[ES] The legal regime on content creators and influencers under criticism

IRIS 2024-2:1/17

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The Spanish Ministry of Economy, Trade and Enterprise (MINECO) unveiled a draft royal decree in December 2023 outlining criteria for identifying users of special relevance on video-sharing platforms such as YouTube or Twitch. This is a legal regulation that will establish obligations for certain users, commonly known as influencers, content creators, or vloggers. If these actors adhere to the outlined requirements, they will be considered as a particular type of audiovisual communication service provider according to the Spanish General Law on Audiovisual Communication, which transposed the European Audiovisual Media Services Directive in 2022.

The law introduces two crucial criteria for users to be considered of special relevance in its Article 94.2: a substantial income derived from their activities, and certain level of audience engagement. However, until the release of the draft royal decree, these criteria had not been clearly articulated, delaying the enforcement of this article of the General Law on Audiovisual Communication. According to the specific parameters established in the draft royal decree, the gross annual income generated by content creators to be considered users of special relevance must be higher than EUR 500 000. Additionally, they must have a number of followers equal to or greater than 2 000 000, along with a minimum of 24 videos published per year, regardless of their length.

Following the publication of these criteria, the independent state body responsible for ensuring the proper functioning of the markets in Spain, the National Markets and Competition Commission (CNMC), has expressed some notable concerns. The CNMC highlights reservations about the high-income threshold and follower count, expressing worries that these parameters may exclude content creators who significantly impact consumers. Furthermore, the CNMC notes the dynamic nature of the influencer segment, suggesting that a universal threshold might pose challenges in terms of implementation and effectiveness, especially considering variations in the relevance of influencers across different platforms.

In the same critical vein, the Association of Communication Users (AUC) and the Commercial Television Association (UTECA) argue for a significant revision of the gross revenue and audience figures. They propose that both criteria should not be applied simultaneously and advocate for a lowered threshold. UTECA specifically

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recommends considering users with at least 100 000 followers on all platforms and a minimum annual turnover of EUR 100 000 as users of special relevance.

Once the final royal decree is established, the classification of user of special relevance will force influencers to comply with the General Law on Audiovisual Communication in terms of content, advertising, and the protection of minors. Non-compliance could result in penalties of up to EUR 1.5 million.

MINECO – Audiencia e Información Pública sobre el proyecto de Real Decreto por el que se regulan los requisitos para ser considerado usuario de especial relevancia a efectos de los dispuesto en la Ley 13/2022, de 7 de Julio, General de Comunicación Audiovisual.

https://portal.mineco.gob.es/es-es/ministerio/participacionpublica/audienciapublica/Paginas/Audiencia-informacion-publica-proyecto-RD-regulan-requisitos-considerado-usuario-especial-relevancia.aspx

MINECO – Hearing and Public Information on the draft royal decree regulating the requirements to be considered a user of special relevance for the purposes of the provisions of Law 13/2022 of 7 July, General Audiovisual Communication

CNMC – Informe sobre 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

CNMC – Report on the draft royal decree regulating the requirements for the purpose of being considered a user of special relevance in accordance with Article 94 of Law 13/2022 of 7 July, General Audiovisual Communication

AUC – Observaciones al proyecto (revisado) de Real Decreto para regular a los usuarios de especial relevancia como prestadores de servicios de comunicación audiovisual en el entorno digital.

https://www.auc.es/download/observaciones-al-proyecto-revisado-de-real-decreto-para-regular-a-los-usuarios-de-especial-relevancia-como-prestadores-de-servicios-de-comunicacion-audiovisual-en-el-entorno-digital/?wpdmdl=15056&refresh=65b13162b3ef31706111330

AUC - Comments to the (revised) draft Royal Decree to regulate users of special relevance as providers of audiovisual communication services in the digital

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environment.

UTECA – UTECA pide la regulación de los “influencers” con 100.000 seguidores y una facturación anual de 100.000€

https://uteca.tv/wp-content/uploads/2024/01/UTECA-PIDE-LA-REGULACION-DE-LOS-INFLUENCERS-CON-AL-MENOS-100.000-SEGUIDORES-Y-100.000-E-DE-FACTURACION-002.pdf

UTECA – UTECA calls for the regulation of "influencers" with 100 000 followers and an annual turnover of EUR 100 000

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