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Protecting Consumers from Data-driven and Cross-device "Native" Advertising: Why Routine Disclosure is Insufficient

So-called "native advertising"—where advertiser-produced or -directed content is designed to blend in with online editorial information—is quickly becoming a dominant way American consumers receive marketing. Marketers in the U.S. spent nearly $8 billion last year on native ads (up $3 billion from 2013), which is expected to rise to $21 billion by 2018.[1] Native ads are where the "format and tone match that of a publisher's original editorial content."[2]

But while the industry, such as the Interactive Advertising Bureau (IAB), proposes that traditional forms of linear disclosure—such as labels saying "Sponsored," "Content You Might Like," "Promoted By" and "Featured Partner"—is sufficient to inform consumers that they are dealing with paid content, native ads require a much more robust and sophisticated set of safeguards.[3] The Federal Trade Commission, which is in the process of developing industry guidelines or recommendations for how best to inform the public, needs to review how the growing role of personalized data targeting (programmatic native), its delivery via mobile devices and social media, the use of video and other multimedia formats, and the robust testing and design process all challenge consumer safeguards that rely on the twentieth-century concept of disclosure. What is required is a dynamic, tested, and effective mechanism that truly provides consumer choice and control.

The FTC must also develop effective guidelines for "sensitive" categories involving native advertising, such as ad content focused on the health, financial, multicultural, and the youth marketplace.

The industry's own definitions for native advertising illustrates why allowing the industry to frame the discussion on safeguards to a narrow approach focused on disclosure, doesn't take into consideration the realties of the contemporary digital marketplace. The challenge is for the FTC, and other regulators like the CFPB, to develop effective consumer controls based on how native ads are actually designed to operate. For example, native ad company Sharethrough defines its work this way:

"Native advertising is a form of paid media where the ad experience follows the natural form and function of the user experience in which it is placed."[4] Nativo, another leading provider, explains that "True Native" is "contextually aligned, always in the editorial feed, with brand content consumed within each publication for maximum engagement." Native ads are "content that can be consumed in the same way as the rest of the content on a publisher's property ... ."[5] One industry expert noted that "At its core, native is about unique ad executions that are tightly integrated into the host environment. In a premium editorial environment, a native ad unit has to mirror the wire-frame of that site ... ."[6]

The IAB's "playbook" for native advertising make clear the industry's goal: "most advertisers and publishers aspire to deliver paid ads that are so cohesive with the page content, assimilated into the design, and consistent with the platform behavior that the viewer simply feels that they belong."[7] With native ad formats specifically designed to "seamlessly flow into publishers' site content," as AOL (Huffington Post, etc.) explains, and to "drive social interaction," the industry's claim's that disclosure can be meaningful is not persuasive.[8] It is, as we hope the FTC recognizes, a much more dynamic process. It has incorporated much of the current practices that are commonplace in the digital media environment, including the use of data-driven personalized ad targeting

across screens and applications. Among the challenges the commission must address in its guidance include the following:

Big Data-driven Millisecond Targeting for Native Advertising

The same powerful system using a host of data to identify an individual most suitable for an ad or marketing message, which is then quickly delivered to that person's device, is playing a major role in native advertising. Known as "programmatic buying," the use of data profiles to make split-section decisions to determine whether an individual is suitable to be served an ad or commercial message has become a dominant way to deliver so-called "display" advertising.[9] Native ads are increasingly being sold through this system, with the IAB creating new technical standards for doing so—the "Open RTB Dynamic Native Ads API." Unlike the delivery of banner ads using data-driven programmatic, native ads delivered this way involve "multiple elements" that are "transferred through the bid request and response." The IAB native standard was developed in cooperation with leading real-time data targeting companies, including Google, Rubicon Project, and Pubmatic.[10]

Many of the providers of programmatic advertising, including AppNexus, Rubicon, Pubmatic, and Google, support the delivery of native formats.[11] According to StackAdapt, a native ad company, "Programmatic Native Advertising serves each ad unit on an impression-by-impression level and leverages real-time data and decision making to ensure that the most relevant ad is placed on each site, creating a unique user experience to everyone on the web."[12] Programmatic native enables advertisers to use "their own 1st party data and 3rd party data," the latter coming from data brokers. Such data-profile-based targeting enables "being able to finite target only the specific and most valuable impressions. ... [E]xcitingly, this targeting mechanism has now made its way to native ads."[13]

The mobile programmatic specialist MoPub, owned by Twitter, offers a "native ad solution" involving ad serving, targeting, and real-time data-driven sales. As the company explained in announcing its native ad work with Yahoo, "MoPub is the only platform that lets you seamlessly mediate native ad networks, run native ads directly with advertisers, and tap into thousands of native advertisers programmatically via MoPub Marketplace." MoPub's native ad network can be integrated with Facebook and many other third parties.[14] TripleLift uses "RTB technology for native ads," with connections to powerful data-targeting platforms including Turn, AppNexus, and Criteo (the latter specializing in retargeting). It also has its own data-driven demand-side platform (DSP).[15] TripleLift enables the buying of programmatic native across devices via AppNexus, Turn, and MediaMath, with a 75-millisecond response time for the bidding process.[16] Native programmatic company Zemanta, working with AdsNative, enables "access [to] over 2 billion native ad impressions per month across the 1,000+ sites" on its exchange.[17]

The world's largest ad agencies also offer programmatic native services. Publicis Groupe's VivaKi, through its "Audience on Demand" apparatus, supports data- focused native campaigns on "desktops, mobile phones and tablets."[18] Xaxis, owned by WPP, enables programmatic native targeting via the "web's largest network for discussion communities," with 1.6 billion unique monthly visitors.[19]

Both Pubmatic and Rubicon Project recently announced major expansions of the data targeting system for native advertising. For example, Pubmatic supports native "ad units that can be targeted at scale including content wall, app wall, news feed, chat lists, carousel and content streams," as well as with Facebook and Twitter.[20]

Sensitive Content Areas Requiring Safeguards

Compounding the problem of data targeting for native ads are their use involving services that can have significant consequences for consumers.

Financial and health services companies, fast food marketers targeting young people, alcohol advertisers, ads aimed at Spanish speaking and other multicultural audiences, and auto sales companies all use native advertising. Such "sensitive" categories of services, where consumers make decisions that can have an impact on their income, health, and families, should trigger a much higher level of consumer awareness and control.[21] The increasing use of actual geo-location, which enables marketers to take advantage of where individuals are and what they may be doing, is another area where native advertising is now playing a role. Location-based marketing via native ad formats, involving an array of data and programmatic partners, allows for a real- time "seamless experience between content and advertisements for the consumer."[22]

Design, Testing, Measurement, and "Content Optimization" of Native Ads Help Ensure Disclosure is Ineffective

Native ads are purposefully designed and tested to ensure that they are effective, and serve the interest of the advertiser or sponsor. Native ad companies are using the latest research involving neuroscience, for example, to make sure their ads have the desired impact. For example, native ad company Sharethrough commissioned Nielsen to "determine how consumers visually process mobile ads," which involved "eye tracking and neuroscience—the study of subconscious reaction in the brain." The study's findings concluded that "Native ads appear to receive two times more visual focus than banners," with "eye gaze ... consistently more concentrated on the native [ad]." This was true on both mobile phone and tablet platforms, it explained. The research also reported that "Native Ad headlines can be optimized to trigger associations," which also impact how well forms of disclosure might work.[23]

These ads also undergo a vigorous set of tests to refine and hone their impact, such as the use of automated multivariate A/B testing for native ads. When combined with programmatic delivery for native ads, such testing is said to show that there is "massive attention and engagement

lift" with significant positive response by consumers.[24] "Programmatic campaign execution allows for the dynamic split testing of various ad executions and shifting focus towards the best performing combinations," notes StackAdapt in a discussion of A/B testing.[25]

The ad testing process incorporates "creative optimization," which "helps advertisers maximize engagement with their content by automatically testing different headlines and thumbnails for each piece of creative."[26] Industry testing also identifies favorable responses for native ads on mobile devices, including click- through rate and engagement time.[27] Rich media formats, including with video, have also been found to boost its reception by consumers.[28]

Since they are deliberately positioned in favorable positions, such as what as Nativo calls the "content well of the site," their integrated design illustrates the inherent limitations of relying on disclosure (especially true in the multimedia environment).[29] Given the dynamic operations of apps, as well as how user expectations are managed, native ads in the app environment pose major challenges for effective consumer control. Companies such as MoPub offer advertisers the ability to test and determine the best place for their ads on apps.[30] App install ads using native advertising compound what is already a very powerful targeting environment that has no real safeguards for consumers.[31]

As the commission knows, the digital marketing industry insists that online ads must be "in view" of the user for a specific period of time, and with correct placement, to ensure they are effective. Native ads are striving to develop ways to meet this standard.[32]

Each of the native ad "units" identified by the IAB should be analyzed by the FTC to understand their unique composition and respective impact on an individual consumer. The units include paid search; recommendation widgets; promoted listings; In-Ad's with "native element(s)," and "custom."[33]

Challenges for the Mobile, Social Media, Video, and App Platforms

The screen size of mobile phones, its design, and unique impact on consumers, as industry research has long revealed, poses a consumer protection challenge.[34] Native ad companies openly discuss creating formats for mobile devices that will be effective forms of what they call "non-interruptive advertising."[35] Video is an especially effective medium for marketers, and is now also a growing part of the native ad environment.[36]

On social media, native ads can be purposefully designed so that when a person shares content, it can appear in a friend's "newsfeed" without any disclosure. Friends can comment as if it were real editorial information, without knowing that it was sponsored. Given the practices of social media marketers to conduct "viral" campaigns designed to trigger widespread response (through the use of influencers, for example), the incorporation of native ads in viral initiatives raises additional concerns for consumer protection. The FTC should not condone the use of paid media to deceptively trigger so-called earned media via native advertising. Native ad copy also appears in search results without any identification that it was initially paid-for content.[37]

Protecting the Privacy and Autonomy of Consumers in the Native Programmatic Era

Given the deliberate integration of native advertising within editorial content, and now their precision-driven data-targeted delivery, consumers require a range of new safeguards. These include being informed about the data that are used to target them, giving consumers the ability to stop the collection and use of their data for native ad applications. A meaningful approach to real disclosure is necessary, one that operates dynamically within the multimedia environment to identify a paid ad or message. Finally, sensitive categories, as well as policies to address native ads on mobile devices, social media, and video platforms, should be developed.

The commission should work with consumer and privacy groups to develop effective guidelines for industry. It should build on its databrokers and privacy initiatives to create a serious standard that empowers consumers in the increasingly and deliberately blurred environment for editorial content and marketing.

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Attitudes." Mark Hoelzel, BI Intelligence. 6 Nov. 2014, personal copy.

[3] The IAB's "Native Advertising Task Force" includes dozens of companies, including Google, Facebook, New York Times, TBS, BBC and many data targeters.

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[9] "US Programmatic Ad Spend Tops $10 Billion This Year, to Double by 2016," eMarketer, 16 Oct. 2014, personal copy.

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native-supply; Another example is Adiant, whose "Adblade Exchange delivers highly targeted native ads via an advanced RTB system to thousands of local and national branded digital properties ... . Adiant reaches over 300 million unique visitors in the U.S. each month and over 550 million worldwide." http://www.adiant.com; see also: http://venturebeat.com/2015/04/16/sharethrough-launches-programmatic-native-ads- monitored-by-a-quality-score/

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