Attention: UK Parliament, Digital, Culture, Media and Sport Committee

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Re: Influencer culture inquiry

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This is a response to the public inquiry on Influencer Culture launched by the UK Digital, Culture, Media and Sport Committee. The authors of this policy brief are academic scholars from nine universities located in six countries (United Kingdom, Netherlands, Norway, France, Switzerland, United States), and representing five different scientific disciplines (computer science, media and communication, law, sociology and business). This written evidence is the result of a focus group on consumer harms and content monetization convened by Dr Catalina Goanta and Dr Christine Riefa (assisted by Laura Aade) in early May 2021 that considered a selection of the inquiry questions. All authors of this brief are experts and have a track record of publications in the field of social media and influencer marketing. The team includes academics from around the world, because influencer marketing is a phenomenon that goes way beyond the geographical borders of the UK and needs to be thought of globally.

1. How would you define 'influencers'?

It is important to highlight that **defining the term 'influencer' is very challenging. It is not defined in law.** However, the CMA in its Guidance (2019) explained: 'Popular bloggers, vloggers, celebrities and social media personalities (also referred to as 'influencers') can have a lot of influence over people's buying decisions if they promote a product or service in their posts.' This approach suggests that the focus is on the influence exercised on buying decisions. However,

defining influencers is a lot more **complex**. Indeed, terminology may vary when referring to influencers. The implications of business models such as influencer marketing have to a certain degree tainted the connotation of the term 'influencer', which is gradually being replaced with broader terms such as 'content creator' or platforms-specific terms such as 'Youtuber' or 'TikTokker'. In addition, while influencers may be more associated with some business models (e.g. influencer and affiliate marketing, barter), it is noteworthy that content monetization business models on social media can be much broader, and also include e.g. crowdfunding (e.g. reward-based income fundraising on platforms such as Patreon), direct selling (e.g. merchandise) and platform ad revenue (e.g. advertising via Google AdSense). Moreover, the industries where influencers are active vary widely. Influencers are not necessarily consumeristic. One prominent example is knowledge influencers who create educational content, who use advertising business models, but for social entrepreneurship. Lastly, there is broad consensus that a lot of uncertainty exists regarding legal personhood (e.g. are influencers consumers, freelancers, incorporated businesses). Some influencers also are AI generated and thus questions surround their legal personality, which would have implications with regards to allocating liability.

To cut through this complexity, there are **two proposed approaches to defining who an influencer is**:

- **Determining** instead **what an influencer does**, and whether these activities are or should be considered tasks that lead to a clear occupational profile, by performing a functional, ILO-inspired analysis of the tasks at hand, as well as associated competencies. This approach allows a task-based occupational definition, as opposed to a more identity-based concept.
- A **general definition** loosely based on influencer activities on social media can be 'anyone that seeks to make money from their social media content production'.

2. Is it right that influencers are predominantly associated with advertising and consumerism, and if not, what other roles do influencers fulfil online?

While influencer marketing has been in the spotlight, other types of influencing are clearly on the rise, such as B2B influencing (whereby influencers focus on business audiences instead of consumers) or political influencing (which may entail different business models). There are many emerging cases of influencer marketing that raise questions about the boundaries between commercial speech and political speech.

3. How are tech companies encouraging or disrupting the activities of influencing?

The term 'tech company' can cover a wide range of platforms, including social media companies (e.g. Facebook, Instagram, TikTok), music platforms (e.g. Spotify) or crowdfunding platforms (e.g. Patreon). The focus on different categories and/or examples of 'tech companies' may entail

a diverse range of visibility for influencer activity. Some platforms, such as Spotify, may monetize content creator work in a more secretive way (e.g. by paying them for curated playlists) compared to other platforms.

In general, platforms (tech companies) encourage the activities of influencing. Influencers are the creators of content, platforms are the distributors. Platforms can benefit from advertising and/or selling to the users attracted by influencers. Because of this, it is in the interest of platforms to maximize influence and exposure. However, they are instances of disruption and control exercised on content and activities that are seen as disruptive by content creators, including:

- **Content moderation**: Deplatforming and demonetization disrupt existing business models. Platform discretion in deciding who and what content can be deplatformed or demonetized creates an unstable business environment. Creators may be in danger of being removed from the platform or being barred from gaining revenue at a moment's notice and without real transparency. Platforms may take such measures unilaterally, based on their opaque interpretations of community guidelines. Besides, creators depend on algorithmic visibility, and there are instances where not all content creators are treated equally due to the fact that visibility can be based on a predilection of audiences to consume sensationalistic, controversial or radical content.
- **Supply chains**: Platforms and influencers are only a part of the supply chains emerging around content monetization. Other actors such as talent agencies, social media companies, multi-channel networks (MCNs), manufacturers, advertising agencies exist in this landscape, and questions arise regarding their role in sharing responsibility towards consumers. A particularly noteworthy dimension of this discussion is reflected by data supply chains. Influencers attract and base their economic activity on algorithmic measurements of popularity, such as engagement, impressions or reach. Data resulting from their activity (e.g. demographic data) is handled by an opaque supply chain, and it is unclear under which legal standards this data is being processed.
- **Exclusivity**: Many influencers advertise and monetize without the platform's direct involvement: they contract with brands directly or through third party marketing agencies, post ads directly in their feeds, and receive money through platforms like Patreon. But as the influencer market becomes bigger, social media platforms' upstream market power should raise concerns. Platforms are likely to encourage influencers and brands to monetize and advertise through the platforms directly. YouTube's ban on Patreon links is one example. The increased prominence of platform-provided advertising (as opposed to ads in influencers' feeds) is another. Future concerns could include restricting the flow of data on engagement and reach that is essential for independent influencers and third party agencies.
- **Business volatility**: Business models are unstable due to the fast paced changes in demand and supply. Influencer professionalization may contribute to the stabilization of this industry, and in turn may lead to multi-platform practices and strategies (e.g. using a social

media platform to gain initial exposure, and redirecting economic activity to other platforms, such as own websites, or other platforms).

There is a need for greater clarity in the legal obligations that fall on influencers alongside all actors in the supply chain and an urgent need to scrutinise the control of platforms in this ecosystem. The current legislative changes regarding big tech at EU level (notably the Digital Market Act) and in the UK with the creation of the Digital Market Unit within the CMA to enforce a code of conduct for large online platforms are unlikely to be sufficient to control behaviours in this area.

4. How aware are users of the arrangements between influencers and advertisers? Should policymakers, tech companies and influencers and advertisers themselves do more to ensure these arrangements are transparent?

There is strong agreement amongst experts that users of social media platforms are likely to have little understanding of the 'influencer economy'. However, using **transparency as public policy, although welcome, is unlikely to be sufficient** to tackle consumer issues arising out of the activity of influencers on social media.

- **Disclosure rules for advertisers (including influencers)**: more research is necessary to determine the usefulness of disclosures on social media, as well as the digital literacy of consumers with respect to influencer business models. Consumer disclosure regulation already exists, but challenges arise out of the problematic interpretation of current standards to business practices which are not sufficiently clear for regulators, authorities or courts (e.g. images that are retouched with body or face filters may contribute to unfair commercial practices, but are currently not interpreted as such). It should also be clarified how responsibility is shared in the supply chain for the disclosure of advertising.
- **Digital enforcement**: even if disclosure rules become more clear, it is not clear how public authorities are and ought to be dealing with the scaling of monitoring. The interpretational issues referred to above also spill over into enforcement, making it difficult to determine what exactly should be monitored (e.g. would consumers behave differently if they knew a post was sponsored). In any event, the CMA has given ample guidance (2019) on how to be transparent and yet would need to devote large resources to monitoring and eliminating unfair practices given their volume.
- **Consumer behaviour**: Recent theoretical and empirical economics research finds that when intermediaries (influencers) are not directly compensated by their followers, disclosure or transparency regulations can backfire, increasing the amount of advertising on the platform at the expense of organic content and potentially reducing user/follower welfare.

As a result the authors of this response would like to encourage Parliament to review other regulatory frameworks, which could include:

- **Self-regulation**: A lot of self-regulation exists (e.g. in media law), but depending on how these rules are enforced, there may be silos of expertise that do not communicate.
- **Fair business practices**: Depending on their expertise, influencers may be vulnerable from an informational perspective, and often not be aware of business practices. This leaves them vulnerable to predatory practices that exploit their economic activity. Different levels of support and awareness (e.g. governmental information or rules on disclosures for contracting parties) may be necessary to avoid abusing influencers who do not have sufficient legal literacy or bargaining power.
- **Labor law**: To the extent that influencers are guided by talent agencies representing them, a discussion similar to that governing gig-workers may arise (e.g. Uber drivers as employees). This can be particularly relevant for child influencers as well. In France, the Labor Code was modified to better protect children in entertainment through new substantive and procedural rules.
- **Content regulation**: Platform governance frameworks must be updated to include the mandatory limits of freedom of contract arising out of fields of law such as consumer protection.

The members of this group are open to further elaborating on the points mentioned in this written evidence and welcome additional information requests. Please contact: Dr Catalina Goanta, catalina.goanta@maastrichtuniversity.nl and/or Dr Christine Riefa, christine.riefa@brunel.ac.uk

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