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INTELLECTUAL PROPERTY RIGHTS IN SOCIAL MEDIA CONTENT CREATION AND INFLUENCER MARKETING

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ABSTRACT

This study investigates the increasing importance of intellectual property rights (IPR) in relation to content creation on social media and influencer marketing. As digital platforms continue to grow, creators are encountering various challenges linked to copyright violations, misuse of trademarks, and unauthorized use of their content. This paper reviews the current legal frameworks, particularly in India, and assesses how copyright, trademark, and contract law is relevant to influencers and digital marketing. Additionally, it explores the obligations of social media platforms and the importance of policy in protecting creative digital content. The research aims to deliver an in-depth understanding of the legal frameworks that defend influencers while offering suggestions to enhance IPR enforcement in the changing digital environment.

INTRODUCTION

The swift expansion of social media platforms has changed how people connect, create, and engage with content. Platforms like Instagram, YouTube, TikTok, and Facebook have led to the emergence of a new digital economy, where content creators and influencers are pivotal in influencing public perceptions, endorsing products, and generating revenue through brand collaborations. Influencer marketing has become a formidable and personalized advertising approach, as social media figures interact directly with specific audiences, often yielding a stronger impact than conventional marketing methods.

As influencers generate and disseminate original content, such as videos, images, music, and blog entries, the necessity to safeguard their creative output has gained increasing importance. This is where intellectual property rights (IPR) come into play. Copyright laws

protect the creative works produced by influencers, trademarks secure their brand image, and contracts clarify ownership and usage terms in collaborations with brands. However, the digital landscape of social media introduces unique difficulties for enforcing these rights. Content is often reposted, duplicated, or modified without authorization, complicating creators' efforts to maintain control over their intellectual property. Additionally, the definition of content ownership can become ambiguous when influencers engage in paid promotions or sponsored deals with brands.

In India, the legal framework regarding IPR in digital content and influencer marketing is still evolving. Although existing legislation, such as the Copyright Act of 1957 and the Trade Marks Act of 1999, offers certain protections, these laws were not initially intended for the digital age. Likewise, the Information Technology Act of 2000 and the intermediary guidelines seek to address

the obligations of online platforms, yet enforcement remains a significant challenge. Furthermore, many influencers might not fully recognize their legal rights or how to effectively protect their content and personal brand in the digital realm.

This research paper aims to investigate the relationship between IPR and social media, concentrating on the rights and challenges encountered by content creators and influencers. It assesses how current laws are applicable to today's digital environment, the efficacy of present enforcement practices, and the role of social media platforms in safeguarding intellectual property. By illuminating crucial issues, case law, and gaps in regulation, the study aspires to provide practical suggestions for enhancing IPR protection and cultivating a more secure and equitable landscape for digital creators and influencers in India and beyond.

Research Objectives :-

- i. To comprehend the application of intellectual property rights in creating and sharing social media content and influencer marketing.
- ii. To evaluate the legal framework overseeing copyright, trademark, and trade secrets within the digital content domain.
- iii. To analyze the obstacles influencers encounter when striving to safeguard their content from IP violations.
- iv. To assess the effectiveness of enforcement mechanisms available through social media platforms and legal regulations.
- v. To suggest measures for improved IP protection and clearer contractual agreements in collaborations between influencers and brands.

Research Questions:-

- How are intellectual property rights implemented concerning content

developed and disseminated on social media platforms?

- What legal protections are accessible to influencers according to Indian IP law?
- What challenges do influencers face in upholding their IP rights online?
- How efficient are the existing dispute resolution mechanisms (such as takedown notices, platform policies, INDRP/UDRP)?
- What is the significance of contracts in specifying IP rights during partnerships with brands?

Research Methodology

This research employs a doctrinal legal methodology to examine the role of intellectual property rights in social media content creation and influencer marketing. It relies on an analysis of primary legal documents including the Copyright Act of 1957, the Trade Marks Act of 1999, and the Information Technology Act of 2000, along with pertinent case law that illustrates how courts have tackled issues related to digital content and branding. Furthermore, the study draws from international frameworks such as the DMCA in the United States and the UDRP process under ICANN for a comparative analysis.

Secondary sources, including scholarly articles, legal commentaries, and guidelines from organizations like the Advertising Standards Council of India (ASCI), are employed to reinforce the analysis. The research also takes into account the role of social media platforms and their mechanisms, such as YouTube's Content ID and Instagram's reporting systems, in enforcing IP rights. This approach aids in understanding existing legal protections and pinpointing areas in need of reform to better assist content creators in the digital age.

Intellectual Property Rights in Social Media Content Creation and Influencer Marketing:-

In today's digital age, social media has emerged as a powerful tool for communication,

entertainment, and business. It provides platforms for individuals and organizations to create and share content, enabling influencers to amass significant followings. The content produced by influencers, including videos, photos, blog posts, and podcasts, has led to a new era of marketing. However, with the rise of social media content creation and influencer marketing, the protection of intellectual property (IP) has become a major concern. Intellectual Property Rights (IPR) are essential for ensuring that content creators and influencers can protect their work from unauthorized use, maintain control over their creations, and monetize their efforts. IPR in the context of social media content creation and influencer marketing plays a significant role in protecting the interests of content creators, brands, and consumers alike. All that said, with how social media makes the personal public, distinguishing between the commercial and the conversational has become notoriously difficult.⁴⁹⁵⁰

Intellectual Property Rights and Their Importance in Social Media Content

Intellectual Property Rights encompass a wide range of legal protections for creative and intellectual works. Social media has integrated itself into day-to-day life, revolutionising communication and business interactions on a global scale with its easy and fast communication.⁵¹ These rights include patents, copyrights, trademarks, and trade secrets, which safeguard original ideas and creations from unauthorized use, reproduction, or distribution. Social media content creation involves the production of various forms of media such as photographs, music, video content, artwork, and written posts. These creations are eligible for copyright protection, which grants the creator exclusive rights over

the use and distribution of their work. For influencers, copyright protection is crucial, as it ensures that they can control how their content is used, whether by brands or other creators.

In addition to copyright, social media influencers and content creators also rely on trademarks to protect their brand identity. A trademark may include a logo, tagline, or a unique name associated with the influencer's personal brand. Trademarks help distinguish the creator's content from others in the marketplace and are valuable assets in influencer marketing campaigns. Trade secrets, on the other hand, are used by content creators to protect confidential business information, such as marketing strategies, audience analytics, or partnership agreements with brands. These IP protections help influencers safeguard their business interests, prevent infringement, and maintain control over their content and brand identity.

Social Media Content Creation and Copyright Issues

Copyright plays a pivotal role in protecting the original works created by social media influencers. The moment a creator uploads content onto a platform like Instagram, YouTube, or TikTok, that content is automatically protected by copyright laws, provided it meets the necessary criteria of originality. Copyright protection allows creators to control how their work is used, shared, and reproduced. This means that no one else can legally copy, redistribute, or profit from that content without the creator's permission.

Despite the automatic protection provided by copyright laws, the enforcement of these rights can be challenging in the digital world. Social media platforms often become hotbeds for copyright infringement, as content is easily shared and reposted without the original creator's consent. This leads to significant issues for content creators who struggle to protect their work from unauthorized usage. Platforms like YouTube and Instagram have content recognition tools, such as Content ID,

⁴⁹ Denneyer Group. (2023, April 7). IP and social media: A complicated relationship. Denneyer. Retrieved April

⁵⁰, 2025, from <https://www.dennemeyer.com/ip-blog/news/ip-and-social-media-a-complicated-relationship/>

⁵¹ Edwards, A. (2024, April 12). Intellectual property rights in the age of social media. Lawdit Solicitors. Retrieved April 19, 2025, from <https://lawdit.co.uk/readingroom/intellectual-property-rights-in-the-age-of-social-media>

which help detect and block copyrighted material. However, this technology is not foolproof, and creators often find it difficult to track and remove infringing content.

Furthermore, many influencers collaborate with brands, which can lead to complex copyright issues. When an influencer creates branded content, they may be required to grant the brand certain rights over the content, such as the ability to repurpose or use it in advertisements. These agreements can sometimes blur the lines of ownership and control over the content. It is undeniable that the expansion of social media networks and sharing culture has impacted copyright law's capacity to fulfil its intended purpose.⁵² To mitigate these issues, influencers must have clear and well-defined contracts that specify the extent to which a brand can use their content. Understanding copyright law and negotiating these agreements is critical for influencers to protect their rights and ensure fair compensation for their work.

Trademark Protection in Influencer Marketing

A crucial element of influencer marketing is the development of a personal brand, which may include distinctive logos, catchphrases, or visual aesthetics that set an influencer apart from others in the industry. Trademarks protect these identifiers by granting exclusive rights to the owner, preventing others from using similar marks that could cause confusion in the marketplace.

For influencers, their personal brand is often the cornerstone of their business. They rely on their established identities to attract followers, collaborate with brands, and generate revenue. As such, protecting their trademarks is crucial. Influencers may register trademarks for their names, logos, slogans, or even hashtags. These trademarks help ensure that their unique brand identity is protected from imitation by other

influencers or businesses that might try to capitalize on their popularity.

Trademark protection also extends to the products and services that influencers promote or create. For instance, many influencers launch merchandise or collaborate with brands to produce exclusive product lines. In such cases, trademarks protect the name and design of the products, ensuring that the influencer's name and image are not used without permission. Additionally, if an influencer licenses their brand to a company for use on merchandise, trademarks help define the scope of that license, ensuring that the brand is represented accurately and consistently.

The Role of Influencer Marketing and IP in Brand Collaboration

Influencer marketing involves collaborations between content creators and brands to promote products or services to a large and engaged audience. This form of marketing has grown exponentially, as influencers offer brands direct access to niche markets. Influencers use their social media platforms to create authentic and engaging content that resonates with their followers, thereby increasing brand awareness and driving sales.

However, influencer marketing also raises several IP-related concerns. One of the primary issues in influencer-brand partnerships is the ownership of the content created during the collaboration. In most cases, influencers grant brands permission to use the content in marketing materials, but the terms of this permission must be clearly outlined in the contract. The agreement should specify how long the brand can use the content, where it can be used, and whether the influencer retains any rights to the content. Without clear terms, disputes may arise regarding the scope of usage or ownership of the content.

Another challenge in influencer marketing is the protection of trade secrets. Influencers often work closely with brands to develop marketing strategies, content plans, and promotional

⁵² IP and Legal Filings. (2025, January 3). Legal analysis of copyright issues in YouTube and other social media content. Retrieved April 19, 2025, from <https://www.ipandlegalfilings.com/legal-analysis-of-copyright-issues-in-youtube-and-other-social-media-content/>

materials. These partnerships involve sharing sensitive information, and it is essential for both parties to take steps to protect their confidential data. Non-disclosure agreements (NDAs) and confidentiality clauses are often used to ensure that trade secrets remain protected during collaborations.

IP Infringement in Social Media and the Legal Framework

The digital nature of social media makes it particularly susceptible to IP infringement. As content is rapidly shared and reposted, it becomes difficult to track the unauthorized use of intellectual property. Influencers and content creators often find their works used without permission, resulting in loss of revenue and reputational damage.

Legal frameworks for addressing IP infringement in social media are constantly evolving. In many countries, laws regarding digital copyright infringement have been updated to account for the challenges posed by the internet. For instance, the Digital Millennium Copyright Act (DMCA) in the United States provides a mechanism for content creators to file takedown notices when their copyrighted work is used without authorization. Similarly, the European Union's Directive on Copyright in the Digital Single Market requires platforms to take greater responsibility for preventing the unauthorized sharing of copyrighted content.

Despite these laws, enforcement remains a challenge. Social media platforms are not always held accountable for the infringement that occurs on their sites, and many creators struggle to enforce their rights. To address this, social media companies have developed systems that allow creators to report infringement, but these systems can be slow and inefficient. Additionally, the rapid pace at which content is uploaded means that creators may not even become aware of infringements until it is too late to take action. A company's trademark, including names, logos, and brand elements, are also subject to infringement on social media. Users may incorporate

trademarks of a company into their own posts, profiles, or pages in a way that is likely to cause confusion as to the source or sponsorship.⁵³

The intersection of IPR, social media content creation, and influencer marketing is a complex and rapidly evolving area. Intellectual Property Rights provide critical protections for influencers and content creators, helping them maintain control over their work and monetize their efforts. Copyright, trademark, and trade secret protections are essential for content creators to safeguard their original works, brand identities, and business interests. At the same time, influencer marketing introduces new challenges related to IP ownership, brand collaborations, and the protection of trade secrets.

As the digital landscape continues to grow, the importance of understanding and enforcing IPR in the realm of social media content creation and influencer marketing will only increase. Influencers must be aware of their rights and the potential risks of IP infringement, while brands must ensure that they protect their own intellectual property and respect the rights of content creators. For both parties, having a clear understanding of intellectual property laws and establishing well-defined contracts is essential to ensuring successful and legally sound collaborations.

Moving forward, policymakers and social media platforms will need to work together to develop more effective frameworks for protecting intellectual property in the digital age. By addressing the challenges of IP infringement and promoting better enforcement mechanisms, the digital content creation ecosystem can continue to thrive and foster creativity while respecting the intellectual property of creators.

⁵³ Abou Naja. (2024, April 25). Copyright infringement on social media: How to prevent. Abou Naja IP. Retrieved April 19, 2025, from <https://abounaja.com/blog/copyright-infringement-on-social-media>

Legal Framework of IPR in Content Creation and Influencer Marketing in India

The rise of social media platforms such as Instagram, Facebook, YouTube, and TikTok has transformed the way content is created, shared, and consumed. Content creators and influencers have become key players in modern marketing, using their platforms to engage millions of followers. With the exponential growth of influencer marketing and social media content creation, the importance of Intellectual Property Rights (IPR) has grown significantly. In India, the legal framework for IPR related to social media content and influencer marketing is primarily governed by copyright law, trademark law, and the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, which fall under the broader intellectual property laws. Understanding the various legal protections available is essential for content creators, influencers, and businesses involved in digital marketing.

Copyright Law in India and Social Media Content

The Copyright Act of 1957 is the key legal framework governing copyright in India. Under this law, original works of authorship, such as literary works, musical compositions, artistic works, and cinematographic films, are granted protection. Social media content, including videos, photographs, music, and text, is generally considered a "literary or artistic work" under the Copyright Act and is thus eligible for protection.

In the context of influencer marketing, copyright law plays a crucial role in safeguarding the content created by influencers. When influencers post content on social media, it is automatically protected by copyright as long as it meets the requirements of originality. This means that no one can legally reproduce, distribute, or use that content without the creator's permission. This includes not only the influencers themselves but also brands that

may seek to use the content in their marketing campaigns.

The Copyright Act also includes provisions for the infringement of copyright, allowing creators to seek legal action if their work is used without authorization. However, the online environment, where content is easily shared and reposted, poses significant challenges to enforcement. Social media platforms often act as intermediaries in the infringement process. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, require intermediaries to take down infringing content within a specific time frame once it is brought to their attention. Influencers can file complaints with social media platforms if they detect unauthorized use of their content.

Trademark Law and Personal Branding of Influencers

In India, trademark protection is governed by the Trade Marks Act, 1999, which grants rights to individuals or companies using distinctive symbols, names, or logos associated with their goods or services. For influencers, trademarks are an essential tool to protect their brand identity. Influencers often use unique names, logos, and catchphrases to distinguish themselves in a crowded marketplace. These elements can be registered as trademarks to ensure that no one else can use them without permission. An influencer's personal brand is often associated with specific products, fashion trends, and lifestyle choices, all of which are showcased through their social media platforms.⁵⁴

Trademark law provides legal protection for personal brands that influencers build over time, which may include logos, slogans, and taglines. For example, an influencer who frequently promotes a specific lifestyle brand might want to trademark a unique hashtag or phrase they use to market their products. This

⁵⁴ Tran, B. (2025, March 25). How social media influencers are impacting trademark law in virtual spaces. PatentPC. Retrieved April 19, 2025, from <https://patentpc.com/blog/how-social-media-influencers-are-impacting-trademarklaw-in-virtual-spaces>

would prevent other creators or brands from using the same phrases or symbols, thus protecting the influencer's brand image and maintaining their unique presence in the market.

In the context of influencer marketing, brands that collaborate with influencers must also ensure that their trademarks are not infringed. For instance, influencers might be asked to promote products or services from a brand, and they may create content that includes the brand's logo, tagline, or product name. In such cases, both the influencer and the brand need to ensure that the use of trademarks in content creation is authorized and legally sound.

The Role of Contracts in Influencer Marketing

Contracts are an essential aspect of the legal framework surrounding influencer marketing. A well-drafted contract defines the terms and conditions under which content is created and used, as well as the intellectual property rights involved in the collaboration. Influencers often work with brands under contract to create promotional content.

These contracts should clearly specify:-

Content Ownership: It is essential to establish who owns the content created. In some cases, influencers may retain ownership of the content, while in others, brands may seek to acquire exclusive rights to the content for use in advertisements or other marketing materials.

Usage Rights: The contract should outline how and where the content can be used. This includes whether the brand can repurpose the content for its marketing campaigns, use it in print media, or share it on other digital platforms.

Exclusivity and Duration: Contracts should specify whether influencers are allowed to work with competing brands during the contract period and how long the content can be used by the brand.

Compensation and Royalties: The contract should also address the compensation to be

provided to the influencer for their work and specify any royalties or performance-based payments if applicable.

The Information Technology Act, 2000 and Intermediary Liability

The Information Technology Act, 2000 (IT Act) is an important piece of legislation governing the use of digital technologies in India. Section 79 of the IT Act provides a "safe harbor" provision for intermediaries, including social media platforms like Facebook, Instagram, and YouTube. This means that these platforms are not held responsible for content uploaded by users unless they have actual knowledge of illegal content and fail to remove it.

For influencers and content creators, this law is important because it defines the responsibilities of social media platforms when it comes to the removal of infringing content. The amended IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, outline more stringent duties for platforms to monitor and remove unlawful content within a prescribed time frame. Influencers can leverage this provision to protect their rights if their content is used without authorization.

However, the safe harbor provision does not absolve social media platforms entirely of responsibility. Platforms must comply with the rules, such as taking action against content that violates intellectual property rights. Social media platforms must also establish mechanisms for users to report infringing content, which allows creators to assert their rights more easily.

Advertising and Endorsement Regulations in India

Influencers who promote products or services are subject to the guidelines set by the Advertising Standards Council of India (ASCI) and the Consumer Protection (E-commerce) Rules, 2020. The Advertising Standards Council of India (ASCI), established in 1985, is committed to the cause of self-regulation in advertising, ensuring the protection of the interests of

consumers.⁵⁵ These rules mandate transparency in influencer marketing and require influencers to disclose any paid partnerships with brands. Failure to disclose such relationships can lead to legal consequences, including fines and reputational damage.

The ASCI's guidelines emphasize that influencers must ensure their endorsements are truthful and not misleading. They must not exaggerate claims or promote products or services that could harm consumers. Influencers are also required to include a clear disclosure in their posts when they are being compensated for promoting a brand. This could be done through a hashtag such as #ad or #sponsored to ensure transparency with the audience. These regulations help protect consumers from misleading or false advertising while ensuring that influencer marketing remains ethical.

Digital Copyright Infringement and Enforcement Mechanisms

In addition to the traditional methods of protecting IP, digital platforms have made it easier for content creators to detect and enforce their copyright rights. Platforms like YouTube, Instagram, and Facebook use automated tools to identify copyrighted material and prevent its unauthorized use. These platforms have established systems like YouTube's Content ID and Instagram's copyright infringement reporting mechanism, which allow content creators to report unauthorized use of their work and take action.

Influencers and content creators can use these tools to assert their copyright and take down infringing content. However, these tools are not without limitations, and sometimes, content creators must resort to legal action if the platform does not adequately address the infringement.

The legal framework surrounding intellectual property rights in social media content creation and influencer marketing in India is robust, but it is constantly evolving in response to the challenges posed by the digital landscape. Copyright and trademark laws provide essential protections for influencers and content creators, ensuring that their works and personal brands are safeguarded from infringement. The role of contracts in influencer collaborations and the regulations governing advertising standards further contribute to a clear and effective legal structure. However, the rapid pace of digital content creation and sharing requires ongoing attention and adaptation from lawmakers, platforms, and industry players to protect the interests of content creators, brands, and consumers alike.

CONCLUSION

To sum up, the intersection of intellectual property rights (IPR) with the creation of content on social media and influencer marketing brings forth notable opportunities and obstacles. The emergence of digital platforms has opened up content creation to many, allowing influencers to build extensive and dedicated audiences. Nonetheless, this transformation has made the application and enforcement of established intellectual property laws more complex. Content creators and influencers are often left to deal with challenging copyright, trademark, and licensing matters without a clear grasp of their rights and responsibilities.

As social media platforms advance, there is an urgent need for more precise regulations to safeguard the intellectual property of creators while also promoting innovation and collaboration. The existing legal framework frequently falls short in addressing new issues, including user-generated content and the indistinct boundaries between personal branding and corporate marketing. Moreover, the growth of influencer marketing underscores the importance of understanding how intellectual property intertwines with advertising

⁵⁵ Advertising Standards Council of India. (n.d.). The ASCI Code. Retrieved April 19, 2025, from <https://www.ascionline.in/the-asci-code/>

regulations, disclosure mandates, and the monetization of content.

Looking ahead, it is crucial to adopt a balanced strategy—one that enables content creators and influencers to safeguard their creations while facilitating the development of the digital economy. There is a need for legal reforms and best practices within the industry to ensure that intellectual property law adapts to the swift transformations occurring in the social media realm. By creating a legal framework that honors the rights of creators while encouraging transparency and fair use, we can maximize the potential for innovation and creativity in the digital space.

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