

# The Influencer Marketing Legal Checklist That Could Save Your Job





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We all know by now that brands and influencers go together like peanut butter and jelly. Why? Because influencers help brands extend their reach on social media and brands provide influencers new opportunities through the partnerships. But with all the pro's of this kind of friendly business relationship comes legal responsibilities. When it comes to partnering with influencers, platforms like Instagram and the Federal Trade Commission (FTC) have some rules that you need to be aware of.

This checklist is designed to make sure you have the foundation for entering a partnership with an influencer and know exactly how to execute a campaign without running into any trouble with the Feds. Who knows, these tips might even save your job one day.

# Nail Down Your Social Media Policy

Developing a social media policy for your brand should be your first step — it's essential. This basically lays out how your brand will be represented on social media. It's important to have a solid social media policy in place because you'll want all of your brand's social media accounts to be cohesive.

Here are some key elements to include:

- Voice and tone for all social media messaging
- What kind of content you want on your own feed
- Brand values, mission statements and causes you want to communicate
- How to ask for permission to repost user-generated content featuring your brand
- Do you follow back? Do you do shout outs? Nail that down!

The policy doesn't just apply to your employees, but the influencers you partner with as well. You'll want to make sure the styles of the influencers you work with align with yours! When you hire new influencers, send them your social media policy so they know the do's and don'ts of working with your brand. Remember: Avoid micro-managing their content. If they're the right influencers for your brand, you won't need to mold them into who you want them to be.

## Contracts for Your Contacts

When you're trying to build relationships with your influencers, bringing up contracts isn't very fun. It makes things sound so... serious. As much as you want all of your influencers to be your besties, there are still business elements that need to be taken care of.

Type up a clear and concise contract to let them know what you expect from them. Make sure your influencer contracts contain the following:

- How many posts you want the influencer to create
- How often the influencer should post
- Specific hashtags and campaign verbiage to use
- Days and times to post
- What kinds of content you expect (photos, videos, Instagram Stories, etc.)
- Whether posts need to be sent ahead of time for approval (This isn't recommended and understand that it can cause delays in posting.)
- Photo copyright and FTC disclosures (We'll dive deeper into these in a bit.)

With influencer contracts, the less gray area there is, the better. You don't want anyone to go back and say something wasn't clear, when it was all supposed to be agreed upon from the beginning. The contract will lay out the groundwork for making sure everyone is in a happy agreement moving forward.

## FTC Disclosure: We Have to Know it's an #Ad

When scrolling on Instagram, it should be easy to see when an influencer is working with a brand. A post will feature the hashtag “#ad” or “#sponsored” at some point. Even though it might seem obvious that an influencer is working with a brand, it's mandatory to identify ads and paid posts. This is all in an effort to prevent consumers from being deceived by influencers to buy a product. It's all about authenticity and transparency — don't underestimate how much your followers value that.

As a brand working with influencers, it's important to remind them that including disclosures in the captions is non-negotiable. A post needs to have a disclosure if the influencer is:

- Expressing an opinion about your product
- Promoting your product
- Giving a testimonial about your product

If they're doing any of these things in any capacity, they must explicitly state that this is a #paid post.

Being authentic with your followers is very important, but this particular practice is something that influencers legally need to do. It doesn't matter if the influencer has received monetary compensation or just a free product, they need to be honest about the partnership.

Of course, there's some guidelines for



disclosures too:

**DON'T USE SHORT FORM HASHTAGS:** Hashtags are a simple way to add disclosure, but using #spon, #sp, and #collab isn't clear enough. By clear we mean crystal clear, so influencers need to use #sponsored, #ad or #paid to let their followers know they're working with your brand.

**DON'T BE VAGUE:** It's not enough for influencers to say that your brand gave them a "sneak peek" at your new product or just say "Thanks @yourbrandname!" They need to spell it out that they received the product or that they're working with you. Instead they should say something like "@yourbrandname gave me this product to review and show to you guys!" Like we said, it's all about transparency.

**HONESTY WITH AFFILIATE CODES AND LINKS:** Bottom line — if you give your influencers affiliate codes for them to give to their followers, the influencers need to let them know whether or not they get a cut of the proceeds.

These rules only apply to influencer posts for marketing and promotion purposes. If it's something that they purchased, then they can post about it without clarifying any relationship exists between you and them.

## Photo Copyright: Who Has Ownership?

When working with influencers, one of the biggest benefits is the authentic content they create for your brand. Successful influencers are good at what they do, so if you're working with the right ones, you can guarantee you'll want to repost and repurpose the content they create. Which leads us to a very important issue — Who owns that content?

The short answer is: Your brand does...as long as it's in the influencer contract.

Photos, videos, Instagram Stories, etc all belong to the influencer unless they agree to let your brand repurpose that content. That's why we mentioned including it in the contract. That way, everyone is on the same page about how the content will be reused, and the influencer won't be blindsided when their work potentially ends up on a billboard or your product packaging one day.



There are some exceptions to the rule, however:

**CONTESTS:** If a user or influencer is specifically participating in a contest where they agree to terms before entering.

**GIVEAWAYS:** When the rules and terms state that creating content is required to enter.



**FAIR USE:** This usually doesn't come up with influencer marketing, but just a tip — You don't have to have permission to repurpose content if it is being used for criticizing, teaching, research or for satire.

**Note:** You can't own the content if it wouldn't be covered under normal copyright laws. So if it features someone else's work, or if it is in anyway not original, you can't have the rights to it. That means you'll want to make sure the influencer's content is creative, original and a product of their own effort.

Now with all this in mind, don't be afraid to repost content because you're afraid of copyright issues! It offers a lot of benefits to your brand like:

- Creating hype by spreading promotions on multiple pages
- Making your brand or product seem more popular
- Showing that your brand engages with influencers in your industry
- Improving your social media feeds with more unique content aside from what your brand creates in-house

## Managing Multiple Contracts and Influencers? How Do I Keep Up?

What's important is that you know exactly what you're getting yourself into when working with influencers. Don't underestimate the time, (wo)man power and legal details that come into play. At Statusphere, we manage all influencer communications and ensure brands maintain ownership of the content influencers create during campaigns.

With this checklist as a guideline, you'll have a solid foundation for working with influencers. Remember to consult a legal professional before you get started. Ready to get the right influencers posting about your brand? [Click here](#) to get in touch with one of our influencer marketing experts!

***Disclaimer: We're influencer marketing specialists, not lawyers! This content is not legal advice and you should definitely consult a legal professional based on your needs and questions. We do not make any guarantees as to accuracy or completeness of this information and take no liability or legal obligations for your use of this information.***

# The Full Legal Checklist

## Contract

	Yes	No
Has a contract been established with an influencer?		
Have you specified how many posts you expect from them?		
Have you included how often your influencer should post during the day/week/month?		
Have posting days and times been established?		
Have you detailed out specific hashtags and campaign verbiage for them to use?		
Is there an agreement on what kinds of content will be posted? (photos, videos, Instagram Stories, etc.)		
Do influencer posts need to be sent ahead of time for approval?		
Have you established an agreement on content ownership?		
Have you reminded your influencers about including FTC disclosures in their posts? See examples below.		

## Should influencers use #ad/#sponsored or #gifted?

	#ad #sponsored	#gifted	both
Did the influencer receive monetary compensation for the post?	X		
Did the influencer receive products or services for free?		X	
Did the influencer receive products to give away to their followers?			X
Is the influencer a paid brand ambassador for the brand?	X		
Did the influencer receive free travel and accommodations to attend a brand event?	X		





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