

THIS ISN'T CLICKBAIT, BUT IF YOU DON'T WANT TO BECOME ONE, READ THIS!

We now live in a world where every other interaction with social media has been of an advertisement which only proves to me that Social Media marketing has now become the most raw, real and effective form of advertising in today's time. Being in the content creation industry for almost around a decade, it's safe to say that the importance of having contracts formulated is now more than ever.

Social Media in India has boomed in the last 5 years so much so that it now holds the biggest budgets in any marketing campaigns. The substantive growth in this industry has been a boon and a bane even though it has provided the common man to shoot their shot at fame it has also exposed the harsh reality of a major lack of legal structure in the industry in order to protect the interest of the content creator/influencer/brand. When working with big brands, the scales are always going to be tipped in the favor of the brand and what having a contract does is it aids in creating an equitable relationship between both the parties.

People tend to compare the legality of matters between social media and traditional form of media but in reality, both these fields are quite different from a legal stand point. It simply wouldn't be prudent to copy and paste the legal blue print of traditional media, marketing, advertising to the much more nuanced, varied and dynamic sphere of social media.

We at Mehra & Mehra Legal LLP, with the help of this article and the ensuing series aim to guide you through the nitty gritty of contract drafting while also simultaneously understanding the importance of having a contract. The end goal is to help influencers & marketers protect themselves while navigating their legal way through all forms of Social Media, be it something as new as Clubhouse or an institution such as Facebook.

Let's start with the basics. What is a Contract?

The industry practice is to generally work on agreements, but the problem here lies that these agreements are informal in nature and therefore not enforceable under law, this is where having a contract comes into play.

In a nutshell a Contract is nothing but an agreement between two or more parties that's been penned down and is enforceable by law under Indian Contracts Act 1872. A Contract states the obligations of both parties towards each other and also lays down the roadmap to understanding what the payment tranches shall be, whether the creator retains any part of the Intellectual Property, what would the creators' obligations be to the brand, etc.

Difference between an Agreement and Contract:

	<i>Agreement</i>	<i>Contracts</i>
Definition	An arrangement that is generally informal in nature, that is between two or more parties which is not enforceable by law.	A formal arrangement between two or more party that, by its terms and elements, is enforceable by law.
Consideration Required?	No.	Yes.
Legal Effect	An agreement that lacks any of the required elements of a contract has no legal effect.	A contract is legally binding and its terms may be enforceable in a court of law.

Essentials of a Valid Contract:

- Offer and acceptance.
- Intention to create legal obligation
- Consideration is must.
- The parties are competent to contract.
- Free Consent of the parties
- The object of the contract must be lawful.
- Must not be expressly declared to be void
- Contracts must not be uncertain or vague

If all the essential conditions mentioned above are fulfilled simultaneously, it will be a valid contract. The next articles will discuss these essentials in detail.

Things to ensure in a Content Creators/Influencers Contract:

Being a Content Creator/Influencer when you're being approached by a brand there are a few of things that one needs to keep in mind when signing a contract:

1. Payment Tranches/Consideration:

This clause under the Contract basically lays down how much consideration you as content creator/influencer are supposed to receive for the work you're doing and it also specifically mentions the time frame under which the payment has to be made to the Content Creator/Influencer.

2. Scope of Work:

This clause shall enumerate all the deliverables and shall also lay down in specific the number of changes/edits that may be done for free and/or the number of edits that shall be charged to the Brand and at what rate.

3. Jurisdiction Clause:

In the event of any dispute between the parties of the clause of the contract lays down what form of legal recourse shall be taken and in which city.

4. Intellectual Property (IP):

As a Content Creator/Influencer the content that you create becomes your Intellectual Property but when you do it for a Brand the dynamics change and it becomes their Intellectual Property so a clause that allows you to use their IP for editorial purposes i.e. using it on your social media platforms to showcase it to your followers but not for commercial purposes.

Hope we have started you on a journey to your legal protection, stay tuned for more!



Warm regards,

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