[GB] CMS report on influencer culture points to regulatory gaps and calls for reforms

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On 9 May 2022, the House of Commons Digital, Culture, Media and Sport Committee (which is responsible for scrutinising the work of the Department for Digital, Culture, Media and Sport and its associated public bodies, including the BBC) published its report on influencer culture, following the conclusion of its inquiry into influencers' power on social media. Whilst acknowledging the benefits and the significant returns that influencer culture brings to the UK economy, the Committee emphasised that the industry needs to be given more serious consideration by the government. In the words of the DCMS Committee Chair Julian Knight MP, "as is so often the case where social media is involved, if you dig below the shiny surface of what you see on screen you will discover an altogether murkier world where both the influencers and their followers are at risk of exploitation and harm online".

Devising a formal definition of the term 'influencer' is challenging, yet necessary in effectively enforcing rules and regulations. For the purposes of its report, the DCMS committee defined an *influencer* as "an individual content creator who builds trusting relationships with audiences and creates both commercial and non-commercial social media content across topics and genres" (paragraph no: 3). *Influencer culture* was taken to mean 'the social phenomenon of individual internet users developing an online community over which they exert commercial and non-commercial influence' (paragraph no: 1).

On the whole, the Committee found low rates of compliance with advertising regulation and concluded that employment protection has failed to keep up with the growth of online influencer culture, leaving those working in the industry unsupported and child influencers at risk of exploitation.

Four broad key issues pertaining to influencer culture emerged from the Committee's inquiry, in particular.

a. Behind the camera

Despite the industry's popularity, earning a living from social media influencing appears challenging. The report takes a look behind the scenes and goes beyond the superficial glamour and public perception, often involving paid-for holidays and free gifts. The report highlights that influencers face a range of challenges

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including hacking, impersonation, algorithmic unpredictability, mental health issues, online abuse, trolling and harassment. This appeared to be a bigger problem for women (compared to men) which is exacerbated by the “lack of developed support from the surrounding ecosystem of platforms, regulators, talent agencies and brands” (paragraph no: 15).

b. Transparency around pay standards and practice

Despite social media influencing being a rapidly expanding subsection of the UK’s creative industry, making a living in it remains difficult. Only few influencers appear to take the lion's share of well-paid work, but many others struggle to make a living. Similar to other professions in the creative sector, many influencers classify as self-employed, which may mean that they experience uneven revenue streams and lack of employment protections (e.g., maternity or sick leave).

Moreover, the Committee points out the lack of payment transparency which has resulted in pay gaps between different demographic groups, affecting particularly influencers from ethic minority groups. Despite the fact that social media platforms understand the value that influencers bring to their business model, they do not always “appropriately and consistently” (paragraph no: 58) compensate influencers for the work that goes into producing content that attracts users.

c. The state of influencer compliance and gaps in advertising regulation

The scale of the sector and the volume of content generated across multiple platforms has outpaced the capabilities of UK advertising regulation. According to the UK’s Competition and Markets Authority, influencer compliance rates with UK advertising regulations remain “unacceptably low” (paragraph no: 74). Earlier in March 2021, the UK’s Advertising Standards Authority had reached similar conclusions in its research on influencer ad disclosure. The advertising watchdog’s report revealed a “disappointing overall rate of compliance” with its rules requiring ads on social media to be clearly signposted as such (see IRIS 2021-5/7).

Despite platform-specific guidance on ad labelling and training for influencers, brands and agencies, the messaging around the rules on advertising transparency still lacks clarity and disclosure requirements are practiced with a high degree of variation. New entrants to the influencer marketplace, who may not receive adequate support, are still unaware of their obligations under the advertising rules.

d. Children as viewers and children as influencers

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Influencer content on social media is becoming increasingly popular with children, but the close bond children develop with online figures leaves them at risk of exploitation. Evidence suggests that children are more vulnerable to native advertising as they find it challenging to distinguish and identify. Current advertising regulation does not appropriately consider their developing digital literacy and sufficiently address the need for enhanced advertising disclosure standards that meets children's needs.

Furthermore, influencers may be financially incentivised to share "extreme content" (paragraph no: 104) that includes misinformation and disinformation which may affect children and other vulnerable groups susceptible to harms arising from this type of content. Influencer promotion of unattainable lifestyles and unrealistic beauty ideals was flagged as a particular issue, especially because its consistent message (i.e., 'what you look like matters') and the damaging pressure it generates are likely to contribute to mental health issues such as depression, anxiety, body dysmorphia and eating disorders. Currently, there is not enough regulation to protect children from this.

Concerns are expressed over the lack of protection for children participating in this new industry as successful influencers themselves (e.g., through gaming channels) and the impact this may have on their consent and privacy. Child influencers do not enjoy the same standard of protection around pay and conditions of work as traditional child performers in the entertainment industry. This is because child performance regulations do not currently apply to user-generated content.

Committee recommendations

In response to the issues identified earlier, the Committee makes a range of recommendations that call on the government to strengthen both employment law and advertising regulation. Specifically, the Committee recommends that the government: (a) conducts an industry review into the influencer ecosystem to address knowledge gaps; (b) develops a code of conduct for the industry as an example of best practice for deals between influencers and brands or talent agencies; (c) gives the ASA statutory powers to the enforce advertising standards under its Code of Non-broadcast Advertising and Direct & Promotional Marketing; (d) updates the same Code to enhance the disclosure requirements for ads targeted to audiences composed predominantly of children; and (e) addresses gaps in UK labour legislation that leave child influencers vulnerable to exploitation (including working conditions and protections for earnings).

The government has two months to respond. It remains to be seen whether and if so, in what way, it will adopt the Committee's recommendations.

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Digital, Culture, Media and Sport Committee, Twelfth Report of Session 2021-22: Influencer Culture: Lights Camera, Inaction?

https://publications.parliament.uk/pa/cm5802/cmselect/cmcumeds/258/report.html

Influencer culture: MPs call for action on advertising and employment rules to protect children and online performers

https://committees.parliament.uk/committee/378/digital-culture-media-and-sport-committee/news/170678/influencer-culture-mps-call-for-action-on-advertising-and-employment-rules-to-protect-children-and-online-performers/

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