 2022 when Kim Kardashian was fined \$1.26 million for not disclosing that she was paid for an Instagram post promoting EthereumMax tokens.¹¹⁶

Social media platforms are also starting to consider influencers.^{xxix} TikTok and Meta (which is the parent company for Facebook and Instagram) both have “branded content” policies which expand upon their Terms of Service and address financial

^{xxix} See Appendix D for further information on social media platform policies.

content and crypto.¹¹⁷ In July 2021, TikTok notably updated their rules to prohibit the publishing of content promoting “financial services and products”. This is in addition to the existing prohibition on advertising cryptocurrencies.¹¹⁸ The Meta “Branded Content Policy”, on the other hand, does not have an absolute prohibition on branded financial content. Instead, this policy restricts the publishing of branded content in relation to “financial and insurance products and services” to individuals over the age of 18 and influencers require written authorisation from Facebook to publish any content promoting cryptocurrencies.¹¹⁹

CCPC FINDINGS ON SPECIALISATION AND TRUSTWORTHINESS

The survey results show low levels of trust overall towards influencers with just 10% of respondents stating that they trust information provided by influencers when they are buying products online. In contrast, 24% and 43% of consumers state that they trust media reviews and consumer/online reviews respectively when making purchases online. Women under 35 are more likely to follow (77%) and trust an influencer.

Despite the low level of trust amongst respondents, 60% stated that they have recommended a product to their friends or family and two-thirds (66%) of the respondents had bought a product as a result of an influencer mentioning it.

An important finding in the context of consumer detriment was that 24% of consumers who purchased a product as a result of an influencer promoting it stated that they subsequently felt misled about the product that they had purchased. Almost half of consumers who bought a product recommended by an influencer stated that the main reason they purchased the product was due to the influencer’s opinion of the product. This was notably more important than their preference for the product, as only 15% stated that they purchased a product because they “liked the product”.

While most participants in the focus groups felt they would be able to identify commercial content, there was concern regarding “vulnerable groups” such as children and teenagers who did not have the same life experience. This was of particular concern in the area of crypto where participants felt there was a much higher risk for consumers to be misled. The rise of concerns surrounding influencers internationally is significant from an Irish perspective, as half (51%) of the consumers surveyed stated that the influencers they follow are based outside of Ireland. This suggests that even if finfluencing is not popular amongst Irish influencers it may still be affecting Irish consumers as they may be following financial content produced by international influencers.

Consumers were asked to rank – using a five-point scale from “not at all important” to “very important” – how important an influencer’s environmental friendliness, qualifications, ethical consciousness, social media following and fame outside of social media was to them. Ethical consciousness (for example, whether they promote fair trade or animal rights) and how environmentally friendly a particular influencer was perceived to be were ranked as the most important factors (with 65% ranking ethical

^{xxx} As of 2022, TikTok and Meta (Facebook and Instagram) have broader “branded content” policies. YouTube has a section on “paid product placements, sponsorships & endorsements” in their “Advertising on YouTube Policies”. Twitter has a section on “paid partnership” as part of their platform use guidelines under the heading “About rules and best practices with account behaviours”. Finally, Twitch has a section in their terms of service regarding “Endorsements/Testimonials”. See Section 5 for more details on social media platforms’ policies and functions. ^{xxx} As of 2022, the TikTok Terms of Service for the EEA states that a user’s account can be suspended or terminated if a user breaches “any incorporated agreements, policies or guidelines”. Facebook Terms of Service specifies that users can’t breach “other terms and policies”.

consciousness as “important” or “very important” and 56% ranking environmental friendliness as important or very important). More than half of the respondents stated that the number of followers (55%) or the fame of the influencer outside of social media (53%) was “not at all important” to them.

Notably, respondents appeared to be quite divided regarding the need for relevant qualifications that align with the content they produce. 43% of the respondents stated that such competence was either important or very important, whilst 38% of respondents indicated that it held low to mid-level importance for them. This finding is worrying as a significant portion of consumers may be taking advice from ill-informed influencers across particular areas (e.g. finfluencers).

The approach taken to guidance by social media platforms in this space and in relation to broader influencer content is not universal. Whilst TikTok, Facebook, Instagram, Twitter, YouTube and Twitch all provide some degree of guidance regarding content that would fall within the remit of influencer marketing,¹²⁰ the terminology used and format that this guidance takes varies.^{xxx} In addition, the Terms of Service¹²¹ for a number of these platforms do not clearly state that members who use their service are obliged to follow their rules regarding “branded content” or “paid partnership” etc.^{xxxi}

As influencer marketing content is a growing industry and it can have significant implications for consumers, the CCPC believes there is an imperative for all social media platforms to provide consistent policies in relation to “branded content”, to clearly require users to follow these policies in their terms of service and to act with swiftness upon receipt of complaints. If users breach these terms of service and branded content policies, there should be a clear reporting procedure and these terms of service should be enforced. Finally, given the potential risks that may be posed by finfluencing and content on crypto in particular, there is an additional need for all social media platforms to specifically address financial influencer content.

This would include their “branded content policy” but this is not directly mentioned and can only be found by clicking on the hyperlink at the end of the policy titled “Facebook, Pages, Groups and Events Policy”. YouTube and Twitter terms of service adopt a similar approach, as both link to other broader policies (advertising policy on YouTube and Twitter Rules and Policies) and it is through this link that their guidance can be accessed. However, it is not evident at first glance that the guidance relevant to influencer marketing is contained there. Only Instagram Terms of Use and Twitch Terms of Service clearly outline the rules in relation to branded content/ endorsements and testimonials. The Instagram Terms of Use specifically states that a user who publishes “branded content” “must comply” with the “branded content policy”, whilst the Twitch terms of service directly includes provisions regarding “endorsements/testimonials”.

3. GUIDANCE AND EDUCATION FOR IRISH INFLUENCERS

The market for influencers has expanded significantly in recent years. However, the industry is still in its infancy. As can be seen from the previous sections, there is much uncertainty for consumers, influencers, brands and agents around the appropriate identification of influencer marketing. This section seeks to: (i) examine the guidance that is currently in place for Irish influencers and the degree to which influencers are utilising this and (ii) explore the educational options on offer for individuals interested in a career as a social media influencer.

3.1 GUIDANCE

Self-regulation organisations (SROs) can play a role in promoting transparency and may also provide prescriptive guidance on the specific expectations on influencers.¹²² The UCPD Guidance (discussed above) recognises the role of SROs in developing codes of conduct and enforcing standards under Article 10 of the UCPD.¹²³ These self-regulatory codes of practice can create another means for enforcement (through the bodies themselves) and can also inform “national authorities and courts in assessing whether a commercial practice is unfair”.¹²⁴

In Ireland, the ASAI is responsible for the self-regulation of advertising and marketing communications. It is financed by the advertising industry but operates wholly independently.¹²⁵ Its “Code of Standards for Advertising and Marketing Communications in Ireland” (the ASAI Code) sets out the standards which apply to “marketing communications” including those published in print media, emails, television, radio and digital advertising.¹²⁶

Under the ASAI Code, a “marketing communication” is defined as “advertising, as well as other techniques such as promotions, sponsorships and direct marketing, and should be interpreted broadly to mean any form of communication produced directly by, or on behalf of, advertisers intended primarily to promote products, to influence the behaviour of and/or to inform those to whom it is addressed”.¹²⁷ It states that “[m]arketing communications in the media and sales promotions should be legal, decent, honest and truthful and should not mislead the consumer”.¹²⁸

The ASAI Code applies to “advertisers, promoters and direct marketers” and should also be followed by any individual “involved in the preparation and publication of marketing communications and in the design and execution of mail order operations and sales promotions”.¹²⁹ This can be read to include influencers who post commercial content on social media. The specific publication of marketing communications by influencers on social media platforms is not directly addressed.

However, it contains specific provisions in relation to alcoholic drinks, advertising to children and health and beauty, which are of relevance to influencers.¹³⁰ In addition, there are general provisions within the ASAI Code that are relevant to influencers (see Appendix B for more information).

Included in the ASAI enforcement activities is a complaints management system.¹³¹ A complaint can be made by an individual consumer, interest group or competitor if they feel that an advertiser may have breached the Code. If the complaint is deemed to have merit it can be investigated and, if found to be in breach, an enforcement action taken. For influencer related complaints thus far, this has typically meant an order to amend or withdraw the offending communication and a notice that it should not be issued again in its existing format.^{xxxii} A case report can also be issued which confirms the action that is required to be taken by the advertiser. In some cases, this is completed before adjudication. The ASAI monitors compliance with these required actions and follows up where necessary to ensure compliance.¹³² Further information on aspects of the complaints process under the Code is available in Appendix B.

In February 2021, the ASAI published a “Guidance Note on Recognisability of Influencer Marketing Communications” (ASAI Guidance Note).¹³³ It provides specific guidance on influencer marketing and how to ensure that commercial content can be clearly identified as such. The ASAI Guidance Note states that where there are specific forms of commercial relationship between influencers and brands, it must be clear that their posts are marketing communications. The following are examples of influencer marketing communications according to the Guidance Note:¹³⁴

- Where an influencer promotes a company’s products on their own social media channel and they have entered into a “commercial relationship” to do so.
- A review where an advertiser has paid an influencer (“directly or in kind”; for example, by providing a “free product”) and where the advertiser has “control over the content of the review”. If an influencer receives free products “with the requirement that they provide a positive review”, this would be considered a “marketing communication” and this should be clearly identified. However, if a review is not specifically required, then it does not have to be marked as marketing.
- Where influencers create content for their own brands or services, or provide “affiliate links” in their content (through which they may receive a percentage of money).

^{xxxii} See, for example, a complaint regarding an influencer on the ASAI’s complaint bulletin (reference 37047): Advertising Standards Authority for Ireland (2022) Health & Beauty (Makeup). Available at: <https://www.asai.ie/complaint/health-beauty-makeup/>.

3.2 EDUCATION

Education and outreach is also an important role of SROs, as not all influencers will be aware of their obligations regarding disclosure of commercial content.¹³⁵ Consumer protection authorities, SROs, brands, agents and social media platforms may all play a role in educating influencers to ensure that they comply with their disclosure obligations.¹³⁶ The ASAI, for example, hosted an event for influencers (where the CCPC attended as a guest speaker) in 2021.¹³⁷ This event provided an opportunity for influencers to “learn more about advertising best practice in the Influencing Marketing space”¹³⁸ and represented an important step toward increased interaction with the industry.

Education options outside of such ad hoc interventions are limited, but growing. The South East Technological University (SETU), previously Institute of Technology (IT) Carlow, offers a free “Digital Hustle” summer course for aspiring teenage influencers.¹³⁹ The course is financed by the Higher Education Authority and features academic lecturers and guest influencers. Coláiste Dhúlaigh in Dublin also offers a QQI Level 5 course titled “Social Media Influencer”.¹⁴⁰ Neither of these courses however appear to cover legislative and regulatory responsibilities at present.

SETU are also planning to launch a QQI Level 8 degree course in content creation and social media. The first intake is intended to enter in September 2023, but this has not yet been fully confirmed. The content of the course has also not been fully disclosed, but SETU have indicated to the CCPC that there will be two modules covering relevant legislative and ethical content.¹⁴¹

One course specifically focused on this area is offered by Kings Inns. The “Advanced Diploma in Social Media and Media Law”¹⁴¹ course covers legal regulation of social media environments, obligations and rights of practitioners in the area, and emerging developments in social media law.

This is an area of increasing focus in other countries such as France where the ARPP, France’s advertising SRO, offer an accredited course in Responsible Influence.¹⁴³ This course trains influencers to be transparent in their marketing particularly for areas such as health, cosmetics, food and with respect to vulnerable consumers such as children. More and more brands in France are now requiring influencers to complete this course before they will engage in collaborations.¹⁴⁴

When considering how best to improve the education of influencer in terms of compliance it seems that an all-inclusive approach will be the most effective. As part of this research, further consideration was given to examining the relationship between the size of the influencer and the number of posts deemed to be potentially non-compliant. The data collected as part of the observational analysis showed that there was no significant relationship between these two variables – i.e. the rate of insufficient posts neither increases/decreases with an increase/decrease in the size of the influencer. This is an important point as established influencers with large numbers of followers and good reputations are often assumed to be tagging correctly. Participants in the focus groups and interviews felt that more established influencers could be trusted as they would not be able to retain brand relationships or followers if they were consistently misrepresenting their content. This logic is circular (and flawed) – they must be posting appropriately because they have high profiles, but equally they have high profiles because they are doing things by the book. Activities to educate and inform influencers should not therefore be targeted solely towards influencers of a smaller following (i.e. nano and micro).

The findings from the interviews show that influencers tend to take direction from brands rather than follow a specific set of regulatory guidance. This is concerning given that the standard of guidance from brands can vary significantly as noted by the influencers interviewed as part of this research. In light of this, it is also important to consider how brands (of all size and age), can be more effectively educated in the area of influencer marketing. We believe that with the professionalisation of influencers and the drive by platforms for influencers to monetise their content, there is potential for courses and other activities to be developed in Ireland to educate influencers and to specifically address their legal responsibilities. Such activities would support influencers to comply with the law and ensure that consumers are protected, whilst also enabling influencers to engage more effectively with agents, brands and platforms.

3.3 CCPC OBSERVATIONAL ANALYSIS

In order to further understand the ways in which Irish influencers are tagging commercial content, the CCPC undertook an observation analysis of 70 Irish influencers on social media for a 2-week period.

Over 7,500 stories, photos, reels and videos were analysed and 28% of these posts were identified as being commercial in nature. The content reviewed covered six categories: Beauty & Fashion; Health & Wellbeing; Entertainment; Gaming; Celebrities (including sports stars); and, Finance & Other. A representative mix of micro, macro and mega influencers were selected with follower numbers ranging from 16,000 to 44 million.

These commercial posts were analysed in the context of requirements under the 2007 Act, advice in the ASAI Guidance Note^{xxxiii} and observations of international practices, including:

- The presence of a hashtag (tags) to identify commercial content (both advertisements and gifts).^{xxxiv}
- Clear positioning, size and colour of tags so that they are immediately visible to consumers.
- Clarity of tag meaning (i.e. no abbreviations^{xxxv} or custom tags) to ensure consumer comprehension.

A summary of the extent of these issues identified during the 2 weeks of analysis is provided in Table 1.

Table 1: Key issues identified under commercial content (Summary)

Commercial Posts (as % of total posts)	28.5
Key Issues Identified	%
No Tag/Label	48.4
- General Commercial Content	32
- Own Brand Content	67.9
Poor Visibility	19.7
Poor Clarity	14.6
Reposts ^{xxxvi}	7.7
Posts with at least one issue	66

Note: In some cases content had multiple issues

As shown in Table 1, 48.4% of commercial posts (39.9% Advertisement and 8.4% Gift) were not tagged.^{xxxvii} Almost 68% of these non-tagged posts were related to the promotion of own brand^{xxxviii} content, while 32% were associated with more general advertisements. Poor visibility (i.e. positioning, sizing, colours) and clarity (i.e. abbreviations or unclear terms) were also identified as issues with 19.7% and 14.6% of commercial posts respectively falling outside of what is considered good practice in these areas.

^{xxxiii} This Guidance Note as discussed above. ^{xxxiv} "Context" was not included as a criteria given its subjective nature. However, consideration was given to verbal cues. ^{xxxv} With the exception of #AD ^{xxxvi} Where an influencer shares content originally posted on a brand's own page and does not sufficiently identify the commercial relationship in the repost. ^{xxxvii} Only post where the CCPC could identify the presence of a commercial relationship were included. Some influencers may include brands in posts as personal reviews or in an effort to secure a commercial relationship with the brand in the future. ^{xxxviii} Where products are manufactured specifically for the influencer.

Table 2: Key issues identified under commercial content (by sector)

	Beauty & Fashion	Health & Wellbeing	Entertainment	Gaming ^{xxxix}	Celebrities (inc. sport stars)	Finance & Other
No Tag (%)	50.6	15	40.4	100	40.2	61.3
General (%)	36.2	56.3	35.4	4.2	11.4	23.2
Own Brand (inc. reposts) (%)	63.8	43.7	64.6	95.8	88.6	76.8
Poor Visibility (%)	24	10.3	34.2	0	0.8	4.5
Poor Clarity (%)	17.8	5.6	24.8	0	2	1.9

As shown in Table 2, the extent of the issues identified varied across sectors with Gaming, Finance & Other, and Beauty & Fashion identified as the three sectors with the highest incidence of no tagging. However, the results for Gaming should be interpreted with a degree of caution given its smaller sample size in comparison to other sectors. The issue of visibility and clarity is more prevalent in the Entertainment and Beauty & Fashion sectors.

More specifically, the following were the most common issues observed during the analysis:

- Inconsistency e.g. appropriate tag used in first story but missing in consecutive stories. In addition, an influencer will label similar commercial content in different ways over short period of time (e.g. a day).
- Lack of consideration for how content would be displayed across different platforms and on different devices e.g. tags placed on top left-hand corner of screen which, when viewed on a mobile app instead of a web page, cannot be seen as they are blocked by a profile picture. This is particularly relevant as this research shows there is significant variation of platform usage across age and gender.
- Insufficient context e.g. verbal acknowledgement of gifted product in first story but no tags in consecutive stories.
- Use of 'poor visibility' tags e.g. tag placed amongst other text; colour of tag blends with background; tag placed at the bottom of post requiring consumer to select "see more".

^{xxxix} There is a relatively small sample size for the Gaming sector.

- Abbreviation and custom tags e.g. use of #ba, #sp and #af rather than brand ambassador, sponsored and affiliated. It was noted that some influencers posted custom tags with no other standard tags used (e.g. #iworkwith[company]).
- Untagged posts which linked to sponsored content on other websites or blogs.

Given the results from the observational analysis around own brand posts and reposts, these two areas were explored further in the consumer focus groups and interviews with influencers and agent. The research shows that reposts can be considered a “grey area” for consumers and influencers. The tagging of reposts was not an issue previously considered by many of the participants in the focus groups. There was a general feeling that reposting occurs without much thought and it is likely that, for this reason, many influencers are not tagging this type of content as paid or sponsored.

Influencers may also feel that their followers are aware of who they have a commercial relationship with and as such do not consider it necessary to tag these posts. In the interviews, influencers also admitted that this was not an area that they had considered but would welcome clear guidance on the most appropriate approach. The influencers interviewed in this study recognised that transparency is important to the industry as a whole. It appeared that the more the influencer viewed the practice as a profession, the more likely they were to support guidelines that protect both the sector and consumers.

“In the end you just want to do right by yourself and your followers, like you want to portray a professional approach”

Male Influencer

Conversely, those for whom social media is only a small part of their income and/or activity appear to be more likely to take a passive approach, often going by whatever guidance a brand gives them.

“It’s not something that bothers me very much. I guess it depends, if the brand gives me direction to follow, I’ll try to do that, but some have a lot more instructions than others”

Male Influencer

“It’s such a new thing, there’s no rule book to it, I guess most people just start off and see how it goes and for sometimes it becomes how you pay your bills.”

Female Influencer

Influencers promoting their own brands/products are viewed differently to when promoting another brand's product. There was a general expectation amongst participants that influencers will use their platform to promote themselves and their products. Therefore, any promotion of own brand products feels organic. Such own brand promotion is viewed as different to a brand partnership, and this can affect how consumers perceive this content and can disrupt how a narrative is perceived.

"If it's her own stuff then that should be fair game, yes? It's her channel for promoting herself, or that's how I see it anyway."

Female Consumer, 18-24

Participants in the focus groups seemed to be less clear in their views on this issue. However, after being shown several clips of influencers promoting own brand products, it was acknowledged that it would be more difficult for a new follower or somebody who had stumbled across an influencer's posts without prior context to identify the content as own brand marketing, particularly if that influencer's name or face were not attached to the brand/product. It was suggested by some participants that a separate hashtag could be used to clarify own brand marketing. However, others felt that this could be covered under the regular "advertisement" label.

The lack of clarity and agreement in what should be done to label content both amongst consumers and influencers demonstrates the need for clear and consistent labelling. For brand promotions and gifted products, the research has shown that transparency can be lacking in how these are conveyed to consumers. Given that these are areas where some form of guidance and obligation is already in place, the added complexity when own brand or reposted content is included can clearly lead to increased consumer risk. In particular the CCPC has concerns about influencers reposting content from brands without telling their followers that they are paid by those brands. We similarly have concerns around influencers using their feed to advertise their own products without labelling those posts as advertisements. There are cases where tags have been used but the lack of uniformity in this area means that their usage does not aid consumer understanding to a significant extent. This demonstrates the need for clear, intelligible, unambiguous and timely labelling so that consumers, influencers, brands, platforms and regulators are all fully aware of what is required. In the CCPC's view, the more uniform this can be across international territories, the better, given the nature of social media use.

4. INTERNATIONAL APPROACHES TO REGULATION

This section provides an overview of international approaches to regulating influencer marketing. Differing approaches can yield alternative but equally effective results. International comparisons can be challenging due to the different cultural contexts and the variety of historical approaches to regulation in each country. The discussion in this section is not intended to be construed as a ranking exercise. Instead, it places Ireland within the international context and, where possible, highlights developments in other territories which might be applicable to influencer marketing regulation in Ireland.

There is a wide variety of international approaches across jurisdictions and relevant examples^{xi} are provided which have the greatest significance to the existing Irish context. The chosen countries have been selected for a number of reasons, including:

- their structural similarity to the Irish competition and consumer protection regulatory context (e.g. the UK and Australia);
- their similarity in approach to advertising regulation (e.g. France, Italy and Portugal);
- their alternative approach to advertising regulation (particularly in relation to influencers e.g. Germany and the Nordic/ Baltic states);
- their global importance in the area of influencer marketing (e.g. USA).

4.1 EUROPEAN CONTEXT: REGULATION OF SOCIAL MEDIA INFLUENCERS

As discussed in section one, the UCPD is the overarching piece of EU legislation in this area and guides individual Member States' approaches to compliance through the various consumer protection (or equivalent) legislative instruments. While the UCPD provides the legislative context for regulation, the majority of Member States also have national advertising self-regulation organisations (SROs) operating in the area of advertising (though this does not always extend into influencer marketing specifically).

The European Advertising Standards Alliance (EASA) is a membership body for self-regulation advertising authorities across Europe. Members¹⁴⁵ include the majority of EU state authorities in addition to the UK, Turkey and Switzerland. EASA has been active in the area of influencer marketing,¹⁴⁶ publishing a Best Practice Recommendation on Digital Marketing Communications in 2015¹⁴⁷ and an EASA Best Practice Recommendation on Influencer Marketing in 2018.¹⁴⁸

^{xi} English translations of guidelines are not available in some cases.

The latter document takes a lead from the International Chamber of Commerce (ICC) Advertising and Marketing Communications Code (2018).¹⁴⁹ It sets out its view that influencer marketing should fall within the remit of SROs.

The EASA guidance refers to two specific elements as being important in defining a piece of content as a “marketing communication”: compensation and editorial control.

It gives a wide range of examples of “editorial control” from strict definitions (such as providing prescriptive messages) to wider-ranging provisions (e.g. a request for a positive review). The effect of these definitions can be seen across Europe and can place SROs who view control through a narrow definition at odds with statutory regulators working under the UCPD and nationally transposed legislation.

There is no one recognised meaning of the term “compensation”. Rather a spectrum of opinion is encompassed by this term, which ranges from the narrow definition of being a contract-based monetary agreement, to the provision of unsolicited free products at the broader end of the scale. The ASA’s concept of ‘control’ encompasses an obligation to follow direction and that compensation can be monetary, benefit in kind or free product/service. As set out in the ASA’s Guidance Note control is required to be present, gifting on its own is not sufficient to consider a post to be “commercial” in nature.¹⁵⁰

Recognisability and disclosure are important elements of EASA guidance in this space: “Recognisability of commercial communications is of paramount importance and is a cornerstone of responsible advertising”.¹⁵¹ The guidance is explicit in outlining the method of disclosure:

- It should be recognisable to more than just a specific group. This would mean that influencers should not assume that their followers will automatically be able to differentiate commercial from organic content.
- Disclosure should be instant. EASA recommends that national SROs should give examples of acceptable disclosure across different platforms and post types including: placement, visibility and wording.

The guidance highlights a quote from the ICC that, “overall responsibility for all aspects of direct marketing and digital marketing activities, whatever their kind or content, rests with the marketer”.¹⁵² However, it also points to an update of this, acknowledging “all parties concerned need to take into account that responsibility also applies to other participants in the direct marketing and digital marketing eco-system including: market influencers, bloggers and vloggers”. This latter interpretation is in line with most SRO guidance internationally and the classification of an influencer as a ‘trader’ under the UCPD and national legislation.

4.2 INTERNATIONAL SUMMARY: APPROACHES TO REGULATION

While differences exist across territories, there are several universalities that can be seen in how countries approach marketing communication on social media. A summary of approaches from the different countries examined in this review are outlined below.

4.2.1 GUIDELINE PUBLISHERS^{xii}

Across most countries within the EU and/or EASA members (in addition to Australia and U.S.A.) SROs play some role in issuing guidance. This is most visible in western and southern European states (such as Spain and France) where SROs are the primary source of information and guidance for influencer marketing. Regulation in these countries generally takes the form of SROs acting on complaints in the first instance and requesting the withdrawal of offending material. The approach to specific influencer guidance varies from country to country. In Ireland, for example, a guidance note on influencer marketing is considered as part of the wider complaints process but it is the general advertising Code as discussed in Section 3 under which action is taken. At the opposite end of the spectrum is the Netherlands where a specific “Advertising Code for Social Media & Influencer Marketing” was issued. Countries such as Czech Republic and Bulgaria have issued guidance which is officially linked to the overall code.

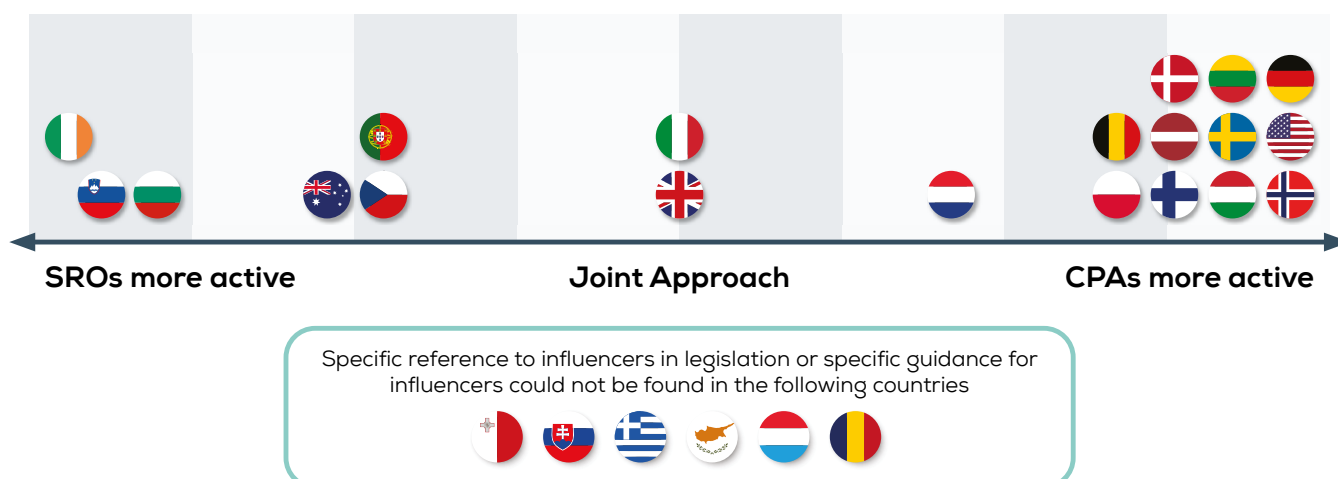
The USA, Nordic and Baltic states (in addition to Hungary and Germany) have taken the opposite approach, with consumer protection agencies issuing their own guidance to influencers. In many cases, these countries also have SROs present who may produce advertising standard codes, but often they have not done so in the case of influencer marketing.

There are also examples of collaborative approaches between SROs and statutory agencies. For example, in the UK the Competition and Markets Authority (CMA), the Committee of Advertising Practice (CAP) and the Advertising Standards Authority (ASA) have produced joint guidance on influencers.¹⁵³ In Italy the Istituto dell’Autodisciplina Pubblicitaria (IAP – Italy’s relevant SRO) has issued guidance on influencer marketing, and the Autorita’ Garante della Concorrenza e del Mercato (AGCM – the national competition and consumer protection authority) has taken cases against brands. In one such case, in 2020 the AGCM secured undertakings by the company to act in compliance with the IAP guidelines.¹⁵⁴

There are also some territories (such as Cyprus, Malta and Greece) that do not appear to have made specific reference to influencer marketing through either SRO or statutory agency guidelines. These countries typically do have consumer protection legislation and advertising codes which would cover the area in a broad sense but there would appear to be little to no specific enforcement on influencers under these.

^{xii} See Annex E for list of relevant guidelines and codes in different countries

Figure 2: Approaches to Publication of Influencer Guidance



4.2.2 MARKETING COMMUNICATION - DEFINITIONS

While many guidance documents take the approach of “if in doubt – tag it”, there are jurisdictional differences regarding what is specifically outlined as requiring to be tagged. For countries with SRO-led compliance guidance, the two key topics are those outlined by EASA: control and compensation. In the ICC and EASA guidance to these agencies these terms are described but it is left to local agencies to determine what they include in their own codes.

“Compensation” is generally homogenous across countries in EASA, with the majority now including any benefit (monetary or non-monetary) as being within scope for disclosure. This, in theory, would bring unsolicited items sent to an influencer, services provided for free, temporary usage of a product, etc all into scope, in addition to more formal arrangements with direct payment for commercial content posting.

However, differences exist in the extent of “control” that is required for content to be considered commercial in nature. Control refers to the level of influence the brand has over the influencer’s post. In Ireland, for example, the ASAI Code states that “marketing communication ...should be interpreted broadly to mean any form of communication produced directly by, or on behalf of, advertisers intended primarily to promote products, to influence the behaviour of and/or to inform those to whom it is addressed”. The ASAI Guidance Note for influencers requires that the brand has a degree of “control” to satisfy this definition in regard to influencer marketing. While “control” itself is not defined in the note, the ASAI approach to “control” is where an influencer is under an obligation to follow direction from an advertiser. The document goes on to state that “If the product is offered free, but with no expectation that there will be a review or that a review is positive (i.e. the advertiser has no control over any subsequent content) then the material is not marketing communications”.

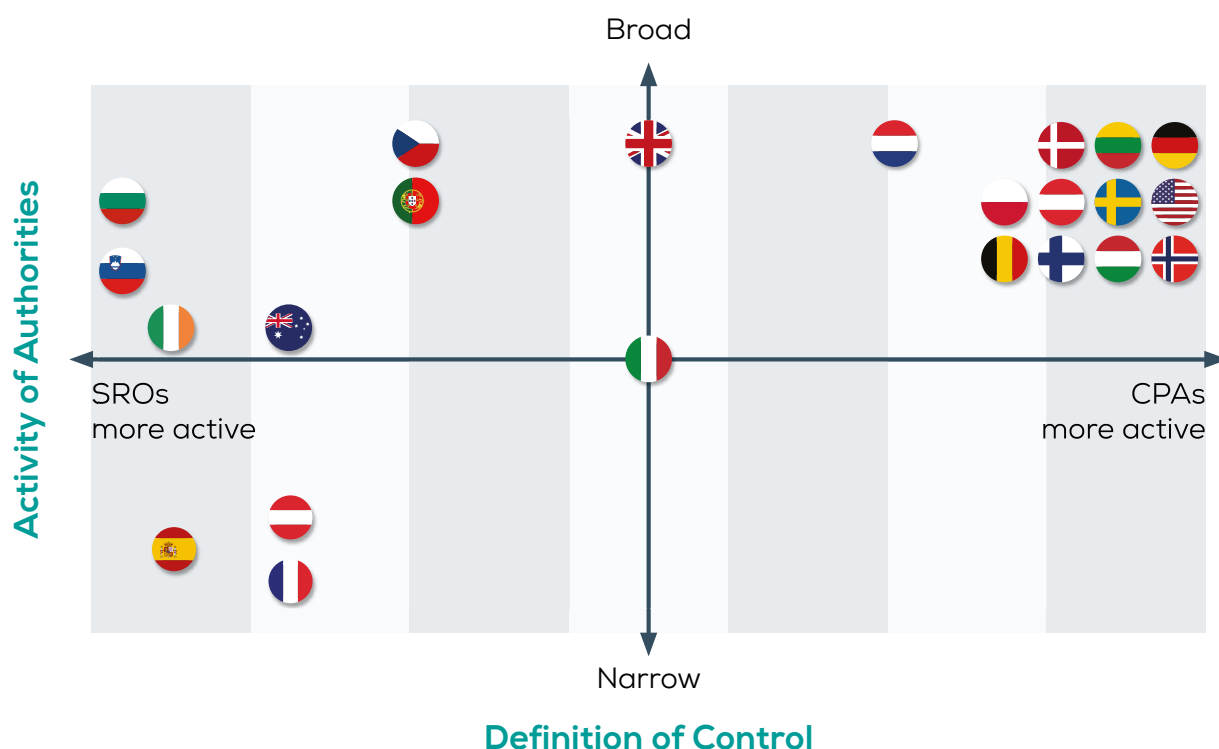
It is noted that the ASAI approach to “control” is similar to that of the ASA in the UK. However, the issuing of joint guidance between the CMA and ASA means that the control definition is broadened in the communication to influencers. Hence the difference in the countries’ placing in figure 2 above and figure 3 below.

The Austrian Advertising Council (Österreichischer Werberat) adopts a narrow definition where control is considered to be present when an advertiser “makes specifications or suggestions regarding texts, structure or the design of a post, such as requesting a positive rating, a certain number of posts or suggesting the use for specific social media channels”.¹⁵⁵

At the opposite end of this scale are codes such as that used in the Netherlands. The Dutch “Advertising Code for Social Media & Influencer Marketing” is a specific code in its own right, which states that, “if an Advertiser offers the Distributor (a chance of) any benefit (e.g. by granting a discount, free products or services or making a payment) for the distribution of Advertising through Social Media and such benefit affects the credibility of the communication in question, the relationship between Advertiser and Distributor must be clear”.¹⁵⁶ The code also gives the definition of ‘Social Media & Influencer Marketing’ as: “a marketing activity by an Advertiser that is directed at causing Distributors to communicate about a product or brand, whether or not on the direct instructions of the Advertiser”.¹⁵⁷ These two statements indicate that almost any financial or non-financial provision from an advertiser to an influencer would require a disclosure if the influencer subsequently posted about it.

The above definitions used by SROs in the Netherlands would be closer to what is generally considered applicable under consumer protection legislation in countries where statutory bodies have issued guidance and/or taken action against influencers. Generally, these countries use a wider definition of control in evaluating compliance with hidden advertising legislation. For example, the Federal Trade Commission (FTC) in the USA is explicit in their guidance on this area: “If a brand gives you free or discounted products or other perks and you then mention one of its products, make a disclosure even if you weren’t asked to mention that product”.¹⁵⁸ This is also seen in the approach of some European statutory bodies, e.g. the Finnish Competition and Consumer Authority (KKV) states “[i]n these guidelines, [the terms advertising, marketing communications and marketing] refer to measures a company takes in an effort to promote its sales or raise the profile of its brand”.¹⁵⁹ The updated UCPD Guidance also supports this approach.

Figure 3: International Approach to Communication of Definition of Control



4.2.3 MARKETING COMMUNICATION - LABELS

In Ireland, the ASAI guidance specifically mentions that “the context of the post or accompanying # [hashtag] may make it clear that it is a marketing communication”.¹⁶⁰ The use of “context” to provide clarity on a commercial communication is common in SRO codes but it can lead to a lack of clarity in terms of what it requires from influencers and when. Guidance which advises a form of “if in doubt - tag it” provides some level of additional clarity but codes in many countries, including Ireland, do not contain this specific advice.

Where disclosure is required, regardless of marketing communication definition, most codes will provide a list of acceptable terms, generally using #AD or #sponsored, or the national language equivalent. Ireland would, however, appear to be less specific currently about acceptable tags, either in legislation or advertising codes. For example, influencer guidance issued in both the UK and Australia specifically reference tags that are acceptable (e.g. “#advertisement”) and not acceptable (e.g. “#sponsored/#sp” and “#affiliate/#af”).

In general, there would appear to be a move towards simplifying tags to use just #advertisement for all marketing content – notably a number of countries are specifying that #AD is no longer appropriate. This is particularly the case in countries more focused on statutory regulation.

In Denmark, guidelines stated that #AD is not a sufficiently clear term, but this may be a linguistic issue to avoid confusion if the shortened English term is used.¹⁶¹ A similar approach is also adopted by the Consumer Rights Protection Centre Republic of Latvia (Patērētāju tiesību aizsardzības centrs) which recommends the use of Latvian language hashtags such as #advertising, #sponsored and #paidcooperation but does not include the hashtag #AD.¹⁶²

Placement of labels is almost universally stated as being required prior to, or at the same time as the consumer first engages with the content. Furthermore, most countries specify that the font should be clearly legible in terms of size, colour, etc. The Nordic countries in particular are very prescriptive on placement stating, for example, that disclosures should not be placed beside a distracting image. In Germany, the courts have clarified that the hashtag should not be placed below a “read more” button or in a hashtag cloud at the end of a post.¹⁶³ SRO codes and guidance tend not be as prescriptive in terms of layout and placement, but still broadly outline the same principles. An example of this is the ARPP’s “Digital Advertising and Marketing Communications Code” in France which states that commercial content should include an “explicit indication identifying the advertising as such, in order for the advertising nature to appear immediately”.¹⁶⁴

In countries with dual-national languages or where English might be commonly spoken in addition to the native language, it is common for codes and guidance notes to include a requirement that disclosures are given in the same language as the post e.g. the FTC guidance indicates that, where a post’s content is mainly in Spanish, the disclosure should also use Spanish rather than the English equivalent term.¹⁶⁵

4.2.4 ENFORCEMENT

Amongst countries where SROs are more active in providing guidance to influencers there is evidence of regulation through the SRO complaints system. This is seen in Ireland where the ASAI have upheld several complaints against influencers, and requested content removal and stated that the material should not reappear in the same format.¹⁶⁶

In some countries, statutory authorities are taking a role in information and compliance rather than enforcement. In Italy, where the AGCM has fully concluded an investigation, no enforcement action was undertaken.¹⁶⁷ Instead, the AGCM secured undertakings for future actions by the brand in relation to influencer marketing. In the UK, the CMA has also secured undertakings from Instagram to tackle hidden advertising on the platform¹⁶⁸ but recently indicated that the body would require increased powers to enforce consumer protection laws, including in relation to influencers.¹⁶⁹ The USA has taken a similar approach, with the FTC issuing warning letters to hundreds of influencers which could also be used in enforcement procedures in future if the influencers do not comply.¹⁷⁰

The FTC has also specifically targeted own-brand promotions by influencers through the use of both educational and follow-up warning letters, which specified that if they have a “material connection” to the product or service, this “relationship must be clearly disclosed, unless the connection is already clear from the context of the endorsement”.¹⁷¹

In countries where the statutory organisations are more active in providing guidance to influencers, there have also been a number of legal cases taken against influencers and/or brands/agents. In Denmark, for example, a judgment was given in October 2021 in a case taken by the Danish Consumer Ombudsman against an influencer.¹⁷² The court found that the influencer had “failed to comply with the prohibition against hidden advertising by not informing the consumer of the commercial aspect of the posts”. A fine was imposed, with the judgment noting that the fine was reduced from the amount requested by the prosecution due to two factors:

- The misleading practice could be ended by just labelling the posts.
- The products were well known and consumers would still have faced a transactional choice after clicking on the links to bring them to the website to purchase.

The case follows on from an investigation by the Danish Consumer Ombudsman in 2019 which resulted in four influencers being reported to the police.¹⁷³

In Hungary, the Hungarian Competition Authority (Gazdasági Versenyhivatal - GVH) pursued an investigation on the activity of three influencers in 2016 and received commitments from the companies who engaged the influencers to alter their current commercial practices. These commitments included that they would highlight that the promotions were paid for, that they would provide education on advertising and consumer protection, and that they would change their contractual terms to require paid promotional content to be identified when posted. Two of these influencers and their sponsor companies/intermediary agencies were subsequently fined in 2019 for not fully executing their commitments.¹⁷⁴

In Germany, there were three cases in September 2021 relating to influencers. They were heard by the Federal Court of Justice (Bundesgerichtshof) which stated that labelling would not be necessary on a post if an influencer did not receive or was not promised any remuneration for the post. However, they stated that the burden of proof would fall on the influencer to prove that this was the case. In February 2022, the court clarified this by stating that a label on a post as advertising would be required if remuneration in any form (monetary or otherwise) was received or if products were given free of charge to the influencer.¹⁷⁵

In the Republic of Latvia, surveillance activity on influencers was conducted by the Consumer Rights Protection Centre Republic of Latvia (CRPC) as part of their project on Influencer Marketing. This activity was completed with cooperation from the State Tax Authority, which provided information on the financial income of the influencers. From this investigation, thirty-five cases were initiated.

However, most of these investigations were concluded on a “voluntary cooperation basis” and only two resulted in liability for influencers. In these two cases, the commercial content was not labelled as being promotional material and the influencers involved in both cases were required to cease “unfair commercial practices” and were issued a fine (less than €2,000).

The CRPC position on influencers is that consumers are entitled to know if the influencer’s posts are commercial content and this applies if the influencer is promoting their own business or the business of someone else, whether this content is produced in return for money, gifts or other forms of remuneration. As noted above, the CRPC accepts Latvian language hashtags such as #advertising and #paidcooperation. However, short hashtags such as #AD are not recommended in updated guidance.¹⁷⁶

In June 2020, the Consumer Authority in Norway (Forbrukertilsynet/CA) took an enforcement action against a trader where micro-influencers had produced content on behalf of the trader and had received free products in exchange but they had not labelled their content as commercial content or the labelling they used could not be clearly distinguished. The CA felt that the trader was liable for the content posted as it was their duty to set the requirements for their marketing and to ensure that there are mechanisms in place to ensure that the law is complied with by those releasing marketing on their behalf. The trader in this case had reposted content produced by the influencers on their own account and thus had had an opportunity to correct the issues in the content. The CA banned the trader from using micro-influencers to promote their products in the future unless this content is clearly labelled as an advertisement. The CA stated that a violation of this would result in a fine of 20,000 kroner (approx. €2,000) per post.¹⁷⁷ In October and November 2020, this trader was found to have violated this prohibition and was fined 80,000 kroner (approx. €8,000) for Instagram posts which were not labelled or which were labelled in an unclear manner.¹⁷⁸

In Sweden, the Swedish Consumer Agency (Konsumentverket (KO)) has pursued three cases since 2019 against influencers. These cases were heard by the Patent and Market Court of Appeal and involved two influencers who did not clearly label their content as being advertising¹⁷⁹ and one influencer who did not clearly label posts and made claims that a fish oil would protect against COVID-19. The latter influencer and the company they were marketing were fined SEK 250,000 (approx. €23,000) and SEK 1 million (approx. €92,000) respectively for the lack of adequate labelling and were fined SEK 500,000 (approx. €46,000) and SEK 1.5 million (approx. €137,000) for the claims made in relation to COVID-19.¹⁸⁰ After reviewing approximately fifty influencers and companies, the Swedish Consumer Agency produced guidance in 2020 on Social Media Marketing which states that the marketing of products and services in exchange for remuneration is considered marketing and is subject to legal requirements under the Marketing Act in Sweden.¹⁸¹

A recent investigation into the tagging of commercial content on social media by the Office of Competition and Consumer Protection in Poland (UOKiK) led to 6 influencers being fined for non-cooperation with the investigation. The fines can be appealed to the court.¹⁸² In addition, UOKiK published guidance on the tagging of advertising content by influencers on social media in September 2022 and has also developed a filter that influencers can use on Facebook and Instagram to ensure they comply.¹⁸³

4.3 CCPC RESEARCH FINDINGS

Of the respondents who follow influencers on social media, more than half stated that they follow social media influencers who are predominantly based outside of Ireland. Influencers in the UK and the US were the most popular amongst these respondents.

In reviewing the international landscape, the CCPC has identified a number of areas for further consideration in the case of Ireland's future approach to regulating influencer marketing. These include the following:

- **Platform variability:** Some countries, e.g. Denmark, provide individual guidance on how commercial content should be labelled across different platforms.¹⁸⁴ While the ASAI guidance lists the platforms that could be included within its scope, it does not provide individual specific requirements.
- **Research into visibility and understanding of labels:** The Danish Competition and Consumer Authority (DCCA) has conducted consumer research to identify appropriate tagging formats.¹⁸⁵ The research found that where hashtags or the "Paid Partnership" tag is highlighted, rather than just presented in standard text, it is more effective in allowing the consumer to correctly identify commercial content. Danish agencies are also reviewing whether the platforms' own tags (such as "Paid Partnership") are sufficient for disclosure, but has not published updated guidance as yet. The Consumer Rights Protection Centre (CRPC) in Latvia conducted a study between 2019 and 2020 in relation to influencers. In this study, they identified that 55% of consumers did not understand vague tags such as #cooperation.¹⁸⁶ Visibility has also been an area of focus for agencies conducting enforcement action against social media platforms. As part of the co-ordinated action against TikTok, TikTok agreed to the use of an independent third party to assess new advertising label designs in order to enhance their visibility for users. The designs being tested will reflect: (i) an advertising label that is larger than the current ad label; (ii) font that is bigger than the font size in the current advertising label; (iii) a variety of different backgrounds, levels of opacity and/or borders; and (iv) a number of alternative screen placements for the advertising label.

- **Links to sponsored content:** In Norway, reference is made to blogs or webpages which may contain advertising in the guidance issued by the Consumer Authority in Norway.¹⁸⁷ Posts directing customers to these pages are also required to be labelled as advertising content. This would currently appear to be an outlier in international terms, but the CCPC's observational analysis indicates that there are social media accounts directing consumers to webpages which contain affiliate links and/ or other advertising content that operate outside of the current ASAI Guidance Note¹⁸⁸ as currently stated.
- **New monitoring tools:** The French advertising self-regulatory organisation, ARPP, has also recently utilised artificial intelligence (AI) to review influencer posts to evaluate disclosure compliance.¹⁸⁹ YouTube, Instagram and TikTok were included in the study. The results showed 41% conformity with the guidelines and found that compliance rates had a positive relationship with influencer size (i.e. those having over 1 million followers showed 68% compliance. This fell to 39% amongst those with 10k to 1 million and just 32% in the group with less than 10k followers. This is in contrast to the findings from this research which found no significant relationships between the size of the influencer and compliance with labelling. The ASAI have informed the CCPC that they are currently exploring options related to AI monitoring.

5. RECOMMENDATIONS AND ACTIONS

In light of the research undertaken as part of this project, it is considered that the most appropriate approach to regulating influencer marketing in the Irish context is hybrid in nature, encompassing: strengthening guidance; promoting education of consumers, influencers, brands and agents; regulatory engagement with social media platforms; and pursuing compliance and enforcement. Recommendations to support this approach are outlined below.

Recommendation 1: Guidance on influencer marketing in Ireland should be strengthened.

The CCPC recognises the work of the ASAI in promoting good practice by influencers through its code, sector specific guidelines and complaints process.

In terms of actions, the CCPC and ASAI will work collaboratively in 2023 to deliver:

- clear joint guidance on areas such as labelling, own brand products and reposts.

The observations below are intended to strengthen the guidance so that areas of concern identified in this report are adequately addressed in future guidance thus removing any potential for misunderstanding by influencers, brands or agents.

- The findings from the research show there would be merit in providing clear guidance for the correct use of a small number of well-defined labels such as #advertisement/#AD, “paid partnership” and #gifted. The use of less specific labels such as #collaboration^{xlii} and abbreviations such as #ba, #sp and #af should be avoided unless they appear in conjunction with one of the well-defined labels set out above. Guidance should be updated in this area on a regular basis to promote the use of labelling tools provided by platforms as they are developed and implemented.
- The appropriate identification of own brand products was recognised as an issue in the observation analysis with 100% of own brand posts reviewed not being labelled in any way. This points to a general lack of awareness amongst Irish influencers regarding the need to label the marketing of their own brand products. It is recommended that future guidance clearly indicates that own brand content must be labelled in the same manner as other advertisements.
- It is evident from the research that certain brands have developed custom labels for their commercial content on social media with a number of influencers choosing to use these labels in lieu of more traditional and familiar tags. The use of customised labels in this context does not absolve the requirement to correctly label advertising and any custom tags should appear after the required disclosure.

^{xlii} In a case taken against an influencer in Sweden in 2019, the court ruled that it not enough to just say that the post is made “in collaboration” with a company, it needs to be clear whether or not the collaboration is paid. See discussion at: Bird & Bird (2020) Swedish case law: Influencers have to properly identify marketing content, but only if it is marketing. Available at: <https://www.twobirds.com/en/insights/2020/sweden/swedish-case-law-influencers-have-to-properly-identify-marketing-content-but-only-if-it-is-marketing>.

- Clarity around the labelling of reposts is required. This issue has presented itself in this research in two ways: (1) where an influencer shares content originally posted on a brand's own page and does not sufficiently identify the commercial relationship in the repost; (2) where an influencer shares content from other pages that promote the influencer's own brand or products. Both of these examples caused confusion amongst focus group participants (and influencers) about the nature of this relationship and there is significant uncertainty about what best practice should be. It is recommended that future guidance clearly outlines labelling requirements for reposted content.
- Under the current guidance, a degree of brand control is required before a post is considered by the ASAI to be commercial in nature. While the ASAI Guidance Note acknowledges that consumer law requires disclosure in the case of all commercial posts related to non-financial payments (e.g. gifts), it does not specifically ask for gifted products to be tagged as an advertisement. This should be addressed in future joint guidance issued by the CCPC and the ASAI.
- The observation analysis conducted by the CCPC as part of this research raised concerns regarding influencers providing links to websites/blogs that contained advertising content. Posts directing consumers to these pages should be labelled as advertising and correct practice should be made clear in future guidance.
- Future guidance should advise on how a platform's interface and content can be viewed on different devices as this research has shown a lack of consideration by influencers with regards to how tags appear across different devices.

Given the absence of borders in relation to internet and social media access, the CCPC recognises that issuing guidance in an Irish context will only go so far in protecting consumers. It is evident from this research that there is significant variation across countries in terms of the guidance provided to influencers. This poses an issue in protecting consumers as a large proportion are exposed to influencers who are based outside of Ireland. Financial influencers can pose a risk to consumers if they are not fully qualified or transparent. A key challenge in this area is that many influencers with brand promotions tied to more high-risk areas such as NFTs and cryptocurrencies, are not located in Ireland and therefore the process for pursuing enforcement action is more complex.

In terms of actions, the CCPC will:

- Advocate for a more harmonised approach to guidance at EU and international level for social media influencers that can better support the education, compliance and enforcement efforts of international regulators and SROs.^{xliii}
- In relation to financial content (e.g. crypto), the CCPC intends to launch a series of educational videos aimed at consumers to explain crypto and outline factors to consider before investing in them.

^{xliii} IMCO 2022 report noted 'it might not be possible to harmonise all national practices, which are rooted in national legislation and the interpretation of that legislation by national courts and authorities.' The reports recommendation to map EU law in the area would be a useful step towards a more harmonised approach. See Michaelsen, F. et al. (2022) The impact of influencers on advertising and consumer protection in the Single Market. Luxembourg: Policy Department for Economic, Scientific and Quality of Life Policies. Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703350/IPOL_STU\(2022\)703350_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703350/IPOL_STU(2022)703350_EN.pdf).

Recommendation 2: Brands, influencers and the agents who represent them have a responsibility to inform themselves of their legal responsibilities and to ensure that brand requirements for paid social media content are in line with the law

and

Recommendation 3: Social media platforms should assume greater responsibility for informing and educating users (i.e. influencer, brands, consumers) on the risks of hidden or misleading advertising by influencers.

There are multiple strands to increasing education and awareness around influencer marketing. Those engaged in influencer marketing (influencers, brands, agents and social media platforms) need to be made aware or reminded of their legal obligations in the area. Any awareness raising initiatives should also be aimed at both new and established influencers as this research shows that the size of the influencer's following is not an assurance of good practice. This research has shown that influencers are more likely to take their direction on how to identify commercial content from brands as opposed to official guidance. However, advice from brands is often inconsistent, can lead to confusion for influencers and potentially increases the risk of insufficient disclosure. Social media platforms also have a role to play in informing and facilitating users in being compliant with their disclosure obligations. As can be seen in table 3 below, various social media platforms have branded content policies in place. As this area develops, it is important that these policies remain clear and inform users of what their requirements are.

As previously noted, education options outside of such ad hoc interventions are limited, but growing. Based on findings from the research related to consumers' confusion about what constitutes an 'influencer', the inconsistencies in the approach to labelling by influencers and the varying standards in the directions provided by brands and agents, the following actions will be undertaken.

- The CCPC will write to agents who represent influencers and brands to make them aware of any future updated guidance relating to influencer marketing and to remind them of the responsibilities of the influencers and brands they represent under consumer protection legislation.
- The ASAI will lead on engagement with educational institutions to ensure that compliance material developed by the CCPC and the ASAI is included in relevant courses (i.e. influencer marketing and digital marketing) offered by educational institutions.
- As a result of engagement with the CCPC, social media platforms such as TikTok^{xliv} and Meta (Instagram) have committed to build upon existing educational content by developing educational campaigns around their branded content for both influencers and consumers. The CCPC will continue to engage with other social media platforms to secure similar commitments relating to educational activities.

^{xliv} TikTok has made a number of commitments regarding the publishing of branded content on its platform following engagement with the CCPC, Swedish Consumer Agency (Konsumentverket) and the European Commission on behalf of the European Consumer Protection Cooperation (CPC) Network. See, European Commission (2022) EU Consumer protection: TikTok commits to align with EU rules to better protect consumers. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_3823.

Recommendation 4: Social media platforms should support users in appropriately labelling content and facilitate the deterrence and reporting of hidden or misleading advertising content.

Social media platforms play a role in ensuring that the influencers using their platforms are appropriately disclosing commercial content. Following engagement with the CMA in 2019, Facebook Ireland committed to updating the tools available to Instagram users to support sufficient labelling of their commercial content. This included making the “Paid Partnership” feature available to all users. In recent engagement with the CCPC, Meta advised of upgrades to its “Paid Partnership” tool to detect commercial content and prompt creators to use the tool as appropriate.

As part of its undertaking to the CMA, Facebook Ireland also committed to introducing a prompt for users to confirm whether they have received any incentive to promote a product or service before posting about it. If a user has been incentivised, they will be required to disclose this clearly on their post. A user will not be able to publish their post without responding to the prompt.

In addition, TikTok has made a number of commitments regarding the publishing of branded content on its platform¹⁹⁰ following engagement with the CCPC, as part of the EU Consumer Protection Cooperation (CPC) Network.^{xiv} These commitments include (but are not limited to) prompting users to turn on the “Branded Content Toggle”¹⁹¹ when content includes “brand-related keywords such as #AD or #sponsored”; reviewing the content of users with more than 10,000 followers to ensure their compliance with the TikTok “Branded Content Policy” and introducing a reporting function for “undisclosed branded content”.¹⁹²

^{xiv} This engagement was led by the CCPC and the Swedish Consumer Authority (Konsumentverket). See, European Commission (2022) EU Consumer protection: TikTok commits to align with EU rules to better protect consumers. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_3823.

However, while most platforms have tools for labelling content, as can be seen in the table below some social media platforms do not have functions in place for reporting and labelling of content.

	Influencer Presence	Branded/ Commercial Content Policy	General Reporting Functionality	Hidden Advertising Reporting Function	Platform provided tag for Commercial Content ^{xlvi}
Instagram	Yes	Yes ¹⁹³	Yes	No	Yes
Facebook	Yes	Yes ¹⁹⁴	Yes	No	Yes
Twitter	Yes	Yes ¹⁹⁵	Yes	No	No
Snapchat	Yes	Yes ¹⁹⁶	Yes	No	No
TikTok	Yes	Yes ¹⁹⁷	Yes	Yes	Yes
BeReal	Limited [‡]	No	Yes	No	No
YouTube	Yes	Yes ¹⁹⁸	Yes	Partial*	Yes ¹⁹⁹
Pinterest	Yes	Yes ²⁰⁰	Yes	Partial*	Yes ²⁰¹
LinkedIn	Yes	Yes ²⁰²	Yes	No	No

‡BeReal is a growing platform with limited commercial content at the time of writing. The CCPC anticipates that this will change as brands and influencers adapt to the platform’s structure therefore they are included in this review. *Both YouTube and Pinterest have a reporting classification for “misleading” information/content. However, this is included beside (or as a subsection of) “Spam” which is a separate consumer issue and the reason for the “partial” tag.

The following actions will be taken:

- Monitoring and reporting functions can vary across platforms. In the interests of supporting users in reporting misleading advertising, the CCPC will work with relevant parties so that the Digital Services Act can be an effective tool with appropriate processes for monitoring and reporting illegal content, including misleading/hidden advertising, across social media platforms.
- The CCPC, as part of our work with the Consumer Protection Cooperation (CPC) Network in Europe, co-lead the co-ordinated action against TikTok. The CPC Network will monitor the outcomes from TikTok’s new reporting function for misleading content and this will inform future engagement, either at a national level or as part of cross border cooperation activities, with other platforms in terms of the potential implementation of simple reporting mechanisms.

^{xlvi} In the cases of Instagram, YouTube and TikTok a prompt is also provided to creators to declare commercial content.

- The CCPC will monitor “branded content” policies on social media platforms to ensure that they contain clear disclosure requirements in line with developments in legislation and guidance, that the “terms of service” unambiguously require users to comply with platforms’ branded content policies, and that these are strictly enforced.
- The ASAI will engage with social media platforms to explore ways to utilise the platform as a deterrent mechanism whereby non-compliant influencers are ‘named and shamed’.

Recommendation 5: Relevant authorities should continue to actively encourage compliance and pursue enforcement through existing and new mechanisms.

To date, action in relation to non-disclosure by social media influencers has been taken as a result of complaints. This research shows that consumers are unlikely to make a complaint even in instances where they see insufficient disclosure on posts, particularly if they feel that an influencer has made “some kind of effort”. As a result, it is unlikely that a complaints-led approach alone will promote good practice in this space.

It is important to keep in mind that influencer marketing remains a very new and rapidly evolving space. As discussed in section 4, the degree of enforcement to date by consumer protection authorities is highly variable across jurisdictions. Consumer protection law provides an important legal framework for tackling misleading practices. However, as noted in section 1, its application in the case of influencers is often not as straightforward as it is in more traditional sectors. Although this vagueness may be advantageous when it comes to characterising new misleading practices, it does give rise to situations where it is difficult to predict every scenario where influencer marketing might be deemed in breach of consumer protection law.²⁰³ The continued pooling of knowledge and practices on an international basis is important in this regard.

In 2022, the tools at the CCPC’s disposal for competition enforcement have been strengthened with the enactment of the Competition (Amendment) Act 2022 which allows the CCPC to impose administrative financial penalties for certain breaches of competition law. There remains a gap in the CCPC’s ability to impose administrative financial penalties for breaches of consumer protection law. The CCPC is of the view that serious consideration needs to be given to closing this gap so that breaches of consumer protection law are subject to a wider range of effective enforcement measures including administrative sanctions.

This would allow the CCPC to ensure appropriate sanction for the breaches of consumer protection law in line with our prioritisation principles, including misleading or hidden advertising by social media influencers. In light of the above, the following actions will be undertaken:

- The CCPC will monitor how its new powers granted under new legislation in 2022 are working over time. Where there is evidence that these new powers are ineffective at tackling breaches of consumer protection law, including by influencers, the CCPC will advocate for the strengthening of its enforcement powers. This may include administrative powers to impose fines for breaches of consumer protection.
- As influencer marketing is a rapidly evolving medium of communication, the CCPC will continue to consider the potential for consumer detriment in influencer communications in its prioritisation of enforcement activities.
- The CCPC is aware the ASAI is currently trialling Artificial Intelligence based monitoring technology to support its existing complaints system. The CCPC welcomes the ASAI's commitment to rolling out this type of technology to support the ASAI's own monitoring and enforcement activities.
- As the degree of reported enforcement by consumer protection authorities to date varies substantially across jurisdictions, the CCPC will actively engage with international initiatives to share our experience towards developing common standards and best practice for regulatory development, guidance and enforcement where necessary on influencer marketing.^{xlvii}

^{xlvii} The CCPC participated in a Consumer Protection Cooperation (CPC) Network workshop on disclosure of commercial content in influencer marketing in June 2022. Furthermore, at the European Consumer Summit on 10 February this was voted as one of the top two joint actions for the year ahead, along with "additional research on influencer marketing (e.g. behavioural studies)" at the workshop on transparency of online markets.

Appendices

Appendix A: Additional information regarding the legal framework applicable to influencer marketing in Ireland

Upcoming Developments in Legislation

Advertising and marketing are covered by a wide scope of legislation at both EU and national level. The acts and directives mentioned above are not intended to be exhaustive in terms of the legislation in the area. Likewise, a number of recent and upcoming legislative developments in the European Union (EU) and Ireland may have implications for the regulation of influencer marketing in Ireland. These developments are also likely to increase awareness regarding the importance of transparent advertising and increase responsibilities on online platforms in relation to advertising. Some of the key areas are listed below.

Online Safety and Media Regulation Bill

The Online Safety and Media Regulation Bill 2022 (OSMR Bill)²⁰⁴ will transpose the revised Audiovisual Media Services Directive 2018/1808/EU²⁰⁵ (AVMSD) into Irish law. It also provides for the appointment of an Online Safety Commissioner as part of a wider Media Commission (Coimisiún na Meán).²⁰⁶ The Media Commission will replace the Broadcasting Authority of Ireland.²⁰⁷

By way of background, the AVMSD sets out obligations for video-sharing platform providers. The AVMSD defines a video-sharing platform provider as “the natural or legal person who provides a video-sharing platform service”.²⁰⁸ Examples of video-sharing platforms include YouTube and TikTok. Under the AVMSD, video-sharing platform providers are also subject to certain obligations regarding audiovisual commercial communications.

An audiovisual commercial communication is defined in Article 1 as:

“images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity; such images accompany, or are included in, a programme or user-generated video in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement”.

The AVMSD sets out requirements regarding the recognisability of audio-visual commercial communications and prohibits those that are surreptitious in nature.²⁰⁹ Audio-visual commercial communications must not use subliminal techniques.²¹⁰ Member States must ensure that video - sharing platform providers under their jurisdiction comply with these requirements for “audiovisual commercial communications” that are and are not “marketed, sold or arranged” by them, whilst also “taking into account the limited control exercised by those video-sharing platforms over those audiovisual commercial communications” that these platforms do not market, sell or arrange.²¹¹ Video-sharing platform providers must include and apply the requirements for audio-visual commercial communications that are not marketed, sold or arranged by the video-sharing platform provider in the terms and conditions of the video-sharing platform service.²¹² The AVMSD also introduces obligations for video-sharing platform providers to inform users when user-generated videos contain audio-visual commercial communications.²¹³ Video-sharing platform providers must also provide users who upload user-generated videos with the functionality to declare whether they contain audio-visual commercial communications.²¹⁴ They are obliged to take “appropriate measures” to safeguard members of the public and minors from content that may cause “harm”.²¹⁵

The requirements for audio-visual commercial communications will be contained in Online Safety Code to be prepared by the Media Commission.²¹⁶ The Bill also allows for the Media Commission to issue various guidance materials along with providing advisory notices regarding content²¹⁷ and will provide for the appointment of an Online Safety Commissioner who will “oversee the new regulatory framework for online safety” as a part of Coimisiún na Meán.²¹⁸

In November 2021, the Joint Committee on Tourism, Culture, Arts, Sport and Media published a report on the pre-legislative scrutiny of the General Scheme of the OSMR Bill.²¹⁹ The Bill was published on the 12 January 2022 and was initiated in Seanad Éireann on the 25 January 2022.²²⁰ The Bill was passed by Seanad Éireann on 11 July 2022 and was passed by Dáil Éireann on 30 November 2022.²²¹

Digital Services Act

The Digital Services Act (DSA) forms part of a legislative package²²² proposed by the European Commission which sets out new rules for digital service providers and online platforms that operate in the EU. The DSA introduces new obligations for the provision of digital services. This includes regulation of online intermediaries and platforms such as social media platforms.²²³ The DSA aims to improve online safety and outlines obligations for intermediaries and online platforms in relation to addressing illegal content (which would include content that is not in compliance with consumer protection law).²²⁴ The potential risks that can be posed by advertising online are recognised in the DSA, wherein it is noted that online platforms should “be required to ensure” that consumers who engage with advertising on online platform “have certain individualised information necessary” so that they can identify advertising and determine whom is behind the advertisement.²²⁵

Under the DSA, online platforms who “present advertisements on their online interfaces” will be required to ensure that individuals who engage with advertisements on their service can “identify, in a clear, concise and unambiguous manner and in real time”:

- “that the information is an advertisement”
- “the natural or legal person on whose behalf the advertisement is presented”
- “the natural or legal person who paid for the advertisement” and
- “meaningful information directly and easily accessible from the advertisement about the main parameters used to determine the recipient to whom the advertisement is presented and, where applicable, about how to change those parameters”.²²⁶

The DSA will require platforms to provide relevant authorities with information on the effect given to orders issued to online intermediary services that require them to take action against specific illegal content.²²⁷

In addition, “providers of hosting services” will be required to have “mechanisms in place” so that individuals can “notify them of the presence on their service” of “illegal content”. These mechanisms “shall be easy to access and user-friendly, and shall allow for the submission of notices exclusively by electronic means”.²²⁸

If a provider is notified in relation to this content, this will be considered to “give rise to actual knowledge or awareness” under Article 6.²²⁹ Under Article 6, a provider will not be “liable” for the information stored on their service providing that it “acts expeditiously to remove or to disable access to illegal content” once they become aware of it.²³⁰

Furthermore, online platforms will be required to have in place an “internal complaint-handling system” that allows individuals to lodge complaints “electronically and free of charge” against the decision of a platform to “remove or disable access to or restrict visibility of” illegal content or content that is “incompatible with its terms and conditions”.²³¹ Platforms will be required to “inform complainants without undue delay of their reasoned decision in respect of the information to which the complaint relates” and “shall ensure that decisions...are taken under the supervision of appropriately qualified staff, and not solely on the basis of automated means”.²³²

The DSA will also provide for the drawing up of voluntary Codes of Conduct on advertising by providers of online platforms to contribute to further transparency for actors in the online advertising value chain.

The DSA was published in the Official Journal of the European Union on the 27th October 2022 and once in effect, it will have important implications for influencer marketing.

Appendix B: Additional information regarding the guidance pertaining to influencer marketing in Ireland

Various general provisions of the ASAI Code are relevant to influencers. These are set out in the table below.

Table A: General Provisions of Code (Relevant to Influencers)

Relevant sections ²³³	Wording contained in The Code*
Section 3.31	"A marketing communication should be designed and presented in such a way that it is clear that it is a marketing communication "
Section 3.32	"Marketing communications should not misrepresent their true purpose ".
Section 3.33	"Advertorials should be distinguished from editorial matter". (In the context of influencers, an advertorial would include any advertisement by them that they produce that is in "exchange for a payment or other reciprocal arrangement where the content is controlled by the advertiser ". ²³⁴
Section 7.2	In producing marketing communications that can be accessed by children, influencers should " have regard to the special characteristics of children " and "the way in which [they] perceive and react to marketing communications".
Section 7.5	"Marketing communications addressed to children should not exploit the loyalty, credulity, vulnerability or lack of experience of children ". In addition, this section states that "marketing communications should not include any appeal to children to persuade their parents or other adults to buy advertised products for them".

*Code rules apply to all applicable marketing communications: influencers should ensure that the advertising they create on behalf of advertisers is compliant – for example, that advertisers have substantiation for any advertising claims. For own brand marketing communications that influencers create, they are responsible for compliance with the Code.

Further Information on the ASAI Complaints Process

The initiation of the complaints process under the ASAI Code does not prevent any other legal action and in this respect, an influencer may still be found in violation of consumer protection provisions outlined in Section 1 of the report.²³⁵ In addition, it should be noted that a decision by the ASAI also “does not deprive a consumer or an advertiser of the right to take further action or prejudice any rights under the law”. Thus, an influencer may also be found in violation of consumer protection law, even if a matter has already gone through a complaints process with the ASAI.²³⁶ It should be noted that if a complaint falls under the scope of a different regulatory body, then the ASAI Code states that it does not wish to “duplicate the work of other regulatory bodies” and that they “will endeavour to provide relevant information or will endeavour to direct the complainant to the most appropriate body”.²³⁷

Overview of the ASAI Guidance Note on Recognisability of Influencer Marketing Communications²³⁸

An influencer should distinguish their “marketing communications” from their other “user-generated content”, private blogs or independent reviews. The ASAI Guidance Note states that where the context or accompanying hashtag does not make it clear that a post is a marketing communication, the advertiser must ensure that clear “flags” are used on the content. Examples of these include #AD and #sponsor. The disclosures must be legible and clear along with being easily visible for consumers to see before they interact with the relevant material. The guidance states that it is not sufficient for the disclosure to be contained in the “see more” section, in terms and conditions at the end of the content or “below-the-fold” on websites. It must not be hidden by other content.

When influencers create content for their own products and services, it must be clear from the content or the context that these are marketing communications. In the case of videos, the ASAI expects the influencer to ensure that consumers are aware that the material is a marketing communication before they engage with the content and when they engage with the content. Furthermore, where the advertising produced is released as a form of “expiring media” such as Instagram Stories or Snapchat, the ASAI Guidance Note states that “all individual posts should have the relevant disclaimer to indicate that they are marketing communications”. This is to ensure that if a consumer does not view the first post, they would still be “aware” that the published content is a marketing communication.

Where multiple posts are published by an influencer, the ASAI Guidance Note specifies that each of the posts should contain the “appropriate disclaimer” that it is a “marketing communication”. Finally, the ASAI Guidance Note states that if multiple social media platforms are used by an influencer to promote a product/company, then they should apply “appropriate disclaimers” to each form of published content across the various platforms.

Appendix C: Additional information on CCPC Qualitative Research

Focus Groups

The purpose of the focus groups was to delve deeper into certain aspects of the consumer survey and observation analysis results. In particular, the focus groups were identified as a useful way to:

- Examine how consumers interact with the information they see on social media.
- Understand the degree to which consumers are conscious of how commercial content should be identified.
- Examine consumer reaction to insufficiently tagged commercial content.

Based on feedback from the consumer survey relating to age profiles and platform popularity it was determined that the focus groups should be structured in the following manner:

Group	Age	Gender	Social Media Usage
1	18-24	Female	Mix of moderate and heavy
2	18-24	Male	
3	25-34	Female	
4	25-34	Male	
5	35+	Mixed	

Participants in the focus groups were recruited by Behaviours & Attitudes Research (B&A), who also moderated the sessions which took place on 1 and 2 December 2021.

Interviews with influencers/agent

Between January and February 2022, B&A conducted three interviews with influencers (micro and macro) and one interview with an agent who represents a number of high-profile sport stars who have a strong following on Instagram.

Appendix D: Influencer Guidelines and Codes by Country

Country	SRO Codes/ guidance	Statutory publications
Austria	https://www.werberat.at/layout/ETHIK_KODEX_1_2021_END_English.pdf (Section 1.8)	No specific guidance found
Belgium	https://www.jep.be/wp-content/uploads/2022/04/influencers_FR.pdf	https://economie.fgov.be/fr/themes/ventes/publicite/vous-etes-createur-de-contenu https://www.vlaamseregulatormedia.be/en/content-creator-protocol (Flemish only)
Bulgaria	https://www.nss-bg.org/en/influencer	No specific guidance found
Cyprus	No specific guidance found	No specific guidance found
Czech Rep	https://ferovyinfluencer.cz/#zakladni-info/	No specific guidance found
Denmark	No specific guidance found	https://www.forbrugerombudsmanden.dk/media/49742/17-10423-20-gode-raad-til-influenter-om-skjult-reklame_mbilleder-3044183_1_1.pdf
Finland	No specific guidance found	https://www.kkv.fi/en/consumer-affairs/facts-and-advice-for-businesses/the-consumer-ombudsmans-guidelines-influencer-marketing-in-social-media/
France	https://www.arpp.org/nous-consulter/regles/regles-de-deontologie-digital-advertising-and-marketing-communications-code/#toc_1_3	No specific guidance found
Germany	No specific guidance found	https://www.die-medienanstalten.de/fileadmin/user_upload/die_medienanstalten/Service/Merkblaetter_Leitfaeden/ua_Leitfaden_Medienanstalten_Werbekennzeichnung_Online-Medien.pdf
Greece	No specific guidance found	No specific guidance found
Hungary	No specific guidance found	https://www.gvh.hu/pfile/file?path=/en/actualities/aktualis_hirek_gvh/megfeleles_velemenyezer_2017_11_30_a&inline=true
Ireland	https://www.asai.ie/wp-content/uploads/ASAI-Guidance-Note-Recognisability-of-Influencer-Marketing-Communications-Feb-21.pdf	No specific guidance found
Italy	https://www.iap.it/digital-chart-pubblicita-sui-social/endorsement/celebrity-influencer-blogger/	No specific guidance found
Latvia	No specific guidance found	https://www.ptac.gov.lv/lv/jaunums/socialie-tikli-un-infulenceru-marketing

Country	SRO Codes/ guidance	Statutory publications
Lithuania	No specific guidance found	https://www.vvtat.lt/doclib https://www.vvtat.lt/doclib_E
Luxembourg	https://www.clep.lu/code-dedeontologie/	No specific guidance found
Malta	No specific guidance found	No specific guidance found
Netherlands	https://www.reclamecode.nl/nrc/advertising-code-for-social-media-influencer-marketing-rsm2019/?lang=en	No specific guidance found
Norway	No specific guidance found	https://www.forbrukertilsynet.no/wp-content/uploads/2018/01/The-Consumer-Ombudsmans-guidance-on-labelling-advertising-in-social-media.pdf
Poland	No specific guidance found	https://uokik.gov.pl/influencer_marketing2.php
Portugal	No specific guidance found	https://www.consumidor.gov.pt/gestao-ficheiros-externos/guia-boas-praticas-digitais_2019-pten-pdf.aspx
Romania	https://drive.google.com/file/d/libPvEqn9CtiFlo9Dc9e4iVobkrzSBxW/view	No specific guidance found
Slovakia	No specific guidance found	No specific guidance found
Slovenia	https://www.soz.si/sites/default/files/priporocila_k_marketingu_vplivnezev_-_2020.pdf	No specific guidance found
Spain	https://www.autocontrol.es/wp-content/uploads/2020/10/codigo-de-conducta-publicidad-influencers.pdf	No specific guidance found
Sweden	https://reklamombudsmannen.org/regler/reklam-i-sociala-medier/	https://www.konsumentverket.se/globalassets/publikationer/produkter-och-tjanster/reklam-och-marknadsforing/vagledning-marknadsforing-sociala-medier-konsumentverket.pdf
Australia	https://aana.com.au/self-regulation-codes-guidelines/code-of-ethics/#section1	No specific guidance found
UK	https://www.asa.org.uk/static/9cc1fb3f-1288-405d-af3468ff18277299/INFLUENCERGuidanceupdatev6HR.pdf	https://www.asa.org.uk/static https://www.gov.uk/government/publications/compliance
USA	No specific guidance found	https://www.ftc.gov/system/files/documents/plain-language/1001a-influencer-guide-508_1.pdf
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- 9 Autorité de Régulation Professionnelle de la Publicité (n.d.) Certificat de l'influence Responsable: Ouverture des inscriptions! Available at: <https://www.arpp.org/influence-responsable/>. Influencers in France can register for a minimum of €49 and receive a certificate of completion which can be presented to brands.
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- 64 UCPD, Article 6.
- 65 UCPD, Article 7.
- 66 UCPD, Annex 1, Point 11 “prohibits practices which do not make it clear that a trader has paid for the promotion of a product in editorial content”. See sub-section 4.2.6 of the UCPD Guidance, where it is noted that the meaning of “editorial content” is to be “interpreted broadly” to be inclusive of social media platforms and some content that is produced by influencers.
- 67 UCPD, Annex 1, Point 22 prohibits influencers from “falsely representing” themselves as consumers. See sub-section 4.2.6 of the UCPD Guidance.
- 68 Per sub-section 4.2.6 of the UCPD Guidance.
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- 70 Per the long title of the Consumer Protection Act 2007 (2007 Act).
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- 224 DSA, Article 3 defines illegal content as “any information that... is not in compliance with Union law or the law of a Member State which is in compliance with Union law, irrespective of the precise subject matter or nature of that law”.
- 225 DSA, Recital 68 .
- 226 DSA, Article 26.
- 227 DSA, Article 9.
- 228 DSA, Article 16(1)
- 229 DSA, Article 6.
- 230 DSA, Article 6(1).
- 231 DSA, Article 20. This internal complaints-handling system will also apply to decisions to “suspend or terminate the provision of the service...to the recipients” and the decision to “suspend or terminate the recipients’ account”.
- 232 DSA, Article 20.
- 233 Appendix 1 of the Guidance Note on ‘Recognisability of influencer marketing communications’ which was produced by the ASAI in 2021 also outline other relevant provisions under this Code. The selected sections included in this table correspond with those that most relate to similar provisions under the UCPD and CPA 2007. See Advertising Standards Authority for Ireland (2021) Guidance Note: Recognisability of influencer marketing communications. Available at: <https://www.asai.ie/wp-content/uploads/ASAI-Guidance-Note-Recognisability-of-Influencer-Marketing-Communications-eb-21.pdf>.
- 234 ASAI Code, section 1.1. Per this section, an advertorial is defined as an “an advertisement feature, announcement or promotion published or electronically broadcast in exchange for a payment or other reciprocal arrangement where the content is controlled by the advertiser”.
- 235 ASAI Code, Introduction section, point 18 specifies that the ASAI Code if “subordinate to and complements legislative controls on advertising and sales promotions and provides an alternative low cost and easily accessible means of resolving disputes”.

- 236 ASAI Code, Introduction, point 19: “The procedures and the adjudications of the ASAI do not prejudice any party’s protection under the law... A decision of the ASAI does not deprive a consumer or an advertiser of the right to take further action or prejudice any rights under the law”.
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