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UP NEXT: CALIFORNIA'S ANTI-BOT LAW RAISES THE STAKES FOR THE USE OF AI INFLUENCERS

by Richard Eisert and Truan Savage

The influencer marketing industry continues to grow rapidly. Some [expect](#)¹ influencers to be worth \$10 billion collectively by 2020.

The industry's explosive growth has, on the one hand, fostered great innovation, including the increasing prevalence of virtual influencers, which are powered by artificial intelligence (AI). On the other hand there has been increased legal oversight and enforcement, particularly by the Federal Trade Commission (FTC). In a sign that the FTC has yet to focus on the proliferation of artificial intelligence influencers, California has stepped into the breach.

THE 'BLADE RUNNER LAW'

On July 1 California's new anti-bot law or the "Blade Runner Law" (SB 1001) takes effect. SB 1001 makes it illegal under certain circumstances to use bots to communicate with individuals online to incentivize the sale of a product or influence a vote in an election, unless the party behind the bot discloses that it is, in fact, a bot.

This law clearly stems in part from the [widespread use of bots](#)² during the 2016 presidential election to disseminate disinformation and sow discord among the electorate. While that has made this law newsworthy, what is noteworthy for marketers is that it specifically addresses the use of bots for commercial purposes.

The California attorney general can seek a \$2,500 penalty per violation and shut down the bots. Private citizens can also seek injunctive relief and restitution for harm caused by bots.

IMPORTANT EXCLUSIONS

It is important to note what California's anti-bot law does not cover.

The law's focus on commercial and political bots excludes bots that don't incentivize purchases or votes, such as customer service bots that help people pay a bill or obtain product assistance.

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The law also exclusively covers “public facing” bots, meaning that automated services that are targeted and only visible to specific consumers likely would not fall within the scope of the law. This likely means, for example, that spam email services are not covered. Further, the disclosure requirement doesn’t completely prohibit the use of bots to incentivize purchases. Bots may be used for commercial purposes as long as consumers know or are at least not intentionally misled about the fact that they’re engaging with a bot.

A STEP BEYOND

Regardless of its intent, the law goes above and beyond what the FTC requires for influencer disclosures. Under the FTC’s Endorsement Guides, there is no distinction between a bot and a human influencer. A bot doesn’t need to self-identify as a bot when it is speaking on behalf of a brand or encouraging a purchase – it simply needs to include FTC-approved disclosures, such as #ad or #sponsored.

Under SB 1001, however, an automated influencer may be required to disclose that it is a bot, not just that its post is brand-related. The law is not clear about what that disclosure might look like, but at the very least it will need to include more than just #ad.

So what are the ramifications of this new law once it goes into effect? Well, the fact that it is specific to California will not be of much solace, given that it is directed at online activity – which, by its very nature, is accessible to citizens in any state. That means that marketers intending to use AI influencers or other public-facing automated services for commercial purposes must comply with California’s law or somehow carve out California consumers from accessing or seeing the bot, which may prove difficult.

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- 1 Giordano Contestabile “Influencer Marketing in 2018: Becoming an Efficient Marketplace,” *Adweek*, January 15, 2018, <https://www.adweek.com/digital/giordano-contestabile-activate-by-bloglovin-guest-post-influencer-marketing-in-2018/>
 - 2 Scott Shane “The Fake Americans Russia Created to Influence the Election,” *The New York Times*, September 7, 2017, <https://www.nytimes.com/2017/09/07/us/politics/russia-facebook-twitter-election.html>

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