

PoPI, social media and influencers

 By Johanna McDowell

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The Independent Agency Search and Selection Company (IAS) recently hosted an interactive presentation and discussion with Danie Strachan - partner - Adams & Adams and Gail Schimmel - CEO - Advertising Regulatory Board.



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There were two parts to this session: the latest on the Protection of Personal Information Act (PoPI), which is now starting to roll out, plus regulations that will be tabled by the Advertising Regulatory Board (ARB) regarding the management of influencers in advertising and social media.

1. PoPI Act (Protection of Personal Information Act)

Although the PoPI Act has been signed into law, it's not yet in force. Preparations are underway, however, and it's advisable for marketers and agencies alike to be aware of the final regulations which were published at the end of 2018. There are already five staff members employed by the [Information Regulator \(South Africa\)](#) to manage this — so it's just a matter of time. It, therefore, makes sense for us to start implementing the provisions in readiness.

Key points

Here are some key points that were mentioned by Danie Strachan, partner at Adams & Adams Attorneys:



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- One of the most famous cases that led to a lot of the modern-day thinking about privacy was the case in the 1960s of a Mrs O'Keefe who was photographed shooting a gun. Because of the unusual occurrence of a lady shooting a gun — in those days, at least — the photograph found its way into a newspaper. Mrs O'Keefe successfully sued The Argus for publishing without her permission and the judge said that the publication hadn't observed her rights to privacy.

- The PoPI Act was signed into law in 2014 and final regulations were published at the end of 2018.
- We need the legislation so that unscrupulous people may not access or sell our information.
- Some of the information is sold onto what is known as the “dark web”, where very unpleasant things are sold eg porn, drugs, guns etc

PoPI covers:

- Processing of personal information
- Information entered into a record by or for a responsible party
- Information obtained through automated or non-automated means — which must then be in a filing system
- What is personal information — how do we define it? Apart from the obvious things such as addresses, birthdays, identity numbers etc, it also covers facial recognition and biometric information. How does this affect CCTV footage, for example? How do the owners of any CCTV security footage prove consent? Or are they protected by a disclaimer?
- A lot still needs to be defined as we go along and as legislation is put in place and enforced
- The big change for marketers will be the “opting in” aspect which means that they will have to ask consumers if they want to share information as opposed to the current situation where consumers have to ask to “opt out”

2. Self-regulation for influencers

Gail Schimmel, CEO of the newly constituted ARB, has been tabling a number of items to add to the [advertising code of practice](#) — the self-regulatory code for agencies and marketers alike — which will assist in the management of the communication around influencers.



#BehindtheSelfie with... Gail Schimmel

Leigh Andrews 20 Feb 2019



She highlighted a number of examples in the area of social media in particular but, as she pointed out, the same rules apply to influencers and social media as in traditional advertising.

So, we know that consumers will feel differently if they know that an influencer is being paid. In that case, what needs to happen so that we know that a piece of communication by an influencer has been paid for?

Consumers deserve to know

- That an influencer on social media is being paid
- That there also has to be some sort of self-regulation to ensure that the content is true
- And that, if something looks like an editorial, is that really the case or is it “advertorial”, which is made obvious in print media for example
- That influencers might have been paid via a barter arrangement ie use of the product with some sort of testimonial in return

As a result

- Ethical influencers will need to add an #AD or #Advertisement or #sponsored hashtag to their tweets
- Bloggers will have to declare their gifts from brands (ethical blogging)
- Parody accounts must be clearly declared
- The brand is responsible ultimately for any misleading content, and it's the agency's job to ensure that all content is signed off as approved by the client
- Agencies and marketers must take everything they know about self-regulation in advertising and apply it to social media and influencer marketing — the same rules apply.

If in doubt, contact [ARB](#).

ABOUT JOHANNA MCDOWELL

MD of the Independent Agency Search and Selection Company (IAS), and partner in Scopen Africa, with a background that includes being on both the agency and the client side of the fence, Johanna McDowell is well-placed to offer commentary on marketing and advertising in the South African and international contexts. She built her career in marketing and advertising since 1974, holding directorship in both SA and British advertising agencies. She was MD of Grey Phillips Advertising in 1988.

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