Selectively Scandalous: The Subjectivity Problem of Morals Clause Enforcement in Talent Contracts

Melina Iavarone[1*]

ABSTRACT

This paper evaluates morals clauses in talent contracts and argues that broad drafting as an industry standard invites subjective and selective enforcement. Such selectivity produces inequitable, unpredictable outcomes, undermining contract law principles like good faith and fair dealing, and obscuring corporate brand transparency. By analyzing case studies across the sports and entertainment industries, this paper demonstrates the pervasiveness of selective enforcement in agreements where reputation is a bargained-for asset. Such case studies examine public figures like Tiger Woods in the context of a sports endorsement contract; Kanye West in the context of a long-term brand collaboration; Anthony David Burke, professionally known as d4vd, in the context of a record deal; and Olivia Jade, in the context of an influencer marketing agreement. This paper argues that a more precise, formalist approach to morals clause drafting can solve the subjectivity problem and mitigate selective enforcement.

INTRODUCTION

The inclusion of a morals clause does not necessarily produce moral outcomes?[2] The contractual provision serves to require employees and independent contractors to meet a certain behavioral standard while contractually bound.[3] In the sports context, it is a commonplace provision found in agreements between athletes and

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 Melina Iavarone [*] J.D. Candidate, Boston College Law School (expected 2027), B.S. Psychology, Syracuse University (2024).

[2] *See* Danielle Weiner Bronner, *After brands dump Kanye West, many people ask: What took so long?* CNN BUSINESS (highlighting how a company's financial obligations to its shareholders cause it to hesitate to abandon lucrative deals) https://www.cnn.com/2022/10/28/business/adidas-gap-businesses-kanye-west (Oct. 28, 2022).

[3] Costanzo Law Firm APC, *Understanding Morality Clauses in Employment Contracts*, https://www.costanzo-law.com/understanding-morality-clauses-in-employment contracts/#: (July 25, 2025).

teams, leagues, or sponsoring companies.[4] In the entertainment context, it appears in agreements between companies and talent, such as record deals.[5] These clauses are understood to protect companies from financial loss and reputational harm resulting from problematic behavior by talent.[6] For example, if the talent breaches the provision, the company has the exclusive, unilateral right to quickly terminate the contract.[7] Despite this common understanding of a morals clause as a damage control mechanism, its enforcement is often less straightforward.[8] Morals clauses are traditionally drafted broadly lacking explicit enumerations of prohibited conduct, often resulting in arbitrary enforcement.[9] This drafting norm stems from a company's aim to not only target illegal activity, but any conduct that may paint the company or its products in an unfavorable light.[10] Examples of behaviors that typically trigger these clauses include criminality, sexual misconduct, discrimination, and harassment.[11] However, these are simply illustrative, and enforcement lacks uniformity.[12] The kinds of behaviors sufficient to invoke the provision are frequently fact-intensive and heavily influenced by public opinion.[13]

Broad drafting practices and the upshot of selective enforcement raises questions about equitable enforcement across the talent pool in public-facing industries like sports and entertainment.[14] In addition, it engenders confusion in consumers and the general public regarding companies' genuine values, and the types of behaviors they are willing to tolerate, as they weigh profitability against public scrutiny with an unchecked amount of discretion.[15]

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[4] Brian R. Socolow, *What Every Player Should Know About Morals Clauses*, MOVES MAG., (Aug. 2008) (reprinted at Loeb & Loeb), https://www.loeb.com/en/insights/publications/2008/09/what-every-player-should-know-about morals-clauses.

[5] Miriam M. Camara, *Let the Beat Go On: Whitney Houston, Morals Clauses, and Better Ideas for Intervention*, INTELL. PROP., MEDIA, & ENT. L.J BLOG (Mar. 6, 2012), http://www.fordhamiplj.org/2012/03/06/let-the-beat-go-on-whitney-houston-morals-clauses-and-better-ideas-for-intervention/#.

[6] *Id.*

[7] Dan Brecher, *Morals Clauses Can Protect Companies and Influencers*, SCARNICI HOLLENBECK LLC: FIRM INSIGHTS (Feb. 15, 2024), https://scarincihollenbeck.com/law-firm-insights/morals clauses-can-protect-companies-and-influencers.

[8] *See* Patricia Sánchez Abril & Nicholas Greene, *Contracting Correctness: A Rubric for Analyzing Morality Clauses*, 74 WASH. & LEE L. REV. 3, 4 (2017) (stating that the typicality of broadly drafted morals clauses allows "expansive and often highly-subjective interpretations"), https://scholarlycommons.law.wlu.edu/wlulr/vol74/iss1/3/.

[9] THE AUTHOR'S GUILD, *Why We Oppose Morals Clauses in Book Contracts* (Jan. 24, 2019), https://authorsguild.org/news/why-we-oppose-morals-clauses-in-book-contracts/.

[10] *See* Annamarie White Carty, *Cancelled: Morality Clauses in an Influencer Era*, 26 Lewis & Clark L. Rev. 565, 574 (2022), https://law.lclark.edu/live/files/33592-2628-party.

[11] STERLING MEDIA LAW, *What is a morality clause in a media contract?*, https://www.sterlingmedialaw.com/lawreview/what-is-morality-clause-contract (last visited Jan. 16, 2026).

[12] *Id.*

[13] Sánchez Abril & Greene, *supra* note 8.

[14] EMPLOYMENT LAW PROFESSIONALS NORTHWEST, *What you should know about morals clauses* (Jan. 12, 2024), https://www.elpnw.com/blog/2024/january/what-you-should-know-about-morals-clauses/.

[15] Weiner Bronner, *supra* note 2.

For example, companies have historically terminated contractual relationships with talent on behavioral grounds, issuing public statements that the talent no longer aligns with their values.[16] However, unacceptable behavior is inadequately defined, and the extensive discretion that such inadequacy creates leads to arbitrary, potentially pretextual invocations of a morals clause.[17] In turn, it is difficult to decipher whether the driving force behind enforcement is a company's adherence to its claimed values, or its attention to whether the public's reaction suggests an impending dip in sales.[18] When crisis management is disproportionately driven by the level of intensity of public backlash, brand identity and authenticity can become camouflaged from the consumer's view.[19]

In addition to the discomfort that selective enforcement promotes from a social standpoint, it has separate implications for contract law.[20] Specifically, the inherent lack of mutuality in such selectivity signals unequal bargaining power, encroaching on contract of adhesion territory.[21] The room for subjectivity that broadly drafted morals clauses creates allows companies to leverage ambiguity to terminate talent on terms that the negotiating parties did not expressly agree upon.[22] This subjectivity problem means that the talent signs off as the only party to the contract with a blind spot.[23] The result undermines the contract law principle of good faith and fair dealing and leaves talent with blurred expectations, rather than clear behavioral limits.[24]

Part I of this paper will provide an illustration of the subjectivity problem and its companion—selective enforcement—in sports and entertainment contexts, focusing on endorsement agreements, record deals, and brand partnership

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[16] *See Accenture Drops Sponsorship of Tiger Woods*, CNBC (stating that Accenture issued a public statement that Tiger Woods is "no longer the right representative" for its advertising), https://www.cnbc.com/2009/12/13/accenture-drops-sponsorship-of-tiger-woods.html (Mar. 17, 2010).

[17] *See* Todd J. Clark, *An Inherent Contradiction: Corporate Discretion in Morals Clause Enforcement*, 78 LA. L. REV. 1, 4 (2018) (stating that the expansive discretion that broadly drafted morals clauses extends to businesses in judging morality allows them to end contractual relationships "according to their own biased perceptions of morality…").

[18] Weiner Bronner, *supra* note 2.

[19] *Id.*

[20] Eric Gros-Dubois, *Morals Clauses, the Controversial Truth You Need To Know*, EPGD BUSINESS LAW ENTERTAINMENT LAW BLOG (Jan. 12, 2024), https://www.epgdlaw.com/what-is-a morals-clause/.

[21] *See Morals Clauses in Contracts: What are They and What to Look for When Negotiating*, PERKINS LAW PLLC BLOG (Oct. 14, 2020) (stating that talent's "key concern to watch out for when reviewing or negotiating a morals clause is overly broad or ambiguous language."), https://ericperkinslaw.com/morals-clauses-in contracts-what-are-they-and-what-to-look-for-when-negotiating/.

[22] *See* Gros-Dubois *supra* note 20 (stating that "an influencer and brand could have a different definition of 'bad publicity'. . .").

[23] Aaron Hall, *Talent Agreements With Non-Mutual Morals Clauses*, ATTORNEY AARON HALL, https://aaronhall.com/talent-agreements-with-non-mutual-morals-clauses/ (last visited Nov. 15, 2025).

[24] Valery Piedra & Emelio Nicolas, *Morality Clauses Take Center Stage: Tips to Help Protect Your Next Project From Being Associated With Talent Controversy*, JW NEWS (Apr. 20, 2021), https://www.jw.com/news/insights-entertainment-morality-clauses/.

lifecycles.[25] Part II will analyze the legal and social issues surrounding fairness and clarity that the morals clause produces.[26] Part III will propose the adoption of a narrower, more formalist approach to the provision.[27] Specifically, in deal structuring, parties to talent contracts should advocate for more specificity of behavioral guidelines, and avoid closing on vague warnings regarding the types of scenarios that give rise to termination.[28]

I. SELECTIVE ENFORCEMENT: IMMORALITY AS A MOVING TARGET

Inconsistent contractual termination is a defining characteristic of morals clause enforcement in talent contracts.[29] Specific language varies based on industry and negotiation, but a standard morals clause in a talent agreement resembles the following:

"Company shall have the right to terminate this Agreement if [Talent] knowingly and publicly disparages the products or services of Company or is charged with a crime involving moral turpitude, notwithstanding any subsequent dropping of such charges, and such charges become known to the public, or if [Talent] is otherwise involved in activities that subject [Talent] to widespread public contempt and/or which materially tarnishes Company's image. In the event of such termination, no further compensation shall be due you or [Talent], other than that theretofore earned and due and then unpaid. Furthermore, Company shall be entitled to a refund of any Fee unearned as of the date of termination."[30]

A variation of this clause was used in the ensuing cases, and drastically non-uniform enforcement demonstrates the problematic nature of broad drafting.[31]

A. Tiger Woods: Accenture and Infidelity

In 2003, professional golfer Tiger Woods entered into an endorsement deal with the consulting firm Accenture.[32] The company had chosen Woods as the face of their multi-year campaign because he symbolized top-tier performance and

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[25] *See What is a Morals Clause? Legal Insights and Implications*, US LEGAL FORMS LEGAL RES. (last visited Jan. 11, 2026) (stating that morals clauses are prevalent in sports and entertainment law, and enforcement varies), https://legal-resources.uslegalforms.com/m/morals clause.
[26] *Id.*
[27] *See* Steven S. Sidman, *Insight: A Moral Compass – A Guide to Celebrity-Focused Morals Clauses*, CARLTON FIELDS (Apr. 26, 2019) (stating that clearly defined offenses sufficient to invoke the morals clause is crucial for the brand and talent), https://www.carltonfields.com/insights/publications/2019/guide-celebrity-focused-moral-clauses.
[28] *Id.*
[29] *See* Sánchez Abril & Greene, *supra* note 8 (stating that the typicality of broadly drafted morals clauses allows "expansive and often highly-subjective interpretations").
[30] Sidman, *supra* note 27.
[31] *What you should know about morals clauses*, *supra* note 15.
[32] Thomas Wailgum, *Tiger Woods and Accenture: A High (and Now Low) Performance Relationship*, CIO (Dec. 10, 2009), https://www.cio.com/article/280750/enterprise-software-tiger woods-and-accenture-a-high-and-now-low-performance-relationship.html#:~:.

embodied the firm's mission to aid businesses in achieving such performance in their own industries.[33] However, in December 2009, Accenture, with a then $26 billion market cap, invoked a morals clause contained in their contract, terminating their deal with Woods after his extramarital affairs came to light.[34] Accenture issued a statement regarding the termination, reasoning that Woods did not accurately represent the brand anymore, given the surfacing of his infidelities.[35]

Accenture was not alone in disassociating from Woods, with Gillette and AT&T distancing themselves from the golfer.[36] However, not every sponsor shared the same line of reasoning.[37] For example, luxury watchmaker Tag Heuer announced that it would sustain its collaborations with Woods because the company values his superior athletic performance, and was not concerned with his actions off of the golf course.[38] Moreover, sportswear conglomerate Nike unrelentingly supported Woods throughout the scandal, with chairman and co-founder Philip Knight reducing the situation to a slight interruption in Woods' career.[39] These vastly different responses demonstrate how broad drafting of morals clauses can produce incohesive outcomes.[40] This subjectivity problem reflects a need for a more formalist approach to drafting.[41]

B. Kanye West: Adidas and Antisemitism

In 2013, Kanye West entered into a brand partnership agreement with the sportswear conglomerate Adidas.[42] By 2015, the lucrative line of sneakers and apparel Yeezy launched under their collaboration.[43] Over the course of the partnership's life, Yeezy reached $2 billion in annual sales, comprising approximately 10% of Adidas' total revenue.[44] Despite these substantial profits, Adidas ended the partnership in 2022, following West's string of public bigotry.[45]

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[33] Ilaina Jonas, *Accenture ends relationship with Tiger Woods*, REUTERS (Dec. 13, 2009), https://www.reuters.com/article/golf-woods-idUSN1314478320091213/.
[34] *Id.*
[35] *Id.*
[36] John Strege, *Report: Gillette ends relationship with Woods*, GOLF DIGEST (Dec. 23, 2010), https://www.golfdigest.com/story/report-gillette-ends-relationship-with-woods.
[37] Matthew Weaver, *Nike stands by Sponsorship of Tiger Woods despite 'indiscretions'*, THE GUARDIAN (Dec. 14, 2009), https://www.theguardian.com/sport/2009/dec/14/nike-sponsorship tiger-woods.
[38] *Id.*
[39] *Id.*
[40] Clark, *supra* note 17.
[41] Sidman, *supra* note 27.
[42] Ask.HipHop, *The Rise and Fall of the Adidas-Yeezy Partnership: A Timeline of Success, Controversy, and Collapse*, THELEARNINGHIPHOP (Oct. 9, 2024), https://thelearning.hiphop/p/the-rise-and-fall-of-the-adidas-yeezy.
[43] *Id.*
[44] Jaclyn Peiser & Jacob Bogage, *Kanye made Adidas billions. Now he could cost the company its reputation.,* THE WASHINGTON POST (Oct. 11, 2022), https://www.washingtonpost.com/business/2022/10/11/adidas-kanye-west-yeezy/.
[45] Sarah Butler, Philip Oltermann, & Morwenna Ferrier, *Adidas cuts ties with Kanye West over antisemitic comments*, THE GUARDIAN (Oct. 25, 2022), https://www.theguardian.com/music/2022/oct/25/adidas-cuts-ties-with-kanye-west-over antisemitic-comments.

For example, in October 2022, the artist wore a shirt with the words "White Lives Matter" printed across the back.[46] In this instance, hate speech was insufficient to trigger the morals clause in West's contract with Adidas.[47] Instead, this move by West merely led Adidas to put their partnership under review.[48]

Still equipped with his deal, valued at $1.5 billion at the time, the artist continued to make hateful remarks on social media.[49] On Instagram, West made an antisemitic comment insinuating that Jewish people are attempting to control people.[50] Instagram deleted the post and restricted his account.[51] The next day, West took to X, sharing a post threatening to go "death con 3 On JEWISH PEOPLE."[52] X consequently suspended his account.[53]

While Instagram and X took action, conversely, Adidas had not yet placed any restrictions on the artist.[54] West's inflammatory commentary continued throughout the month.[55] For example, the leaking of unaired footage of West making an additional antisemitic speech on the set of Fox News sparked heightened criticism from the public.[56] For the remainder of October, he made further conspiratorial claims regarding Jewish control.[57] In an interview with journalist Piers Morgan, the artist affirmed that he was unremorseful for his actions.[58] Notably, on the Drink Champs podcast, known for unfiltered interviews with hip-hop A-listers centered around career trajectories and impact on culture, West asserted that he can exhibit antisemitism, and Adidas cannot drop him.[59]

Eventually, the company overrode West's claim and terminated their contractual relationship.[60] However, prior to this sequence of bigotry, West engaged in other forms of disconcerting behavior over the years that he was signed

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[46] Peiser & Bogage, *supra* note 44.
[47] Butler, Oltermann, & Ferrier, *supra* note 45.
[48] Bobby Allyn, *Adidas cuts ties with Ye over antisemitic remarks that caused an uproar*, NPR, https://www.npr.org/2022/10/25/1131285970/adidas-ye-kanye-west antisemitic (Oct. 25, 2022).
[49] Mary Whitfill Roeloffs, *Kanye West's Yeezy Shoes Save Adidas' Bottom Line—Spur $150 Million In Donations To Anti-Hate Groups*, FORBES (Mar. 13, 2024), https://www.forbes.com/sites/maryroeloffs/2024/03/13/kanye-wests-yeezy-shoes-save-adidas bottom-line-spur-150-million-in-donations-to-anti-hate-groups/.
[50] J. Clara Chan, *How Many Chances Does Kanye West Get On Instagram and Twitter?*, THE HOLLYWOOD REP. (Oct. 11, 2022), https://www.hollywoodreporter.com/business/digital/kanye-west-instagram-twitter-suspensions 1235238559/.
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] Butler, Oltermann, & Ferrier, *supra* note 45.
[55] *Unpacking Kanye West's Antisemitic Remark*, ANTI-DEFAMATION LEAGUE, https://www.adl.org/resources/article/unpacking-kanye-wests-antisemitic-remarks (Oct. 31, 2022).
[56] *Id.*
[57] *Id.*
[58] Althea Legaspi & Charisma Madarang, *Piers Morgan Praises Kanye West's Apology for Antisemitic Remarks Moments After Rapper Said He Was 'Absolutely Not' Sorry*, ROLLING STONE (Oct. 19, 2022), https://www.rollingstone.com/music/music-news/piers-morgan-kanye-west antisemitic-remarks-apology-1234614875/.
[59] Butler, Oltermann, & Ferrier, *supra* note 45.
[60] *Id.*

with Adidas, including stating that slavery was a choice, showing pornographic content in business meetings, and verbally abusing employees.[61] Interestingly, the company amended his contract in 2016, incorporating a morals clause, but never released him from the deal.[62]

Apart from its social and political concerns, this chain of controversial behavior marks a prime example of the selective enforcement of morals clauses.[63] Prior to cutting contractual ties, Adidas' tolerance of West's hate speech and creation of a hostile working environment demonstrates that these clauses can be a gaping hole in contract law.[64]

Specifically, the West case signifies that morals clauses can fail to set expectations and clear rules for consequential behavior, generating unpredictable outcomes.[65] Moreover, the company's acceptance of the artist's successive problematic acts and charged speech left the Anti-Defamation League (ADL) and the public perplexed regarding what kinds of behaviors are sufficient to lose corporate support and warrant contractual termination.[66] Further, Adidas' prolonged tolerance contradicts its claimed values of diversity, inclusion, and mutual respect, obscuring brand identity.[67] Therefore, there is a need for a formalist approach to drafting the provision.[68]

C. d4vd: Record Deals, Brand Collaborations, and Homicide Investigations

Illustrated by the Woods case, extramarital affairs may lead a company to invoke a morals clause.[69] Similarly, the West case demonstrates that companies might be willing to invoke a morals clause when the talent uses hate speech, albeit after social pressures and intervention by the ADL—a prominent non-profit organization that works alongside law enforcement.[70] Despite a delayed pull, the talent's use of language led the company to trigger the morals clause in their contract.[71] These cases create the reasonable expectation that companies are also willing to invoke a morals clause when the talent is subject of a criminal

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[61] Peiser & Bogage, *supra* note 44.
[62] Mark Wilson, *Ye's contract with Adidas prevented him from getting long-term mental health treatment*, FAST COMPANY (Oct. 27, 2023), https://www.fastcompany.com/90974613/yes contract-with-adidas-prevented-him-from-getting-mental-health-treatment.
[63] *See* Peiser & Bogage, *supra* note 44 (stating that with iconic talent like West, businesses will try to do everything that they can "to salvage the deal, and to make him happy, and to kind of ignore some of the comments and keep pushing out product, which they've done.").
[64] *Id.*
[65] *See ADL Letter to Adidas Executives Regarding Kanye West*, ANTI-DEFAMATION LEAGUE (Oct. 20, 2022), https://www.adl.org/resources/letter/adl-letter-adidas-executives-regarding-kanye-west (noting the Anti-Defamation League's surprise by Adidas, which claims to support diversity and inclusion, choosing support West's product line as he spreads "hateful antisemitic ideas to his 31 million Twitter followers…").
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] Jonas, *supra* note 33.
[70] Allyn, *supra* note 48.
[71] *Id.*

investigation and Internet rumors speculating sexual relations with a minor.[72] However, those expectations are often unmet.[73] The case of 20-year-old singer-songwriter David Anthony Burke, professionally known as "d4vd," is a prime example of how morals clause enforcement remains unpredictable today.[74]

In April 2024, 13-year-old Celeste Rivas Hernandez was reported missing and later deceased.[75] In September 2025, law enforcement discovered her body inside of a vehicle in a tow yard.[76] Significantly, the vehicle was registered in Burke's name.[77] Hernandez's cause of death remains undisclosed.[78] She would have been 15 years old at the time that she was found.[79]

Following this disturbing discovery, the public began speculating about the artist's potential involvement with Hernandez and her death.[80] Amid an official investigation, social media posts from prior years resurfaced, such as screenshots of communications between Burke and Hernandez.[81] For example, Internet users have sparked discussion about his song lyrics describing a girl named Celeste in a leaked demo recording.[82] Additionally, Hernandez's mother reported that she had mentioned having a boyfriend named David.[83] Moreover, the investigation uncovered that the two had a common tattoo on their right index fingers, fueling

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[72] *See* Julie Zerbo, *As Adidas Severs Yeezy Deal with Kanye West, What Happens Next?*, THE FASHION LAW (Dec. 12, 2025) (discussing Adidas' public statement that it does not tolerate any form of hate speech), https://www.thefashionlaw.com/as-adidas-severs-yeezy-deal-with kanye-what-happens-next/.

[73] *See* Josh DuBose, *D4vd's album release suspended in wake of investigation into dismembered girl*, KTLA (stating that Burke's record, publishing, and media companies have paused promotion of his music "out of respect…of the ongoing investigation."), https://ktla.com/news/local-news/d4vds-album release-suspended-in-wake-of-investigation-into-dismembered-girl/(Sep. 18, 2025).

[74] *Id.*

[75] *Celeste Rivas-Hernandez's body was not frozen nor decapitated when found in D4vd's Tesla, police say*, ABC30 NEWS (Nov. 26, 2025), https://abc30.com/post/celeste-rivas-hernandezs-body was-not-frozen-decapitated-when-found-d4vds-tesla-police-say/18213373/#:~:text=Rivas.

[76] *D4vd considered suspect in death investigation of 15-year-old Celeste Rivas-Hernandez, source says*, ABC7 EYEWITNESS NEWS (Nov. 19, 2025), https://abc7news.com/post/celeste-rivas-hernandez-case-d4vd-considered-suspect-death-investigation-teen-girl-found-dead-tesla-source-says/18171295.

[77] *Id.*

[78] *Id.*

[79] *Id.*

[80] *See* Alexa Mae Asperin, *D4vd explains idea for his music's murderous alter ego in resurfaced clip*, FOX 11 LOS ANGELES (Sep. 23, 2025) (stating that Burke's song "Romantic Homicide" and a fictional plot he had written about a character with "a murderous alter ego" presents clues about Hernandez's death), https://www.foxla.com/news/d4vd-romantic homicide-alter-ego-resurfaced-video.

[81] Nardine Saad, *Court seals records in investigation of teen's body found in singer D4vd's Tesla*, BBC (Nov. 24, 2025), https://www.bbc.com/news/articles/cwyxg429yr9o.

[82] Josh DuBose, *Dismembered teen girl, 15, met D4vd on social media, alleged former teacher says*, FOX 8 (Sep. 19, 2025), https://fox8.com/news/dismembered-teen-girl-15-met-d4vd-on social-media-alleged-former-teacher-says/.

[83] Will Conybeare, *Reports: D4vd 'likely to be indicted in murder of Celeste Rivas Hernandez*, KTLA (Dec. 29, 2025), https://ktla.com/news/local-news/reports-d4vd-likely-to-be-indicted-for murder-of-celeste-rivas-hernandez/.

speculation and rumors.[84] Burke has been considered a suspect in the investigation, but he has not been arrested or formally charged.[85] He has allegedly been uncooperative with the investigation, despite his public relations representatives claiming otherwise.[86]

In response to this publicity catastrophe, the retail industry took swift action, unlike in the West case.[87] Here, brands promptly terminated contractual relationships with the artist.[88] For example, Hollister and Crocs ended their collaborations on the limited edition "Dream Drop" shoe collection.[89]

Conversely, the music industry's response was less uniform.[90] Burke's team's initial steps consisted of canceling the final dates of his U.S. tour and numerous performances scheduled to take place in Europe.[91] Ticketing websites marked the shows as canceled, and venues removed the events from their platforms.[92] Additionally, former musical collaborators attempted to distance their public images from him.[93] For example, singer-songwriter Kali Uchi's song "Crashing" in collaboration with Burke was removed from streaming platforms within the month that law enforcement discovered Hernandez's body.[94] Furthermore, singer-songwriter Damiano David's song "Tangerine" in collaboration with Burke remains on streaming platforms, but Burke's verse has been replaced by Damiano David's vocals with altered lyrics.[95]

Interestingly, Burke being closely linked to a homicide investigation, on top of the inferences of sexual relations with a minor circulating in the media, has not yet proven to be morals clause triggers.[96] Regardless of whether the artist is arrested, criminally charged, or found guilty on any count, it comes as a surprise that neither

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[84] Kiera Tempel, *D4VD and Celeste: Facts, Rumors, and Suspicious Artistry*, IMAGINARY GARDENS (Oct. 22, 2025), https://www.imaginarygardens.org/index.php/2025/10/22/d4vd-and celeste-facts-rumors-and-suspicious-artistry/.
[85] ABC7 EYEWITNESS NEWS, *supra* note 83.
[86] Audrey Rock, *Singer D4vd being investigated as suspect in murder of teenager found in his Tesla: report*, PAGE SIX (Nov. 18, 2025), https://pagesix.com/2025/11/18/celebrity-news/singer d4vd-being-investigated-as-suspect-in-murder-of-teenager-found-in-his-tesla/.
[87] See Ariel Zilber, *Crocs, Hollister drop singer D4vd after rotting corpse found inside his Tesla*, NEW YORK POST (Sep. 10, 2025) (stating that "Crocs and Hollister yanked pop star D4vd from their latest marketing campaigns after a decomposing body was discovered in a Tesla registered to his name at a Los Angeles tow yard."), https://nypost.com/2025/09/10/business/crocs-hollister-drop-singer-d4vd-after-rotting-corpse found-inside-his-tesla/.
[88] *Id.*
[89] *Id.*
[90] DuBose, *supra* note 73.
[91] FOX 11 DIGITAL TEAM, *D4vd world tour shows in US, Europe canceled amid investigation into dead body found in his Tesla*, FOX 11 LOS ANGELES (Sep. 19, 2025) https://www.foxla.com/news/d4vd-cancels-us-tour.
[92] *D4vd tour dates removed from websites after the discovery of a girl's body in Los Angeles*, CNN ENTERTAINMENT (Sep. 20, 2025), https://edition.cnn.com/2025/09/20/entertainment/d4vd-tour-removed-discovery-girls-body.
[93] Asperin, *supra* note 80.
[94] *Id.*
[95] Damiano David (feat. d4vd), *Tangerine*, on *FUNNY little FEARS* (Arista Records 2025), Spotify, https://open.spotify.com/track/4rSF54WsnmArj1cnKWFNcu.
[96] DuBose, *supra* note 73.

of his record labels, Darkroom and Interscope Records under Universal Music Group (UMG), have opted to invoke the morals clauses in their respective artist agreements.[97] With his record deals still formally intact, any concept of morals clause enforcement uniformity is seemingly nonexistent.[98]

D. Olivia Jade: Sephora and College Admissions Scandals

In 2019, 26-year-old Olivia Jade Giannulli, social-media influencer and daughter of "Full House" star Lori Loughlin, became enmeshed in a widely publicized college admissions scandal.[99] Specifically, Giannulli's parents paid $500,000 to gain her admission to the University of Southern California (USC).[100] Moreover, her parents arranged for her to be falsely admitted as a crew recruit, despite her lack of experience in the sport.[101] The influencer attended USC for approximately one academic year until the scandal became public knowledge.[102]

In 2020, Giannulli's parents pleaded guilty to conspiracy to commit wire and mail fraud.[103] Additionally, U.S. District Court for the District of Massachusetts Judge Nathaniel M. Gorton issued hundreds of thousands of dollars in fines, hundreds of hours of community service, and sentenced Loughlin and her husband to two-month and five-month prison sentences, respectively.[104] While the influencer, 19 years old at the time, faced no criminal charges, she became the face of the scandal and the subject of intense public scrutiny; Sephora and TRESemmé terminated their partnership agreements with Giannulli, citing morals clauses.[105]

This is incongruous with the Burke case, underscoring the unpredictable and inequitable outcomes that broad morals clauses produce.[106] In terms of Burke's record deal, being under investigation for the homicide of a minor was insufficient

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[97] *Id.*
[98] *Id.*
[99] *Lori Loughlin's daughter Olivia Jade sorry for admissions scandal*, BBC (Dec. 9, 2020), https://www.bbc.com/news/entertainment-arts-55243617.
[100] *Id.*
[101] Tegna & Associated Press, *Prosecutors release Olivia Jade Giannulli's fake student athletic profile*, WCNC, https://www.wcnc.com/article/news/nation world/prosecutors-release-olivia-jade-giannullis-fake-student-athletic-profile/507-c355d356-203f 4d6f-9838-0c6480d81820 (Feb. 10, 2020).
[102] Kelly McLaughlin, *Olivia Jade dropped out of USC and left her thriving YouTube career amid the college admissions scandal. Now she's back on Instagram*, BUSINESS INSIDER (Apr. 21, 2020), https://www.businessinsider.com/olivia-jade-giannulli-no-longer-attending-usc-year later-2019-9#:~:text=Two.
[103] Ray Sanchez, Mark Morales, & Sarah Jorgensen, *Lori Loughlin and Mossimo Giannulli plead guilty in college admissions scam*, CNN, https://www.cnn.com/2020/05/22/us/lori-loughlin-guilty-plea (May 22, 2020).
[104] William L. Drake & James M. Purce, *Federal Judge's Denial of Lori Loughlin and Mossimo Giannulli's Motion to Dismiss Prompts Guilty Pleas*, STEPTOE (June 3, 2020), https://www.steptoe.com/en/news-publications/federal-judges-denial-of-lori-loughlin-and-mossimo-giannullis-motion-to-dismiss-prompts-guilty-pleas.html.
[105] Associated Press, *Lori Loughlin's daughter loses Sephora, TRESemme deals over college bribery scheme*, ABC10, https://www.abc10.com/article/news/nation-world/lori-loughlins-daughter-loses-sephora-deal over-college-bribery-scheme/507-ee46fc54-ffa3-4f4a-8ff4-df6f71535b7c (Mar. 14, 2019).
[106] Clark, *supra* note 17.

to trigger the morals clause in his contract.[107] His labels only reacted by halting promotional activities.[108] In contrast, a teenage Giannulli's association with her parents' white collar crimes, concededly on her behalf, was sufficient to trigger the morals clauses in her brand partnership agreements, irrevocably fracturing her career.[109]

II. IDENTIFYING THE ENFORCER: THE COMPANY VS. THE PUBLIC

A. Tiger Woods: Different Sponsors Means Different Standards

Accenture loudly espoused characteristics of high performance and integrity.[110] These attributes were known by its consumers, the centerpiece of the firm's advertising strategy.[111] The company built off of these attributes to cultivate an admirable brand and attract a particular client.[112] Having developed a clientele that expanded into more than 100 countries, the stakes were high for Accenture.[113]

The company's long-standing adherence to such characteristics was a key piece of its ad campaigns; thus, continued affiliation with Woods would signify an obvious contradiction with these values.[114] Having the foresight into this optical consequence, Accenture not only decided that extramarital affairs sufficed to trigger the morals clause in their contract, but also decided to announce its reasoning, explicitly informing the public that such affairs do not align with the high standards that Accenture is committed to helping clients reach.[115]

Conversely, Nike, which elected to continue doing business with Woods, has not built its brand around the concept of integrity.[116] Instead, with its slogan, "Just Do It," the company has confidently collaborated with controversial athletes who other companies have steered clear of, such as former professional tennis player John McEnroe.[117] A decorated player and International Tennis Hall of Fame inductee, McEnroe is nevertheless known for his problematic behavior, famously consisting of on-court outbursts.[118]

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[107] DuBose, *supra* note 73.
[108] *Id.*
[109] Clark, *supra* note 17.
[110] *Accenture cuts Woods as sponsor*, ESPN (Dec. 13, 2009), https://www.espn.com/golf/news/story?id=4739219.
[111] *Id.*
[112] *Id.*
[113] *Id.* (noting that Syracuse University sport management professor stated that "It is probably prudent to take a low-key, conservative approach until they determine what their next message is that they want to send…")
[114] *Id.*
[115] *See* CNBC, *supra* note 16.
[116] *See* Weaver, note 37 (stating that Nike has built its brand "by associating with controversial sportsmen, from whom more conservative sponsors have shied away.")
[117] *Id.*
[118] Bryan Armen Graham, *John McEnroe: 'A knack for creating controversy where there is none,'* THE GUARDIAN (July 1, 2017), https://www.theguardian.com/sport/2017/jul/01/john-mcenroe-a knack-for-creating-controversy-where-there-is none#:~:text=McEnroe%20has%20been%20involved%20in%20controversy%2C%20including:, * %20Commentating%20with%20the%20BBC%20and%20ESPN.

For example, suspensions and fines were regular for McEnroe, who was even disqualified from the 1990 Australian Open after making a crude remark to a tournament official.[119] Furthermore, in 2000, he stated that any male collegiate tennis player could win against professionals Venus and Serena Williams.[120] In addition, in a 2017 interview with NPR, he made a comment suggesting that Serena Williams' performance would be drastically less impressive if she competed against the men in the sport.[121] Doubling down on CBS This Morning, McEnroe stated that he would not apologize to her.[122]

Therefore, in contrast with Accenture, Nike's decision to abstain from invoking the morals clause in its contract with Woods may be driven by different motivations; its long-term financial investment in Woods, rather than the company's core values.[123] For example, Nike took its first steps into the golf market by signing Woods in 1996 to a deal valued at $40 million annually.[124] From then on, the company developed golf sportswear and paraphernalia with Woods as the face.[125] Dropping the golfer would be a major undertaking, requiring a pivot from decades of consistent golf apparel and equipment marketing and rendering moot the hundreds of millions of dollars paid to Woods as a result.[126]

In contrast, it may be that Accenture was just as profit-motivated as Nike.[127] After all, Accenture is an information technology consulting firm; genuine company values may not be a primary concern or the linchpin to its success.[128] The firm may not have any at all; rather, they may be referred to merely as a marketing tactic.[129] Alternatively, Accenture may have been equally driven by financial investment but simply landed at a different conclusion with Woods, under the guise of company values.[130]

Regardless of their motivations, the difference in how companies responded to Woods' marital scandal highlights the subjectivity problem by conveying the major role that executives' personal judgment plays in determining whether

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[119] Debra Birnbaum, *The Mouth That Roared – And Roared Some More*, NEW YORK POST (June 16, 2002), https://nypost.com/2002/06/16/the-mouth-that-roared-and-roared-some-more/.
[120] *Id.*
[121] *Id.*
[122] Chelsea Bailey, *John McEnroe Won't Apologize for His Serena Williams Ranking*, NBC NEWS (June 27, 2017), https://www.nbcnews.com/news/sports/john-mcenroe-won-t-apologize-his serena-williams-ranking-n777171.
[123] *See* Weaver, *supra* note 37 (stating that "Nike has invested heavily in Woods and built its entire range of golf sportwear and equipment around him.").
[124] *Id.*
[125] *Id.*
[126] *Id.*
[127] *See* Charisse Jones, *Scandals tarnish star endorsements*, ABC NEWS (Feb. 22, 2009) (stating that sponsor companies "watch every marketing penny in this economy…"), https://abcnews.com/Business/story?id=6935627&page=1#:~:text=ByCharisse%20Jones%2C%20USA%20TODAY,well%20as%20the%20necessary%20investment.%22.
[128] *Id.*
[129] *See* Kristie Watkins, *5 Brands That Are Owning Values-Based Marketing*, BBR (Mar. 6, 2018) (noting the advertising industry's movement toward values-based marketing), https://bbrcreative.com/2018/03/5-brands-that-are-owning-values-based-marketing/.
[130] *Id.*

talent's behavior suffices to trigger the morals clause.[131] The Woods case teaches that the room for subjective interpretation that broad drafting allows generates capricious invocation of the provision that is based on unpredictable factors.[132] On the one hand, for Accenture, a commitment to company values and the interplay between sending an ethical message and brand image was supreme in the decision to enforce the clause.[133] On the other hand, for Nike, company values were seemingly non-factors, as decades-long investments into Woods and his anticipated comeback were prominent considerations.[134]

This ambiguity calls for a more formalist approach to drafting the morals clause.[135] For Tag Heuer, Woods' infidelity did not trigger the clause because it took place off the court, outside of his capacity as a public figure.[136] Conversely, for Nike, McEnroe was permitted to exhibit problematic behavior both on and off of the court, still dodging invocation of the provision.[137] This illustrates how broadly drafted morals clauses grant companies extensive discretion to retroactively write and insert their own unique rules for enforcement.[138]

Thus, athletes cannot predict whether their behavior in their capacity as a public player or as a private person will be implicated.[139] Additionally, with opposite responses from sponsors and a lack of precedential pattern, they also cannot predict the level of behavioral severity that will trigger the provision.[140] For example, business insiders have claimed that by engaging in unfaithful marital endeavors, Woods harmed his spouse and children and did not keep up his side of the deal.[141] Although damaging, an extramarital affair does not properly correspond with more typical triggers, such as criminality and harassment.[142] This begs for increased

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[131] *See* Clark, *supra* note 17 (stating that the expansive discretion that broadly drafted morals clauses extends to businesses in judging morality allows them to end contractual relationships "according to their own biased perceptions of morality…").
[132] *Id.*
[133] *See* Wailgum, *supra* note 32.
[134] *See* Weaver, *supra* note 37 (stating that "Nike has invested heavily in Woods and built its entire range of golf sportwear and equipment around him.").
[135] *See* Piedra & Nicolas, *supra* note 24 (stating that "talent will likely view a broadly worded (or boilerplate) morality clause as overbroad and ambiguous, leading to concerns about potential abuse of contract.").
[136] Weaver, *supra* note 37.
[137] *Id.*
[138] *See* Clark, *supra* note 17.
[139] *See* Piedra & Nicolas, *supra* note 24 (stating that morals clause drafters should ask themselves, "Is the project's subject matter or target audience such that a certain type of scandal might negatively affect the project's success?).
[140] *Id.*
[141] *See* Wailgum, *supra* note 32.
[142] *See* Elizabeth Vulaj, *Morality clauses: The legality, loopholes, and lasting impact of one of the most hotly debated contract provisions*, LAW AND CRIME NEWS (Dec. 15, 2023) (discussing the debate about the place of romance in morals clauses), https://lawandcrime.com/analysis/morality clauses-the-legality-loopholes-and-lasting-impact-of-one-of-the-most-hotly-debated-contract provisions/.

specificity in drafting, especially surrounding the parameters of athletes' images as public players versus private people.[143]

B. Kanye West: How Much Bigoty is Too Much?

Importantly, it was not West's hate speech alone that prompted Adidas to terminate his contract.[144] Rather, the termination was largely fueled by accumulated public outrage.[145] This highlights the selective enforcement of the provision and raises questions about the ethics of selectivity, as well as whether adopting a formalist approach would better serve contract law.[146]

After wearing the White Lives Matter shirt, the ADL characterized the slogan as hate speech due to its widespread use and influence in white supremacist groups.[147] Following his partnership going under review, ADL CEO Jonathan Greenblatt embodied the public's dissatisfaction with the company's tolerant stance, writing a letter to Adidas to question what more there could be to review.[148]

It was not until pressure from consumers and the public at large hit a peak that Adidas invoked the morals clause and ended the deal.[149] Upon termination, the company issued a statement, claiming that it does not condone antisemitism or hate speech in any form, and that his remarks were "dangerous."[150] Adidas went on to announce that his comments violate the company's values of diversity, inclusion, and mutual respect.[151]

This announcement inevitably raises the question of whether there the company genuinely condemns hate speech or if, alternatively, it is only tolerable until public opinion reaches an undefined breaking point.[152] After all, verbally abusing employees did not constitute a consequential violation of mutual respect.[153] A violation only arose after multiple social media platforms silenced him, the ADL inserted itself in the matter, and public uproar reached its highest volume.[154]

Specifically, before Adidas decided to terminate the contract, the ADL stated that dropping West would be powerful, signifying that bigotry is not societally acceptable.[155] This suggests that a combination of public outrage and a vocal ADL

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[143] *See* Paul Horvath, *Morality Clauses in Sports Contracts*, LEXOLOGY (June 27, 2023) (stating that morals clauses in sponsorship contracts are increasingly important "due to the ever-increasing public nature of the 'private lives' of athletes…").
[144] Madison Shaner, *The Importance of Morality Clauses in Contracts with Public Figures*, MILGROM, DASKAM, & ELLIS (Jan. 30, 2023), https://www.milgromlaw.com/business-corporate law/the-importance-of-morality-clauses-in-contracts-with-public-figures/.
[145] *Id.*
[146] Clark, *supra* note 17.
[147] Allyn, *supra* note 48.
[148] *Id.*
[149] *Id.*
[150] Zerbo, *supra* note 72.
[151] *Id.*
[152] *See* John Rabil, *Moral Clauses in Business Contracts—What Do They Really Mean?*, ENTREPRENEUR LEGAL ADVISORS (Jan. 13, 2022) (suggesting that businesses "be on the lookout for how the public is responding to any comments the individual makes.").
[153] Peiser & Bogage, *supra* note 42.
[154] Allyn, *supra* note 48.
[155] Zerbo, *supra* note 72.

substantially informed the company's late-stage decision to drop him, rather than the company's internal voices and espoused values.[156]

C. d4vd: Fans as Fact Finders

Between Burke's homicide investigation, facts tying him to the victim, and a flood of unverified rumors from various sources, fans and the general public were left in shock, calling for justice for the victim.[157] In addition, many have revisited Burke's work and inspected it through a different lens in light of the circumstances, finding that it tends to reference murder.[158] For example, in his song titled "Romantic Homicide," lyrics mention killing someone without regret.[159] Further, the music video for his song "One More Dance" portrays him wearing a bloody shirt while dragging a body into the trunk of a car.[160] This illustrates the connections that the public quickly began to draw and the type of circumstantial evidence that enraged and unnerved the public.[161]

D. Olivia Jade: The Public's Role in Policing Privilege

The public's reaction to the college admissions scandal represented a strong distaste for the idea of a young, wealthy white woman from a privileged background gaining access to a prestigious education by way of socioeconomic advantage.[162] The type of content that Giannulli posted in her capacity as an influencer adds color to the unrelenting backlash that she received.[163] Specifically, her YouTube videos consisted of high-end lifestyle, fashion, and beauty content, often featuring designer items and tropical vacations.[164] Relevantly, she confessed in a vlog that she cares about attending sports games and parties, not classes.[165]

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[156] *Id.*
[157] *Justice for Celeste Rivas Hernandez: Demand a Full & Transparent Investigation*, CHANGE.ORG, https://www.change.org/p/justice-for-celeste-rivas hernandez-demand-a-full-transparent-investigation (last visited Dec. 5, 2025).
[158] Asperin, *supra* note 80.
[159] *Mónica De Anda*, *Fans question dark inspiration behind D4vd's music amid investigation into teen's death*, ABC7 EYEWITNESS NEWS (Sep. 25, 2025), https://abc7.com/post/fans-question-dark inspiration-behind-d4vds-music-amid-investigation-death-celeste-rivas-hernandez/17880880/.
[160] *Id.*
[161] *Id.*
[162] Keertana Anandraj, *Why Olivia Jade Admitting She's "The Poster Child Of Privilege" Is So Frustrating*, THE FINANCIAL DIET (Dec. 12, 2020), https://thefinancialdiet.com/why-olivia-jade admitting-shes-the-poster-child-of-privilege-is-still-incredibly-frustrating/.
[163] *See* Joelle Goldstein, *Lori Loughlin's Daughter Olivia Jade Joked She Was 'Literally Never at High School' in 2018 Video*, PEOPLE (Mar. 15, 2019) (discussing one of Giannulli's vlogs from high school in which she stated that she is "literally never at school" and joked that her class forgets that she attends the school), https://people.com/tv/olivia-jade joked-literally-never-at-high-school/.
[164] Caroline Cotton, *Olivia Jade: Setting a Precedent For Influencing Beauty On The Inside and Out* (Mar. 8, 2022), THE HOUSE MAGAZINE, https://thehouse-magazine.com/olivia-jade-setting-a precedent-for-influencing-beauty-on-the-inside-and-out/.
[165] Kerry Justich, *Celebrity kid called 'spoiled' and 'privileged brat' after saying she's going to college for 'game days' and 'partying'*, YAHOO LIFE (Aug. 17, 2018), https://www.yahoo.com/lifestyle/celebrity-kid-called-spoiled-privileged-brat-saying-shes-going-college-game-days-partying-

The situation as a whole came to symbolize abuse of privilege, and upset a large community of individuals, especially students working laboriously to gain admission to highly ranked universities like USC.[166] The public expressed their disgust in watching someone whose priorities lie outside of academics gain unmerited access to a highly sought-out academic.[167] The public viewed Giannulli as the embodiment of privilege and the perpetuation of disparate life outcomes that it generates, giving rise to widespread hate on social media, amounting to death threats.[168] This led her to step away from her influencer career and the public eye.[169]

III. THE ARGUMENT FOR A FORMALIST APPROACH

The traditional practice of broadly drafted morals clauses is flawed and should be replaced with a formalist approach.[170] Broad drafting as an industry standard must be dismantled, as it undermines talent's bargaining power and enables selective enforcement of the provision, producing inequitable and unforeseeable results.[171] There is a need to introduce uniformity and prevent retroactive behavioral assessments by implementing specific guidelines into such clauses.[172]

An absence of textual clarity regarding behavioral standards creates a contract that is not self-executing.[173] This allows it to serve as a discretionary tool for companies to gauge public opinion and make ex post decisions about whether certain behavior is sufficiently "immoral" to cut losses in investments in talent, regardless of whether such behavior actually cuts against corporate values or is objectively immoral.[174]

For years, Adidas tolerated West's inappropriate workplace conduct and hate speech, and contractual termination only came as a long-awaited response to criticism from the public, as well as the ADL.[175] Companies like Sephora were quick to revoke Giannulli's brand deals, invoking the morals clause as a result of crimes that were not legally ascribed to her personally.[176] According to Sephora, association with white-collar crimes sufficed to remove her from their roster.[177] In contrast, despite the severity of involvement with a homicide investigation and

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190101738.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=.

[166] *Id.*

[167] *Id.*

[168] Rhea Tepp, *The Public Shame of Olivia Jade*, MEDIUM (Apr. 13, 2019), https://medium.com/@anita.rhea.t/the-public-shame-of-olivia-jade-f66993d7ee54.

[169] Mirna Alsharif, *Lori Loughlin's daughter, Olivia Jade, returns to YouTube after an absence of nearly nine months*, CNN (Dec. 2, 2019), https://www.cnn.com/2019/12/02/us/olivia jade-return-to-youtube.

[170] *See* Sidman, *supra* note 27 (stating that "Now, more than ever, morals clauses should be drafted for clarity and in a manner reflecting the market realities of the day.").

[171] Clark, *supra* note 17.

[172] Sidman, *supra* note 27.

[173] *Id.* (stating that the ambiguity of broadly drafted morals clauses can raise concerns about abuse of contract).

[174] *See* Rabil, *supra* note 152.

[175] Allyn, *supra* note 48.

[176] Associated Press, *supra* note 105.

[177] *Id.*

inferences of unlawful relations with a minor circulating in the media, UMG has not announced any official action to invoke Burke's morals clauses and release him from his record deal.[178] These disparate outcomes with no tangible throughline convey the disproportionate and misplaced power companies have over talent and their social behavior.[179] Notably, this power is derived from haphazard assessments of how public dissatisfaction interplays with profitability, rather than proactive internal judgments about what types of behavior the company will and will not support.[180] Inadequately restrained corporate discretion permits the systemic contravention of good faith and fair dealing by giving only one party the right to set ex post definitions of contractual boundaries.[181] Without clear language or uniform industry precedent, the talent is subordinately positioned to consent to tentative rules.[182] This creates a semblance of a contract of adhesion.[183] Theoretically, talent is not without recourse.[184] A formalist approach to drafting the morals clause can combat this issue.[185] Granted, "morality" is a highly nuanced, inherently subjective topic.[186] Approaching a concept that has dramatically different meanings to different people will be challenging and may present its own difficulties, especially since public opinion does and ultimately should play a role in whether the morals clause is triggered.[187] However, effectuating some sense of formalism should not hinge on erasing the significance of public opinion in enforcing the clause.[188] Instead, companies should consider introducing a regular amendment process, altering the provision to evolve and align with substantial changes in social and political conditions over time.[189]

Moreover, striking a balance between avoiding unattractive, overly restrictive directives and adding enough specificity to provide uniformity can be burdensome.[190] However, companies need not be required to provide an enumeration of every possible instance of prohibited conduct.[191] Instead, the new norm should be an extension of the provision that includes delineated categories of misconduct by the talent or associations with third-party misconduct.[192] This will transform the morals clause from an arbitrary sliding scale of discretion to a

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[178] DuBose, *supra* note 73.
[179] Piedra & Nicolas, *supra* note 24.
[180] Clark, *supra* note 17.
[181] *See* Sidman, *supra* note 27 (stating that morals clauses can be drafted narrowly, but businesses are "less likely than ever to negotiate to a large extent on the terms of morality.").
[182] *Id.*
[183] Piedra & Nicolas, *supra* note 24.
[184] Sidman, *supra* note 27.
[185] *Id.*
[186] *See* Piedra & Nicolas, *supra* note 24 at 8 (questioning "under what circumstances should a court invalidate a morals clause?").
[187] *See* Sidman, *supra* note 27 (stating that "clarity is not easily achieved.").
[188] See Rabil, *supra* note 152 (suggesting that businesses amend morals clauses to reflect how morals, values, and acceptable behavior changes with time over time).
[189] *Id.*
[190] Sidman, *supra* note 27.
[191] *Id.* (suggesting that parties clearly state what will constitute a violation, such as "accusation of a crime versus actual conviction…").
[192] *Id.*

representation of a fixed responsibility a company owes the talent and the public alike, fostering equitable, predictable results.[193]

For example, based on the case studies, a narrower, more precise morals clause can include the following non-exhaustive categories, depending on a given company's proactive decisions about their behavioral demarcations:

1) Publicization of extramarital affairs
2) Threats of violence and/or hate speech toward a protected class
3) Involvement with a homicidal investigation
4) Association with federal crimes committed by third-parties.[194]

The first category would allow companies who value signaling and attracting a certain standard of clientele to put the talent that they sponsor on notice of such standard.[195] Increased specificity, serving as a notice function, minimizes the disparity in bargaining power in the negotiation process and promotes a more predictable contractual lifecycle.[196]

Increased specificity is used as a refined notice function and thus an answer to the subversion of the good faith and fair dealing principle that broadly drafted morals clauses and their ramifications present.[197] To that effect, the second category would expressly spell out that not only action, but speech can be grounds for termination, clearly informing talent to monitor their public commentary accordingly.[198]

In the third category, narrower drafting would allow companies to expand on criminality as a typical trigger without grossly doing so.[199] Specifically, noting involvement with a homicidal investigation makes clear that an arrest, criminal charges, or conviction are not necessary to enforce the clause.[200] Specifying the type of investigation as homicidal has a cabining effect, allowing the contract to maintain its attractiveness to talent.[201] The result is a more fairly fixed triggering event that is supportive of predictable and equitable enforcement.[202]

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[193] Clark, *supra* note 17.
[194] *See* Piedra & Nicolas, *supra* note 24 (stating that "A narrow moral clause is far more palatable to the talent because it limits termination to more specific fact patterns…").
[195] *See* Romano Law, *What is a Morals Clause?* (Nov. 18, 2022) (stating that negotiating a more narrow scope clarifies what behavior can cause enforcement).
https://www.romanolaw.com/morals-clauses-what-you-need-to-know/.
[196] *See* Piedra & Nicolas, *supra* note 24 (stating that union groups argue that morals clauses are "overbroad and ripe for abuse…").
[197] *Id.*
[198] *See* Gros-Dubois *supra* note 15 (stating that "Moral clauses can be especially dangerous to influencers when they are written broadly, without definitions.").
[199] Sidman, *supra* note 27.
[200] *See* Sidman, *supra* note 27 (stating that "accusation of a crime versus actual conviction" clearly states what qualifies as grounds for morals clause enforcement).
[201] *Id.*
[202] *See* Romano Law, *supra* note 200.

The fourth category leverages a formalist approach by explicating association, rather than direct participation with a crime, as a potential trigger.[203] The result is an ex ante indicator to the talent that enforcement decisions may not be singly guided by their behavior, but also that of the individuals who they surround themselves with.[204] This prevents unfettered discretion in ex post expansion and contraction of the scope of enforcement.[205] In balancing the parties' interests, defining federal crimes, as opposed to any crimes, ensures that the provision is sufficiently attractive to talent and not overtly limiting.[206]

CONCLUSION

The traditionally broad approach to morals clause drafting creates a provision that fails to function like an ex ante, self-executing defense against financial and reputational brand harm. Instead, it functions like a limitlessly discretionary tool, authorizing ex post behavioral evaluations and arbitrary, ad hoc weighing of public opinion. A more formalist approach will, in the contractual sense, give the concept of scandal some shape.

Importantly, more precise drafting that reflects proactive corporate decision making is not an exacting endeavor to define morality. Rather, it is a commitment to defining behavioral bounds in the contractual context that carry weighty consequences that can and have derailed talent's careers. The value-add will be threefold: 1) a mitigation of talent's exposure to unforeseen enforcement, 2) an increase in corporate accountability to adhere to their purported values, and 3) an elucidation of brand image, thereby increasing trust in consumers and the public at large. This value-add can also be achieved by ensuring that a company's stated commitment to values such as diversity, inclusion, and mutual respect are addressed in their negotiations and contractual agreements, instead of capriciously honored depending solely on economic implications and the level of intensity of public backlash.

Implementing a formalist approach to morals clause drafting will decrease selective enforcement and honor contract law principles, benefitting companies, talent, consumers, and the public, creating a more orderly, responsible, trustworthy talent industry.

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[203] *See* Piedra & Nicolas, *supra* note 24 (stating that morals clause drafters should ask themselves, "Does the clause extend to acts committed by those closely associated to the talent?")
[204] *Id.*
[205] *Id.*
[206] *Id.*