

PAY ME TO TRUST YOU

An Online Marketer's Guide To The FTC Revised
Guidelines for Disclosures of Endorsements in
Social Media

(And How to Make a Difference)

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[Comments submitted to the Federal Trade Commission in response to the In Short Workshop for review and consideration for FTC Project No P114506 - revisions of the 2000 Dot Com Disclosure Guidelines on July 11, 2012]

Introduction

The United States Federal Trade Commission (FTC) is currently in the process of re-evaluating its 12-year old online advertising disclosure guidelines known as “Dot Com Disclosures.” Any decision the FTC reaches is expected to have a profound impact on the online marketing industry with respect to how required disclosures, or non-disclosures, of material relationships and connections may affect consumer trust and fair competition in business.

The following report is meant to serve as an easy-to-follow, condensed overview of FTC disclosure guidelines around endorsements in online media, with an understanding of the important issues and questions online marketers have. Contents include:

- The FTC’s guidance on disclosure methods and understanding endorsements in online media
- The FTC’s review for changes and the challenges to be faced, and;
- How online marketers may affect positive change with FTC compliance and self-regulation.

What online markers will gain from this report

This report is based on the premise that when online marketers possess an understanding of these FTC guidelines, they will benefit in the following ways:

- Greatly reduce or eliminate the legal risk by practicing better FTC compliance
- Achieve better customer relationships from a better understanding of consumer expectations for transparency and disclosure of relationships, and;
- Be empowered to act against unfair and deceptive business practices in online media by their competitors.

All captions (labeled in this style format of bold blue) are quotes attributed to FTC – either in their published reports and online documentation, unless stated otherwise.

Author’s Disclosure

In the interests of full transparency, the following information is voluntarily disclosed:

- Research and quotes for this report was made possible with the assistance of the FTC’s Press Officer, Betsy Lordan; the Word of Mouth Marketing Association (WOMMA); and from the expert guidance of Tom Chernaik, CEO of CMP.LY – a social media disclosure solution and monitoring service and FTC workshop attendee.
- A media release of this report on PRWeb.com has been made possible by Vocus.

All findings and opinions expressed in this report are solely the author’s, and are neither endorsed nor affiliated with any other party. No sponsorships, advertising, or other financial

contributions were provided by any companies, organizations, or other individuals into actual making of this report.

Legal Disclaimer

This report, either excerpts or in its entirety, should also not be considered as, or substituted for, legal advice. Nor, should it be treated as legal expertise. It is recommended that those seeking legal answers around the issues explained in this report should be directed at professional legal counsel, such as an attorney with both an understanding and practice of FTC law and advertising compliance.

Background – How Did We Get Here?

On May 30, 2012, the FTC hosted a [one-day public workshop](#)ⁱ to consider the need for new guidance concerning advertising and privacy disclosures in today's online and mobile environments. [The workshop](#) addressed online disclosure challenges for enterprises with consumers and the public at large, including methods for making clear and conspicuous disclosures in online media.

From May 30th to July 11th, 2012, the FTC staff accepted public feedback following that workshop, including from its online comment formⁱⁱ. The FTC also made all records and transcripts of their workshop available on their website.

On July 11th, 2012, the FTC completed its public feedback process receiving comments with respect to revision of their guidelines and to provide updated guidance for industry for clear and conspicuous disclosures in social media, mobile and digital channels.

At the time of publication of this report, the FTC is expected to be in the very the initial stages of reviewing all submitted information by the public. No announcement has yet been made of a date for a final decision or further activities.

The FTC, Explained

What is the FTC's role in regards to online marketing?

The FTC exists for two main reasons:

- Improve consumer trust in advertising, and;
- Allow business to fairly compete in the online market, through the prevention of unfair and deceptive advertising by competitors.

The FTC's authority extends completely to the online ecosystem, and expects the same standards of compliance with online media and marketers as they do with more "traditional" media like television, radio, and print.

“The FTC Act’s prohibition on unfair or deceptive acts or practices encompasses Internet advertising, marketing and sales. In addition, many Commission rules and guides are not limited to any particular medium used to disseminate claims or advertising, and therefore, apply to online activities.

“The FTC has enforced and will continue enforcing its consumer protection laws online to ensure that products and services are described truthfully in online ads and that consumers get what they pay for. These activities benefit consumers as well as sellers, who expect and deserve a fair marketplace.”

What is the FTC’s authority?

The Federal Trade Commission (FTC) is an independent agency of the United States government, established in 1914 by the Federal Trade Commission Act. Its principal responsibility is the promotion of consumer protection and the elimination and prevention of anti-competitive business practices.

The FTC has been entrusted by the U.S. government with the authority to enhance consumer welfare and protect competition in broad sectors of the economy. This authority extends to mandating policy, monitoring activities, levying judgments and fines, and even restrict the ability of enterprises to do business altogether who demonstrate a failure to comply with their laws.

“The Commission enforces the laws that prohibit business practices that are anticompetitive, deceptive, or unfair to consumers; promotes informed consumer choice and public understanding of the competitive process; and seeks to accomplish its mission without impeding legitimate business activity.”

Who makes up the FTC?

ⁱⁱⁱThe Commission is composed of five members appointed by the President, with the advice and consent of the Senate, for a term of 7 years. Not more than three of the Commissioners may be members of the same political party. One Commissioner is designated by the President as Chairman of the Commission and is responsible for its administrative management.

How is the FTC different from self-regulation?

The FTC is meant serve as a strong, independent law enforcement presence that backs up self-regulation.

“...although industry self-regulation certainly can play an important role in protecting consumers as these new forms of marketing continue to evolve and new ones are developed, self regulation works best when it is backed up by a strong law enforcement presence.”

Dot Com Disclosures and Endorsement Guidelines, Explained

The FTC treats truth-in-advertising around online marketing with the same standards and practices as they do for more traditional media:

For that reason, the FTC put out two documents designed to protect basic truth-in-advertising principles: *The Dot Com Disclosures* and *The Endorsement Guides*.

- [The Dot Com Disclosures](#) were last updated in 2000 and are the document that is being updated now (and that was the subject of the workshop).
- [The Endorsement Guides](#) were updated in October 2009 and took effect December 1, 2009.

It's important to mention that while these two documents are inextricably related to each other, the FTC has made it clear that they are only focused right now on updates to the Dot Com Disclosures.

The Dot Com Disclosures Report

Dot Com Disclosures – Information About Online Advertising, was originally released in 2000. The report was designed to handle the proliferation of shopping online and advertising online (in a web-based environment), where an increased likelihood of fraud and deception would take place that, if not properly regulated, “may dampen consumer confidence in the e-marketplace.”

The purpose of the Dot Com report was to set guidance for advertisers with online disclosures – to prevent an online advertisement from being misleading by requiring such disclosures to be “clear and conspicuous” to the consumer.

“In evaluating whether disclosures are likely to be clear and conspicuous in online ads, advertisers should consider the placement of the disclosure in an ad and its proximity to the relevant claim. Additional considerations include: the prominence of the disclosure; whether items in other parts of the ad distract attention from the disclosure; whether the ad is so lengthy that the disclosure needs to be repeated; whether disclosures in audio messages are presented in an adequate volume and cadence and visual disclosures appear for a sufficient duration; and, whether the language of the disclosure is understandable to the intended audience.”

Obviously, the digital landscape has undergone a seismic transformation and the Commission has acknowledged that both documents required updates to keep up with emerging technologies and new channels of communications.

What are the FTC Endorsement Guidelines about?

The FTC document's official title is *16 CFR Part 255 – Guides Concerning the Use of Endorsements and Testimonials in Advertising*.

Specifically, the Guides address the application of Section 5 of the FTC Act (15 U.S.C. 45) to the use of endorsements and testimonials in advertising. The guide is meant to provide voluntary compliance with the law by those engaging in marketing and commerce online, under its definition for who are “advertisers” and who are “endorsers.”

The FTC’s Endorsement Guidelines were originally written in 1975 and updated in 1980. In October 2009, after almost 30 years unchanged, they were updated to address social media and digital communications.

Since the FTC issued the revised Guides, advertisers, ad agencies, bloggers, and others have sent questions to endorsements@ftc.gov. The FTC also put out a “FTC Facts for Business” document to answer some of these questions; and continues to review and revise their examples to show how these standards continue to apply in today’s marketing world.

The FTC recognizes that online media and the marketing ecosystem continues to grow and transform, and those changes have to be recognized and explained; but the fundamental legal principles haven’t changed.

Why do we still need these guides (and updates)?

Online media and marketing is still proliferating, and so is spending. More media and marketing efforts are being geared for online; and the glut of content and new technology platforms can make it increasingly likely for consumers to be misled and confused about material relationships by businesses that can affect their judgment; and in negative circumstances, become victims of deception. This is what erodes trust by consumers in the e-marketplace, which erodes fair competition in the market and ends up hurting most businesses.

The FTC’s own public information website, [The Federal Register](#),^{iv} explains how having the guides offer a degree of necessary protection for consumers and businesses alike, built around trust of the message and the messenger:

“to the extent that consumers’ willingness to trust social media depends on the ability of those media to retain their credibility as reliable sources of information, application of the general principles embodied in the Guides presumably would have a beneficial, not detrimental, effect.”

Why the FTC felt the need to revise their Dot Com Disclosures

“The existing version of the Dot Com Disclosures booklet was published in 2000, and clearly a lot has changed since then.” Said Betsy Lordan, Press Officer for the FTC.

The Federal Register has cited many advances in technology – especially with consumer-generated media, social media, and mobile – along with business-to-consumer activities around these areas – that that has led to the need for possible updates that cover these new circumstances.

Why is it important to disclose endorsements online?

Endorsements factor into our decisions to buy products, especially by people and brands we are influenced by. When practicing marketing and commerce, the FTC mandates that all content being shared with an audience of existing and/or potential consumers “clearly and conspicuously” include a disclosure of any relationships with other parties, when a reasonable consumer would be influenced by in their engagement.

“If there’s a connection between the endorser and the marketer of the product that would affect how people evaluate the endorsement, it should be disclosed... If you disclose the relationship clearly and conspicuously on your site, readers can decide how much weight to give your endorsement.”

An “endorsement” of this kind falls under the label of being an advertisement – i.e., commercial speech. Commercial speech has fewer protections under the U.S. law than free speech, including the right of anonymity.

The FTC does not necessarily treat endorsements as being content-specific. It does not matter if the marketer says that their content was not done as an explicit testimonial or review of anything. What the FTC says matters with deciding what’s an endorsement is the message that consumers receive.

“The Guides have always defined “endorsements” by focusing on the message consumers take from the speech at issue. Indeed, this focus on consumer takeaway is completely consistent with the approach the Commission uses to determine whether a practice is deceptive, and thus in violation of the FTC Act.”

Definitions, Explained

The following definitions are all directly provided from the language used by the FTC in their existing reports and regulations. When it comes to online media and marketing, the FTC mainly organizes the affected parties into 3 groups: “advertisers,” “endorsers,” and consumers.

Note: All definitions and labels here are used solely in the context of the FTC’s Disclosure Guidelines on Endorsements and consumer transparency in online media and marketing.

“Material relationships”

Material relationships, aka “material connections,” were defined by the FTC in the current version of the Endorsement and Testimonials Guidelines as an existing connection between an endorser and the seller of an advertised product:

“When there exists a connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement (i.e., the

connection is not reasonably expected by the audience), such connection must be fully disclosed."

Material relationships also include contractual relationships or other business relationships, or even just where there is a commercial transaction in play between the seller and endorser. This is defined and explained further in the Endorsement Guidelines, "*Section 255.5 – Disclosure of material connections.*"

"Deception"

The FTC says: "Under the law, an act or practice is deceptive if it misleads "a significant minority" of consumers. So even if some readers are aware of these deals, many readers aren't. That's why disclosure is important."

Section 5 of the FTC Act prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission will find deception if there is a representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment. See [FTC Policy Statement on Deception](#) (1983), appended to *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174 (1984).

"Certain elements undergird all deception cases:"

- **First, there must be a representation, omission or practice that is likely to mislead the consumer.**
- **Second, we examine the practice from the perspective of a consumer acting reasonably in the circumstances**
- **Third, the representation, omission, or practice must be a "material" one. The basic question is whether the act or practice is likely to affect the consumer's conduct or decision with regard to a product or service.**

"Clear and conspicuous"

"Clear and conspicuous" refers to the placement of a disclosure over any endorsement presented to consumers, that is discernable and understood by a reasonable consumer.

The [FTC's business guidance document](#) offers this further explanation:

As for where to place a disclosure, the guiding principle is that it has to be clear and conspicuous. Putting disclosures in obscure places – for example, buried on an ABOUT US or GENERAL INFO page, behind a poorly labeled hyperlink or in a terms of service agreement – isn't good enough. The average person who visits your site must be able to notice your disclosure, read it and understand it.

“Endorsers”

The FTC considers an endorser to be someone whose viewpoints and sharing of information are likely to influence and shape their own audiences views – in this case, “consumers.”

An endorser can be an “entertainer” or an expert. In updated Social Media Disclosure Guides recently released by the Word of Mouth Marketing Association (WOMMA) endorsers are referred to as “advocates.” Other common terms in the industry are “ambassadors” or “influencers.”

Consumers or influencers who receive free products to review can be considered endorsers, as are those who are paid to review, share, post, or publish sponsored content. Note that the FTC does not have a minimum value threshold so non-monetary compensation is treated the same as lavish gifts or incentives.

Professional content contributors (i.e., outside, non-staff contributors) who are paid for their contributions that are published on the advertisers’ or sponsors’ site, or have any other material relationship with the publisher/advertiser/sponsor on the publisher’s website or other online properties, are also treated by the FTC as “endorsers.”

“Endorsement”

The FTC considers an endorsement to be something that consumers are likely to believe reflects the endorsers’ own views.

“an endorsement means any advertising message (including verbal statements, demonstrations, or depictions of the name, signature, likeness or other identifying personal characteristics of an individual or the name or seal of an organization) that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser. The party whose opinions, beliefs, findings, or experience the message appears to reflect will be called the endorser and may be an individual, group, or institution.

The FTC also uses the word “testimonials” interchangeably with “endorsements,” and says they are to be treated identically.

“Advertisers”

Advertisers in this case are referred to as sponsors and marketers who have a material connection with an endorser through a marketing initiative and stand to benefit from their said endorsement over their product.

“Product”

A “product” includes any product, service, company or industry. Products are what are endorsed by endorsers, marketed by advertisers, and part of a commercial transaction with consumers

Questions on Endorsements and Disclosure Guidelines

What are the guidelines for “endorsements?”

[The FTC says](#) “all experiences must be actual, opinions must reflect the actual beliefs of the endorser, and any and all claims must be proven... The most important principle is that an endorsement has to represent the accurate experience and opinion of the endorser.”

How does the FTC decide what is an “endorsement?”

There has been confusion over what marketers consider to fall outside their understanding of what is an endorsement (and subject to FTC disclosure guidelines), versus what the FTC actually says. It is important to keep in mind that the FTC evaluates ads from the perspective of “reasonable consumers.”

“If it’s clear that what’s on your site is a paid advertisement, you don’t have to make additional disclosures. But what’s clear to you may not be clear to everyone visiting your site, and the FTC evaluates ads from the perspective of reasonable consumers.”

If the audience understands the material relationship, no disclosure is needed.

“But if a significant number of his readers don’t know that, a disclosure would be needed. Determining whether followers are aware of a relationship could be tricky in many cases, so a disclosure is recommended.”

How can you determine what needs to be disclosed and what doesn’t?

The FTC states that if the audience understands the material relationship, no disclosure is needed.

“But if a significant number of his readers don’t know that, a disclosure would be needed. Determining whether followers are aware of a relationship could be tricky in many cases, so a disclosure is recommended.”

Is there any special language for disclosure?

The FTC says that there is no need for any special language. The point is to give readers information. The disclosure could be as simple as, “Company X gave me this product to try.”

Or, “Blogger X is a paid freelance writer for Publisher Y or Sponsor Z.” What matters is effective communication, not legalese.

What is the proper display of such disclosure?

As explained under the “Clear and Conspicuous” guidelines, a disclosure has to have the actual information of the material relationship provided as part of the message, and on the same page or embedded in the same content. A single disclosure (like on a home page) doesn’t really do it because people visiting your site might read individual reviews or watch individual videos without seeing the disclosure on your home page.

Is just a button, badge or a URL an acceptable way to show disclosure?

The FTC requires that there be a “clear and conspicuous” text description for all disclosures. Also, the FTC has clearly stated that just having a button is not enough. There are social media marketing enterprises like [CMP.LY](#) offering disclosure solutions that include notice in the form of readable URLs and disclosure badges along with documented process to display full text of a disclosure and provide additional context about the disclosed relationship. One of the areas of primary focus in the recent workshop was to highlight the changes in the digital ecosystem and to address disclosure challenges in new platforms, tools and devices.

When Lines Get Blurred: Why Many Online Marketers Are Still Confused by the FTC

The FTC put out its own “FTC Facts” help document for businesses: [“The FTC’s Revised Endorsement Guides: What People are Asking.”](#) The document provided a number of familiar examples and scenarios that are helpful to online marketers to better distinguish between what the FTC considers to be commercial speech and truth in advertising, subject to their disclosure guidelines. Yet despite these efforts by the FTC, many online marketers don’t feel like they adequately know what they should be disclosing.

Continual rapid advances in the online media and marketing ecosystem have blurred the lines for marketers and the FTC alike with seeing eye-to-eye on several key areas:

- What is free speech and what is commercial speech
- What is unbiased information and what are advertisements
- Confusing labels over who is an “endorser” or “advertiser”
- What constitutes a “material relationship” that requires disclosure
- New tools and channels of communication, some with strict character and other limitations
- Increasing use of social channels to develop both paid and non-monetary marketing relationships with influential endorsers

The confusion over online media and material relationships

Many online marketers today, arguably the vast majority, fail to properly disclose their material relationships in their own online media – be it published on their own hosted sites or on partnership sites. While most of these individuals and organizations operate with no intention to deceive or violate FTC law otherwise, it has caused a great deal of consternation in the industry – both for those who don't feel they have the guidance and support that they need, and for those skeptical of information shared online and by their peers regarding these regulations.

After doing extensive research and interviews across several areas of the online marketing industry – including search, social, and video – **what appears to suffer from the greatest confusion and non-compliance are blogger-publisher relationships and consumer-generated reviews of products.** Contributing greatly to the problem is a lack of industry standards and self-regulation over disclosure guidelines, and a failure of effective communication by the FTC with online marketers in both these areas.

Blogger-publisher relationships

The FTC considers any material relationship between bloggers and advertisers as a requirement for clear and conspicuous disclosure. Publishers also fall under the category of “advertisers” when their publication engages consumers in commercial transactions as an intended result of their exposure to the bloggers’ content

A blogger could have some kind of business or material arrangement to contribute content for the publisher's website, that happens to be involved in its own advertisements and commercial endeavors with consumers. There does not need to even be a paid arrangement or any financial transaction between the publisher and the blogger. It could be having the blogger speak at an event hosted or sponsored by their publisher, or the publisher's parent company, where there is sales or other kinds of commercial engagements to be done. This is commonly the case with a number of popular marketing sites that feature outside “guest bloggers” (independent bloggers or blogger associated with another company than the publishers' own company) who are also speakers for events associated with the publisher and tickets are purchased.

Whatever the case, the “material relationship” is obviously there, and likely to persuade consumer opinion based on the strength of the blogger's influence along with the influence of the publisher. This is why it's necessary for publishers to practice a clear and conspicuous disclosure of their material relationships with guest bloggers and other outside contributors.

This may sound strange at first, since it does not typically fall into what most people would naturally label as an “endorsement” per se. However it is acknowledged by the FTC, and even by many online marketers, that consumer's opinions of any published content from a blogger may likely be affected by knowledge of a material relationship beyond the guest contribution. (E.g., being paid, a featured speaker at the publisher's conference, taking part in a joint marketing endeavor, etc.) So by the standards the FTC uses for defining material

relationships, a publisher is required under FTC law to disclose such relationships “clearly and conspicuously” to consumers.

Consumer-generated reviews

The FTC considers consumer-generated reviews made possible through free products provided to them by the manufacturer as commercial speech, and subject to the same disclosure of endorsement guidelines as other advertising.

Take this example below, which comes right from the FTC business guide: The FTC treats consumers who receive products to try out and give public, positive reviews of as “endorsements” subject to FTC disclosure guidelines.

*“**Example 8:** Assume now that the consumer joins a network marketing program under which she periodically receives various products about which she can write reviews if she wants to do so. If she receives a free bag of the new dog food through this program, her positive review would be considered an endorsement under the Guides.”*

What Online Marketers Can (and Should) Do

The first step that all online marketers need to look at is what is within their own means to do. Here are some recommendations:

Self-Monitoring

The FTC explains that Advertisers need to have reasonable programs in place to train and monitor members of their network.

It would be unrealistic to say you had to be aware of every single statement made by a member of your network. But it’s up to you to make an effort to know where your people are talking about your product. It’s unlikely that the activity of a rogue blogger would be the basis of a law enforcement action if your company has a reasonable training and monitoring program.

CMP.LY has developed an automated disclosure monitoring service that works in conjunction with its disclosure solution to provide reporting on both the inclusion and omission of required disclosures within an advertiser’s advocate or affiliate networks.

Submit your comments (and questions) to the FTC

July 11, 2012 was the FTC’s final date for accepting comments for evaluating a revised Dot Com Disclosures. Should the FTC provide an extension to this deadline at a future time, comments can be submitted to the FTC’s Comment form at <https://ftcpublishcommentworks.com/ftc/inshortworkshop/>.

Individual responses in the comments box are limited to 4,000 characters. However you can also attach a letter or document.

Questions about the Dot Com Disclosures and Endorsement Guidelines can always be submitted to the FTC's email address: endorsements@ftc.gov. The FTC has promised to address the most common questions in future FAQs.

Submit your complaints to the FTC

FTC's Press Officer Betsy Lordan says "The FTC considers complaints from consumers, complaints from competitors, and the results of its own internal monitoring of various industries."

The FTC works to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop and avoid them. To file a complaint or get free information on consumer issues, visit ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261.

The FTC enters consumer complaints into the Consumer Sentinel Network, a secure online database and investigative tool used by hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

Watch a new video, [How to File a Complaint](#), at ftc.gov/video to learn more.

Complaints are handled and decisions are reached on a case-by-case basis, although it is not a direct support line for grievances, as explained by the FTC here.

"The FTC generally does not send a response, and does not resolve individual consumer complaints. But these complaints can help us detect patterns of wrong-doing, and lead to investigations and prosecutions. The FTC enters all complaints it receives into Consumer Sentinel, a secure online database that is used by thousands of civil and criminal law enforcement authorities worldwide."

Where else you can turn

The National Small Business Ombudsman and 10 Regional Fairness Boards collect comments from small businesses about federal compliance and enforcement activities. Each year, the Ombudsman evaluates the conduct of these activities and rates each agency's responsiveness to small businesses. Small businesses can comment to the Ombudsman without fear of reprisal. To comment, call toll-free 1-888-REGFAIR (1-888-734-3247) or go to www.sba.gov/ombudsman.

Other places you can work with on these issues include:

- [Better Business Bureau](#)

- National Advertising Review Council's [Electronic Retailing Self-Regulation Program](#) (ERSP)
- [Current Attorneys General](#)

Learn more from the FTC

The FTC's [revised Guides](#) offer more than 35 examples of how they apply in practical settings. The FTC also has produced [to-the-point video clips](#) discussing some of the issues on marketers' minds.

Learning from legal professionals

The Practising Law Institute (PLI) features an on-demand web program, "[Hot Topics in Advertising Law 2012](#),"^v which covers FTC regulatory issues and competitor issues around these documents, along with related legal issues involving social media and online marketing.

For disclosure, the author has received passes on several occasions from PLI for media coverage of their events.

Conclusion: Can Online Marketers Trust the FTC? Yes and Maybe...

What online marketers' responsibilities are

The FTC's revised policy on Dot Com Disclosures will directly affect many online marketers' business activities. Online marketers should treat it as an opportunity to shape future public policy and practice better self-regulation in their respective industries, and build back consumer trust that they can turn into sustainable and profitable business.

Online marketers also need to better organize around these issues. They should set policies, communicate those policies to their employees, agencies and representatives and monitor programs for compliance with those policies. Furthermore, they should look into their own independent watchdog groups for self-regulation, monitoring and reporting of perceived violations, along with disseminating information to their members, their peers in other industries, authority figures in government and the mainstream media. They also must be vigilant in reporting violations on their own – to the FTC along with the cooperation of their peers.

Marketers also need to continue to pay close attention to the FTC's labels for their own industry. They need be properly aware of how the FTC defines and qualifies "ads," "endorsements," and endorsers; and what disclosure requirements are required of them for how they choose to distribute and share their content online.

Marketers need to share their knowledge with fellow marketers on these topics for increasing awareness industry-wide, providing forums for their own open discussion around positions for debate; and working in cooperation toward a new community and coalition

around best practices that extend beyond just their own professional interests, inclusive of outside consumer interests.

What FTC's responsibilities to online marketers need to be

The FTC should also do well to understand online marketers' need for further clarification and guidance in the areas that are most subject to non-compliance. Except for the most blatant and extreme cases, they can be attributed to understandable ignorance and no intentional harm. Most online marketers across all industries demonstrate a willingness to comply with FTC disclosure guidelines, either as they truly see it or how it's been explained to them. The FTC can best help online marketers by having their next version of their *Dot Com Disclosure Guidelines* include the following:

- Provide better clarification of existing definitions and labels as they apply to online marketers and consumers alike, and incorporate new categories and/or levels for where lines are sometimes blurred.
- Provide a wider range of scenarios, including more recent applications of online media in marketing – and in context with the end users' experience.
- Support and provide independent research – including surveys and user testing around consumers' actual experiences and attitudes with online media, and their expressed impressions and expectations for disclosure of such media around "endorsements" or other material relationships.
- Understand and appreciate online marketers' need for more support from the FTC – in education and awareness, and also in review and enforcement.
- Provide flexibility for methods of disclosure, with an understanding that tools and platforms are constantly changing. Clear and conspicuous notice can vary by media type and device, but standards and best practices should foster consistency and uniformity.
- Support an independent watchdog organization, or appoint an independent individual, to oversee and report on the online media and marketing space, with both an expertise and appreciation of the online ecosystem from the vantage point of both consumer and enterprise.

About the Author



Grant Crowell is a marketing industry veteran and independent analyst covering online marketing space since 1996. His areas of expertise include social media marketing, web video, SEO, usability, e-commerce, new media legal issues, and more.

Grant carries a traditional media background includes being a former talk-show host on AM radio, a professional newspaper cartoonist and illustrator, and a documentary film producer on first amendment issues in academia. Grant has facilitated interviews and panel discussions with leading vendors, analysts, and thought leaders across technology, marketing, academia, and government.

Learn more about the author at these links below:

- [LinkedIn Profile](#)
- [ReelSEO author profile](#)
- ["About Me" bio](#)

ⁱ <http://www.ftc.gov/bcp/workshops/inshort/index.shtml>

ⁱⁱ <https://ftcpublic.commentworks.com/ftc/inshortworkshop/>.

ⁱⁱⁱ <http://ftc.gov/>

^{iv} <https://www.federalregister.gov/agencies/federal-trade-commission>

^v http://www.pli.edu/Content/OnDemand/Hot_Topics_in_Advertising_Law_2012/_/N-4nZ1z133ic?ID=142806