



INTELLECTUAL PROPERTY PROTECTION: MAJOR CONCERNS OF SOCIAL MEDIA INFLUENCERS AND CONTENT CREATORS IN NIGERIA



INTRODUCTION

Social media influencing and content creation forms a major part of the fast-evolving technological advancement in the media and internet space. Social media influencing involves the use of social media to establish credibility, access a large audience and disseminate information to persuade the targeted audience.¹ On the other hand, content creation involves the ideation, production and sharing of content that connects the creator, the subject of the creation and the prospective audience. Players in these ventures are called “Social media influencers” and “Content creators” respectively.

Digital content platforms such as webpages, blogs, infographics, social media platforms like Facebook, TikTok, Instagram, YouTube, Twitter, and sometimes LinkedIn are commonly used by social media influencers and content creators to amass large followings and subscriptions.

In recent times, social media influencing and content creation have gained popularity as an effective means of advertising and marketing. These social media influencers and content creators have leveraged on their large followings and subscriptions to partner with brands and promote products and services in exchange for monetary compensation, free products, or discounts.

The extent of time and intellectual resources invested by social media influencers and content creators to produce high-quality content on specific trends, products and industries makes the protection of their Intellectual Property Rights (IPRs) a major concern. It is for this reason, among others that this article seeks to highlight the different types of IPRs and the protection available for social media influencers and content creators under the extant laws in Nigeria.

¹<https://www.pixlee.com/definitions/social-media-influencer#:~:text=definition,Social%20Media%20Influencer,through%20their%20authenticity%20and%20reach.> (last accessed on 16/03/2023).

WHY IS THE PROTECTION OF INTELLECTUAL PROPERTY (IP) IMPORTANT TO SOCIAL MEDIA INFLUENCERS AND CONTENT CREATORS?

Once an IP is duly registered, the IP is protected in accordance with the laws and the relevant IPRs of the owner are guaranteed. The advantages of registering one's Intellectual Property (IP) includes:

1. It offers a competitive edge over other similar businesses.
2. It affords the owner of the registered IP the opportunity to establish ownership and enforce the IPRs in the event of any dispute.
3. Unlike in the case of an unregistered IP where strong evidence must be adduced to prove plagiarism, plagiarized content can be easily removed, and damages obtained where the IP is registered.
4. Registered IPs are more reliable, legitimate and consumers are more likely to re-visit them.

In Nigeria, as social media influencing becomes more prevalent by the day, it has become pertinent to note the existence of regulatory concerns and laws to be complied with by social media influencers, content creators and prospective brands in the process of creating content in the digital content space.

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The unique content on digital platforms is easily accessible to millions of users and susceptible to plagiarism. Thus, it has become vital for social media influencers and content creators to be informed of the available IPRs and the protection of such rights, as well as the legal consequences for the infringement of the rights of others while creating and distributing content to the general public.

Social media influencers and content creators promoting goods and services must conduct their due diligence and at the same time ensure that the products to be promoted are such that the brand owners have IP ownership and control over. Additionally, in terms of the creative works of others in texts, photos or videos on digital content platforms, it is crucial for creators to obtain the requisite authorization before using them.

Under the relevant Nigerian laws, both the brand owner, creator or influencer in any case may be held liable where a product that infringes on another's IPRs is advertised or marketed.

The consecutive paragraphs of this article reveal how these relevant laws can impact the activities of social media influencers and content creators within the scope of their IPRs.

Copyright

Copyright is a form of IP that protects certain categories of creative works as specified in the Nigerian Copyright Act 2022 (“NCA”).² Under the NCA, copyright owners are vested with the right to distribute, copy, display, or perform their original works. Unique content such as videos, posts, texts, podcasts and pictures created by social media influencers and content creators need not be registered to be protected in Nigeria. However, sufficient effort must be expended on the work to give it an original character and it must be fixed in a tangible medium of expression now known or later to be developed from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device.³

The NCA prohibits every form of copyright infringement.⁴ This is justified on the ground that the creative works of social media influencers and content creators are productions of their minds. Thus, before their works can be used by others, permission must be first sought and obtained.

Furthermore, to prevent cases of copyright infringement and accruing liability, content creators must verify that they have the appropriate permissions (or are eligible for an exception under the principle of ‘fair use’) before using creative works belonging to others for social media posts.⁵ It is important to state that where the appropriate permissions are not sought and the content of another is utilized, an infringement is said to have occurred and liability incurred under the NCA.⁶

In a bid to protect IPRs, several social media platforms have come up with their own tools to detect IPRs violations; for example – The **‘Content ID’** program which is a digital fingerprinting system developed by Google to detect violation of copyrighted works on You tube.

Mostly, the online use of creative works is not protected, thus while promoting brands and products, social media influencers and content creators must also be careful to avoid posting contents that would violate the IPRs of others. They must conduct the necessary due diligence such as finding out if license needs to be obtained, contacting the copyright holder before sharing their materials etc.

² Section 1 (1) of the NCA.

³ Section 2 (2) (a) and (b) of NCA.

⁴ Section 36 (1) (a)- (g) of the NCA

⁵ Importance of Intellectual Property for Social Media Influencers and Content Creators (<https://www.lexorb.com/entry/social-media-influencers-and-content-creators/>) last accessed 17/03/2023.

⁶ Section 37 (1) of the NCA.





Trademark

Trademarks constitute a form of IP that are used to identify, classify, and differentiate the source of one's goods and services from others. Upon registration, the Trademarks Act⁷ grants to the owner of a registered trademark, the exclusive right and use of such trademark.

The written consent of the owner of a trademark or brand name must be sought and obtained before such trademark or brand name can be displayed on a social media post, photo, blog, vlog or video. Liability for infringement of trademark will arise where such consent is not obtained. It is therefore pertinent for creators to avoid using IP in a way that may confuse customers with the source of the goods or services or negatively affect a company's brand.

WHO OWNS THE INTELLECTUAL PROPERTY (IP) DEVELOPED FOR THE PURPOSE OF SOCIAL MEDIA INFLUENCING AND CONTENT CREATION MARKETING?

Businesses often engage the services of social media influencers and content creators to promote their products by creating original content for such brands. Both parties often enter into a Service Level Agreement ("SLA") which usually sets out the terms of engagement and ownership of the rights.

Generally, the brand/business usually reserves ownership of the content created whether for advertising or for marketing, however, the parties may agree otherwise. In the absence of an Agreement to this effect, the Promoter, which in this case is the social media influencer or content creator retains the ownership rights of such IP.

⁷ CAP T13, Laws of Federation of Nigeria 2004.

CONCLUSION

In order to protect a brand owners' IP, social media influencers and content creators must conduct due diligence on every product or brand in the course of advertising and ensure that they:

- i. Engage a professional, preferable an entertainment lawyer who would provide advice prior to formal engagement with the Brand owners.
- ii. Get copyright subscriptions for original videos, audio recordings, photos, texts, and artwork.
- iii. Obtain the necessary permits and licenses in advance and avoid the use of brand names, logos, trademarks, and copyrighted material without permission of the owner.
- iv. Obtain factual review of a product and avoid false reviews.
- v. Register trademarks that will adequately protect logos, slogans, tags, series names, and their unique hashtags.
- vi. Enter a SLA with the brand or business owner when promoting a brand and clearly set out the terms and conditions with respect to IPRs ownership.

They must also note that where diligence and caution is not exercised, punitive consequences may arise. Thus, proper legal advisory and guidance should be sought while engaging in the business of social media influencing and content creation.

This article is to provide general guidance and information and does not in any way constitute legal advice. Should you require any legal advice in respect of the above, kindly contact:



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