CREATOR RISK INTELLIGENCE

The Signal

Monthly intelligence on Creator Risk, regulatory change, and brand safety incidents. Issue 08 · August 2024

Four incidents in five months. The same pattern each time: a historical post, a live campaign, a rapid termination. At Signal Intelligence we have been tracking this category since January and the data is pointing in one direction. This issue introduces the framework we use to assess it.

IN THIS ISSUE

01 — NO STATUTE OF LIMITATIONS

Historical content risk · Pattern analysis · August 2024

In the eight months since January, Signal Intelligence has tracked four separate brand safety incidents attributable to historical content — content posted by a creator before the brand partnership began, which was surfaced during an active campaign and led to partnership termination. In each case, the content was publicly available at the point the partnership was signed. In each case, the brand had no documented evidence of having searched for it.

The incidents occurred across fashion, food and beverage, sports, and consumer electronics categories. The creators involved ranged from 200,000 to 4 million followers. The common variables were the content type — inflammatory language on X, resurfaced from three to nine years before the partnership — and the brand response: immediate termination, public statement, no acknowledgement of process failure.

What the pattern tells us

The post that ends a partnership is not the post from last week. It is the post from 2015, 2017, 2019 — the one the creator had largely forgotten, written before they had an audience or a public profile. It is surfaced by motivated audiences: critics, competitors, journalists, or simply users who happen to remember. X's search archive extends to account creation. The Wayback Machine holds cached versions of deleted content. Screenshots spread through Reddit and forum threads with no expiry date.

The internet has a longer memory than any vetting process built around a creator's current feed. And critically — unlike a criminal record or financial disclosure — there is no institutional barrier to accessing this information. A search that takes twenty minutes would, in most cases, have prevented the incident.

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There is no statute of limitations on the internet. The commercial risk of historical content is not a niche concern — it is a systematic gap in how most brands vet creators. Standard platform-based tools show what a creator has posted recently. They do not show what a creator posted years ago on platforms they no longer use. Both assessments are required.

RECOMMENDED ACTION

Run a historical content search as part of every creator activation process. X Advanced Search, the Wayback Machine, and a basic news archive search cover most cases and cost nothing. For higher-value partnerships, extend to public record checks. The tool is free. The failure is process.

02 — FASHION NOVA AND THE BRAND LIABILITY QUESTION

Fashion Nova · FTC · United States · 2022–2024

In a case that completed its FTC process in 2022 and 2024, fast-fashion brand Fashion Nova agreed to pay $4.2 million to settle FTC allegations that it had suppressed negative reviews on its website. The case is relevant to creator risk not because of the review suppression finding itself, but because of what the FTC's framing confirmed: the brand, not the influencer, is the primary target of enforcement action when commercial relationships produce misleading content.

The FTC's position — consistently stated across multiple enforcement actions and the updated Endorsement Guides — is that the brand which commissions and benefits from influencer content shares legal responsibility for that content's compliance. A creator contract that purports to place all disclosure obligations on the creator does not shield the brand from FTC scrutiny. The brand that paid for the content is accountable for whether it meets the standards.

THE DUAL LIABILITY STANDARD

The FTC's dual liability approach means that brand safety is not just a reputational risk management function — it is a legal compliance function. The brand that activates a creator who fails to disclose a material connection is not a bystander. Under the updated Endorsement Guides, it is a co-respondent. Legal teams that have not yet integrated influencer marketing into their compliance review processes should do so now.

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The brand that commissions the content shares accountability for it. A creator contract is not a liability transfer mechanism. It is a commercial agreement between parties who are both, in the eyes of the FTC, responsible for what gets published.

RECOMMENDED ACTION

Review your influencer contract templates to confirm that disclosure obligations are specified, not merely implied — and that your brand compliance review includes verification that disclosures were made, not just that they were contractually required.

03 — A FRAMEWORK FOR THINKING ABOUT RISK

Signal Intelligence methodology · August 2024

Tracking creator incidents over the first eight months of 2024, a pattern has become clear: standard content-based vetting consistently fails to detect the signals that precede the most significant brand safety incidents. The risk is not in what creators post. It is in the dimensions of their situation that a content feed does not show.

Signal Intelligence has been developing an internal framework for thinking about these dimensions systematically. We are not publishing it in detail — it is still being refined against live cases. But the outline is emerging from the incident data.

The incidents that matter do not cluster around content. They cluster around trajectory — is the creator's situation improving or deteriorating? Around reputation — what does the full public record actually say beyond the recent feed? Around exposure — are there legal, regulatory, or commercial pressures building that the content does not reflect?

Content is one input. It is not the only one, and it is frequently not the most important one. The Fashion Nova case, the Hudson case, the Ferragni case — all of them produce clean content scores. All of them look materially different when you examine the surrounding dimensions.

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A content score tells you what a creator has published. It does not tell you what is happening around them. The gap between those two things is where most brand safety incidents originate — and it is the gap that a content-only vetting process is structurally unable to close.

RECOMMENDED ACTION

Review your current creator vetting process and ask honestly: does it assess anything beyond the content feed? Identify which additional dimensions of a creator's situation you could reasonably check before your next major activation.

04 — REGULATORY NOTE

FTC · ASA · Italy · August 2024

USA	The FTC's proposed rule banning fake reviews, fake social media indicators, and AI-generated fake testimonials is in its final stages of consideration. Public comment periods closed and informal hearings were completed in early 2024. Industry sources expect a final rule before year end. In the interim, existing Endorsement Guides enforcement continues — with the FTC's focus on brands as primary respondents, not individual creators.
UK	ASA Active Ad Monitoring confirmed operational across Instagram, TikTok, YouTube, and X in its Q2 2024 report. The system is scanning at scale without waiting for complaints. The ASA has confirmed it will name non-compliant brands publicly as part of its enhanced sanctions regime — a step change from previous practice.
ITALY	The DDL Beneficenza continues through parliament. AGCOM's Code of Conduct consultation has received submissions from major platforms and industry bodies. The AGCM Pandorogate investigation continues — Milan prosecutors have confirmed the criminal fraud case is progressing separately from the civil regulatory action.

The FTC's expected finalisation of the fake review rule before year end represents the most significant near-term regulatory development for US-facing brands. The rule will explicitly extend to fake social media metrics — followers, engagement, views — making the purchase of manufactured audience metrics a formal enforcement target, not just a best practice concern.

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The Signal is published monthly by Signal Intelligence. Each issue covers real Creator Risk incidents, regulatory developments, and the intelligence that brand-side teams need before they need it. Subscribe at signalintelligence.consulting — and if this issue was forwarded to you, make sure you're on the list for the next one.