Signal Intelligence
CREATOR RISK INTELLIGENCE
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CREATOR RISK INTELLIGENCE

The Signal

Monthly intelligence on Creator Risk, regulatory change, and brand safety incidents. Issue 15 · March 2025

When you send a creator a free product, you are not starting a casual relationship. In the eyes of the FTC, the NAD, and the ASA, you may have just created a material connection that requires disclosure — whether or not a contract was ever signed. This month we examine the gifting obligation, and what it means for brands that rely on organic creator content.

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01 — THE GIFTING PROBLEM

NAD · FTC · ASA · Gifted product disclosure · March 2025

The conventional understanding of influencer disclosure obligations is built around payment: if a creator is paid, they must disclose. The regulatory reality in 2025 is different. Gifted product — sent without payment and without a contract — creates a material connection under US, UK, and EU regulatory frameworks that may require disclosure as clearly as a paid partnership.

The National Advertising Division published updated guidance in 2024 clarifying that the material connection test under FTC standards is met by value, not cash. A brand that sends free product to a creator with the intention or expectation of content generation has created a material connection. If the creator posts about the product without disclosing the gifted nature of the relationship, the brand that sent the product shares responsibility for the non-disclosure — even without a contract, a brief, or a payment.

The seeding campaign risk

Product seeding campaigns — sending product to large numbers of creators without formal agreements, hoping for organic posts — are the highest-risk gifting practice under current regulatory frameworks. The brand has intentionally initiated content creation by providing value. If creators post without disclosing, and the brand cannot demonstrate that it provided clear disclosure guidance with the product, the enforcement exposure falls on the brand.

The ASA's position in the UK is consistent with this: gifted product requires disclosure. The standard is not whether a contract was signed — it is whether value was exchanged with the expectation of content. The ASA's Active Ad Monitoring system scans gifted content as well as paid content. The compliance obligation does not begin at the contract.

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Sending free product is not a compliance-free activity. The gifting relationship creates a material connection before a contract is signed. Any seeding programme should include clear disclosure guidance sent with the product — and a monitoring process to verify that disclosure is made. The brand that sent the product is accountable for whether it was disclosed.

RECOMMENDED ACTION

Review your gifting and seeding programme documentation. Does every product send include written disclosure guidance? Do you maintain records of what was sent, to whom, and when? If not, you cannot demonstrate compliance — and the absence of that record is itself a compliance gap.

02 — CREATOR-OWNED BRANDS: THE GOVERNANCE GAP DEEPENS

CMA powers · Brand risk · March 2025

The CMA's new enforcement powers under the Digital Markets, Competition and Consumers Act 2024 are in force from April 2025. For brands that partner with creator-owned product companies — as stockists, co-collaborators, or campaign partners — the implications extend beyond their own disclosure obligations.

A brand that distributes or promotes a creator-owned product has a commercial relationship with both the product and the creator behind it. If the creator's conduct generates an enforcement action — under DMCCA, the CMA's consumer protection powers, or the ASA framework — the distributing brand may find itself in the enforcement perimeter by association. The governance gap in creator-owned brands does not stay within the creator's business.

Signal Intelligence has tracked five cases in the past eighteen months where a brand's distribution or promotional relationship with a creator-owned product was complicated by a conduct incident involving the creator. In each case, the brand had conducted a standard creator assessment. In none of them had the assessment covered the governance structure of the creator's product business.

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Partnering with a creator-owned brand is a different risk assessment from partnering with an individual creator. The product company has no governance structure independent of the founder. The founder's conduct is the company's governance risk. That assessment requires a different set of questions.

RECOMMENDED ACTION

For partnerships with creator-owned product companies, supplement your standard creator assessment with questions about the company's governance structure. Who runs it day-to-day beyond the founder? What happens to the company if the founder is unavailable? Public Companies House records, trading history, and company filings are all searchable.

03 — WHAT WE'RE WATCHING

Forward signals · March 2025

EU Digital Fairness Act	European Commission legislative proposal expected Q2 2025. The Act is expected to introduce EU-wide influencer marketing obligations — disclosure standards, transparency requirements, and potentially registration requirements for high-reach creators. The most significant regulatory development in the European market since the GDPR.
Ferragni verdict	Fast-track criminal proceedings expected to conclude H1 2025. A conviction would establish the most significant creator marketing legal precedent in European history. An acquittal would not remove the civil regulatory findings or the legislative response.
ASA gifting enforcement	The ASA has signalled it will increase its focus on gifted content disclosure in Q2 2025 — the spring product seeding season. Brands running seeding programmes should ensure disclosure guidance is in place before April.

04 — REGULATORY NOTE

UK · USA · France · EU · March 2025

UK	DMCCA unfair commercial practices provisions in force from April 2025. CMA 10% global turnover penalty ceiling applies. ASA increasing focus on gifted content disclosure in Q2. FCA finfluencer monitoring active — enforcement actions expected H1 2025.
USA	NAD updated guidance on gifted product obligations published 2024. FTC Consumer Reviews Rule active. FTC enforcement pace maintained — brands as primary respondents. SEC Marketing Rule enforcement in financial services sector active.
FRANCE	ARPP speech-to-text monitoring operational. Verbal brand mentions detectable. Brand liability joint and several. ARPP 2024 Annual Report: 222% increase in content reviewed. France remains the most technologically advanced enforcement market in Europe.
EU	EU AI Act labelling requirements for AI-generated content phasing in. Digital Fairness Act legislative proposal expected Q2 2025. DSA platform obligations active — platforms removing non-compliant content within 24-hour windows. UCPD classifies influencers as traders across all 27 member states.

The DMCCA coming into force in April 2025 is the most significant near-term development for UK-facing brands. The 10% global turnover penalty ceiling is not a theoretical maximum — the CMA has demonstrated its willingness to impose substantial penalties in other consumer protection contexts. Influencer marketing compliance is no longer a soft risk for UK brands.

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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.