

Advertising Alert – Influencers May Now Benefit from SAG-AFTRA’s New Agreement

05.06.201 By [Kyle-Beth Hilfer](#) and [Jeffrey Chery](#)



As influencer marketing transforms the advertising industry, the Screen Actors Guild-American Federation of Television and Radio Artists (“SAG-AFTRA”) has extended its services and coverage to these popular content creators who promote brands.

SAG-AFTRA referred to a Business Insider report that the market size for global influencers is anticipated to reach over \$23 billion by 2025, with brands expected to spend up to \$15 billion on influencer marketing by 2022. Despite generating billions in revenue for brands and collectively becoming an advertising powerhouse, influencers have often operated without the protection and services of a formal union.

To address this need, in February 2021, the national board of SAG-AFTRA approved an agreement (the “Influencer Agreement”) that would cover sponsored content produced pursuant to underlying contracts between influencers and advertisers. Prior to this announcement, the only advertising platform covered under SAG-AFTRA’s umbrella of services was YouTube. The

union's new Influencer Agreement expands this coverage to include advertising on a variety of social media platforms.

Brands should note that the union has created a pathway to protect influencers. This recognition from SAG-AFTRA has provided an opportunity for influencers to earn union income, qualify for health and pension benefits, and potentially become full union members. Brands need to understand fully the implications of SAG-AFTRA's coverage for influencers.

2021 Influencer-Produced Sponsored Content Agreement

Importantly, SAG-AFTRA did not define a specific follower count for a person to be deemed an influencer. The union did specify, however, some important details about the way an influencer does business and the kind of content that would qualify.

The Influencer Agreement, a sample of which can be found [HERE](#), governs the relationship between the influencer and the union. It contains several important terms that influencers must note in creating their content agreements with advertisers.

- The influencer must contract with the advertiser through a limited liability company or corporation created, controlled, and operated on behalf of the influencer, which is referred to as the "Producer."
- The influencer, alone, must produce and distribute the content with no collaborators, like an ad agency, production company, or public relations company.
- The influencer's content should be released or exhibited solely on the influencer's and/or advertiser's own websites, social media accounts, or YouTube channels.
- The content cannot feature other individuals or use an ensemble.
- Streamed or recorded on-camera or voiceover content that is not self-produced and/or that falls under the jurisdiction of any other SAG-AFTRA contract (e.g., television commercials or motion pictures) is not covered by the Influencer Agreement.
- The influencer must own the intellectual property in the content. It cannot be a work made for hire for the advertiser or any third-party.
- Compensation for the influencer can be freely bargained and there is no dollar amount limit.
- The influencer's content may be used for a maximum period of one (1) year from the date of the first post unless a longer term is agreed upon in writing by the Producer and/or influencer and advertiser.
- The content cannot contain stunts, hazardous conditions, nudity, or sexually explicit content.

In addition, if the influencer wants to claim SAG-AFTRA benefits pursuant to the contract with the advertiser, he or she must agree to make contributions of 19% of compensation attributable to influencer's on-camera and/or voiceover services to the SAG-AFTRA pension and health plans. These payments are not the brand's responsibility.

SAG-AFTRA's website contain several Influencer Resources to assist influencers with understanding the Influencer Agreement such as [Influencer Agreement 101](#) and an [Influencer Agreement Fact Sheet](#).

SAG-AFTRA Influencer Waiver

A Waiver for Influencer-Produced Sponsored Content ("Influencer Waiver") applies to influencer-sponsored content that involves a signatory to a SAG-AFTRA Commercials Contract or a Joint Policy Committee (official bargaining partner for the SAG-AFTRA Commercials Contracts) authorizer advertising agency or advertiser.

The Influencer Waiver, which can be read [HERE](#), contains many of the same provisions as the Influencer Agreement and also permits influencer content to be distributed on other channels, platforms, or mediums (e.g. television) with the influencer's consent.

Key Takeaways for Brands

Brands using influencers need to review their policies on hiring union talent. If the advertiser is a non-union shop, it will want to reinforce its contractual warranties that the influencer is not a member of any union.

If contracting with an influencer participating in the SAG-AFTRA Influencer Agreement, here are some key takeaways:

- Before the release of the Influencer Agreement and Influencer Waiver, it was not completely clear to brands that wanted to use influencers for digital distribution whether SAG-AFTRA would treat the content as a commercial. Now, the brands can be confident that the digital content that meets the requirements of the new guidance will not be subject to minimum fees under the union's Commercials Contract.
- As compensation can be freely negotiated, minimum fees are not an issue.
- The Influencer Agreement itself is unclear whether the brand will have to take down content after the one-year maximum period of use or negotiated term expires. The Influencer Waiver, on the other hand, permits extended use with influencer consent. At the same time, the Influencer Waiver makes it clear that content that remains online but clearly connected to the original post's date will not require any additional payments. If, however, the influencer requests removal of the content, the advertiser must comply.
- What if the brand wants to make use of the content beyond social media on other platforms covered by collective bargaining agreements with SAG-AFTRA? While this question was initially unclear, the Influencer Waiver now provides a path forward for such uses, with influencer consent.
- Even though the onus is (for now) solely with the influencer to make all pension and health contributions, will influencers pass that line item on to non-signatory brands? Will influencers start demanding the equivalent amount as additional compensation? The Influencer Waiver suggests a methodology for so doing based on clear differentiation between compensation and contributions.
- Certainly, the advertiser should include warranties in its agreement that the influencer will be responsible for all union requirements, regardless of whether it is an additional line item for compensation.

- For those brands working on handshakes with influencers, the SAG-AFTRA development emphasizes the need for more formal arrangements. If using the Influencer Waiver, the brand must notify the influencer at or before the engagement commences.

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Kyle-Beth Hilfer has over thirty years' experience providing legal counsel to advertising, marketing, promotions, intellectual property, and new media clients. Leveraging her deep understanding of branding, Kyle-Beth ensures regulatory compliance for her clients' advertising and marketing campaigns.

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