[ES] Adoption of decree on the regulation and identification of users of special relevance on video-sharing platforms

IRIS 2024-5:1/1

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On 30 April 2024, the Council of Ministers, at the proposal of the Ministry for Digital Transformation and Public Service led by José Luis Escrivá, approved *Real Decreto-Ley 444/2024* (Royal Decree-Law no. 444/2024) which, for the first time, establishes conditions for the regulation of the activities of Spanish influencers (or content creators or vloggers) in accordance with the 2022 *Ley General de Comunicación Audiovisual* (General Law on Audiovisual Communication).

According to the royal decree, the text is designed to create an up-to-date legal framework that reflects the development of the audiovisual market in recent years, strikes a balance between access to content, protection of users and competition between different audiovisual service providers, and includes, under the same regulatory umbrella, all stakeholders competing for the same audience.

The law sets out three cumulative components of "*usuario de especial relevancia*" (user of special relevance), a specific category of influencers defined in Article 94.2 of the General Law on Audiovisual Communication.

The first is financial and states that the user must earn substantial revenue of over EUR 300 000 from all their audiovisual activities.

Secondly, they must have at least 1 million subscribers on a single video-sharing platform or 2 million across multiple platforms.

The third and final condition is that the influencer must create a minimum of 24 videos per year.

"Users of special relevance" must fulfil certain obligations primarily designed to improve the protection of minors on social networks and prevent surreptitious advertising.

Anyone who meets all three criteria must register as a "user of special relevance"with the *Registro Estatal de Prestadores Audiovisuales* (national register of audiovisual service providers) within two months.

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Once registered, they must adhere to rules on the protection of minors and advertising in the audiovisual sector, including a ban on promoting products such as tobacco, alcohol and other products likely to harm the physical or mental health of minors. They are also required to label advertising content and identify the age groups at which content is aimed.

Anyone who breaches these obligations will be fined up to EUR 1.5 million depending on the seriousness of the offence and their level of income.

This royal decree marks a major step forward in protecting minors and creating legal certainty in regulating the most popular influencers. Nevertheless, some experts are challenging it.

A number of lawyers and the Spanish audiovisual regulator have pointed to the decree's failure to regulate minors not just as passive social network users but also as content creators themselves, sometimes exploited by their legal guardians.

A report by the *Comisión Nacional de Mercados y la Competencia* (National Markets and Competition Commission – CNMC), the national media regulator, concerning the draft royal decree considers the thresholds to be far too high and claims that the cumulative nature of the criteria excludes some very well-known influencers. The royal decree will apply to fewer than 10% of influencers in Spain. For more information about the criticism it has received, see IRIS 2024-2:1/17.

Real Decreto 444/2024, de 30 de abril, por el que se regulan los requisitos a efectos de ser considerado usuario de especial relevancia de los servicios de intercambio de vídeos a través de plataforma, en desarrollo del artículo 94 de la Ley 13/2022, de 7 de julio, General de Comunicación Audiovisual

https://www.boe.es/diario_boe/txt.php?id=BOE-A-2024-8716

Royal Decree 444/2024 of 30 April regulating the conditions of recognition as a user of special relevance of video-sharing platforms, based on Article 94 of the General Law on Audiovisual Communication of 7 July 2022

CNMC- Informe sobre el el proyecto de Real Decreto por el que se regulan los requisitos a efectos de ser considerado usuario de especial relevancia según lo dispuesto en el Artículo 94 de la Ley 13/2022, de 7 de julio, General de Comunicación Audiovisual

https://www.cnmc.es/sites/default/files/5056299.pdf

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CNMC - Report on the draft royal decree regulating the conditions of recognition as a user of special relevance, based on Article 94 of the General Law on Audiovisual Communication of 7 July 2022

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