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July 11, 2012

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Room H-113 (Annex I)
Washington, DC 20580

Re: CMP.LY, Inc. Comments - In Short Workshop; FTC Project No P114506

CMP.LY, INC. (“CMP.LY”), submits these comments in response to the Federal Trade Commission (the “Commission”) staff request for advice and input regarding revising its business guidance document, “Dot Com Disclosures: Information About Online Advertising” (the “Dot Com Disclosures”) originally issued in 2000. Public comments were requested following the May 30, 2012 workshop concerning advertising and privacy disclosures in today's online and mobile environments

In a comment that CMP.LY submitted to the Commission in August 2011, we highlighted concerns for the Commission’s consideration and urged the Commission to host a workshop.¹ Our previous comments discussed the evolution of Internet, social and mobile communications, technological advances in social networking, the prevalence of social media for online advertising, as well as the importance of achieving transparency in online disclosures and disclaimers.

The FTC hosted a workshop in May 2012 to examine disclosures for sponsored content and marketing messages made via various integrated platforms. The May workshop provided the opportunity to hear perspectives from the Commission and other regulators as well as from industry, academia and other thought-leaders.

In this comment, we address open questions that were raised at the workshop, further clarify some of the key issues for the Commission to consider and highlight updates on both research and developments in the space in the past few months. As the Commission considers the Dot Com Disclosures, we suggest that the Commission ensure its guidance retains flexibility in how advertisers and other parties provide disclosures. The online and mobile environments are dynamic and evolving rapidly. Overly prescriptive guidance or declaring means of notice ineffective would lessen the potential for innovation in providing disclosures. We recommend that the Commission foster the development of new tools and methods for providing disclosures.

¹ CMP.LY Comments, FTC Seeks Input for Revising Its Guidance to Businesses About Online Advertising; FTC Matter No. P114506 (August 2011), *available at* <http://www.ftc.gov/os/comments/dotcomdisclosures/00036-80268.pdf>.

About CMP.LY

CMP.LY offers third parties a number of purpose-built regulatory compliance solutions including the ability to create and document required disclosures in short form across social media, Internet and text advertisements, as outlined below. The solutions include free tools for individual bloggers and influencers, as well as paid commercial tools for advertisers to document and monitor disclosure policies and activities.

Advertisers face significant challenges complying with disclosure requirements, including providing the fine print and context in messages presented in social media communications and syndicated between multiple social media platforms in a manner that can be easily documented and monitored. CMP.LY provides advertisers the ability to communicate directly with their consumers on social networks and other short form communications, while including required disclosures, providing documentation, audit trails and automated monitoring for compliance with a given disclosure policy.

We believe that it is vital that the Commission issue clear guidance with respect to the continued importance and use of disclosures given the rapid adoption of social platforms; the increasing trend toward communication platforms with character constraints; open syndication of content to multiple platforms; reliance on advertising revenue models; and, in particular, advertising, marketing and sponsorship efforts meant to integrate seamlessly into social networks and intended to spread virally within those networks.

The Importance of Disclosures in Communications Today

The Federal Trade Commission Act prohibits “unfair methods of competition” and “unfair or deceptive acts or practices” which affect commerce. The FTC regulates advertising and marketing to try to protect consumers from being misled and deceived. Over the years, the FTC and courts have recognized the use of disclosures of material information related to the products or advertisements as a way to fully inform consumers and avoid misleading or deceiving them.

Significantly for disclosures to be effective is that they must be “clear and conspicuous.” Courts and the Commission have held that disclosures must be clear and conspicuous regardless of the medium in which the advertisements are made. For example, commercials that air on television must include audio disclosures, as well as text, for certain types of claims and endorsements. The limitations of social communication platforms, like the number of characters that may be used, as well as the screen size and capabilities of portable devices present certain challenges for making disclosures clearly visible or, in some cases, including disclosures in messages at all. For this reason, we believe the Commission should ensure its guidance provides flexibility in how disclosure may be made.

As panelists at the recent workshop indicated, openness and transparency are of even greater importance when advertising is integrated into social networking channels or transmitted to mobile devices. During the May workshop, panelists supported the concerns that we raised above and said that the Commission should not limit the

advertisers' and marketers' duties to make required disclosures merely as a result of limitations of third-party platforms.

Restrictions on space, the design of certain social media tools or the size of a given advertisement in a small screen or window should not exempt advertisers from making required disclosures and notices on those platforms. Platform providers and vendors may (or may not) develop integrated solutions for required disclosures, but it is advertiser's policy and clear communication of the expectations for compliance and monitoring that will drive adoption of disclosure best practices. Significantly, platform providers have not indicated a willingness to create cross-platform disclosure solutions, presenting a significant challenge to standardization and uniformity for consumers.

The Commission is not addressing the use of disclosures in social media and on mobile devices in a vacuum. Regulators in the United States, as well as internationally, have considered, and are considering, the requirements for disclosures in social and mobile media for advertising and marketing related to everything from political campaigns to financial services. While social media and mobile platforms present the same challenges regardless of the content of the advertising and marketing, regulators have recognized that the need for disclosures remain significant.

However, there are no clear standards or best practices for required disclosures on social media and mobile platforms. Without established best practices, we will continue to see confusion and a wide variety of approaches to compliance with disclosure requirements. We suggest that the Commission take this opportunity to provide clear guidance for existing and future tools, in light of the significant changes that have occurred since 2000 and in context of today's social web.

The Importance of Standards in Disclosure

With a wide variety of disclosure needs and the use of emerging platforms with unique limitations and structures, it is important that standards of disclosure be developed to ensure accountability and consistency in compliance. If a cross-platform campaign uses Hashtags in Twitter, hyperlinks in Facebook, and individual written disclosures in HTML applications, the result is difficult to track and monitor, inconsistent for reporting and documentation and likely to be very confusing to the end-user consumer.

The lack of standards has also hindered the use of social media and mobile platforms for advertising and marketing among established companies. Significantly, a recent survey by RSW/US, *2009 – 2012 Changes in Digital/Social Media*, revealed that advertising agencies are increasingly concerned about transparency in the social space. According to the survey, in 2012, 45% of advertising agencies reported that legal concerns have been a barrier to using social media. In 2009, however, only 26% of advertising agencies reported that legal concerns impacted their use of social media platforms.² Similarly, an IBM survey of the marketing industry reveals that while social

² http://www.rswus.com/images_and_uploads/Changes-in-Social-Digital-Media-2009-2012.pdf

media and mobile channels are growing, marketers do not have a clear consensus on how to use them to reach consumers.³

Confusion and lack of clarity are enormous deterrents to companies engaging in responsible social business practices or, in many cases, to use social media at all.

Ad Hoc Disclosure Methods and Technological Feasibility for Standard Disclosures in Social Media

Since the revised Guides for Endorsements and Testimonials took effect in December 2009 there has been little consistency among advertisers, advertising agencies, and influencers with regard to the method for making disclosures. The lack of consistency has led to confusion in the marketplace as disclosures appear differently across platforms. For example, a blogger may have a dedicated disclosure notice on a page on his/her site or within the user profile page on his/her social media account, but not make a disclosure when discussing a particular product while another blogger makes a disclosure on each post he/she makes to his/her site.

Twitter, a popular social media sharing site with upwards of 180 million users, has an internal method for indexing and sorting the messages posted to its site, commonly referred to as Tweets. The method involves using the hash mark (#) followed by a term or phrase without spaces (a “Hashtag”).⁴ For example, a Hashtag such as #FTC could be used to identify messages of on topics related to the Federal Trade Commission, enabling users to follow conversations or monitor communications on that particular topic.

Hashtags have been highlighted as a simple method for an individual user to make a disclosure in an individual tweet. In the FTC disclosure context specifically, #AD (for advertising content), #SPON (for sponsored content) and #ENDORSE (for endorsements) have been used to make simple disclosure statements in short form. However, in the context of an advertiser campaign or within a larger organization, Hashtags provide little, if any, tracking or documentation of messages for compliance. It is impossible for an advertiser, or their agency, to monitor for the omission of a given Hashtag at any sort of scale. Within campaigns where thousands of messages are generated by multiple third-party influencers, affiliates or employees a manual audit of each post would be required to monitor for the brand mention, the inclusion of a particular user in a given campaign and the inclusion of the given Hashtag in each post. In marketing initiatives of even modest sizes, messages numbering in the tens and hundreds of thousands are generated and can be impossible to monitor.

The core challenge to the use of Hashtags as a method for disclosure is that Hashtags are not meant to be disclosures. According to Twitter (where Hashtags originated for social media use) Hashtags are used to mark keywords or topics in a Tweet.⁵ Hashtags also help to categorize and search Tweets. They are now used in multiple social media

³ <http://www-03.ibm.com/press/us/en/pressrelease/38084.wss>

⁴ <https://support.twitter.com/articles/49309-what-are-hashtags-symbols#>

⁵ <https://support.twitter.com/articles/166337-the-twitter-glossary#h>

platforms to provide emphasis where characters cannot be bolded or italicized and the use of all capital letters is seen as shouting. (e.g., #knowwhatImean) Social media blogs are rife with suggestions on using Hashtags to increase search visibility, grow following and other marketing enhancement goals. The overuse of Hashtags has resulted in some questioning of their viability, even for their original intended purpose.

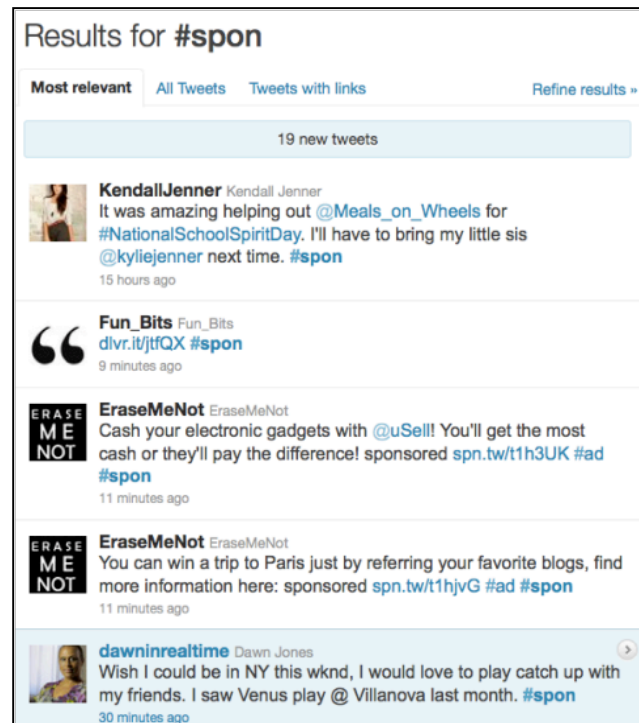
The use of Hashtags for disclosures does not provide clear context to the consumer who clicks on them. Clicking on a #SPON within Twitter would bring the user to a search page of other sponsored posts mentioning #SPON, but no description or explanation of why a particular disclosure was required can be found on this page or elsewhere. Furthermore, outside of Twitter or when Twitter content gets syndicated to other platforms, the Hashtag loses its relevance and no longer serves as a link to search related posts.

See, for example, the Tweet below which includes a #SPON.⁶ The reader is given no context to understand who has sponsored this message, and why that message was sponsored. In fact, by clicking on the Hashtag in Twitter, the following messages provide no context regarding why the user was presented with the sponsored message or who was responsible for that message.

Original Tweet



Search Results for #spon



Hashtags used for disclosures are generic in nature and are not unique to the individual program or user. They cannot be distinguished from all of the other posts that use generic tags. As a result, an advertiser who wants to track, monitor and document a

⁶ <https://twitter.com/dawninrealtime/statuses/109623663166361600>

given program faces a significant challenge understanding which posts are relevant to a given program and which of the mentions were generated by an influencer with a material connection. Furthermore, the omission of a Hashtag by a given influencer can only be detected by a manual search of each influencer's individual feeds.

As was illustrated in examples at the recent workshop highly customized Hashtags or those that are integrated into ad-hoc solutions and generic URL shorteners, present an even greater risk of consumer confusion. In some instances Hashtags are hijacked by third parties to change the conversation to which the Hashtag originally applied or to divert an audience. For example, McDonalds ran a promotion on Twitter asking users to share stories using the #McDStories Hashtag only to have the organization People for the Ethical Treatment of Animals (PETA) and others hijack the Hashtag for their own purposes.⁷ Sometimes the overlap of Hashtags is unintentional, a product of timing (where two events overlap), similar initials for organizations (see #FTC), or other innocent cause.⁸ Regardless of cause overlapping Hashtags defeat the purpose of a disclosure to clearly and conspicuously inform consumers.

In addition to Hashtags, many advertisers and agencies rely on individual influencers to write their own disclosures. This has proven challenging to influencers who, without legal training or advice, attempt to write relevant and meaningful disclosures. Without a standard framework, disclosures are increasingly hard to track as large programs scale up, especially when syndicated across multiple communication channels.

Use of Hyperlinks in Social Media

The 2000 Dot Com Disclosures required that the person making a disclosure via hyperlink should make the link obvious; label the hyperlink appropriately to convey the importance, nature and relevance of the information to which it leads; use hyperlink styles consistently so that consumers know when a link is available; place the hyperlink near relevant information and make it noticeable; and take consumers directly to the disclosure on the click-through page.⁹

During the recent workshop, panelists discussed the sufficiency of hyperlink disclosure — specifically, how descriptive the hyperlink-disclosure text should be. It is important to note that examples focused primarily on hyperlinks in the context of a traditional web page where they are less likely to be highlighted in the same way that they are in social media messages, such as a Tweet, Facebook Status Update or Pinterest Pin, where the link is generally the operative action on the message itself. Furthermore, examples of social media posts in the workshop were limited to generic links that do not reveal anything about the nature, format or context of the underlying content.

Hyperlinks present the best opportunity to make a meaningful disclosure in short-form media where both the media type (often text only) and the number of characters are limited. Readable disclosure URLs are unmatched in clarity and consistency in meeting

⁷ http://www.mediabistro.com/alltwitter/hijacked-hashtag-infographic_b19969

⁸ <http://servedfreshmedia.net/2011/08/a-tale-of-two-hashtags-blood-on-the-tweets/>

⁹ FTC Staff, Dot Com Disclosures (2000), available at <http://www.ftc.gov/os/2000/05/0005dotcomstaffreport.pdf>

challenges of syndication of content across platforms and ensuring that notice is included with context in the body of a message. Standardizing disclosures with a referenced, icon-based disclosure system further reinforces the notice and presence of disclosure information and provides consumers with a uniform and consistent user experience.

The same standardized hyperlink based approach can be leveraged across digital, social, mobile and word of mouth efforts. As these issues relate to Tweets, SMS, mobile and social apps, required disclosures and notices should follow a consistent, documented and demonstrable format that can be reasonably monitored and audited for compliance.

CMP.LY Approach

Compliance with the FTC disclosure requirements is possible, even in short-form communication regardless of platform or device, without complexity or inconvenience to the advertiser or the consumer. With advanced and standardized coding frameworks, compliance reporting can be automated, documented and create an audit trail of all required activities.

In response to the FTC Endorsement Guidelines update in 2009, CMP.LY introduced a structured, standardized and purpose-built solution that can be used in just this manner not long after their issuance. More recently, CMP.LY has announced the development of solutions addressing disclosure requirements for corporate communications and regulated industries including financial services (under SEC and FINRA) and healthcare/pharma (under FDA). In addition, we have developed a number of “plain language” URLs (including [rul.es](#), [ter.ms](#) and [leg.al](#)) that make it easier for consumers to understand the type of information that is provided in complete detail behind the link.

CMP.LY has developed a universally standardized and simple solution, which provides detailed and documented disclosures in the space-constrained environments of Twitter, Facebook, Foursquare, SMS Text and other social media platforms. The CMP.LY solution is an emerging standard for the disclosure of any required information or fine print related to content. Across the multiple applications for CMP.LY technology, a CMP.LY link or icon always indicates, and is directly linked to, a complete disclosure or inclusion of legal language.

While the issue of disclosure in short-form seems at first to be a complex problem to solve, with the proper framework such statements are easily included in the body of content and can provide for tracking and reporting to ensure compliance in a consistent manner. In addition, our solution employs a linking structure that enables a clear and prominent notice of disclosure to be documented in individual posts and for complete information to be displayed to the user (with or without additional content that is being shared) whenever the CMP.LY disclosure link or badge is clicked.

The CMP.LY Iconic Compliance Framework uses standardized coding that enables influencers and advocates to include a concise short-form disclosure that is readable on

its face in the body of their message and links directly to a complete disclosure and, in certain cases, supplemental content with a clear disclosure associated with that content. These iconic disclosures can be represented as a coded URL or a standardized visual icon badge, which is uniquely identified and can be monitored for compliance reporting.

Within character-limited social media platforms and on mobile devices, a simple-coded URL provides a universally identifiable notice indicating a relationship or required disclosure of a certain type exists. It also provides straightforward, documented and trackable method for including disclosures clearly and conspicuously, highlighting the full text of disclosures — even in environments of 140 characters or fewer. This codified link can be displayed clearly and prominently with the content that is the subject of the post and in relatively few characters (10-15% of overall message content in the 140 or 160 character platforms) while providing clear and conspicuous disclosure.

Aside from shortening the length of a given link to content, CMP.LY codes carry specific meanings. Unlike generic URL shorteners, which may refer to any form of content, CMP.LY URLs always refer a user to content that includes some form of legal disclaimer or disclosure. Furthermore, CMP.LY codes indicate to a user before clicking the link that, not only does disclosure or legal language apply, the type of disclosure that is referenced by the standardized framework of designated numbers and letters.

The architecture of the CMP.LY compliance solution has the ability to frame a designated page of content and to ensure that the disclosure is prominently displayed on-screen whenever the user follows a CMP.LY link to that page. Those reading the communication can then click through the link to view a page that includes a full disclosure along with the full content from any source (including Facebook pages, web sites, blogs, social media profiles or pages).

Visual icon badges are also used to indicate disclosures and add context to a particular disclosure. These icons are embedded as visual elements in a page, using our URL coding system to uniquely identify users, programs and polices from monitoring and reporting functions. These badges are immediately recognizable and highly visible, with contrasting colors, clear text and readable and coded representations of the disclosure type that pertains to that use. The badges can be used and displayed in any environment that displays images (blogs, web sites, apps) and we hope to integrate them into text-based environments in the future.

Similar methodology can be applied to mobile advertising and privacy notices in a standardized and uniform manner.

Recent Updates

Since we submitted our last comment, the FTC published a closing letter¹⁰ sent to Hyundai that was particularly enlightening with regard to the responsibilities of advertisers and their agencies. In the Hyundai closing letter, it is made clear that social media policies of advertisers and their agencies or vendors must be in alignment. The corresponding blog post¹¹ further reinforced guidance from Legacy Learning Systems regarding reasonable monitoring of posts made in conjunction with a marketing effort. It is important to note that, for such monitoring to be effective and comprehensive, certain types of disclosure present inherent challenges in practice and in application.

The New York Times published an article later in January 2012 about the risks of transparency in online product reviews.¹² The example that they called out was one in which a particular retailer devised a scheme to increase positive reviews in the Amazon marketplace. The article focused attention on this important area that consumers routinely rely upon for trusted reviews from other consumers in the community. Violations of that trust are a significant threat to the consumers who use these reviews in making actual purchase decisions about products in an online environment where they may not be able to see the product firsthand and where the opportunities and incentives to manipulate ratings can be significant. One important note is that currently there are no standards for disclosure in the major review platforms that power leading retailer sites and that in a number of those platforms there is no opportunity to include hyperlinks or other mentions of disclosure.

Another area of concern is the use of affiliate links in digital and social channels. The Commission addressed this issue in Legacy Learning Systems, and the OFT in the UK followed suit with an investigation of MoreNiche Limited.¹³

On June 20, 2012, the UK Advertising Standards Authority (ASA) ruled against Nike and banned a campaign they were running leading up to the Olympics due to Tweets from sponsored athletes about the brand lacking the required disclosures. Although Nike indicated that the players were free, as part of the campaign, to independently reply or re-tweet consumer tweets at their own discretion, the ASA said it understood from its investigation that the final content of the tweets was "agreed with the help of a member of the Nike marketing team". This issue was raised in the FTC workshop and both the Office of Fair Trading (OFT) and the ASA have made it clear that disclosure is required for celebrity endorsements in social media channels.

Just today, as we submit this comment, another action by the ASA has been announced with regard to disclosure of social media endorsements.¹⁴ In this case, a beauty salon named Toni & Guy offered a celebrity a free haircut if she would Tweet out a special offer. The ASA held that ads must not only be identifiable as marketing communications, but that they must be obviously identifiable.

¹⁰ <http://www.ftc.gov/os/closings/111116hyundaimotorletter.pdf>

¹¹ <http://business.ftc.gov/blog/2011/12/using-social-media-your-marketing-staff-closing-letter-worth-read>

¹² http://www.nytimes.com/2012/01/27/technology/for-2-a-star-a-retailer-gets-5-star-reviews.html?_r=2

¹³ <http://www.oft.gov.uk/news-and-updates/press/2012/35-12>

¹⁴ http://www.asa.org.uk/ASA-action/Adjudications/2012/7/Toni-and-Guy-%28Lakeside%29-Ltd/SHP_ADJ_193054.aspx

Recent articles and an open letter to the Commission¹⁵ have focused on another area that has been the subject of debate on the application of disclosures. In the area of search engine optimization, there has been extensive use of “back-linking” to improve search rankings. Search engines use the number of inbound links from relevant sources and pages to determine the relevance of a given site on a topic. This approach has led to a widespread use of paid back-links where sponsored links are added to sites in exchange for payment in an effort to increase that relevance rating. The links that are posted are sponsored content, but lack any disclosure of the nature or source of their origin. As of the writing of this comment, there is an active discussion around these issues that began with a post from industry thought-leader Danny Sullivan.¹⁶

Some in the marketing industry have made efforts to remain on the forefront of these issues and to develop demonstrable and consistent disclosure best practices. To that end, the Word of Mouth Marketing Association (WOMMA) has released a draft of updated Social Media Disclosure Guides¹⁷ (Disclosure: I am the Co-Chair of the WOMMA Members Ethics Advisory Panel) in an effort to update the guidance that was prepared in 2009. In the process of preparing this update, WOMMA took into account questions raised by the Commission as well as by members of the community in addressing the document for clarity and for parity with current and emerging marketplace trends and practices. Key issues addressed include updated guidance from regulators, new platform challenges and syndication of content across channels. In addition, WOMMA defines specific disclosure issues such as contests and promotions, non-monetary incentives, Like-Gating, monitoring, celebrity endorsements and more. We strongly urge the Commission to look to that document for guidance in considering revisions to the Dot Com Disclosures and to provide feedback to the community on disclosure best practices.

¹⁵ <http://searchengineland.com/a-letter-to-the-ftc-regarding-search-engine-disclosure-124169>

¹⁶ <http://searchengineland.com/given-nextags-lack-of-transparency-its-wsj-opinion-piece-asking-for-google-transparency-isnt-wise-124045>

¹⁷ www.womma.org/ethicsreview

Best Practices

With a rich landscape of new and emerging platforms presenting both incredible opportunities for marketers to more efficiently and effectively reach consumers and significant challenges to disclosure, we have observed that best intentions, rather than best practices, are often being followed.

There are a few key considerations that we at CMP.LY feel are fundamental in developing and establishing best practices including:

1. Ensuring the delivery of notice and/or disclosures as well as a good user experience
2. Providing consumers with access to all relevant information and context
3. Ensuring that programs can be reasonably monitored for both inclusion and omission of disclosures
4. Streamlining and standardization of disclosure methods
5. Using clear, attention-getting labels and icons
6. Educating of the marketplace with regard to the importance and meaning of disclosures

Conclusion

We strongly urge the Commission to revisit the Dot Com Disclosures to address the issues that advertisers and marketers face in the evolving digital landscape and in social media and networking. We have been working on the forefront of these issues with a mission to help advertisers and influencers comply with disclosure requirements, document their efforts and provide clear and conspicuous methods to ensure that consumers are able to easily understand the context and connections behind the messages that they receive. We appreciate the opportunity to provide these comments to you and we would be happy to participate in future discussions or answer any questions that you might have.

Sincerely,

/s/ Tom Chernaik

Tom Chernaik
CEO
CMPLY, Inc.

APPENDIX

Evolution of the Internet, Social and Mobile Communication

When the Dot Com Disclosures were issued in 2000 approximately forty percent (40%) of homes in America had Internet access, only ten percent (10%) of which was high speed connection through either Cable or Digital Subscriber Lines (“DSL”).¹⁸ In 2010, seventy one percent (71%) of homes in America had Internet access of which sixty eight percent (68%) connected through high-speed broadband.

In 2000 access to the Internet over mobile devices was non-existent while in 2012 the Pew Internet and American Life Project found that more than half (55%) of cell phone owners use them to go online. According to Nielson nearly half (49.7%) of U.S. mobile subscribers own smartphones as of February 2012 – a 38% increase an increase over the last year.¹⁹

Similarly in 2000 text messaging using Short Message Service over mobile telephony networks was rare. According to the CTIA 14.4 Million texts were transmitted monthly. However, in 2011, U.S. wireless consumers sent and received an average of 6.3 billion text messages per day.²⁰ Approximately 2.304 trillion texts were sent and received annually – a 12% increase just in the past year.²¹

According to data gathered by PQ Media, total U.S. mobile & social media revenue -- including consumer and business access, content, advertising and marketing -- increased 30.2% to \$45.38 billion in 2011.²²

In 2000 social networking was still primarily done in person. As the first online social networks launched, relationships and connections online brought users together with friends, family and business contacts. Since then, social networks have fundamentally changed the ways in which communications occur on the Internet. Online social networks enable content to be shared and syndicated across devices, platforms and channels seamlessly and without requiring any technological expertise of users.

¹⁸ “Falling Through The Net: Toward Digital Inclusion” October 2000 US Department of Commerce, National Telecommunications & Information Administration, Economic and Statistics Administration retrieved on July 31, 2011 from <http://search.ntia.doc.gov/pdf/ftn00.pdf>

¹⁹ http://blog.nielson.com/nielsenwire/online_mobile/smartphones-account-for-half-of-all-mobile-phones-dominate-new-phone-purchases-in-the-us

²⁰ http://www.ctia.org/consumer_info/service/index.cfm/AID/10379

²¹ <http://blog.ctia.org/2012/05/17/indices-report/>

²² <http://www.fiercemobilecontent.com/press-releases/new-pq-media-forecast-us-mobile-social-media-revenue-surged-30-454-billion->

Growth of Social Networking Platforms

Adoption of Social networking platforms continues to grow at a rapid pace. Consider the following growth figures for just Twitter and Facebook:

Twitter

Nov 2004 – Did not exist

Nov 2008 – approx. 4 million users

Feb 2012 – approx. 500 million users

Facebook

Nov 2004 – Fewer than 1 million users on a closed platform

Nov 2008 – approx. 120 million users

Feb 2012 – approx. 850 million users

The proportion of online adults who use Twitter on a typical day has doubled since May 2011 and has quadrupled since late 2010.²³ This growth is directly related to the increased use of social platforms on mobile devices, where disclosure challenges are most significant.

Facebook held its initial public offering on May 18, 2012.

However, Facebook and Twitter are only two of the platforms in the social media space. Note the high numbers of users across other platforms as of February 2012:

Google+ - approx. 90 million users

Pinterest – approx. 10.4 million users

LinkedIn – approx. 135 million users

²³ <http://pewinternet.org/Reports/2012/Twitter-Use-2012.aspx>

Emerging Platforms are Increasingly Influential in Marketing and Advertising

Advertisers are embracing social marketing channels to connect directly with consumers in novel ways. Marketing messages within social networks and applications are more deeply integrated into social networks and designed to be both more targeted and less intrusive than traditional ad units. The ability to encounter marketing out of context in social media channels in many ways increases the importance of meaningful disclosures.

The unprecedented growth of digital communication has fundamentally changed the way in which companies market and advertise their goods and services. According to a recent survey, 72 percent (72%) of companies in the United States have a social media marketing strategy.²⁴ Social networks have enabled users to connect and share information, and have emerged as sources of news, influence and advertising that leverage the power of “Word of Mouth Marketing” in ways that could not have been imagined just a few years ago.²⁵

Social networks have, in a few short years, emerged as a leading media channel. In addition to Word of Mouth efforts, leading social networks have become the dominant player in display advertising as well. According to ComScore, in the first quarter of 2011, Facebook led all online publishers in number of display ad impressions accounting for 346 billion impressions. This was nearly double the number that Facebook delivered in the first quarter of 2010 and accounted for 31.2% (nearly one-third) of all display ad impressions served by online publishers overall in the quarter.²⁶

Social networks and communications have proven highly effective for advertisers who rely increasingly on social media to connect with consumers and influencers.²⁷ This has proven particularly challenging in the context of advertising and marketing initiatives where disclosure requirements for endorsements and testimonials or other terms and fine print are required. The Commission has revised the Guides for Testimonials and Endorsements as a result of these changes to include social media and Internet channels specifically.

Across social media channels (blogs, web sites, platforms and apps) advertisers have been finding ways to leverage the users who are most influential in the demographic audiences that they are looking to reach. By reaching out to these influencers, directly and indirectly, advertisers are engaging influential advocates with goods, services and payments, to review and promote their products, contests and special offers. Much of the concern raised in the revised guides was with regard to sponsored and incentivized content that is promoted in this manner.

²⁴ <http://www.kingfishmedia.com/Portals/51063/pdf/kfm-social-media-usage-2010.pdf>

²⁵ <http://pewresearch.org/pubs/2025/social-impact-social-networking-sites-technology-facebook-twitter-linkedin-myspace>

²⁶ http://www.comscore.com/Press_Events/Press_Releases/2011/5/U.S._Online_Display_Advertising_Market_Delivers_1.1_Trillion_Impressions_in_Q1_2011

²⁷ https://www.borrellassociates.com/reports?page=shop.product_details&flypage=garden_flypage.tpl&product_id=885&category_id=6

Both Twitter and Facebook allow companies to directly market to consumers in a variety of ways. Facebook offers companies pages on its platform for free on which they can connect directly with consumers. Additionally, Facebook sells advertising space to companies that may appear in a variety of sponsored forms. Twitter offers a similar two-tiered system for companies to communicate with its users. Companies may communicate with followers through a Twitter account, or they may pay Twitter sponsorship fees to promote campaigns, brands or individual messages. Plans for the release of Google+ for advertisers are about to be released and other platforms are sure to follow.

Today, Standard Ads make up the majority of ads on the Facebook platform, but Facebook continues to innovate to incorporate advertising and sponsorship of messaging into the fabric of the user experience. While marketers have found standard ads on the platform to be incredibly effective, the types of advertising that are available on Facebook are constantly evolving.

The Facebook “Like” button and Google+1 features have been incorporated not only into the interactive experience on their respective web sites, but also across third-party sites as a means to further engage and leverage the power of social networks to influence increasingly large groups within social groups. Currently, for a user with a material connection, there is no provision to indicate that connection within the related posts, news feeds that contain the message that the user “likes” the brand or in third party sites where the message is syndicated.

Similarly, both Facebook and Twitter offer corporate users the ability to pay to promote certain messages and profiles within the platform and within a user’s network in a prominent position. In addition, a number of third parties offer sponsored Tweets with opportunities to leverage the networks of celebrities and other influencers. These messages are sometimes sponsored through companies acting as agents for Twitter influencers. Most of these require Tweets to be sent through a proprietary dashboard and they rely on a number of ad hoc disclosure solutions including Hashtags and [ad] or {spon}.

Companies are also beginning to bypass the Internet to communicate directly with consumers through the use of Apps or mobile applications. An App is a dedicated program that resides on smartphones, tablets, mobile devices and/or computers that are able to connect with the Internet directly without the use of a web browser. With increased adoption of smartphones and tablets, consumers are increasingly reading, watching and sharing content within App environments. Within Apps, there are a number of questions that are raised with regard to small screen sizes, access by minors, privacy and location that are all likely to increase with importance in correlation with mass-market adoption and continued development of these technologies.

As social media and networking platforms mature, additional novel forms of advertising will surely emerge. Disclosures and disclaimers will be even more important as these messages become shorter, are more seamlessly integrated into social conversations, and appear less like traditional advertising. Across advertising channels, including

traditional ads, advertiser disclosures are key to a complete understanding of context and are vital to maintain open and transparent communications. Without disclosures, we run a significant risk of confusion and/or obfuscation of the source of content within social media networks and a strong likelihood that important material connections between the promoters of such content and the original source will be hidden from public view.