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**Content Monetization on Twitter: A Study of
Platform Documentation and Transatlantic
Legal Implications**

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Abstract

Social media platforms have long been considered as public squares, democratic spaces of public interest, where communities can gather and discuss matters relevant for every member of society. Yet new actors who are relevant for the space of online speech continue to emerge. A more recent category of such stakeholders is reflected by content creators. Also known as influencers, content creators are a new iteration of the gig economy engaging in the generation and monetization of user content. So far, research has very much focused on monetization from the perspective of content creators. In this working paper, I take the perspective of platforms in trying to better understand monetization policies. To this end, I focus on Twitter as an example of a platform with a blossoming content monetization strategy, which has also been seriously changing in the light of Elon Musks's plans for the future of the platform. As monetization is becoming more and more complex, and it entails an increasing amount of transactions, it is important to understand what kind of frameworks platforms develop around their monetization products. The goal of this paper is two-fold: to understand content monetization on Twitter according to the platform's own rules, policies and practices; and to highlight the complex legal framework that applies to content monetization from a transatlantic perspective. The paper is structured as follows. Section 2 offers a general overview on content monetization based on existing literature and taxonomies. Section 3 addresses Twitter monetization as a case study, and presents a methodology for the selection of platform documentation. Section 4 outlines some regulatory questions relating to monetization from the perspective of US and EU law, highlighting some essential concerns arising out of the increasing complexity of the relevant legal frameworks. Section 5 provides a brief discussion of the findings and concludes.

Table of Contents

1. Introduction.....	1
2. Content monetization on social media.....	4
3. Twitter Monetization: Studying Selected Platform Documentation.....	9
4. Legal Issues with Content Monetization Frameworks: A Comparative Approach 14	
5. Conclusion	21

Could I interest you in everything?

All of the time?

A little bit of everything

All of the time

Apathy's a tragedy

And boredom is a crime

Anything and everything

All of the time

Bo Burnham - Welcome to the Internet

1. Introduction

Social media platforms have long been considered as public squares and democratic spaces of public interest, where communities can gather and discuss matters relevant for every member of society. This was initially based on the connectivity promise of free social media services that brought people together irrespective of the geographical

distances between them,¹ turning them from passive bystanders into active participants in the production and consumption of content. In other words, ‘a dynamic space that was shaped (both intentionally and inadvertently) by your own actions and contributions’.²

Because of its perceived public nature, social media speech has been called a triangle bringing together users, governments and platforms.³ The emergence of new speech intermediaries has unveiled a new set of stakeholders who support and maintain speech digitally, and whose role in the governance of free speech has been increasingly questioned.⁴ Yet new actors who are relevant for the space of online speech continue to emerge. A more recent category of such stakeholders is reflected by content creators. Also known as influencers, content creators are a new iteration of the gig economy engaging in the generation and monetization of user content. Content monetization has been bringing about a new era of social media business models that allow content creators to engage in the production of cultural content and gain money in the process. The financial success of content creators has traditionally relied on advertising. As ‘advertising is becoming, well, less like advertising’, the Internet has taken this industry into a so-called ‘age of authenticity’.⁵ An illustration of what content monetization may look like in practice is reflected by influencer marketing. By creating relatable and authentic content for the followers who like and trust them,

¹ danah m. boyd & Nicole B. Ellison, *Social Network Sites: Definition, History, and Scholarship*, 13 J. COMPUT.-MEDIAT. COMMUN. 210 (2007).

² PHILIP SEARGEANT & CAROLINE TAGG, *THE LANGUAGE OF SOCIAL MEDIA: IDENTITY AND COMMUNITY ON THE INTERNET* (2014), p. 2.

³ Jack M Balkin, *Free Speech Is A Triangle*, 118 COLUMBIA LAW REV. 47.

⁴ *Ibid.*, at 2012.

⁵ O’Neil-Hart, C., & Blumenstein, H. (2020, September 3). Why YouTube stars are more influential than traditional celebrities. Think with Google. <<https://www.thinkwithgoogle.com/marketing-strategies/video/youtube-stars-influence/>>.

Internet influencers earn social media advertising revenue, and in turn gain financial benefits (endorsements), goods or services (barter), or commissions for conducted sales (affiliate marketing).⁶ The popularity of such advertising approaches is undeniable. In 2021, influencer marketing reached a global market size of \$13.8 billion (700% increase since 2016), and in the United States alone, affiliate marketing was predicted to grow to \$7 billion, and in 2023 this market is expected to expand beyond \$21 billion.⁷ Although content monetization had been an early goal for Internet profitability,⁸ it was influencer marketing that inspired new content monetization strategies allowing platforms to diversify their initial reliance on targeted advertising by creating entertainment-on-demand-like digital services.⁹

⁶ Giovanni De Gregorio & Catalina Goanta, *The Influencer Republic: Monetizing Political Speech on Social Media*, 23 GER. LAW J. 204 (2022).

⁷ Statista. (2021, February 12). Global influencer marketing value 2016–2021. <<https://www.statista.com/statistics/1092819/global-influencer-market-size/>>. See also Influencer Marketing Hub. (2023, 7 February). The State of Influencer Marketing 2023: Benchmark Report. <<https://influencermarketinghub.com/influencer-marketing-benchmark-report/>>.

⁸ Christopher T. Marsden, *Net Neutrality and Consumer Access to Content*, 4 SCRIPTED J. LAW TECHNOL. SOC. 407 (2007).

⁹ Bea Andrea Antonio et al., *Invasion or Personalization: An Overview on User Attitudes towards the Privacy Issues in Targeted Advertising in NCR and Its Effect in Consumer Purchase Behavior*, 4 J. BUS. MANAG. STUD. 38 (2022); Christina M. Claxton, *Private Offerings in the Age of Surveillance Capitalism and Targeted Advertising Notes*, 74 VANDERBILT LAW REV. [i] (2021); Goanta, Catalina, *Human Ads Beyond Targeted Advertising*, VERFASSUNGSBLOG (2021), <https://verfassungsblog.de/power-dsa-dma-11/> (last visited April 20, 2022); Melinda M. Kline, *Missing the Mark: The Trademark Battle over Software-Based Contextually Targeted Advertising on the Internet Comment*, 54 CASE WEST. RESERVE LAW REV. 917 (2003); Gianna Korpita, *It's a Small World after All: How Disney's Targeted Advertisements Implicate COPPA*, 19 J. HIGH TECHNOL. LAW 407 (2018); Jeannie Marie Paterson et al., *The Hidden Harms of Targeted Advertising by Algorithm and Interventions from the Consumer Protection Toolkit*, 9 INT. J. CONSUM. LAW PRACT. 1 (2021); Crystal Schreiber, *Google's Targeted Advertising: An Analysis of Privacy Protections in an Internet Age Student Notes*, 24 TRANSNATL. LAW CONTEMP. PROBL. 269 (2014); Chandler Nicholle Spinks, *Contemporary Housing Discrimination: Facebook, Targeted Advertising, and the Fair Housing Act Comment*, 57 HOUST. LAW REV. 925 (2019).

So far, research has very much focused on monetization from the perspective of content creators.¹⁰ In this working paper, I take the perspective of platforms in trying to better understand monetization policies. To this end, I focus on Twitter as an example of a platform with a blossoming content monetization strategy, which has also been seriously changing in the light of Elon Musks’s plans for the future of the platform.¹¹ As monetization is becoming increasingly complex, and it entails an increasing amount of transactions, it is important to understand what kind of frameworks platforms develop around their monetization products. The goal of this paper is two-fold: to understand content monetization on Twitter according to the platform’s own rules, policies and practices; and to highlight the complex legal framework that applies to content monetization from a transatlantic perspective. The paper is structured as follows. Section 2 offers a general overview on content monetization based on existing literature and taxonomies. Section 3 addresses Twitter monetization as a case study, and presents a methodology for the selection of platform documentation. Section 4 outlines some regulatory questions relating to monetization from the perspective of US and EU law, highlighting some essential concerns arising out of the increasing complexity of the relevant legal frameworks. Section 5 provides a brief discussion of the findings and concludes.

2. Content monetization on social media

¹⁰ Gregorio and Goanta, *supra* note 6.

¹¹ Elon Musk’s Twitter monetization plans, ranked | Mashable, <https://mashable.com/article/elon-musk-monetization-plans-ranked> (last visited April 23, 2023). It is worth noting that the research for this working paper was conducted in January 2023.

Advertising-related content monetization has its perils. Influencer marketing is by now so ubiquitous on social media, that it has developed a negative connotation, stemming from the criticism of the fact that influencers sell their opinions.¹² Seen as a limitation on the provision of independent opinions, some content creators choose minimize their reliance on advertising and rather pursue other monetization avenues. Overall, content creators can rely on a plethora of approaches to earn revenue on the basis of the production of content,¹³ including:

- *Advertising* – creators obtain revenue from brands in the form of influencer or affiliate marketing, as well as barter, whereby brands offer money, goods, services or sales commissions in exchange for bespoke content which influencers make for the brand.¹⁴
- *Platform revenue* – creators gain mediated revenue which platforms pay in the form of ad revenue (which allows them to place platform ads on their channels),¹⁵ channel subscriptions (which entails that users can pay to gain access to premium content),¹⁶ or tokens (which allows users to purchase alternative digital currencies to spend more granularly on specific types of content,¹⁷ or at specific times such as during live streams).¹⁸ This also includes platform creator funds, where creators are paid directly by platforms on the basis of a variety of factors affecting the popularity of their content.

¹² Lorenz, T. (2019, May 31). The real difference between creators and influencers. The Atlantic. <https://www.theatlantic.com/technology/archive/2019/05/how-creators-became-influencers/590725/>.

¹³ Based on earlier work, see Goanta & Ranchordás 2020; De Gregorio & Goanta 2021.

¹⁴ Goanta & Wildhaber 2019.

¹⁵ Caplan & Gillespie 2020; Bishop 2020.

¹⁶ Huotari & Ritala 2021.

¹⁷ Goanta & Ranchordás 2020.

¹⁸ So-Eun Lee, Mideum Choi & Seongcheol Kim, *They pay for a reason! the determinants of fan's instant sponsorship for content creators*, 45 TELEMAT. INFORM. 101286 (2019).

- *(Unmediated) peer revenue* – followers can support their favorite creators by relying on decentralized technologies such as the Brave monetized browser, or the Web Monetization protocol, consisting in micropayments made whenever the content is visited.¹⁹ Unlike platform revenue, under this model platforms do not participate in the mediation of the revenue.
- *Direct selling*: Creators can develop and sell their own products and services (e.g. merchandise or digital content).

In this ecosystem, there are also platforms that specifically support income crowdfunding as an example of the platform revenue category mentioned above.²⁰ Patreon is one such platform which allows creators to set out perks (rewards) which may be offered regularly against a specific tier of payment. While the transactional architecture of this business model is reminiscent of a contract for the supply of a continuous service, given the very inconsistent landscape of content monetization on social media, this activity also has the features of a reward model of crowdfunding, since creators will depend on crowds to gather sufficient money for their monthly income. Similarly, it can also reflect a donation model, since it is not clear that all contributors join such a platform to obtain the perks or rewards, or simply want to express their support for their preferred creators in the form of a financial contribution.

This systematization is however only one view into monetization policies. Taking the perspective of content creators offers insights into the commodification of influencer labour, the flexibility, diversity and volatility of platform work, and other such specific characteristics. However, taking the platform perspective is a complementary approach in understanding monetization. What kind of products do

¹⁹ Goanta 2021.

²⁰ Sokolova & Perez 2017.

platform offer for monetization? Who are the target audiences of these products? What are their features? And most importantly for this paper, what kind of legal frameworks do they shape?

I endeavor to answer these questions by taking Twitter as a case study. In what follows, I present insights into Twitter's policies, gathered from the platform's documentation. Before doing that, a few clarifications relating to platform documentation are in order. I refer to 'platform documentation' as a platform's collection of web-based resources, which describes how the platform works and how users can engage with it. While traditionally, online services used to have one main document governing their transactions (e.g. Terms of Service), in the past decade, social media platform documentation has changed fundamentally with the increase of sophistication and complexity in the type of services covered. Nowadays, platforms also have community guidelines, privacy policies, commerce policies, and a lot of other documents which are constitutive for their private ordering. Moreover, monetization policies may be reflected by such constitutive documents, but at the same time, they can also be found on web pages that are meant for commercial communication, such as marketing. They are, after all, products that platforms are trying to sell to users. At the same time, platforms will also offer so-called support centers, where frequently asked questions (FAQs) provide more easily accessible information. In this rather chaotic configuration of platform documentation, it may prove challenging to map and describe all the communications that platforms - and in this case Twitter - share with users relating to communications about monetization. To methodologically simplify the retrieval of information for the purposes of this paper, I used an advanced Google search to find the most relevant web pages on the Twitter

website which refer to monetization.²¹ I screened the first two Google pages with results, totaling 19 results.²² Given the nature of the platform, many of the results were tweets, but the method also resulted in the retrieval of the most important digital *locus* of commercial information relating to monetization. The tweets can provide a lot of additional insight, context and information, but I focused on platform documentation, so many of them were removed (e.g. if not including reference to platform documentation) Table 1 below presents an overview of the selected documentation.

Page name	Type of documentation	Link
Twitter's Creator Monetization Standards	Rules and policies	https://help.twitter.com/en/rules-and-policies/content-monetization-standards
Monetization	Creator tools	https://create.twitter.com/en/goals/monetization
Media Studio Monetization	Help pages	https://help.twitter.com/en/using-twitter/how-to-monetize-in-media-studio
Creators, meet Twitter's new monetization products	Creator tools	https://create.twitter.com/en/articles/best-practice/2021/creators-meet-twitters-new-monetization-products
Media Studio	Creator tools	https://create.twitter.com/en/products/media-studio
Media Studio Overview	Help pages	https://help.twitter.com/en/using-twitter/media-studio

²¹ More information about advanced Google searches can be found here:

<<https://support.google.com/websearch/answer/2466433?hl=en>> accessed 23 January 2023. I used the search string "site:twitter.com monetization" on Google, which allowed me to find the most relevant web pages within the Twitter website (as ranked by Google) about monetization.

²² The 19 results include 9 results on the first search results page, and 10 on the second.

3. Twitter Monetization: Studying Selected Platform Documentation

This part provides an overview of the monetization models identified in the Twitter documentation selected according to the methodology presented in Section 2.²³ Generally, Twitter divides its monetization according to the type of content users can generate on the platform, with two distinguishable categories: videos and tweets.

With respect to video monetization, Twitter has two main monetization programs, focused on the monetization of video content. The first program, Amplify Pre-Roll is “an opt-in advertising program to serve pre-roll against your premium video content shared on Twitter. The program was created to make it easy for publishers to monetize video content on Twitter, and also turnkey for advertisers to align with brand-safe content. Those partners that are accepted into the program and develop a sponsorship package will have access to monetization functionality in Media Studio”.²⁴ In other words, this monetization program pairs ads from advertisers with ‘premium, brand-safe video content’ on Twitter.²⁵ At the time of writing, the Amplify Pre-roll program is available in 16 countries around the world. The second program, Amplify Sponsorship “allows [users] to align [their] premium video content via a one-to-one sponsorship with an advertiser (or many). Sponsorships are the best way to

²³ It is worth noting that as all other social media platforms, Twitter has been constantly experimenting with monetization models. In 2018, it offered monetization products such as Video Ads and Sponsorships and Super Hearts. See for instance https://blog.twitter.com/en_us/topics/product/2018/Update-on-Amplify-Publisher-Program-Requirements.

²⁴ Twitter Amplify Pre-Roll. <<https://create.twitter.com/en/products/amplify-pre-roll>>.

²⁵ Id.

drive meaningful reach and revenue for your brand and deliver premium alignment for advertisers who want to reach your audience. Those partners that are accepted into the program and develop a sponsorship package will have additional monetization functionality in Media Studio.”²⁶

With respect to the monetization of tweets, Twitter features Tips and Superfollows. Tips allow creators to “make money via a third-party payment service”, with Twitter not taking any intermediation fee, but allowing the tips to go entirely to the user they were destined for.²⁷ Superfollows are monthly subscriptions that can be set up between \$2.99 and \$9.99 and reflect bonus content and interactions, and “help [users] earn revenue and connect with [their] Twitter fans on a deeper level”.²⁸ The Creator Monetization Standards also refer to subscriptions, yet on the basis of the platform documentation it is unclear whether they are the same (e.g. subscriptions replacing Superfollows), or whether they are different products.²⁹ Regardless of terminology, the concept is the same - users may earn revenue by creating extra content which they can charge for.

The two categories of content monetization entail very different business models, some of which benefit Twitter more than others. Amplify Pre-Roll and Amplify Sponsorship are products deployed within Twitter’s advertising ecosystem. The rules and FAQs relating to these products use terminology such as “publishers”, “advertisers” and “brands”.³⁰ The main business model here is that Twitter acts like an advertising marketplace, where publishers (who can also be creators) engage in the

²⁶ Twitter Amplify Sponsorships. <<https://create.twitter.com/en/products/amplify-sponsorships>>.

²⁷ Twitter Create. <<https://create.twitter.com/en/goals/monetization>>.

²⁸ Id.

²⁹ Twitter Help. <<https://help.twitter.com/en/using-twitter/subscriptions-creator#how>>.

³⁰ Twitter Amplify Pre-Roll. <<https://create.twitter.com/en/products/amplify-pre-roll>>.

production and publishing of video content which can then be paired with advertisers looking for advertising video content. In contrast, Superfollows and Tips are subscriptions and donations which focus on individual content creators who can reflect a myriad of industries and profiles. While it is unclear from the selected documentation what revenue Twitter retains from each of these monetization products, the platform states that it currently retains no fees for Tips.

The Twitter content monetization products can be used by creators who fulfill certain eligibility criteria set out in Twitter's rules and policies.³¹ According to these rules, users must:

- Reside in a country covered by Twitter's monetization programs;
- Be 18 years of older;
- Have a Twitter account that has been active for at least three months;
- Have a complete profile (e.g. account name, bio, picture and header image);
- Have a verified email address;
- Have two factor authentication;
- Have 'good standing' with Twitter, namely:
 - o Not having repeatedly violated the Twitter User Agreement or Twitter's Content Monetization Standards;
 - o Not having previously been removed as an advertiser on Twitter for violating the Ads policies or as an Amplify publisher on Twitter for violating the Amplify Pre-Roll Guidelines;

³¹ Twitter Rules and Policies. <<https://help.twitter.com/en/rules-and-policies/content-monetization-standards>>.

- Feature an authentic identity, namely not using another person's (legal or natural, fictional or real) identity or a fake identity intended to deceive Twitter users;
- Have a verified Stripe account;
- Comply with additional criteria from the Subscription terms, including maintaining 10,000 active followers and posting at least 25 tweets in the past 30 days

Certain types of accounts are excluded from monetization, such as state-affiliated media accounts or parody accounts (including fan and commentary accounts). In addition, Twitter restricts the conduct and content of users who pursue monetization.³² In terms of conduct, there is a prohibition of engaging in the monetization of illegal content (including fake engagement, soliciting sexual services and sweepstakes). The terms also indicate that local laws govern the interpretation of illegality.³³ In terms of content, six categories of content are restricted by Twitter for monetization purposes:

- Illegal or restricted goods & services (e.g. tobacco, alcohol, weapons);
- Criminal behaviours (e.g. child abuse material);
- Violent or graphic content (e.g. torture);
- Sensitive events (e.g. natural or industrial disasters);
- False, misleading or unsubstantiated claims (e.g. miracle cures);
- Unowned or unlicensed content;
- Adult or sexually suggestive content.

³² Id.

³³ Id.

In its creator monetization materials, Twitter also includes its ‘enforcement philosophy’, whereby it states that attention is given to context, severity and history of violative behaviours when enforcing the content monetization rules. Enforcement options include the following activities:

- Limiting the algorithmic recommendations to the account (de-amplification);
- Limiting (temporary or permanent revocation of) the ability to monetize the account and getting paid by Twitter (de-monetization);
- Asking the user to remove or directly removing violative content.
- Hiding content while awaiting removal;
- Limit access to the Twitter account or permanently revoking access.

It is noteworthy that the monetization approaches supported by Twitter according to its platform documentation do not include clear strategies or products for content creators to engage in what is probably the most well-known monetization business model, namely influencer marketing. This is due to the fact that influencer marketing remains - at least for Twitter - a largely off-platform monetization model, whereby the revenue is not mediated by Twitter.³⁴ This adds to a general cohesion issue which makes monetization difficult to map in a systematic and way, due to the many networks, stakeholders and environments relevant to the content monetization business models outlined in Section 2.

³⁴ Marijke De Veirman, Liselot Hudders & Michelle R. Nelson, *What Is Influencer Marketing and How Does It Target Children? A Review and Direction for Future Research*, 10 FRONT. PSYCHOL. 2685 (2019); Laura E. Bladow, *Worth the Click: Why Greater FTC Enforcement Is Needed to Curtail Deceptive Practices in Influencer Marketing*, 59 WILLIAM MARY LAW REV. 1123 (2017); Demetris Vrontis et al., *Social media influencer marketing: A systematic review, integrative framework and future research agenda*, 45 INT. J. CONSUM. STUD. 617 (2021).

4. Legal Issues with Content Monetization Frameworks: A Comparative Approach

Monetizing content on social media reflects new generations of business models facilitated by digital platforms for an increasing amount of stakeholders. The rise of social media platforms has provided an avenue for particularly content creators to monetize their work. However, this also exposes them to the discretion of these platforms, making them vulnerable. Social media platforms have the ability to change their policies, algorithms, and terms of service at any time, which can greatly affect a content creator's revenue.³⁵ For example, changes in algorithms can impact the reach and visibility of their content, potentially leading to a decline in revenue. Additionally, platforms can demonetize or even remove content that does not align with their policies, leaving the creator without a source of income. Moreover, these platforms often hold a monopoly over the distribution of content and control the monetization process, leaving content creators with limited options. This puts the power in the hands of the platform and leaves the creators vulnerable to exploitation.

Looking at this growing industry from a transatlantic perspective, the regulation of content monetization varies between the United States and the European Union. The differences stem from their distinct approaches to sectoral regulation relevant for the different industries impacted by content monetization.

Generally speaking, in the United States the regulation of content monetization is relatively permissive, with a focus on free speech and commerce. On the other hand,

³⁵ See for instance Robyn Caplan & Tarleton Gillespie, *Tiered Governance and Demonetization: The Shifting Terms of Labor and Compensation in the Platform Economy*, 6 SOC. MEDIA SOC. 205630512093663 (2020).

the European Union takes a stricter approach to content monetization, with a focus on protecting the rights of consumers and content creators.³⁶ In each of these jurisdictions, content monetization gives rise to a wealth of legal issues. Some of the key issues - albeit more traditionally framed - include misleading advertising practices and restrictions on advertising for regulated industries. Advertisers may use false or exaggerated claims to sell products, and this can harm consumers and damage the credibility of the platform. Another issue is user privacy. Twitter collects vast amounts of user data, which can be used to target ads, but this raises questions about how the data is being used and whether users are adequately informed about what data is being collected and how it is being used. Intellectual property infringement is also a concern for Twitter's monetization products. Advertisers may use copyrighted material or trademarked logos without permission, which can lead to legal disputes. In addition, regulated industries, such as gambling and alcohol, face advertising restrictions that can limit the types of products they can advertise on the platform. This can create conflicts with advertisers and impact Twitter's revenue. In addition to these challenges, Twitter's monetization products also raise concerns about user data usage and sharing, discrimination and bias in ad targeting, and potential conflicts of interest with advertisers. The platform's content moderation policies and freedom of speech also create challenges, as Twitter must balance the right to free speech with the need to remove harmful content.

More recent concerns emerging in the social media space have to deal with the monetization of weaponized information (e.g. monetizing conspiracies, misinformation or disinformation), as well as platform dependence. Social media platforms may depend heavily on monetizing content, which can limit their ability to make decisions

³⁶ Gregorio and Goanta, *supra* note 6.

in the best interests of their users. This can result in conflicts between the platform's commercial interests and its obligations to its users. Twitter is in this respect a very good example of platform volatility, given the unpredictable changes it suffered in recent months due to renewed leadership.

Generally, Twitter's monetization products face a number of legal challenges that must be addressed in order for the platform to continue to grow and thrive. Addressing these issues will require a careful balancing of user privacy, advertiser interests, and the broader legal landscape. Yet the relevant legal landscape reflects a plethora of laws and policies which are jurisdiction-specific, and which apply in parallel with the private standards adopted and enforced by social media platforms. In what follows, I will make a brief overview of US law and EU law in this respect, and address the biggest regulatory issue social media platforms are and will continue to struggle with: legal complexity.

In the US, Twitter's monetization policies, which involve the use of promoted tweets and sponsored content, are subject to a number of laws that regulate advertising practices, protect consumer privacy, and safeguard intellectual property rights, to give a few examples. A brief overview of some of the relevant applicable legislation includes the following:

- The Federal Trade Commission Act, which regulates advertising practices, requires that advertisements be truthful and not deceptive or misleading. This means that advertisers using Twitter's monetization products must be careful in the claims they make about their products, and that Twitter must ensure that these advertisements are not misleading.³⁷

³⁷ See for instance Lawrence R. Fullerton & Jane E. Larson, 'Using FTC Act Precedents In State Consumer Protection Cases ' (1988) 3 Antitrust 24; David A. Crane & Adam Hester, 'State-Action

- The Children's Online Privacy Protection Act protects the privacy of children under 13, and regulates the collection of personal information from minors. Twitter must exercise diligence in collecting information from minors, and must ensure that it has adequate privacy policies in place to protect this information.³⁸
- The Digital Millennium Copyright Act protects against intellectual property infringement, including unauthorized use of copyrighted material.³⁹
- The Civil Rights Act prohibits discrimination in advertising, and ensures that all individuals have equal access to advertising opportunities, regardless of their race, color, religion, or national origin. This means that Twitter must be careful in the types of advertisements it displays, and must ensure that its advertising practices do not discriminate against certain groups.⁴⁰

Immunity and Section 5 of the FTC Act' (2016) 115 Mich L Rev 365; Richard Dagen, 'Rambus, Innovation Efficiency, and Section 5 of the FTC Act' (2010) 90 BU L Rev 1479.

³⁸ See for instance Tianna Gadbaw, 'Legislative Update: Children's Online Privacy Protection Act of 1998' (2016) 36 Child Legal Rts J 228; Elizabeth Delaney, 'The Children's Online Privacy Protection Act and Rule: An Overview' (2002) 16 St John's J Legal Comment 641; Suzanne Kaufman, 'The Invisible Yet Omnipresent Ear: The Insufficiencies of the Children's Online Privacy Protection Act' (2022) 78 NYU Ann Surv Am L 101; Laurel Jamtgaard, 'Big Bird Meets Big Brother: A Look at the Children's Online Privacy Protection Act' (2000) 16 Santa Clara Computer & High Tech L J 385; Olivia Levinson, 'Embedded Deception: How the FTC's Recent Interpretation of the Children's Online Privacy Protection Act Missed the Mark' (2021) 105 Minn L Rev 2007.

³⁹ See for instance David Nimmer, 'Puzzles of the Digital Millennium Copyright Act' (1999) 46 JCopyright Soc'y USA 401; Selene Presseller, 'Copyright Infringement Via Social Media Live Streaming Shortcomings of the Digital Millennium Copyright Act' (2018) 7 Ariz St USports & Ent LJ 357; Caroline Russ, 'Tweet Takers & Instagram Fakers: Social Media & Copyright Infringement' (2020) 22 Tul J Tech & Intell Prop 205; 'Platform Society: Copyright, Free Speech, and Sharing on Social Media Platforms' (2019) 30 Fordham Intell Prop Media & Ent LJ 1.

⁴⁰ See for instance Elise Sandra Shore & Jimmy Anthony Rodriguez, 'A Case Study for Using Social Media in Civil Rights Investigations' (2022) 70 Dep't of Just J Fed L & Prac 39; Noah Olson, 'Stifling Dissent or Enforcing Rules? The State of Speech Rights in Online Forums' (2021) 6 IPCLJ 1.

- The First Amendment of the U.S. Constitution protects freedom of speech and freedom of the press, including speech on social media platforms. Twitter must weigh the types of content it allows on its platform, and must balance the right to free speech with the need to remove harmful content.⁴¹

In the EU, Twitter's monetization policies are equally subject to a number of regulatory instruments of supranational governance that govern advertising practices, protect consumer privacy, and safeguard intellectual property rights. An overview of some of the instruments which are applicable to content monetization includes the following:

- The Audiovisual Media Services Directive regulates the provision of audiovisual media services, including video-sharing platforms, within the EU. This Directive requires audiovisual media services to comply with EU standards on advertising, hate speech, and child protection.⁴²
- The General Data Protection Regulation regulates the collection, use, and protection of personal data within the EU. This legal framework provides EU

⁴¹ See for instance Kathleen McGarvey Hidy, 'Social Media Use and Viewpoint Discrimination: A First Amendment Judicial Tightrope Walk with Rights and Risks Hanging in the Balance' (2019) 102 Marq L Rev 1045; Daniel S. Harawa, 'Social Media Thoughtcrimes' (2014) 35 Pace L Rev 366; Samantha Levin, 'Tweet Tweet: A First Amendment Wake up Call regarding Social Media in the Sports Arena' (2013) 30 J Marshall J Info Tech & PrivacyL 117; Eric D. Bentley, 'He Tweeted What: A First Amendment Analysis of the Use of Social Media by College Athletes and Recommended Best Practices for Athletic Departments' (2012) 38 JC & UL 451; Kathleen McGarvey Hidy, 'The Speech Gods: Freedom of Speech, Censorship, and Cancel Culture in the Age of Social Media' (2021) 61 Washburn LJ 99.

⁴² See for instance Karin Sein, 'Interplay of Digital Content Directive, European Electronic Communications Code and Audiovisual Media Directive in Communications Sector' (2021) 12 J Intell Prop Info Tech & Elec Com L 169; Natali Helberger, 'Exposure Diversity as a Policy Goal' (2012) 4 J Media L 65; Mariacristina Reale, 'Digital Market, Bloggers, and Trendsetters: The New World of Advertising Law' (2019) 8 Laws 1.

citizens with greater control over their personal data and establishes strict penalties for data breaches.⁴³

- The E-Commerce Directive regulates electronic commerce, including online advertising, within the EU. This Directive requires that electronic commerce services provide clear and comprehensive information to consumers about the terms and conditions of sale.⁴⁴ It previously provided for the liability exemptions enjoyed by neutral platforms, which have been taken over by the Digital Services Act.⁴⁵
- The Copyright Directive protects the rights of creators of original works, including online content, within the EU. This law provides copyright holders with the right to control the distribution, modification, and commercial exploitation of their works.⁴⁶

⁴³ See for instance Ezra Wolfson, 'Privacy in the Digital Age: Is Our Data Safe?' (2020) 3 Int'l Comp, Policy & Ethics L Rev 477; Samuel M. Roth, 'Data Snatchers: Analyzing TikTok's Collection of Children's Data and Its Compliance with Modern Data Privacy Regulations' (2021) 22 J High Tech L 1; Alexander Tsesis, 'Data Subjects' Privacy Rights: Regulation of Personal Data Retention and Erasure' (2019) 90 U Colo L Rev 593.

⁴⁴ See for instance Jan Trzaskowski, 'Identifying the Commercial Nature of Influencer Marketing on the Internet' (2018) 65 Scandinavian Stud L 81; Trent Scheurman, 'Comparing Social Media Content Regulation in the US and the EU: How the US Can Move Forward with Section 230 to Bolster Social Media Users' Freedom of Expression' (2022) 23 San Diego Int'l LJ 413; Ellen Wauters, Eva Lievens & Peggy Valcke, 'Towards a Better Protection of Social Media Users: A Legal Perspective on the Terms of Use of Social Networking Sites' (2014) 22 Int'l JL & Info Tech 254.

⁴⁵ See for example Miriam C. Buiten, 'The Digital Services Act from Intermediary Liability to Platform Regulation' (2021) 12 J Intell Prop Info Tech & Elec Com L 361; Parker Williams Hassard, 'What's Not to Like?: The EU's Case against Big Tech and Important Lessons for the United States' (2022) 47 NC J Int'l L 521.

⁴⁶ See for instance Rachel Griffin, 'The Sanitised Platform' (2022) 13 J Intell Prop Info Tech & Elec Com L 36; Andrew Tyner, 'The EU Copyright Directive: Fit for the Digital Age or Finishing It' (2019) 26 J Intell Prop L 275; Madeleine Patton, 'How to Protect Users' Copyright Rights in the Age of Social Media Platforms and Their Unread Terms of Service' (2019) 53 USF L Rev 463; Hannah Bloch-Wehba, 'Automation in Moderation' (2020) 53 Cornell Int'l LJ 41.

Content monetization is the turning of content into a source of revenue. The already vast scholarship covering the various complexities of content moderation has been highlighting the theoretical and practical difficulties in designing and enforcing culturally-sensitive state and/or platform rules that can apply across borders.⁴⁷ Content monetization complicates this landscape even further, for a wide array of reasons. Two points stand out.

Firstly, it reveals social media spaces to be transactional environments. While early on in their history, social media platforms have been seen as public fora, this conception was based on the ability of platforms to express commercial interests in a rather invisible manner. Paying for perceivably free services with users' data created the illusion of gratuity and supported the perception that social media platforms offer public interest services. However, content monetization removes the veil of gratuity by providing a new generation of business models which entail actual payment (for the platform) and revenue (for other stakeholders earning from monetization). The nature of the various questions relating to, among others, intellectual property, criminal law or tort law, will be fundamentally changed in the face of content monetization, with financial incentives affecting the behaviour of users in this ecosystem.

Secondly, monetizing content means offering digital services, goods (not necessarily digital), which in turn raises questions relating to contracts and consumer transactions. In some jurisdictions, such as the EU, consumer protection has developed as a mandatory limitation to freedom of contract. Similarly, privacy protections trump

⁴⁷ Among others, see Jenna Hensel, 'How a New Standard of Care Can Make Social Media Companies Better "Good Samaritans"' (2021) 105 Minn L Rev 1453; Tanner Bone, 'How Content Moderation May Expose Social Media Companies to Greater Defamation Liability' (2021) 98 Wash U L Rev 937; Niva Elkin-Koren, Giovanni De Gregorio & Maayan Perel, 'Social Media as Contractual Networks: A Bottom up Check on Content Moderation' (2022) 107 Iowa L Rev 987; Kyle Langvardt, 'Regulating Online Content Moderation' (2018) 106 Geo LJ1353.

private commercial rights and freedoms to the benefit of public interest. In the EU, consumer protection even has the status of a fundamental right. As things stand, monetization will lead to different layers of protections on an international level. Jurisdictions with similar rules will use them to protect their consumers against the potential harms arising out of content monetization. However, jurisdictions where high standards of consumer protection are not supported by a comprehensive statutory framework might become a second tier space where consumers are exposed to more harms.

5. Conclusion

This paper focused on understanding monetization from the perspective of platform policies, taking Twitter as a case study. As content monetization is currently increasing the complexity of the social media regulatory landscape, it is important to first understand what it entails, to then sketch an overview of the problematic legal framework(s) applicable to these developments from a transatlantic perspective. The resulting complexity makes the Internet - and particularly social media - even more difficult to govern than when content monetization was not blooming as much as it does today. Twitter's content monetization policies are in full swing, and while it is by far not a leading social media platform in terms of size, its monetization policies can offer us insights into the commercial trends pursued in this industry. At the same time, the Creator Monetization Standards offer insights into how meagerly the platform deals with the emerging complexity.

