[GB] DCMS report on influencer culture: no indication of a change of mood in the government response

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On 23 September 2022, the House of Commons Digital, Culture, Media and Sport (DCMS) 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 the government response to its report *Influencer Culture: Lights, camera, inaction?* (previously reported on IRIS 2022-7/18).

The Committee had found low rates of compliance with advertising regulation and concluded that employment protection had 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. It made a range of recommendations that called on the government to strengthen both employment law and advertising regulation.

The Advertising Standards Authority (ASA), which monitors advertisements across the UK (including influencer marketing) for compliance with advertising rules, as well as the Competition and Markets Authority (CMA), which enforces competition and consumer laws and has powers to conduct investigations in suspected violations of these laws in the market, submitted separate responses to the Committee's recommendations earlier in July 2022.

Recommendations concerning the ASA and the CMA

The government welcomed the Committee's recommendations on strengthening the ASA's regulatory tools (e.g., to be given statutory powers to enforce its rules) but pointed to the work currently undertaken as part of its Online Advertising Programme, which aims to improve transparency and accountability across the online advertising supply chain. The government also agreed that the CMA should have more powers to enforce consumer protection law and stated that it will bring forward its Digital Markets, Consumer and Competition Bill (announced in the 2022 Queen's Speech) to provide for regulatory changes (including giving CMA the ability to decide for itself when consumer law has been broken and to impose monetary penalties when breaches are established).

Influencer careers and influencer harassment

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The government agreed with the Committee that pursuing a career as an influencer often came with challenges, including a worrying rise in the amount of online abuse, harassment and intimidation directed towards them. Reference was made to Online Safety Bill (OSB), which will require technology companies to improve their users' safety and take action against online abuse and threats on their services. The Bill places, in particular, a statutory duty on in-scope services to operate complaints procedures that provide for "appropriate" action to be taken by the provider in response to relevant complaints (clauses 18(2b) and 28(2b)). Services will be thus expected to consider the nuances of different types of harm and the appropriateness of their action in response to the complaints they receive. However, the progress of the Bill towards becoming law has been (at the time of writing) paused, with some of its most controversial elements being subject to government review.

Influencer code of conduct

In its response, the government expressed strong support for the Incorporated Society of British Advertisers' (ISBA) Influencer Code of Conduct, noting that the ASA had already published guidance for influencers which existed alongside the Code of Conduct for the Influencer Marketing Trade Body. The government agreed with the Committee's proposal to develop a code of conduct which would complement ISBA's existing work by promoting good practice in the coordination between influencers, brands as well as talent agencies. It is unclear though how the different codes of conduct and guidelines will work together effectively.

Media literacy and children influencers

Children are often unable to differentiate undisclosed advertising from other types of content they access on social media. The Committee had found in its report that both children and parents were not being adequately supported in developing media literacy skills to make informed choices online. Although the government appreciated the risk of children being exploited as consumers of influencer content, it referred to its ongoing work on the Online Media Literacy Strategy, which is designed to equip users with the knowledge and skills required to become more discerning consumers of information. The OSB is also intended to strengthen Ofcom's (the UK's communication regulator) media literacy functions by including media literacy within the new transparency reporting and information gathering powers.

The government also recognised the regulatory gap in relation to safeguarding children acting as "brand ambassadors" themselves. Under existing law (i.e., section 37 of the Children and Young Persons Act 1963), a licence must be obtained before a child can legally participate in certain types of performance and activities in Great Britain (including for example any live broadcast performance or any performance recorded to be used in a broadcast or a film intended for

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public exhibition). However, this protection does not extend to user-generated content, e.g., where young people or a family record themselves and share it on social media. The government pointed out that the Department for Education is open to exploring legislative options that may provide more effective protection to children but there was no express commitment to this.

Overall, the government welcomed the Committee's comprehensive inquiry into influencer culture and recognised that it shed much-needed light on the influencer ecosystem and its impact on both traditional and digital media. However, the government's response provides little indication of what concrete frontline actions will be taken.

Digital, Culture, Media and Sport Committee, Influencer Culture: Lights, camera, inaction?: Government Response to the Committee's Twelfth Report of Session 2021–22

https://committees.parliament.uk/publications/28742/documents/173531/default/

Digital, Culture, Media and Sport Committee, Influencer Culture: Lights, camera, inaction?: ASA System and CMA Responses to the Committee's Twelfth Report of Session 2021-22

https://committees.parliament.uk/publications/23200/documents/169665/default/

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