

# Influencers' guide to making clear that ads are ads



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# Who are you?



**The Advertising Standards Authority (ASA)** is the UK's advertising regulator. The ASA makes sure ads across UK media stick to the advertising rules (the Ad Codes).



**The Committee of Advertising Practice (CAP)**, whose members represent advertisers, media owners and agencies, is responsible for writing the **Ad Codes**.

Together, we work to make ads responsible. We do this by taking action against misleading, harmful or offensive advertising and providing advice and training to help businesses get their ads right.



**The Competition and Markets Authority (CMA)** is the UK's primary competition and consumer authority. We work to ensure that consumers get a good deal when buying goods and services, and that businesses operate within the law.

We do this by:

- enforcing competition and consumer law;
- carrying out investigations into entire markets; and
- investigating mergers.

If we have concerns that a market or business practice may be harming consumers, we can investigate and take legal action to stop it. We are an independent non-ministerial government department. For more information on the CMA, see our **[homepage](#)**.

# What are the rules?



**Just because an ad is covered by the CAP Code, this doesn't mean it's a problem – it just needs to follow the rules.**



There are lots of rules that could apply, depending on the circumstances – but it's worth paying particular attention to the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (the **CAP Code**) and the Consumer Protection from Unfair Trading Regulations 2008 (CPRs).

The CAP Code, enforced by the ASA, applies to most forms of influencer marketing. Just because an ad is covered by the Code, this doesn't mean it's a problem – it just needs to follow the rules. The Code is broken up into sections containing rules that relate to different subjects. For example, **Section 2** contains rules about how ads should be recognisable as ads, and **Section 3** sets out rules that advertisers must follow to avoid misleading people.

Consumer protection legislation, enforced by the CMA, also applies to influencer marketing. This makes 'unfair commercial

practices', including using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial), against the law. Other practices which may break the law are falsely claiming or giving the impression that an individual is acting outside of their business purposes or falsely representing themselves as a consumer; failing to identify a commercial intent behind a social media post; and omitting or hiding 'material' information (e.g. that you are an ambassador for a brand whose product you have posted about).

# When do I need to disclose?



When a brand gives an influencer a payment, any posts then promoting or endorsing the brand or its products/services become subject to consumer protection law. Payment means any form of monetary payment; commission; a free loan of a product/service; a free product/service (whether requested or received out of the blue); or any other incentive.

This means that whenever you receive a payment from a brand, you need to disclose this in any relevant posts (e.g. where you feature or refer to the brand/product/service in any way or where the content was controlled by the brand, see p11). The same goes for when you're posting 'affiliate marketing' (see p5).

You will also need to make sure it's clear when you're posting about your own products/services; e.g. products you've created or events you're running etc., or any prize draws or giveaways you do. For more on who enforces the requirements, and against what types of content see p9–11.



# What counts as 'payment'?

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**...products, gifts, services, trips, hotel stays etc. for free, this is all likely to qualify as a 'payment'.**

”

Obviously, if you're paid a specified amount of money to create and/or post a particular piece of content, this counts as 'payment'.

But this isn't the only type of arrangement that counts. If you have any sort of commercial relationship with the brand, such as being paid to be an ambassador, or you're given products, gifts, services, trips, hotel stays etc.

for free, this is all likely to qualify as 'a payment [or other reciprocal arrangement]'.

There's nothing wrong with getting paid to create content, but you need to be upfront about this with your audience.

# Affiliate marketing



**For affiliate ads, you are effectively acting as a secondary advertiser, so you need to make sure that your content follows all of the relevant rules...**

When your content promotes particular products or services and contains a hyperlink or discount code that means you get paid for every 'click-through' or sale that can be tracked back to your content, this counts as advertising.

If there are affiliate links or discount codes for only some of the products mentioned in your content, and the rest you've mentioned in a purely editorial capacity (i.e. there's no affiliate link), then the bits of the content that relate to affiliate-

linked products are ads. In that case, you need to make clear that those bits are advertising.

Obviously, if all of the content is about affiliate-linked products, the whole thing's an ad and you'll need to make clear that the whole of the content is advertising. For affiliate ads, you are effectively acting as a secondary advertiser, so you need to make sure that your content complies with the law by making clear that it's advertising, as well as following any other ASA rules.



# How do I make it clear?

Under the CAP Code ads '*must be obviously identifiable as such*' and the CMA advises that they must be '*clearly identifiable*' to comply with consumer law.



Consumers should be able to recognise that something is an ad, without having to click or otherwise interact with it. Since it needs to be clear/obvious, consumers shouldn't have to work to figure it out.

Most influencer marketing appears alongside organic/editorial content and is presented in a very similar style, so it usually isn't immediately obvious to a consumer when something is or isn't an ad from the context alone.

Both you, the brand and any agents involved in creating or publishing the content are responsible for ensuring that it makes clear when it's advertising or has a commercial message. Ultimately, if it's not obvious from the context that something's an ad, a clear and prominent disclosure is needed.

If you are promoting your own products or services on your own

channels – provided it's clear that you're talking about your own products – people are usually able to recognise that you're advertising your own stuff.

Influencer and affiliate marketing, on the other hand, are much less likely to be clearly recognisable by context alone, so this is usually where you'll need to work a little harder to make it clear.

There are potentially loads of ways you could make advertising content 'stick out' as being advertising, but as an absolute minimum you should consider including a prominent label, such as 'Ad', upfront that makes it clear.



# What labels are OK?

ASA research found that people really struggle to identify when social media posts by influencers are ads. So, at a minimum, regulators are going to expect an upfront ad label that must first be noticed and then understood.

ADVERT

#AD



Both the ASA and the CMA advise using labels that say it how it is, in a way that consumers understand e.g.;

- Ad
- Advert
- Advertising
- Advertisement
- Advertisement Feature

Labels like this can be used with or without a '#'.

Other labels are riskier, and although it will always depend on the wider content and context, we usually recommend staying away from;

- Supported by/Funded by
- In association with
- Thanks to [brand] for making this possible
- Just @ [mentioning the brand]

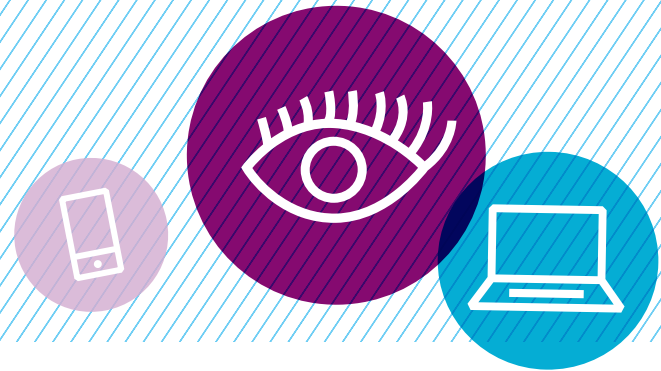
- Gifted
- Sponsorship/Sponsored

The label also needs to be understood by consumers so we would advise against;

- Affiliate/aff
- Spon/sp
- Any other abbreviations/ words that consumers are unlikely to be familiar with

It would be impossible to comment on every potential word or phrase that might be used to identify an ad but – in light of the ASA's research it's unlikely that labels other than those that explicitly and directly call the content what it is, in a way that consumers understand, will be good enough.

# How should I present this?



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**Any label you use needs to be upfront, prominent, appropriate for the channel and suitable for all potential devices.**

”

The main thing to remember is that you need to make it **obvious**.

Any label (or other means) you use to highlight advertising content needs to be upfront (before people click/engage), prominent (so people notice it), appropriate for the channel (what can you see and when?) and suitable for all potential devices (it needs to be clear on mobiles and apps too!).

This means that burying the label in a sea of hashtags, putting it where it can only be seen by clicking ‘see more’, having to click to view the full post or only being able to tell

a video is an ad by watching it, really isn’t going to cut it. We recommend including the disclosure at the very beginning which might mean at the start of the post, in a title or thumbnail, or on an image (if that’s all people see at first).

Put yourself in your audience’s shoes – if you didn’t already know about your relationship with a brand, would you be able to tell immediately and without a shadow of a doubt that a specific post you had made was, in fact, advertising?

# Who enforces the law?

“Consumers need to know the endorsement has been ‘paid for’. If this isn’t clear, your post risks breaking the law.”



There are a number of regulators who might enforce the rules in this area, including the ASA and the CMA.

The CMA has power to investigate and take legal action to stop breaches of the law which may harm the collective interests of consumers.

When posting incentivised endorsements, the CMA expects commercial relationships/payments to be disclosed upfront and any views expressed by influencers to be genuine. Everyone involved in the chain (brands, marketers and influencers) should ensure that there are robust compliance processes in place that accurately reflect the requirements of the law.

It is important to note that industry rules may be specific about certain points but under consumer law, it does not matter who is ‘in control’ or who is selling a product/

service. Consumer law does not distinguish between types of endorsements, so whether you are promoting your own products/services or advertising/endorsing something on behalf of a brand, a clear and upfront disclosure is always necessary.

Although it’s not illegal for brands to pay people to promote their products in blogs, vlogs, tweets or other online articles, consumers need to know the endorsement has been ‘paid for’. If this isn’t clear, your post risks breaking the law.

We strongly recommend referring to the CMA’s **guide for influencers** to ensure that you stay on the right side of consumer protection law. The CMA has additional guidance **here** and **here**.

# Who enforces the Ad Code?



The ASA, as the UK's advertising regulator, enforces the CAP Code and can take action where a brand:

1. 'paid' you in some way (same as CMA, doesn't have to be money), **AND**
2. had some form of editorial 'control' over the content, including just final approval (different to the CMA, for whom the issue of control doesn't matter).

Whether or not a brand has 'control' over a post will usually depend on the agreement you have with them. As a rule of thumb, if you weren't

completely free to do and say whatever you wanted whenever you wanted, then there could have been some level of editorial 'control' by the brand (see p11).

The ASA can also take action where you're advertising your own products (whether you're creating and selling them yourself or doing so in collaboration with a third party), running a competition, prize draw or giveaway and when you post affiliate marketing.

# What counts as 'control' for the ASA?



The simplest way for a brand to 'control' the content is by telling you what you have to say, e.g. if there are particular words, phrases, themes or 'key messages' you need to include, or you have to use a particular hashtag.

This doesn't just apply to text or words – if the brand has specified what needs to be in an image, required you to include a specific action in a video or specified the type of content you need to create (e.g. 'unboxing' the featured product), this is likely to count as 'control'.

Requiring you to post a specific number of times, on certain

dates or at particular times could also count as 'control'.

If a brand reserves the right to check/approve the content before it's posted and/or to ask you to change it, this could similarly count as 'control'. They don't need to actually ask for changes – if they could, and you would have to do it (e.g. the contract means they could stop you from posting it), that's enough.



# What else do I need to remember?



**Making it clear it's an ad is only the beginning.**



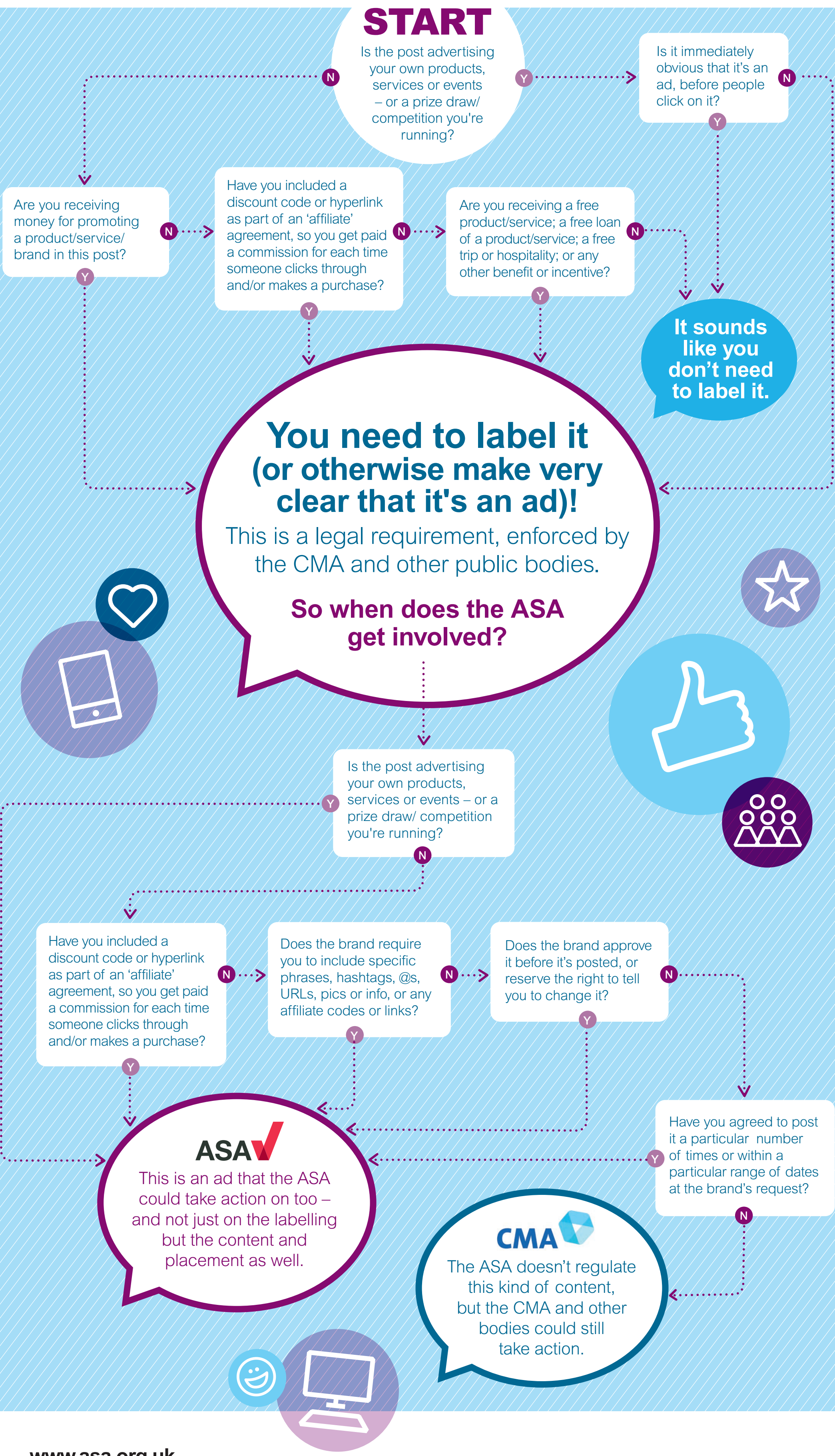
If you're advertising your own products/services or engaged in affiliate marketing, then other rules are likely to apply to your content too.

Make sure you've got an idea of generally what the ad rules and the law requires, particularly if you are:

- making claims about the product (you'll need to back them up);
- advertising age-restricted products (like gambling or alcohol);
- promoting products subject to lots of rules (like food or supplements); or
- running your own 'giveaways' and prize draws (seriously read Section 8).

But this is just a taster – the CAP Code covers a lot more than that (as does the law!).

# Is my post an ad and do I need to label it?



# Where can I get help?

— CAP 



## Online Guidance

There's loads of free advice on our website. Why not try searching our [Advice Online](#) database? We've got guidance on various topics – from alcohol to weight loss claims and everything in between.

## Newsletter

Fancy receiving topical tips and guidance updates direct to your inbox? Go ahead and sign up to our [Insight e-Newsletter](#).

## Online & Face-to-face Training

We offer [Advice:am](#) seminars and [eLearning](#) modules on a wide range of topics, including social media. Keep an eye out for our webinars too!

## Tailored Advice

Want to ask a question or sense-check your idea or content before you post it? Contact our [Copy Advice team](#), either on 020 7492 2100 or through the [website](#). It's free and usually takes 24 hours.

You can also follow us (@CAP\_UK) on Twitter for the latest news and guidance updates.



# Where can I get help?



... guidance  
on being open  
and honest  
when endorsing  
products/services  
online.



For more advice and information from the CMA, see the resources below;

## **Social media endorsements: guide for influencers**

Information on complying with consumer protection law when endorsing brands, products or services on social media.

## **Influencer marketing: what you need to know**

A CMA blog that unpacks how the law affects influencer marketing, and addresses some of the main questions that arise.

## **Online reviews and endorsements: information for businesses**

Information and advice for businesses on how to comply with consumer protection law in the online reviews and endorsements sectors.

## **Online endorsements: being open and honest with your audience**

CMA guidance on being open and honest when endorsing products/services online.

## **ICPEN Guidelines for Digital Influencers**

Guidelines from the International Consumer Protection Enforcement Network (ICPEN) on online reviews and endorsements.

# Where can I get help? – More



**The Internet Advertising Bureau (IAB) UK**, the trade association for digital advertising representing brands, media owners, technology providers and agencies has created Good Practice Guidelines and an infographic to help you work out when and how to disclose content-based and native advertising;

[Content & Native Disclosure Good Practice](#)

[‘Do I Need to Disclose?’ Infographic](#)



**The Incorporated Society of British Advertisers (ISBA)**, the organisation that represents major brands, has created a set of template contractual terms for the industry – including clauses that address labelling of content – that influencers and brands alike can use to ensure proper commercial relationships;

[Influencer Marketing Management Resources](#)



# Make it Clear

...there really isn't much more to it than that...



Legal, decent, honest and truthful