Issues Associated with Advertising on the Internet

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Paper presented to the Korea Association for Infomedia Law.
Seoul, Korea, June 20, 1997.

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Introduction

Briefly considered a pristine, commercial free communication medium, the Internet quickly evolved into a medium in which commerce is routinely transacted. The first advertisements appeared on the Internet three years ago, much to the surprise and chagrin of many users. Today, ads are commonplace and recognized as a integral component of the Internet's market-driven landscape. As would be expected, the existence of Internet advertising points to legal and policy concerns as does advertising in earlier media. Following a brief summary of the appeal and use of the Internet as an advertising medium, this paper highlights ten issues linked with advertising on the Internet which have policy ramifications. In doing so, this represents a snapshot, generally taken from the marketer's perspective, of a rapidly moving and evolving target.
Advertising on the Internet
From the marketer's perspective, the Internet is an alluring channel of communication (Keeler, 1995; Internet Advertising Bureau, 1997). Internet users tend to be young with upscale demographic attributes (e.g., well educated, relatively affluent) marketers seek. Users may represent real prospects, consumers able and willing to spend discretionary resources on products and services for work, home and recreational pursuits. And, with an estimated 45 million users, the Internet now is able to deliver the sweeping reach large marketers seek. Because it often demands consumer involvement, the Internet links interested--or at least curious--consumers with marketers. The nature of the medium also maximizes the marketer's flexibility. Because no lead time is needed (unlike magazines, for example, which often require advertising copy 6-8 weeks before the magazine appears), a marketer

can make last minute decisions on message and placement strategies--and can make modifications as needed over time. Internet messages also aren't restricted by space or temporal constraints associated with most traditional advertising media (e.g., 15, 30 and 60 second spots on television and radio). Messages on the Net can easily vary from brief (banners) to expansive (substantial dedicated sites), giving corporations the opportunity to present a compelling case for their products and services. And, unless the files are erased, Internet messages can be posted forever. Finally, advertising on the Internet can be a relatively reasonable financial proposition. Marketers working on a shoestring budget can have a presence on the Internet. And, while the price for buying valued space (e.g., on a Web site run by ESPN) has increased dramatically, it still represents a fraction of the cost associated with purchasing time on other visual media such as television. Given these strengths, it is easy to understand why marketers explored to Internet advertising. Two Arizona attorneys were the first to advertise, posting messages in 1994 (about the legal services they offered) on about 6,000 newsgroups. While their messages incurred the wrath of thousands, many of whom responded with junk mail, hate mail and threats, they also generated over 25,000 inquiries (Canter and Siegel, 1994). Other marketers quickly followed suit, using newsgroups and Web pages to reach audiences. In 1995, 60 percent of the largest 100 advertisers in the United States were on the Web. By 1996, marketers spent $301 million on the Web (Collins, 1997).

The Web, however, has not been a panacea for marketers. Users who browsed were not always buyers. As outcomes failed to match corporate expectations, a number of companies have cut back on their efforts, downsizing staff and expenditure levels (Clark, 1997). Companies using the Web to market their wares have been forced to upgrade and frequently modify their Web sites and messages, making Web maintenance a potentially expensive proposition. Advertising rates have skyrocketed, too. With increasing clutter, users also have become more discriminating browsers. As a result, many marketers have turned to the broadcast model of advertising, using strategies that "push" their messages to users. This "in your face" strategy will increase reach, a valued outcome. But, it may be accompanied by two unwelcomed by-products: decreases in user involvement while processing messages and increases in user annoyance with marketing efforts on the Web.

In this period of flux, marketers seem to have regarded the Internet as a great new frontier, ready to be exploited for the corporate good. They have pushed and prodded at the core and boundaries of the Internet. And, in doing so, they have alerted or angered consumers, consumer advocates, other marketers, and regulatory and legislative bodies across the globe. In response, consumers and their advocates have complained, fellow-marketers have gone to court, regulators have considered regulations and legislative bodies have considered legislation. Three examples:

In response to unwanted linkages with their Web sites, several powerful news corporations (e.g., The Washington Post Company, Time, Inc) filed a suit against TotalNEWS Inc. When users linked to the plaintiffs' sites from that maintained by TotalNEWS, the plaintiffs' sites were framed with the TotalNEWS logo and advertising. The plaintiffs argued such framing infringed on their rights and cost them advertising revenue (Wood, 1997).

In response to a challenge issued by Federal Trade Commission member Christine Varney, a set of Internet advertising guidelines has been set up by the Children's Advertising Review Unit (CARU) of the Council of Better Business Bureaus. These guidelines encourage corporations to market responsibly when targeting children (Mifflin, 1997).

In response to the "flood" of ads sent on e-mail to hundreds of thousands of consumers, two bills limiting unsolicited, commercial e-mail (pejoratively called junk e-mail or spam) were recently introduced for consideration by the U.S. Congress (Johnson, 1997).

Each of these examples seems designed to rope in excesses associated with the explosion of marketing activity on the Internet. Each also reflects a value judgment and three assumptions. The value judgment is that advertising on the Internet should be regulated. The assumptions are that advertising on the internet can be effectively regulated; that jurisdictional issues can be easily resolved; and, that--at least for regulatory purposes--it will be easy to distinguish advertising and non-advertising content on the Internet. The value judgment and each of the three assumptions can be contested. Given the nature of the value judgment, it must be addressed before anything else can be examined.

Precursor Issues:

1. Should advertising on the Internet be regulated?

Set up in 1969 as a communication line of defense for the United States in case of nuclear war, the Internet was used in the 1970s and 1980s by a relatively small but growing group of government employees and academics. An informal standard of usage rules--netiquette--emerged as an honor system which delineated proper behavior on the Internet. For example, it was inappropriate to send hateful or harassing speech, intentionally harm or interfere with others, "shout" (using lots of capital letters), or engage in excessive game playing (Clark, 1995). It also was inappropriate to use the Internet to sell product and services, e.g., to advertise.

As usage surged--and the US government withdrew its support--private enterprise stepped in. And, with private enterprise came entrepreneurs, the profit motive and advertising. While some say the Internet currently functions within a free market ethos (Lohe, 1997), some sets of advertising guidelines--netiquette for advertisers--are emerging, too. Indeed, marketing practitioners teach others about advertising netiquette. Here are some of the rules described for online marketers: avoid USENET newsgroups, mailing lists, forums and bulletin boards; keep the message short; don't send the same message to multiple discussion groups; be polite; identify yourself; be informative; avoid hype and exaggeration; and, overall, strive to be flameproof (Janal, 1995; Keeler, 1995). Industry organizations such as the Children's Advertising Review Unit (CARU) of the Council of Better Business Bureaus have similarly offered guidelines for practitioners wishing to advertise on the Internet. Designed to counter concerns of parents and child advocacy groups, these guidelines suggest that advertisers make an effort to have children check with their parents before purchasing a product on the Net or giving any information about themselves to advertisers (Mifflin, 1997).

Some believe self-regulation by Internet users is adequate. As Donald Heath, president of the Internet Society notes, "If the Internet is going to reach its full potential, it must utilize self-regulatory techniques, or self-governance. This is the essence of what we are trying to achieve" (Leibowitz, 1997b). But, others either favor or are willing to rely on government intervention.

The position taken on this issue is critical. As noted by a reporter for The New York Times, "The bedrock issue is who will determine the commercial rules of the road on the Internet as it increasingly becomes a mainstream medium of communication and commerce" (Lohe, 1997, p. C1). Since the United States has long tradition of government regulation of commerce, including commerce, it seems much more likely that a government intervention model will be used to regulate the Internet in the US. At a minimum, the US administrative and justice systems have been used for years to adjudicate many of the issues now surfacing on the Internet. For example, the Federal Trade Commission has entered into a number of consent agreements with advertisers who engaged in unsubstantiated or deceptive advertising on the Internet (JLCom, 1996). And, US corporations which feel legally aggrieved by other corporations have not hesitated to go to court, asking that current law be applied to problems on the Internet. It seems possible, though, that other countries, with differing legal and intervention traditions, may take a regulatory posture different than that being taken by the US.

2. Can advertising on the Internet be effectively regulated?

Compared to the Internet, advertising on traditional media (e.g., television, radio, newspapers, magazines, outdoor) is relatively easy to regulate. Since all advertising on those media must be placed with each media outlet used, regulators can identify marketers and media outlets which engage in problematic advertising practices. And, while there are thousands of outlets, the list for each medium is finite. There are, for example, only six major commercial broadcast television networks, roughly 1,200 commercial television stations, 10,000 commercial radio stations and about 1,500 daily newspapers in the United States. Moreover, since for-profit organizations must pay to advertise on any outlet, there also are a relatively limited number of businesses and corporations which advertise on these media. Advertisers can and do abuse the system. For example, by the time the Federal Trade Commission finds a television ad in violation of federal statutes, the ad is likely to have been seen, perhaps frequently, by millions of viewers and withdrawn from use by the advertiser, its mission accomplished. Nonetheless, the FTC can and has punished corporations for violating federal advertising laws.

Advertising on the Internet is likely to be much more difficult to regulate. First, since any user can advertise on the Internet--after all, it can cost nothing--regulators would be forced to consider informing and then enforcing its policies on an ever-expanding number of users, now numbered in the tens of millions. Often, the products featured on the Internet are created by individuals who "are radically autonomous and act outside the normal boundaries of 'trade'" (Nicholas, 1997, p. 8). It seems unreasonable to expect that such individuals will hire counsel to determine if their advertising message fits within the parameters of advertising regulations across the world. Second, because the Internet represents a theoretically boundless space, there are an infinite number of sites that can be used for advertising purposes. And, because it can cost nothing to set up a site, advertising sites appear--and vanish--on a moment by moment basis. Any governmental agency that seeks to monitor Internet advertising sites is faced with a monumental task. On the other hand, programmers have developed software (e.g., SurfWatch) which permits gatekeepers to monitor undesirable newsgroups and Web sites (Nicholas, 1997).

Marketers and entrepreneurs have begun monitoring the Net. The National Advertising Division of the Council of Better Business Bureaus has a clipping service (eWatch) which scans over 100,000 messages each day in over 15,000 newsgroups (National Advertising Division, 1997). Some companies now search for illegal activity on the Web that affects their own marketing efforts. Others hire firms established to serve as cyberspace sleuths. One (Paramount Digital Entertainment) asks Internet users to help them monitor illegal activity (Shapley, 1997). But, marketers who are spotted have to be corralled, a not always easy task on the Internet. For example, the Federal Trade Commission identified 215 cases of marketers with questionable advertising claims; when the FTC returned to those sites a month later, 37 had shut down, leaving the FTC at a dead end location (Selz, 1997). Finally, cunning marketers using e-mail and newsgroup forums to push their products have found ways to hide their electronic addresses, making it difficult if not impossible for regulators to track them down. It is likely that these advertisers will play a game of electronic hide and seek with regulators, each relying on increasingly sophisticated methods of avoidance and detection. As suggested by communication scholar John Newhagen, the architecture of the Internet is likely to make it extremely difficult to effectively control advertising content on this medium (McChesney, 1996).

3. What laws should govern Internet advertising?

Using traditional advertising media, an advertiser's message is disseminated in no wider a geographic area than the medium's known and deliberate pattern of geographic distribution. While this sometimes cuts across state lines within a country, it infrequently cuts across international boundaries. Advertising on television, radio, newspapers and magazines rarely is truly global in scope; instead, advertisers tailor messages for individual nations or clusters of countries which share selected attributes. Certainly, using traditional advertising media, it is relatively easy to identify the geographic origin of the advertiser's message and address the policies associated with that jurisdiction. Unless electronically blocked, every advertiser's message on the Internet is available across the globe, regardless of the advertiser's interest or intent. Internet advertising, then, is inherently global; it is omnidirectional. However, the norms and laws regulating advertising vary from country to country (Maxeiner & Schotthofer, 1992). And, the United Nations has affirmed--by consensus--that each country has the right to regulate advertising within its borders, even when the advertising originates from another country (Baudot, 1989). From time to time, countries have claimed jurisdiction over Internet advertisements initiated elsewhere--and won. Three examples:

The United States successfully asserted jurisdiction over an Internet ad offered by Virgin Atlantic Airways, a British corporation. The company was fined $14,000 by the US Department of Transportation because it used a separate section of its Web site to disclose that the cut rate fares it was offering were subject to a tax of about $39 per ticket (Feldman & Rose, 1996b).

Bennetton was fined $30,000 by France for a print ad about featuring an HIV positive person which the French argued exploited suffering (Feldman & Rose, 1996a).

In response to a German prosecutor who argued that some of CompuServe's newsgroups violated German laws on pornography, US based Compuserv Inc blocked its subscribers from directly accessing over 200 Usenet discussion groups (Feldman & Rose, 1996b). But, since these newsgroups did indirectly reach German soil, a number of Compuserve's employees in Germany were arrested.

In other areas of communications law, efforts have been made to standardize policies across nations through international compacts, treaties and conventions. The Berne Convention, for example, addressed copyright law. And, there are some cross-national self-regulatory advertising codes such as those offered by the International Chamber of Commerce. But, there are few truly international agreements that address either commercial or non-commercial content, the most likely source of contention across nations. Moreover, there are likely to be players working against such agreements, certainly among nations whose within border policies would be less restrictive than those established across nations. For example, in an open letter to the Federal Trade Commission, the president of the American Advertising Federation to "not embrace the severely restrictive guidelines of certain other countries as a standard" (Snyder, 1997). Even if established, internationally standardized policies would be difficult to disseminate--in scores of languages, even though English currently is the most frequently used language for commerce on the Internet--and then enforce among all potential advertisers (e.g., all users). The thrust of this discussion has been to address cross-national issues associated with the global reach of the Internet. However, it also should be noted that jurisdictional questions arise within federal nations as well. This clearly has been the case in the United States as plaintiffs, defendants, and the courts grapple with the issue. Two illustrations:

The Bensusan Restaurant Corporation, owners of The Blue Note night club in New York City, claimed trademark infringement against Richard King for advertising his Columbia, Missouri night club, The Blue Note, on the Internet. Here, the plaintiffs argued that King's Web site, available in New York, violated the trademark they had already established in that state (Bensusan, 1996).

The Nevada state Senate is considering a bill which would outlaw unsolicited ads sent directly to e-mail accounts. The bill is modeled after a previous effort in the state which banned unsolicited commercial messages transmitted by fax machines (Nevada, 1997)

While Bensusan's complaint was dismissed (because the Missouri night club noted on its Web site the difference between it and its same-named counterpart in New York), it underscores the problem faced in federations. Similarly, Nevada's proposed ad ban points to the problem advertisers face when laws vary within a country, as is the case with civil laws (e.g., covering libel, invasion of privacy) within the United States. If enacted--and if courts rule that Nevada can claim personal jurisdiction over advertisers located elsewhere--that law could be used to sanction marketers across the country who send unsolicited ads to e-mail accounts. Courts already have ruled that physical presence in a forum is not necessary to establish jurisdiction (Cendali & Arbogast, 1996). As such, using the Net to solicit business may open the marketer to state by state nuances in civil law. And that, according to some, would place a greater burden on small businesses (Rosenoer, 1997). In the United States, interstate jurisdictional problems may be temporary as the federal government has the right to set interstate commerce policy preemptively. In other federations, jurisdictional problems may be more protracted.

4. What is meant by "advertising" on the Internet?

Traditionally, advertising has been defined as nonpersonal, deliberately persuasive communication paid for by identified corporations, organizations or individuals (cf, Dunn et al, 1990). And, this definition has worked well for television, radio, newspapers, magazines, direct mail, outdoor and transit, seven major advertising media. Unless otherwise donated by the managers of specific media vehicles, those wishing to promote their goods, services or ideas on these media have had to pay for the time and/or space on the specific media vehicles they sought to utilize. Moreover, these crafted but not personalized messages are designed to elicit specific, desired outcomes (e.g., favorable attitudes, product purchases, initiation or cessation of behaviors). For for-profit corporations engaged in advertising activity, effective advertising is that which ultimately translates into sales and enriched corporate coffers.

For three reasons, this definition may be ill-suited for advertising on the Internet. First, because the Internet represents an infinite space open to all, marketers have not paid for much of the deliberately persuasive content found on the Internet. It's nearly free. Messages can be sent to thousands of news groups operating on the Web at nearly zero cost. Instead, the costs of Internet advertising are shared by all, as consumers and marketers pay for their connection to--and time on--the Internet. Similarly, there is no fee linked with owning a Web page, however long or complex it may be. While it costs money to create and maintain Web sites, marketers only pay for advertising space when they seek space on another corporation's Web site. Since marketers do not have to purchase space on the Internet in order to advertise, the exchange of money for space cannot be used as a sufficient condition delineating commercial and non-commercial speech. Paid-for space on the Internet obviously represents advertising. But, unpaid-for space on the Internet may be advertising as well. Second, because the Internet can be a site for interactive message exchange, advertising messages can be--or at least can appear to be--personalized. Black Sun Interactive Inc., for example, has "robots" on its server which enable marketers to step into chat room conversations when one of the participants uses any of a series of words relevant to the marketer. For Black & Decker, the manufacturer of household vacuuming products, words such as dirty, messy, or clean in chat room conversations trigger a response introducing the participants to cleaning suggestions and/or Black & Decker products (Quick, 1997). Since marketers can personalize and respond to messages, nonpersonal messages cannot be used as a sufficient or necessary condition delineating commercial from non-commercial speech. Nonpersonal messages on the Internet may, indeed, be advertising. But, personalized messages may be advertising as well.

The third reason addresses the persuasive intent of the marketer's message. Constrained by time and space, most marketers using traditional advertising media explicitly point the consumer in the direction desired by the marketer (e.g., come to the showroom for a test drive, buy the product, donate money to a cause). Occasionally, marketers rely on a softer selling strategy, hoping that consumer good will can be translated into the desired behaviors at a later date. Because there are no space limitations on the Internet, marketers often use a soft-sell strategy, providing lengthy informative messages which are seen as a service to the consumer. These messages may or may not be linked with messages at the site which are designed to prod the consumer into action. Indeed, Web sites produced and maintained by or for marketers form a lengthy continuum. On one end of this continuum are Web sites which provide information and services for free (e.g., the U.S. National Oceanic and Atmospheric Administration site [http://www.nws.noaa.gov], enabling users to find out about weather conditions across the globe). Here no persuasive intent or profit motive involved. At the other end of the spectrum are Web sites which do little more than hawk products for consumers to purchase at the site (e.g., the American Greetings Web site [http://www.greetingcard.com], describing the host of greetings cards consumers can buy). Sites such as these have a clear--for-profit--persuasive intent, consistent with the bottom-line goal of advertising. Between the extremes are more ambiguous sites. Two broad illustrations: Toward the non-persuasive side of the continuum are the Web sites maintained by the major news organizations in the United States (e.g., the Cable News Network at http://www.cnn.com]. While these sites provide information for free, they also feature advertisements. More importantly, it could be argued that these sites serve to subtly reinforce use of each company's clearly for-profit, traditional media enterprises (e.g., CNN's 24 hour news channels on cable television). Closer to the persuasive side of the continuum are Web sites maintained by marketers (e.g., McDonald's at http://www.mcdonalds.com) which, while featuring entertaining things to do (e.g., puzzles, games), clearly and continuously showcase corporate icons and products (e.g., McDonald's golden arches, hamburgers and french fries). Unless all Web sites are considered advertising ventures, it will be difficult to distinguish advertising from other promotional content.

(Additional) Issues which Merit Consideration

For purposes of this discussion, the author assumes that, while difficult, advertising on the Internet will be defined, regulated and supported by governmental agencies around the world. Many of the issues eliciting government interest are likely to be content-based, centering on the specific messages employed by marketers. At times, though, governmental agencies may also address a mix of non-content, technical issues. The remaining section of this paper will describe ten issues likely to generate regulatory discussions within and/or across nations. The first six issues relate to content. The remaining four are non-content based.

1. Type of Products Advertised

The type of products advertised in any locality or country is likely to reflect its contemporary standards, values and regulatory policies. Four US-based illustrations should make the point: When marketers began to use radio as an advertising medium in the mid-1920s, executives argued about a sponsored talk on teeth, concerned that teeth were too personal to be permitted on air (Barnouw, 1978). Now, of course, toothpaste ads are aired on television throughout the day as are ads for considerably more personal products such as tampons and feminine hygiene sprays. Television and radio ads for cigarettes have been prohibited in the US since 1972, a reflection of increased concern about the relationship between smoking and health. Conversely, because of increased social concern about AIDS and other sexually transmitted diseases, radio and television stations have been cautiously airing ads for condoms. These ads focus on life and death rather than the pleasures associated with sex although pleasure is the focus of many ads for condoms in magazines. Finally, following self-regulatory guidelines, U.S. broadcasters traditionally limited alcoholic beverage ads to those featuring beer or wine. Within the past year, however, several stations began airing ads for hard liquor, perhaps a result of the deregulatory posture taken by the federal government. These illustrations were chosen deliberately as products for personal care, sex, tobacco, and alcohol are likely to showcase differences--in attitudes, values, practices and advertising policies--across nations and among their citizens. Ads for alcohol, for example, are proscribed in all public media in India as are tobacco ads in Singapore (Baudot, 1989). These bans reflect the values of both countries. Similarly, ads for breast-milk substitutes have been banned in a number of nations, a reflection of health concerns in those countries not experienced elsewhere (e.g., in the United States where those substitutes were developed and initially marketed). Regulation of these ads points to the fact that cross-national differences go beyond the sale and use of personal care, sex, tobacco, and alcohol products. But, Internet advertising permeates previously firm national information borders.

2. Message strategies employed

Major marketers fine-tune their advertising messages, frequently relying on feedback from target audience members to help them work through the message generation process. However, message strategies that are effective in one country may not be effective in another, a function for example of attitudes about sex, children, the role of women and the appropriateness of humor. Some message strategies permitted in some countries are frowned upon or prohibited in others.

Most marketers focus on their own brand, ignoring competing brands. On occasion, though, marketers deliberately create comparative ads which describe and/or show how their brand is superior to that offered by others. Comparative advertising initially was discouraged in the United States as advertisers feared giving their competitors a free ride. Attitudes changed with the success of Avis' successful five year "We try harder" campaign. Now, comparative advertising now is encouraged in the United States by the Federal Trade Commission (Lichenberger, 1986). But, in Mexico, comparative ads are prohibited and in many countries, comparisons are constrained with marketers urged to avoid disparaging the competition (Baudox, 1989; Maxeiner & Schotthofer, 1992).

Marketers typically rely on appeals that generate positive responses from those tested. Since sex sells and can be quite appealing to many, many marketers rely on sex in their advertising messages. Products such as perfume frequently rely on sex appeals but sex also has been used to sell automobiles, soft drinks, alcohol, spas, cruises, toothpaste, mouthwash, shaving cream and undergarments. Nudity sometimes is incorporated into these appeals. Here, United States standards are considerably more restrictive view than many European countries. And, in Moslem countries, where women are strongly encouraged to cover their entire bodies when in public, the use of female models--even when clothed--may provoke concern.

Advertisements featuring children often sell effectively since cuddly tikes elicit strong, positive affect. Witness, for example, the Michelin tire company's long-standing advertising campaign featuring a toddler or two sitting inside one of its otherwise unadorned tires. In some cultures, these strategies may be characterized as abusive or exploitative of children. Advertisers occasionally try to integrate children into ads using sex appeals. The clothier Calvin Klein tried this several years ago, using models who appeared to be younger than 18. Even in the United States, though, this advertising campaign drew the wrath of many.

3. Substantiation of claims

In the United States, regulators tolerate a certain amount of "puffery" in ads. They reason that since adults understand the persuasive intent of advertising, no harm is done with a bit of exaggeration. So, for example, the US Federal Trade Commission said it was acceptable for an aspirin manufacturer to say that its product "works wonders" or that a motor oil was a "perfect" lubricant, permitting one's car to go an "amazing distance" between oil changes (Middleton & Chamberlin, 1991). Similar but varying standards of puffery exist in other countries. In Portugal, the Portuguese advertising council recommended that advertisers avoid using the word "extraordinary" when describing their product. One wonders if that term would be regarded as mere puffery elsewhere.
Since the 1970s, marketers in the US have been expected to be able to substantiate specific claims made in ads (Nelson & Teeter, 1986). And, substantiation now is required prior to use, forcing marketers in the US either to have prior proof or to tone down their claims. Substantiation is required elsewhere as well, although cross-national variations in what constitutes proof are inevitable. Given US reliance on hard evidence for substantiation of claims, US-based marketers may have little to fear here as their messages extend across the globe. Non US-based marketers, however, may find some of their claims challenged in the United States.

4. Separation of advertising and programming/editorial content

Adults generally have little difficulty distinguishing television, radio, magazine and newspaper ads from program and editorial content. Young children are less able to discriminate between commercials and programming content (Ward, Wackman, & Wartella, 1977). As a result, separators (e.g., "We'll return after these messages" and "Now, back to the program") are inserted between program and advertising content in children's shows. Host-selling also is prohibited in the United States as it further blurs the distinction between programs and ads for young children (Kunkel, 1988). If regulators view the Internet as an extension of the electronic mass media (e.g., television), they may call for separators on Web sites directed at children. However, if regulators view the Net as an extension of print, they may feel more comfortable taking a laissez-faire stance.
Other regulations and practices serve to identify advertising

content. On television and radio, sponsors must be identified, even with political attack ads where the sponsor may not wish to be known. Newspapers and magazines regularly label sections of advertising content which otherwise could be construed as editorial content as "Advertising Supplements." But, informercials and product placements in movies and programs blur the distinction between programming and commercials. Indeed, product placement represents a growing industry as marketers pay for coverage and, on occasion, the status such coverage provides. The manufacturers of Reese's Pieces candy, for example, had to be absolutely delighted with the results of the exposure it received in the film ET. However, the proliferation of product placement efforts has raised the ire of many consumers and consumer advocacy groups as it represents an unwanted intrusion of advertising into programming content.

Consumer and child advocacy groups are likely to complain about advertising on the Internet as the boundary between advertising and non-advertising content at children's sites can be quite fuzzy. Adults who browse the Internet should quickly recognize banners as ads; banners quickly have come to represent an advertising convention on the Internet. But, children may have more difficulty linking banners with advertising content, particularly with flashy banners that employ movement and multiple colors. Confusion is even more likely to reign with Web sites which as described earlier, truly obfuscate the distinction between advertising and non-advertising content. For example, the McDonald's Web site, which has separate tracks of content for children and adults, is filled from the opening screen with pictures and materials designed to promote their products. As part of its integrated marketing communication effort, McDonald's Web site strongly reinforces the images and messages conveyed in their ads on television. This is likely to reflect the wave of the future. As noted by Esther Dyson, vice-chair of the Electronic Frontier Foundation, "The challenge for advertisers is to make sure that their advertising messages are inextricable from the content" (Dyson, 1995, p. 182).

Marketers can deflect some of the confusion and related concerns by clearly identifying the advertising portions of their sites (e.g., "click here to see our latest ad"). However, they may be disinterested in doing this; for many marketers, the Web site is merely the attraction that lures potential customers to the sales message contained within the site.

5. Protection of trademarks

Traditionally, trademarks offer territorial protection for each of over 40 classes of goods and services. In the United States, trademark registration costs marketers $300 to register for each of the classes in which they wish to have trademark protection (Leibowitz, 1997a). But, with its global reach, the Internet ignores territory and may move marks into new territories. As a result, marketers in different states or countries now find themselves in unwanted competition with those who have identical or nearly identical trademarks. For marketers, brand identity, protected by trademark, is a critical component of the promotion process. Moreover, brand identity is particularly important on the Internet as consumers searching for Web sites are most likely to type in the name or trademark of the corporation they seek. Because of its importance, marketers have gone to court seeking legally binding resolutions. To illustrate:

The entertainment magazine "Playboy" is published by Playboy Enterprises, Inc. (PEI). Since 1967, a similar magazine, "Playmen," has been published in Italy by Tattilo Editrice, S.p.A. When it was announced in 1979 that an English language version of "Playmen" would be produced and sold in the United States, PEI brought suit and won, blocking use of the name in the US and in English language publications. In 1996, PEI discovered that Tattilo had an Internet site which featured the "Playmen" name; the site was created and maintained in Italy. PEI filed for contempt and, again, won. Tattilo was ordered to shut down his site or deny US users access to it (Playboy Enterprises, Inc, 1996).

The end of territoriality through Internet communication suggests an undermining of traditional mark registration systems.

6. Selection and sale of domain names

Marketers also have a stake in the domain names they use. Good domain names generate traffic as users search for Web sites. As more marketers develop Web sites, desired domain names increase in value. One company about to go out of business sold its rights to the domain name "Internet.com" for more than $100,000 Given its domain name and likely use, the price seemed reasonable (Flynn, 1997).

By the end of 1997, seven new top level domains (e.g.,.firm,.arts) will be added to those currently used (e.g.,.com,.edu). But, there is some uncertainty about who will be handling name registries as the current administrator, Network Solutions Inc. (NSI) works under a government contract which expires in 1998. If competing organizations delegate domain names and administer the Net, it is possible that the Internet would no longer be a seamless, global channel of communication. And, with that, marketers and consumers would face considerable confusion created by non-unique domain names.

7. Use of push advertising strategies

Initially, marketers advertising on the Internet relied on a pull strategy and depended on active consumers to pull the sponsor's message into view. However elaborate and well-produced, Web sites depended on this approach, waiting for consumers to call for the site and then "point and click" through as many layers of the site as they wish. This worked well as consumers eagerly explored across the Internet frontier, much as radio audiences did in the early 1920s with their first radio receivers. But, four related factors now propel Internet advertisers into more aggressive methods. First, as the novelty wore off for consumers, exploration became more limited and focused; "click through" rates among browsers decreased (Quick, 1997; Kalakota & Whinston, 1996). Second, the Internet became a considerably more cluttered environment, pushing small sites into the cyberspace background. Third, as costs escalated (e.g., maintenance for those owning sites, space for those buying on another's site), advertisers demanded a more certain level of return (e.g., viewership) for their efforts. Finally, with rising costs, it was harder for marketers selling inexpensive goods to justify the expense associated with Web site based campaigns (Murphy, 1996). So, rather than waiting for the consumer to come to them, marketers began to push their messages to consumers. Push ads on the Net require no "surfing" (Bank, 1997).

Marketers now use a variety of push strategies. These include massive, unsolicited e-mail blitzes sent to thousands of Internet users; the use of robots in chat rooms; full screen ads prior to successful downloading of desired programming such as a game; and, ads which appear along with news, weather, and other features supplied as screen savers. Audiences and regulators appear to be most annoyed by the unsolicited e-mail blitzes (spamming) done by corporations such as Cyberpromotions which reportedly sent close to two million unsolicited messages a day to America On Line (AOL) users (Levine, 1996). Concerns over such tactics seems reasonable as unsolicited e-mail ads pile up quickly, cost the user time and money even to simply delete and offer little (e.g., entertainment) in return. Indeed, responses to push strategies may rest on a perceived cost/benefit ratio, one akin to the description just offered for spamming. Responses also may be a function of consumer choice: Those who sign up for push based information (e.g., the screen savers which provide news and ads) should be considerably less offended than those who encounter unsolicited junk e-mail. Marketers using push strategies have fallen back on the television model of advertising. For consumers comfortable with that model, push strategies on the Internet will be quickly recognized and accepted--perhaps grudgingly--as the price to be paid for Internet use. For those less comfortable with the television model, push strategies may have a boomerang effect, disaffecting the very people marketers are trying reach and cajole. And, given responses to date, it seems reasonable that as push strategies become more massive and intrusive, they will face increased regulatory scrutiny.

8. Advertising Clutter

Advertising clutter is the perception that a media landscape is strewn with advertising. When the environment is cluttered, consumers are aware of an unwanted abundance of advertising material. On television and radio, clutter is a function of the amount of time devoted to advertising as well as the number of ads aired. As a result, when 15 second ads were introduced during prime time television, viewers may have felt prime time was more cluttered even though no more time was devoted to advertising. Those who own or run commercial media outlets always run the risk of alienating users with excessive clutter. Free-marketplace advocates argue that users help owners arrive at appropriate levels of commercialism; when the environment becomes too cluttered, users change channels or switch media. Beginning in the 1980s, electronic media policy-makers in the United States deleted laws that limited the amount of advertising per hour permissible on U.S. radio and television stations (Head, Sterling, & Schofield, 1994). But, such quantitative limits are still imposed on broadcast advertising in other nations. Such limits may be tempting to those who would regulate the Internet.

Print media vehicles in the United States have been free to incorporate an unlimited amount of advertising as print ads do not have to come at the expense of editorial content. Nonetheless, print vehicles do vary in the proportion of advertising to editorial content they carry.

In some senses, the Internet may more closely resemble print than electronic media. Like newspapers and magazines, there is an unlimited amount of space for advertising. In some respects, Internet users may find the Net less cluttered than newspapers or magazines in that users cannot see the Net's universe of advertising, at least at any one time. Similarly, Internet users may find the Net less cluttered than television or radio as they do not have to wait through several minutes of ads in order to get back to the content they sought--although push strategies are changing this now. However, a Net site may seem cluttered and, certainly, Net sites do vary in the number of advertising banners they feature. Beyond that, users are likely to be highly sensitive to the amount of unsolicited e-mail they receive, particularly among those who directly pay for their Internet connection time. Mass marketers with their own sites need to weigh the financial advantages associated with selling banner space with the clutter those banners create. The same could be said for marketers making use of massive, unsolicited e-mail campaigns. Those who seek to protect consumers may seize on unfettered commercialism to limit the amount of advertising featured on the Internet.

9. Privacy

Interactive communication on the Internet creates transaction records which can provide detailed profiles of individual interests, activities, buying behaviors and health status. Such profiles could be used by marketers to better understand their target; they also represent a source of revenue as marketers sell information to other marketers. Marketers are able to gather information about users without asking for consent by reading newsgroup postings, locating users on Internet directories, downloading information about the browser being used, using "cookies" to record browsing activity at Web sites and intercepting e-mail (Mann, 1997). Most Internet users, however, are unaware that their activities on the Internet can create such profiles or that marketers value, store and use those profiles. Users also voluntarily provide such information when they register at Web sites although here, too, users may be uninformed about the uses of the information they provide. Such a scenario seems quite likely with children who use the Internet. Web sites for children sometimes ask children to write about themselves and their families. For example, at the McDonald's site, children are given the opportunity to write to Ronald McDonald. In the letter, children are asked for their name, grade, favorite sport, book and McDonald's food (Mifflin, 1997). And, many children gladly comply, thinking they have established a special linkage or friendship with the characters on the corporate site. At the McDonald's site, children get a quick response which includes a thank-you and a joke.

Marketers also solicit information from users using survey research methods. One company, MatchLogic, expects to gather data from three million users this year, with five million users per year after that (Williamson, 1997). Surveys will ask consumers about a variety of behaviors of interest to marketers, helping marketers more effectively target their messages. To generate participation, MatchLogic expects to run one million banners each month they collect data. While MatchLogic's effort requires active consent, it still is controversial as participants may not fully appreciate the consequences of their participation.

Critics have argued that the United States has fallen beyond other countries, including many in Europe, in developing systematic and proactive laws governing computer privacy (Reidenberg, 1995). For example, while the Federal Trade Commission held hearings in 1996 on on-line marketing directed to children, the commission has not adopted any regulations designed to control such marketing activity (1997, Furger). Marketers must walk a fine line here, balancing their data-based marketing needs with the hard-line, consumer protectionist policy consequences of arousing the ire of consumers and regulators.

10. Security

One reason why marketers like the Internet is because it is interactive. With this attribute, marketers can transact business on it. Consumers interested in purchasing a product advertised on the Internet can do so without leaving their seat by the computer screen simply by typing in information on their credit card. But, the Net is not a completely safe system for such transactions, as amateur hackers and professional thieves do their best to break into supposedly secure transmission lines. It is in the marketer's best interest to have extremely secure encryption standards. However, such standards would also affect a government's ability to unobtrusively observe activity which might threaten its national security. Here, there is a three way tug-of-war, with marketers pulling against their governments and governments pulling against one another.

Concluding Comments

Users and marketers are turning to the Internet in rapidly increasing numbers. There is no reason to believe the tide for either will change. Now thoroughly entrenched, advertising will continue to be a prominent feature on the Net. Beyond this, users and marketers are likely to make increasingly savvy use of the Internet, with marketers one step ahead of most consumers, a function of human, technical and financial resources and sheer determination. Increased regulation seems inevitable, a function here of excesses, abuses, complaints and tradition. Law and policy are behind the use curve and are likely to stay there. While some clamor for quick, patchwork solutions, the Internet's global reach presents jurisdictional problems that merit careful, multinational consideration.

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