

INFLUENCERS AS PROVIDERS OF AUDIOVISUAL MEDIA SERVICES: RELEASE OF THE ITALIAN COMMUNICATIONS AUTHORITY NEW GUIDELINES ON INFLUENCER MARKETING AND ITS IMPACT

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On January 16, 2024, the AGCOM (Italian Communications Authority) published the Guidelines that regulate the scope of application of the Consolidated Text on audiovisual media services (Law Decree 208/2021) to influencers.

This includes all individuals, whether real or virtual, who, through the sharing of video content on platforms and social media over which they have control in terms of creation, production, or organisation, effectively engage in an activity analogous to or assimilable to that of audiovisual media service providers.

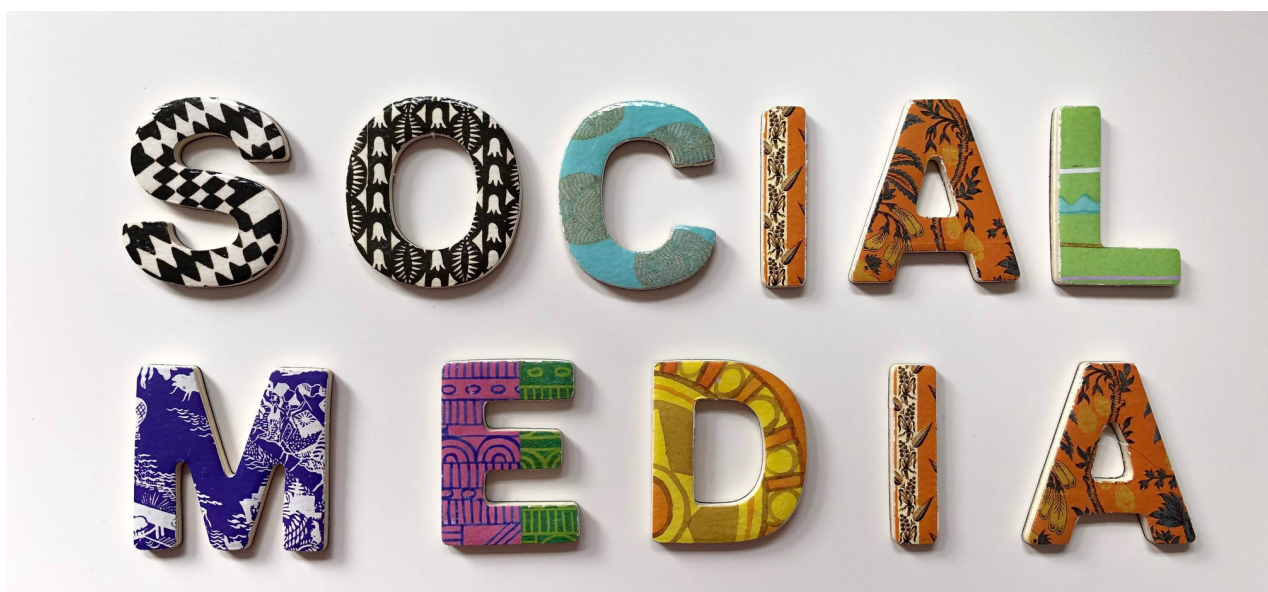
The application of Law Decree 208/2021 is subject to the fulfilment of certain requirements set by AGCOM itself, including that the influencer's activity is carried out on a professional rather than amateur basis.



In order to distinguish between these two different activities, the Guidelines specify that professional activity should be presumed if the audiovisual content proposed by influencers includes commercial communications based on agreements of any kind, involving the payment of money or the provision of goods or services, and if they have a cumulative follower count of at least one million (resulting from the sum of subscribers on platforms and social media where they operate). Additionally, they must have published at least 24 contents in the year preceding the assessment, meeting the characteristics defined by the Guidelines, and have surpassed, at least on one platform or social media, an average engagement rate value in the last 6 months equal to or greater than 2%.

Certain fundamental provisions of Law Decree 208/2021 immediately apply to these influencers, including those protecting the fundamental rights of individuals, minors, and the values of sports, as well as those protecting copyright and regulations on commercial communications. Regarding the prohibition of covert advertising, the Guidelines recognise the rules of the Digital Chart Regulation on the recognizability of commercial communication disseminated through the Internet of the Italian Self-Regulatory Advertising Institute (IAP).

In order to establish criteria to safeguard the interests protected by Law Decree 208/2021 and provide useful indications for adopting one or more codes of conduct through co-regulation procedures, the Guidelines finally envision the establishment of a Technical Table, chaired by the Authority.





In case of violation of the Guidelines, the sanctions provided by Law Decree 208/2021 may apply, including penalties up to 600.000 euros.

The Guidelines represent a significant step towards the regulation of influencer marketing, an area that has long been overseen by the Italian Competition Authority and the Self-Regulatory Advertising Institute (IAP), even for influencer categories and/or content that are not subject to regulation by the AGCOM Guidelines.



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