

Influencer industry experts say 'usage rights' are a key part of brand deals that can lead to much higher earnings if negotiated well

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Amanda Schreyer, a media, marketing, and technology lawyer and counsel at Morse, a law firm based out of Waltham, MA. Morse

Influencers who create content for brands own the legal rights to that content. This means that without permission, brands cannot re-post or repurpose that influencer's content elsewhere.

Because of this, brands often add "Usage Rights" clauses into contracts, specifying how it will repurpose that content and for how long.

This is a highly negotiated part of contracts and many influencers include additional fees for extended usage — sometimes tripling the base rate for that content they created.

Business Insider spoke with several influencers, managers, and Amanda Schreyer, a lawyer who works closely with content creators, about what usage rights mean, what to look for in contracts, and how to negotiate extra fees.

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Industry insiders say one of the most important things influencers should look out for when signing a contract with a brand are "usage rights."

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What are usage rights? Simply stated: It refers to the ways brands are able to repurpose an influencer's image or video across a brand's own social-media accounts or marketing materials.

For instance, a brand could request the right to include an influencer's picture of themselves wearing a product in the brand's marketing emails to customers for 90 days. A brand could also request to re-share an influencer's Instagram Story on its own account.

In influencer marketing, the influencer owns the rights to their content and the brand has to be granted, or purchase, those rights.

"In traditional media, if someone acts as a talent in a video or a television commercial, that person doesn't own the commercial, the advertiser owns the commercial," said Amanda Schreyer, a media, marketing, and technology lawyer and counsel at Morse, a law firm based out of Waltham, MA. "But in influencer marketing, it's the other way around."

Schreyer has worked with content creators for nearly a decade, assisting in negotiations and contract reviews, as well as working closely with marketers and brands. She said brands have sought more access and control as the industry has developed, which is why usage rights have popped up in contracts more frequently.

In influencer-brand contracts, usage rights can often be found under sections titled "Usage Rights," "Licensing," or "Ownership."

Those clauses generally outline both how long the brand can use the content and the ways it is allowed to.

"Sometimes that's two weeks, other times there is a default of 90 days or a year," Schreyer said of the amount of time. The longer and more elaborate the usage, the higher the price tag for those rights.

Veronica Bonilla, a content creator on Instagram with around 50,000 followers, said a brand requested usage rights to her images for three years as part of a recent campaign and her management negotiated payment of over \$20,000. The added usage rights for three years tripled her base rate for this partnership, she said.

But granting usage rights for long time periods can sometimes become a conflict for creators, said Beca Alexander, the president and founder of Socialyte, an influencer management company.

For instance, if an influencer shared content about a brand one month, but the usage rights last three months, a brand could continue posting the influencer's content on its social-media accounts or as a paid advertisement. Another brand the influencer wants to work with could see this as an obstacle to doing a deal.

"What we would do, if that influencer is relatively mid- to higher-tier caliber, is basically charge a brand the value of that piece of content for three months," Alexander said.

Beyond the time period, the manner in which a brand can use the content is also often a part of usage rights negotiations.

The most common way brands seek to re-use content is by re-posting the influencer's content on the brand's social media page — whether that's re-sharing an Instagram Story or re-posting the content on the brand's feed. That's often referred to as "organic" usage rights, Schreyer said.

Monica Morton, an influencer manager at the firm Gleam Futures, said this type of usage doesn't usually come with a higher fee. She added that her clients usually allow this usage as long as it occurs within a short time frame of the influencer's original post and the brand tags the creator.

But sometimes the brand wants more elaborate usage rights, like the ability to re-use the influencer's content in its advertisements and paid marketing, such as a boosted post on Instagram or Facebook or in a brand email to customers.

"Not every influencer likes that," Schreyer said. "Because they no longer have control over their content, they don't know who is going to see it." This type of usage may then require a higher fee or limited usage terms, she said.

Other extended usage scenarios that Schreyer described included video content being used in television advertisements (such as a clip from a YouTube sponsored video) or if a brand uses an influencer's content for a third-party vendor, such as Sephora.

Usage rights are not always clear

Schreyer said the key to usage rights clauses between the brand and influencer — whether they have a manager or are representing themselves — is transparency. Any brand deal negotiation should discuss rates and fees and what's included in those prices.

"When usage becomes broader, more money is asked for," Schreyer said. "It's important for both sides to understand what is expected of them for that fee."

If an influencer isn't careful, however, they can sometimes agree to usage rights without realizing it.

Alexander, of Socialyte, said one of her clients attended a brand-hosted event and, after taking pictures in a photo booth, saw those images plastered on a huge billboard.

Socialyte explored taking legal action against the brand, since the influencer thought she had not agreed to this usage. But Socialyte found out that at the event, the brand had included a button in the photo booth granting rights to any images taken.