[DE] Media authorities publish guidelines on labelling of influencer marketing

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At the #watchdog18 social media conference, the German Landesmedienanstalten (regional media authorities) presented a new “labelling matrix” for advertising in social media. The matrix contains recommendations for providers of content on YouTube, Instagram, Twitter and Facebook, for example, but also covers platforms such as Twitch and Pinterest for the first time. The guidelines, which were designed to provide practical advice in the field of influencer marketing, were introduced following an increase in infringements and court procedures linked to the inadequate labelling of advertising and product placement in social media.

Under the German broadcasting and telemedia law governing the separation of advertising and editorial content and the labelling of advertising, a distinction is made between video and photographic content on the one hand and text-based content on the other. Where video content is concerned, Article 58(3) of the Rundfunkstaatsvertrag (Inter-State Broadcasting Agreement - RStV) states that the provisions of Articles 7 and 8 RStV concerning separation and labelling apply. For photographic and text-based content, the less intensive advertising rules of Article 58(1) RStV and Article 6(1)(1) of the Telemediengesetz (Telemedia Act - TMG) apply. Influencers must also observe the advertising rules contained in Article 6 of the Jugendmedienschutz-Staatsvertrag (Inter-State Agreement on the protection of minors in the media - JMStV). These provisions contain labelling obligations and advertising restrictions designed to shield the editorial independence of programmes against third-party interference, protect users and viewers, and safeguard minors from unlawful advertising on the Internet.

The recently published guidelines explain how these legal requirements also apply to influencers. For example, Instagram posts about products that are published in return for a consideration must be labelled as advertisements at the start, while affiliate links must be indicated on YouTube videos.

Videos about products used or made available free of charge, but whose publication is linked to an agreement, must be clearly and permanently marked with the word “Werbevideo” (promotional video) if the product is the main subject of the video.

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The guidelines have considerable practical significance for the influencers concerned. The regional media authorities are responsible for monitoring compliance with broadcasting legislation. This applies not only to licensed television and radio services and the protection of minors from online advertising, but also, in most Länder, to other advertising laws governing audiovisual online media and social media. The responsible authority is always the one in whose Bundesland the Internet-based service operator is domiciled. The media authorities can open supervisory procedures and impose fines when the rules are infringed.

Kennzeichnungs-Matrix der Landesmedienanstalten vom 15. November 2018

https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Richtlinien_Leitfaeden/Leitfaden_Medienanstalten_Werbekennzeichnung_Social_Media.pdf

Labelling matrix of the regional media authorities, 15 November 2018

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