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FEDERAL TRADE COMMISSION

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BLURRED LINES: ADVERTISING OR CONTENT?

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AN FTC WORKSHOP ON NATIVE ADVERTISING

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DECEMBER 4, 2013

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18 Federal Trade Commission

19 601 New Jersey Avenue, N.W., Conference Center

20 Washington, DC

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23 Reported By: Stephanie Gilley

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1 PROCEEDINGS

2 MR. CLELAND: Good morning. My name is
3 Rich Cleland. I am the assistant director in the
4 Division of Advertising Practices. I am going to do
5 a little bit of housekeeping before I introduce
6 Chairwoman Ramirez and stall a little bit while we
7 let a few more people in.

8 I was just joking that the FTC mentions
9 the word internet and we can fill up a room, no
10 matter how big that room happens to be.

11 I am going to repeat my earlier request
12 that, to the extent possible, please move in to the
13 center seats.

14 Another request, this actually is a
15 flip-phone. Remember those? Whether you have a
16 flip-phone or a smart phone or a dumb phone,
17 whatever it is, please turn off the ringer. We
18 don't like to have the speakers interrupted.

19 Okay, all of you came in through security
20 and you know that can be a bit of a hassle. Anyone
21 who goes outside will be required to go back through
22 security to come back through the conference center.
23 We are going to have our lunch at about 12:30,
24 depending on whether we can stay on schedule. We
25 will reconvene at 1:30 and you will have to go back

1 through security, so please factor that into your
2 lunch plans.

3 Okay, a little bit of safety stuff here.
4 Hopefully, it's not going to be necessary, but in
5 the event of a fire or evacuation of the building,
6 please leave the building in an orderly fashion.
7 Once outside the building, you need to orient
8 yourself towards New Jersey Avenue, across the
9 street, over towards Georgetown Law Center. And
10 there will be somebody there, Laura Sullivan or one
11 of the people involved in the organizing of the
12 conference, to take names. Or you can just take the
13 rest of the afternoon off, whatever.

14 Also, if you spot any suspicious activity,
15 please alert security.

16 I need to inform you that this event will
17 be photographed, videotaped, and otherwise recorded.
18 By participating in this event, you are agreeing
19 that your image and anything you say or submit may
20 be posted indefinitely on FTC.gov or on one of the
21 Commission's publicly available social media sites.

22 We would also ask -- we're pretty good
23 right now, but that people take their seats and not
24 stand. It's a fire code regulation. I've already
25 said, move to the center.

1 Okay. Question cards are available out
2 there on the table, out in the hallway. If you have
3 a question, you know, grab one of those cards, write
4 it down, and give it to one of the FTC staff and
5 they will get it to me, and we'll try to answer
6 those questions if time permits. We have some
7 pretty full panels today, so we will try to work in
8 questions if possible, but it may not be possible.
9 So we appreciate your indulgence in that regard.

10 More importantly, the bathrooms are
11 through the outer lobby here to the left and back
12 behind the elevators. And also, if you didn't
13 notice when you came in here, there is a list of
14 local restaurants on the table in the hallway
15 outside.

16 Now, it's my pleasure to start our event
17 by introducing Chairwoman Edith Ramirez.

18 Chairwoman.

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1 WELCOME

2 MS. RAMIREZ: I think you know who I am,
3 right? So I'll just put that down.

4 Good morning, everybody. I really want to
5 thank you all for being here. Apologies for some of
6 the time it's taking for folks to be able to get
7 into the room, but it's terrific to have you all
8 here.

9 I want to welcome you to the Federal Trade
10 Commission's workshop on native advertising,
11 "Blurred Lines: Advertising or Content?" The
12 practice of native advertising, which imitates the
13 form and style of the media in which it's featured
14 isn't new. Neither are the types of native
15 advertising that we'll discuss today, ads that
16 resemble digital editorial content. And at the FTC,
17 we have been concerned with consumers' ability to
18 distinguish between paid and editorial content for
19 many years.

20 So to start off the day, we are going to
21 have a presentation from FTC Staff Attorney Lesley
22 Fair, who is going to be setting the stage for us by
23 examining the FTC's historical approach to native
24 advertising, from advertorials to infomercials,
25 sponsored posts, fake news sites, and paid search.

1 The leap from the printed page and from
2 television to digital media presents advertisers
3 with infinite ways to present brand information to
4 consumers. Marketers have also moved past the
5 banner ad into advertising that is more seamlessly
6 and inconspicuously integrated into digital content.
7 And the internet provides many new opportunities for
8 advertisers, distributors, and publishers to
9 collaborate on content creation and rapid fire ad
10 delivery, so it's no surprise that the use of native
11 advertising is growing rapidly.

12 A recent survey of online publishers revealed
13 that 73 percent offer native advertising opportunities
14 on their sites and that an additional 17 percent are
15 considering offering them this year. Another survey
16 reported that 41 percent of brands and 34 percent of ad
17 agencies currently use native advertising, with many
18 others hoping to do so in the coming year.

19 But apart from technology, why has native
20 advertising suddenly become so popular? Brands
21 report that it helps them provide more relevant
22 messages, increase consumer engagement, and generate
23 awareness and buzz about products. Some marketers
24 believe that integrating their ads into digital
25 publications will help them capitalize on the

1 reputations of publishers. So not surprisingly,
2 brands, publishers, and ad agencies overwhelming
3 believe that native advertising adds value for
4 consumers.

5 On the other hand, critics argue that this
6 practice improperly exploits consumers' trust in a
7 publisher or deceives them outright to influence
8 their purchasing decisions. While native
9 advertising may certainly bring some benefits to
10 consumers, it has to be done lawfully. The delivery
11 of relevant messages and cultivating user engagement
12 are important goals, that's the point of advertising
13 after all, but it's equally important that
14 advertising not mislead consumers. By presenting
15 ads that resemble editorial content, an advertiser
16 risks implying deceptively that the information
17 comes from a non-biased source.

18 Properly designed disclosures can mitigate
19 this possibility and it's this intersection, between
20 format and consumer takeaway, that brings us
21 together today.

22 So we have a packed agenda for you. I am
23 pleased to welcome to the FTC Nicholas Lemann,
24 Professor of Journalism, Columbia University's
25 Graduate School of Journalism, and Bob Garfield,

1 cohost of "On the Media" and columnist for "Media
2 Post."

3 Following Lesley's presentation, Professor
4 Lemann will walk us through the origins and the
5 purpose of the wall between marketing and editorial
6 content and discuss the challenges of maintaining
7 that wall in digital media. In the afternoon, Mr.
8 Garfield will offer his views on the current state
9 of native advertising and where he thinks it should
10 go.

11 And in addition to these presenters, we
12 have three panels. The first panel will explore the
13 different context in which native ads are integrated
14 into digital media, the business models that support
15 them, the costs and benefits of integration, and the
16 ways in which native advertising may be
17 retransmitted and aggregated in other channels.

18 Our second panel will examine the ways
19 consumers recognize and understand native
20 advertising in digital media and whether consumer
21 expectations and the potential for deception differ
22 depending on the context.

23 And finally, the last panel will use
24 hypothetical examples to explore best practices for
25 effectively differentiating native advertising from

1 editorial content, including what content should be
2 identifiable as advertising, what adequate
3 disclosures should look like, and whether current
4 self-regulatory efforts provide consumers and
5 industry with the right amount and type of
6 information.

7 The FTC has long sought to work with
8 advertisers and publishers to achieve the right
9 balance and today is going to be another step in
10 that process, so I look forward to today's
11 discussions.

12 With that, let me turn the floor over to
13 Lesley. Thank you.

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1 A HISTORICAL FTC PERSPECTIVE:
2 ADVERTORIALS, INFOMERCIALS, AND PAID ENDORSEMENT

3 MS. FAIR: Thank you very much, Chairwoman
4 Ramirez. It is my privilege today to call attention
5 to an FTC law enforcement action, a settlement in
6 the area of native advertising. The Commission
7 alleged that a company promoted a new high-tech
8 product in a format that deceptively suggested that
9 it was independent content, when it was really an
10 ad.

11 But hold off on your tweet, because the
12 product in question was the first electric vacuum
13 cleaner. The case, Muenzen Specialty Company,
14 appeared in volume one of FTC decisions published in
15 1917. So in response to the question, isn't this
16 phenomenon of blurring sponsored content, native
17 advertising new, my response, un-nuh, not so much.

18 My job today is to recap the FTC's 100-
19 year history in law enforcement history in this area
20 in 15 minutes. So fasten your seatbelts

21 From a consumer protection perspective,
22 the conversation begins where it always does, with
23 Section 5 of the FTC Act. You'll have to take my
24 word for it, I do not have a tattoo, but if I did,
25 here's what mine would say, "Unfair or deceptive

1 acts or practices in or affecting commerce are
2 hereby declared unlawful." That's the standard that
3 the FTC begins with in evaluating any form of
4 advertising, including native advertising, sponsored
5 content, blurred lines.

6 The Commission elaborated on the words of
7 Section 5, especially what it means to be -- for an
8 act of practice to be deceptive, in its landmark
9 1984 Deception Policy statement. An action or
10 practice is deceptive, under Section 5, if it's
11 likely to mislead consumers who are acting
12 reasonably under the circumstances and if it would
13 be material to their decision to buy or use the
14 product.

15 Let me go back to the future now and give
16 a couple of examples, as the Chairwoman mentioned,
17 of how the FTC has applied Section 5 in the past
18 century, involving what the Commission alleged were
19 deceptive advertising formats. In other words, when
20 the advertiser represented expressively or by
21 implication that the content was something other
22 than an ad.

23 I'll use one example from the 1960s, what
24 the FTC has always called deceptive door openers.
25 Now, how did that work? In this instance,

1 door-to-door salespeople literally got their foot in
2 the door by claiming to be conducting a survey.
3 Once inside, however, what was the real pitch? They
4 were selling encyclopedias. The Commission cited
5 this as an example of deception in the Deception
6 Policy statement and even added, specifically
7 referring to this form of marketing, "When the first
8 contact between the seller and the buyer occurs
9 through a deceptive practice, the law may be
10 violated, even if the truth is subsequently made known
11 to the purchaser." That's from the Commission's
12 Deception Policy statement.

13 Next, the growth of ads in newspapers and
14 magazines in the 60s, the FTC raised concerns that
15 they were deceptively mimicking a news format. The
16 FTC released a press release in 1967, followed up by
17 a 1968 advisory opinion applying it, and here's what
18 the Commission said. The question asked was whether
19 it's deceptive to publish an advertisement, in the
20 format of a news article, without disclosing that it's
21 an ad.

22 In the example that the Commission
23 addressed, these were local restaurants. The
24 marketing promotion in question would often
25 interview the chef, they would talk about the

1 specialties of restaurants, the prices, and they
2 included my favorite little bit, whether "dancing is
3 permitted."

4 And here's what the Commission concluded,
5 "The column uses the format and has the general
6 appearance of a news feature and/or article for
7 public information which purports to give an
8 independent, impartial, and unbiased view of the
9 cuisine facilities. Since the column, in fact,
10 consists of a series of commercial messages which
11 are paid for by the advertisers, the Commission is
12 of the opinion that it will be necessary to clearly
13 and conspicuously disclose that it is an ad."

14 I think it's important to note here that
15 the Commission considered not just what the
16 promotions said, but also the impression conveyed by
17 implication to consumers through the visual. That's
18 in keeping with the long-standing FTC principle that
19 the Commission examines an ad's net impression that the
20 ad conveys to consumers. You know, put another way,
21 the FTC looks at the entire mosaic, rather than each
22 title separately, and that will often include an
23 evaluation of the visual conveyed to consumers.

24 The Commission has applied that same
25 principle over the years in numerous cases. Many

1 were ultimately resolved in settlement, but they do
2 still offer insights into what the FTC has called
3 "masquer-ads", ads that look like something other than
4 ads.

5 One area, certainly over the years, has
6 been deceptive mail promotions that the FTC has
7 challenged. I think all of us have received a piece
8 of mail purporting to be from the IRS, the Social
9 Security office, or a federal or state agency.
10 Here's one example from an outfit that did business
11 as the Prize Information and Award Notification
12 Bureau.

13 You've probably figured out by now there
14 was no prize, there was no information, there was no
15 board. Despite what the mailer says, there is no
16 State of California Commissioner of Registry that
17 notifies people when they strike it rich.

18 What was really going on in the promotion,
19 and the FTC alleged, was that the defendants were
20 tricking people into paying 20 dollars to collect a
21 fake sweepstakes prize. The lawsuit challenged the
22 allegedly phony baloney transaction, that's a legal
23 term, and the allegedly phony baloney format that
24 was used to defraud consumers.

25 There was another development in the

1 direct mail area in the mid '90s. Consumers received
2 what looked to be a review, torn out of a magazine,
3 you can see the jagged edge, for a book about public
4 speaking. There was a yellow sticky note on that said
5 your name, "Lesley, try this. It works. Signed, J."

6 I received this promo in the '90s and
7 my FTC boss at the time was a J, the inimitable
8 Jodie Bernstein, but of course I wasn't the only one
9 that received this. Millions of consumers received
10 similar yellow sticky note Post-Its. One of my
11 favorites was this one, "Roscoe, try this. It's
12 really good" mailed to then-Commissioner, Roscoe
13 Starek, of the Federal Trade Commission.

14 Another development about the same time
15 was the infomercial format that has often raised
16 concerns from an FTC perspective. These were, of
17 course, infomercials, the program-length content,
18 were illegal on TV until about 1984, when the FCC
19 changed its rules about the number of commercial
20 minutes that could run during an hour on network TV.

21 The FTC's first infomercial case, and
22 there have been more than 100 since then, challenged
23 an infomercial for BluBlocker sunglasses. It opened
24 with the seller saying that they were very upset
25 that they found out their product was going to be

1 reviewed on a hard-hitting investigative show called
2 "Consumer Challenge."

3 "If you've ever watched 60 minutes or
4 20/20, you could understand our fear." Then the
5 pitch was included between snippets of the purported
6 show, right here, "Consumer Challenge".

7 "Welcome to 'Consumer Challenge,' hosted
8 by Jonathan Goldsmith. The show that examines
9 popular new products for you, with investigative
10 reporters Don Hale and Katherine Grant. On today's
11 'Consumer Challenge' we investigate BluBlockers.
12 New product innovation or consumer ripoff?"

13 Will you be surprised when I tell you that
14 the Mike Wallace-style, hard-hitting investigative
15 reporter decided that the BluBlocker sunglasses were
16 fantastic?

17 I think there are two things that I'd like
18 to emphasize with regard to this. First, the
19 Commission's complaint did not in any way allege --
20 it did not challenge the underlying product claims.
21 It did not address the underlying efficacy of what
22 was said about the sunglasses. What the FTC charged
23 in the complaint was that the advertiser falsely
24 represented "Consumer Challenge" to be an
25 independent investigative show, when it was really

1 just an ad.

2 The second thing I'd like to point out is,
3 does this have like a total Ron Burgundy look to it
4 or what, right?

5 Since then, the FTC has challenged format
6 as deceptive in numerous infomercial cases, both TV
7 ads and alleged fake radio call-in shows. Here's an
8 example from a case decided by the First Circuit
9 that upheld a multi-million-dollar judgment for
10 consumers.

11 Not so much, said the FTC. This is a case
12 where the Commission did challenge the underlying
13 efficacy claims for the product, but also the notion
14 that "Total Health" was conveyed to consumers as
15 being independent content, rather than simply a 30-
16 minute commercial.

17 That brings us to the era of online
18 advertising. I'd like to mention just one thing
19 that I think sometimes we don't focus in on. When
20 Congress passed the Can-Spam Act in 2003, one
21 particular concern was commercial email that
22 included what are called false headers, misleading
23 information about who was sending the email and the
24 nature of what the email was about.

25 The Can-Spam law, again, passed by

1 Congress makes it very clear that, in certain
2 circumstances, materially falsifying header
3 information isn't just deceptive, it is a crime
4 punishable by a fine, imprisonment, or both and
5 enforceable by the United States Department of
6 Justice. So this lets us know how seriously the
7 notion of deceptive content in this way Congress
8 took that to be in drafting the Can-Spam Act.

9 The FTC is still amid an ongoing battle
10 against sites that appear to be affiliated with
11 legitimate news outlets, but really are ads hawking
12 weight-loss pills. These ads appear online and
13 often had banners or headlines that called
14 themselves "News 6 News Alert" or "Health 5 Beat."
15 The FTC alleged that the sites falsely represented
16 themselves that they were news reports that had
17 appeared on ABC, FOXNews, CBS, CNN, USA Today, and
18 even "Consumer Reports" magazine.

19 Some claimed specifically that the
20 reporter who was investigating it had had a great
21 experience, losing 25 pounds using the product
22 alleged to be investigated. The FTC has filed suit
23 against roughly two dozen marketers behind these
24 promotions at really every level of the advertising
25 food chain. The FTC has challenged the work of the

1 people selling the diet pills, the people
2 responsible for the new fake sites, and the
3 affiliate networks that put them together.

4 I think also relevant in this area is a
5 subject that most folks are familiar with, the FTC's
6 Enforcement Guides. The Commission revised the
7 Guides in 2009 to reflect developments in marketing
8 media, but it's the law and it has always been the
9 law, that material connections between an advertiser
10 and endorser should be clearly and conspicuously
11 disclosed.

12 Here is what the Endorsement Guides have
13 said and do say. "Where there exists a connection
14 between the endorser and the seller of an advertised
15 product, that might materially affect the weight or
16 credibility of the endorsement, i.e., the connection
17 is not reasonably expected by the audience, such
18 connection must be fully disclosed."

19 That's the principle that undergirded the
20 FTC's 2010 settlement with the PR firm hired by a
21 video game and app developer. The FTC's complaint
22 charged that the firm engaged in deceptive
23 advertising by having employees pose as just regular
24 consumers posting reviews on the iTunes store site,
25 but not disclosing that the reviews came from people

1 working on behalf of the app developers.

2 The FTC did not challenge whether, in
3 fact, this was an amazing new game or one of the
4 best; the FTC's concern was about the format that
5 the ads used.

6 Let me finish by calling attention to one
7 of the factors that we are all here about today,
8 which is the staff letters sent to search engines
9 regarding this issue. In 2002, the group Commercial
10 Alert asked the FTC to investigate whether certain
11 search engines were violating the FTC Act by failing
12 to disclose that ads were inserted into search
13 engine results list. You'll want to read the
14 staff's 2002 response for details, but here is
15 pretty much what they concluded.

16 Staff recommends that you review your
17 website to ensure that any paid ranking search
18 results are distinguished from nonpaid results with
19 clear and conspicuous disclosures, the use of paid
20 inclusion is clearly and conspicuously explained and
21 disclosed, no affirmative statement is made that
22 might mislead consumers as to the basis on which a
23 search engine is generated. That's what the FTC
24 staff said in 2002.

25 And staff revisited that issue in 2013.

1 Fast-forward then and the FTC staff again expressed
2 concern whether paid search results were
3 appropriately distinguished from natural results.
4 In letters sent to general purpose search engines as
5 well as specialized search engines, the staff
6 observed that, in recent years, paid search results
7 have become less distinguishable as advertising.

8 The 2013 letters affirmed what had been
9 said in 2002 and said that consumers ordinarily
10 expect that natural search results are included and
11 ranked based on relevance to a search inquiry, not
12 based on payment from a third party. Including or
13 ranking a search result, in whole or in part, based
14 on payment is a form of advertising. To avoid the
15 potential for deception, consumers should be able to
16 easily distinguish a natural search result from the
17 advertising that a search engine delivers.

18 The staff urged search engines to also
19 have an eye out for the future. We encourage you to
20 review your sites or other methods of displaying
21 search engines, including your use of specialized
22 search, and make any necessary adjustments to ensure
23 you clearly and prominently disclose any
24 advertising. In addition, as your business may
25 change in response to consumer search demands, the

1 disclosure techniques you use for advertising should
2 keep pace with innovations in how and where you
3 deliver information to consumers.

4 That, I think, is the starting point for
5 what I think will be a very, very interesting day.
6 That's my 100 years in 15 minutes.

7 But I have a particular honor right now in
8 introducing the next speaker. After a decade as the
9 Dean of Columbia University's Graduate School of
10 Journalism, Professor Nicholas Lemann remains on the
11 faculty. His area of expertise includes journalism
12 ethics, trends in journalism, and the history of
13 communications.

14 He continues to contribute to "The New
15 Yorker" as a staff writer, has published five books,
16 written widely in publications like the New York
17 Times, The New York Review of Books, and Slate, and
18 for Atlantic Monthly, Washington Post and Texas
19 Monthly.

20 As the chairwoman said, his topic today is
21 "The Wall." As much as I think we are all hoping
22 for an air guitar rendition of the Pink Floyd
23 ground-breaking album of the same name, Professor
24 Lemann will actually be addressing an even more
25 provocative kind of wall, and that's the wall

1 between editorial and advertising, its origins and
2 purpose.

3 Please join me in welcoming Professor
4 Lemann.

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1 THE WALL BETWEEN EDITORIAL AND ADVERTISING:
2 ITS ORIGINS AND PURPOSE

3 PROFESSOR LEMANN: Thanks. Thanks,
4 Lesley. I think, given the title today, I was
5 thinking instead of the air guitar, I should have
6 worn my blackout aviator shades and not shaved, so
7 as to resemble Robin Thicke more closely. But then
8 I thought that's kind of a lost cause.

9 So thank you for inviting me. And I'm
10 mindful that the next panel has to start pretty
11 soon, so I will try to be brief and just set some
12 background to our topic.

13 In the beginning, journalism was not
14 really a commercial endeavor. The first versions of
15 something we would recognize as journalism began to
16 appear in the late 1600s. It consisted of printed
17 and disseminated expressions of political opinion or
18 first-hand accounts of events, the most notable
19 being public hangings by the way, and secondarily
20 proceedings of legislative bodies.

21 In the United States, the early newspapers
22 were owned and operated by printers, like Benjamin
23 Franklin, or by political interests. In the
24 mid-nineteenth century, the political parties were
25 the main source of economic support for newspapers.

1 It was only after the Civil War that
2 newspapers became a real business that required the
3 development of fast rotary printing presses, and the
4 growth of cities, which provided commercial
5 newspapers with a sizable audience. Newspaper
6 proprietors discovered that they could hire
7 reporters and editors to assemble news quickly and
8 expertly, print the fruit of their labor, and sell
9 it in the streets of the city for prices ranging
10 from a penny to a nickel. Anybody seen Newsies?
11 You get the picture.

12 Street sales, as the original business
13 model for news, required editorial content that was
14 timely and attention-getting, as is the case for
15 online journalism today. Advertising became an
16 important part of the revenue of newspapers in the
17 late nineteenth century. Once a paper had acquired a
18 sizable audience, it could plausibly argue that
19 buying advertising space, priced according to the
20 size of the audience, would help businesses to sell
21 their products. That argument is still around,
22 though as I'll mention later in my talk, it seems to
23 be losing force.

24 According to Hazel Dickens-Garcia's 1989
25 book called Journalistic Standards in Nineteenth

1 Century America, total newspaper advertising revenue
2 was \$1 million in 1850, \$27.5 million in 1880, and \$95
3 million in 1900.

4 The argument that advertising was a
5 corrupting factor in journalism was very quick to
6 appear. A prominent Irish-American actor playwright
7 named Dion Boucicault wrote in 1887 in the North
8 American Review, which was then one of the most
9 prominent magazines in the country, and now I'm
10 quoting him, "When it was apparent that revenue
11 arising from this source was enormous, the newspaper
12 attracted the attention of capital as an important
13 investment. And it soon became a commercial
14 enterprise to which all other considerations were
15 subordinated.

16 The only business of the newspaper
17 proprietor was to increase its circulation by any
18 means, for on its circulation depended the value and
19 number of advertisements. In this sordid struggle,
20 the editor and staff were instructed by the
21 proprietor to pander to the degraded appetites of
22 the reader."

23 As early as the 1870s, there were
24 discussions of the kind we are having today about
25 establishing clear distinctions between the

1 editorial matter and advertising in newspapers.
2 Richard Grant White, who was the father of the great
3 architect, Stanford White, wrote in 1870, "It should
4 be understood that payment for advertising secures
5 the advertisement and nothing more."

6 Hazel Dickens-Garcia quotes a Maine editor
7 named William Sampson, complaining in 1876 about the
8 practice of newspapers publishing articles called
9 puffs, that touted the products of their
10 advertisers, without revealing the financial
11 incentives underlying the articles.

12 In 1905 and 1906, Collier's, another
13 prominent but now defunct American magazine,
14 published a sensational series of exposés about the
15 then completely unregulated patent medicine
16 industry. Patent medicine, at that moment, was by
17 far the biggest advertiser as an industrial category
18 of the United States.

19 And these articles included damning
20 material about the industry's practices. In an
21 article called "The Patent Medicine Conspiracy
22 Against Freedom of the Press," a journalist named
23 Mark Sullivan, writing anonymously, reported that
24 the standard advertising contract between patent
25 medicine companies and newspapers, which he had

1 leaked to him by somebody, declared that the
2 contract was subject to cancellation, "In case any
3 material otherwise detrimental to the company's
4 interests is permitted to appear in the reading
5 columns or elsewhere in the paper."

6 These exposés help create the climate that
7 led to the establishment of the forerunner agency of
8 the Food and Drug Administration in 1906. Federal
9 bureaucracy buffs will remember that the FDA was
10 part of the Department of Agriculture in its early
11 decades.

12 In 1912, Congress passed a law called The
13 Newspaper Publicity Act, which is one of the few
14 American instances of government regulation of the
15 press and it is still on the books. Using the
16 threat of taking away the lower postal rates that
17 have long amounted to an implicit government subsidy
18 of the press as leverage, it required newspapers to
19 publish accurate information about their ownership,
20 management, circulation. And you still see these
21 annual notices in magazines that you subscribe to by
22 mail around this time of year. And also to label
23 advertisements that have been designed to look like
24 editorial matter.

25 The American Newspaper Publishers

1 Association immediately challenged the law on First
2 Amendment grounds and the case made its way to the
3 Supreme Court quickly. And in a 1913 decision, the
4 ANPA lost and the law was upheld.

5 The following year, the Federal Trade
6 Commission was established. From the beginning, it
7 has monitored advertising for deceptiveness, and I'm
8 going to define beginning even more generously than
9 you did, both in the claims it makes and in its
10 attempts to disguise itself as something other than
11 advertising. Three of the five complaints the FTC
12 issued in its first year of operation were about
13 advertising practices.

14 It's important to note, however, that both
15 the advertising industry and news organizations,
16 initially newspapers and magazines, later radio and
17 television, undertook to self-regulate to prevent
18 deceptive advertising. That was partly because of
19 the natural urge of any business sector to avoid
20 being regulated by government and partly for reasons
21 of economic strategy.

22 In the early twentieth century, when a
23 national consumer market was being established, the
24 largest advertising agencies and their clients
25 perceived that it was in their interest, as they

1 sought to compete with more marginal entities, to
2 make advertising respectable.

3 The FTC's first public hearing on
4 deceptive advertising practices, which was held
5 almost to the day 98 years ago, on November 23,
6 1915, was staged in cooperation -- eager cooperation
7 with the Advertising Trade Association, which had
8 declared, "We are a natural ally to the Federal
9 Trade Commission."

10 In journalism, long-term subscriptions
11 were beginning to replace single copy sales as the
12 primary direct source of revenue from readers, at
13 least for publications aimed at a more affluent and
14 educated audience. Sustained trust and loyalty,
15 rather than immediate interest, was the key to
16 bringing in subscription revenue. This dictated
17 more substance and sobriety editorially and it also
18 implied a potentially profitable advertising
19 strategy.

20 Advertisers who saw themselves as
21 purveying a prestigious brand could be persuaded
22 that a subscriber-based publication could bring
23 their product to the attention of affluent,
24 committed readers. Publications saw that, to make
25 this system work, they had to keep both their

1 editorial and advertising content clean and classy
2 and obviously separate them from each other.

3 For many years, the most established news
4 organizations, individually and collectively through
5 industry associations, have endeavored to police
6 their advertising for deceptiveness, for general
7 ickiness, and for attempts to misrepresent itself as
8 editorial content. For my whole career in
9 journalism, I have worked for publications that hued
10 to advertising guidelines promulgated by the
11 American Society of Magazine editors. The most
12 recent revision of these was published just this
13 fall.

14 I should say, you know, per our discussion
15 and somewhat in this lingua franca of journalists,
16 these separations have names like The Church/State
17 Divide, The Chinese Wall, The Firewall, et cetera.
18 And it may mark me as being of a certain age to say that
19 not all that long ago, at least in very established
20 news organizations, these separations were regarded
21 as absolute.

22 And again, I want to be clear, it was
23 partly a matter of sort of professional pride and
24 even vanity, on the part of journalists, and partly
25 a matter of self-interest. That the thought was the

1 value proposition, as management consultants would
2 say, of the publication was a sense of trust around
3 the editorial content and that that was what they
4 were selling to their advertisers. And that if they
5 vitiated that, they would be hurting themselves.
6 And that was what led news organizations, the more
7 prominent, established news organizations, mostly
8 not to need a lot of prodding from our friends at
9 the FTC to do this.

10 One unfortunate result, I would say as an
11 aside, is that journalists, at least of my
12 generation, grew up thinking that we never have to
13 engage with these issues at all because they've all
14 been settled for all time, which is unfortunate.

15 Just as a little natural experiment, is
16 anybody in this room a working journalist who isn't
17 covering this event and is only here because you
18 feel, as a journalist, this is a topic you should be
19 of interest to you? That's about what I thought. I
20 count two.

21 You know, my school, Columbia Journalism
22 School, when it was founded by Joseph Pulitzer in
23 1903, he wrote a kind of manifesto and he said, I
24 insist that no one who attends this school ever be
25 taught anything about the business side of

1 journalism or how journalism is resourced because
2 that would corrupt them. And in addition, he didn't
3 want anyone to be taught about anything about how
4 you gather an audience for a news publication
5 because that, too, would be corrupting.

6 In recent years, for reasons I'll give in
7 a minute, we've -- I guess we would say adapted Mr.
8 Pulitzer's views to the present by saying, you know,
9 if you want to be in journalism, you need to know
10 something about how journalism gets paid for, how it
11 attracts people and, horror of horrors, you even
12 need to know something about media policy, other
13 than shield laws, which is the one thing journalists
14 traditionally think they need to know about media
15 policy.

16 So in my time as dean, I repeatedly staged
17 events about various aspects of media policy, mostly
18 with the FCC at the school, all of which had about
19 three students in attendance. But I applaud the FTC
20 for doing this today and for inviting me, because I
21 do think, you know, working journalists need to
22 engage in this more than the numbers would show we
23 are.

24 Codes of conduct exist as a bulwark
25 against the relentless daily pressure to offer

1 advertisers something special in exchange for their
2 business. And even so, they're usually produced
3 only by established players and mature industries.
4 The online news landscape has relatively few
5 inhabitants like that and it's important to
6 understand, as a backdrop to the current situation,
7 that news organizations in the so-called legacy
8 media, which by the late twentieth century had
9 become overwhelmingly economically dependent on
10 advertising, are seeing alarming declines in their
11 economic situation with no end to the trouble in
12 sight.

13 The most vivid local example of many,
14 many, many that I could provide is that of the
15 Washington Post Company, which first sold Newsweek
16 for a dollar and then sold the Washington Post
17 earlier this year for 250 million dollars, which is
18 a fraction of what it would have fetched a decade
19 ago. The Washington Post building sold for almost
20 as much as the newspaper sold for, so that gives you
21 the magnitude, by one example. And there are many
22 more of the total enterprise value collapse that is
23 so alarming journalists.

24 The legacy organizations initially
25 believed that if they could establish online

1 presences and build up large audiences there, they
2 could get generous advertising revenue in the
3 traditional manner. That has not happened. In the
4 legacy media, advertisers usually had to buy the
5 entire audience at a steep price. Online, they have
6 the luxury of paying far lower rates to reach far
7 more highly targeted groups of potential customers,
8 often through sites like Google, Facebook, and
9 Twitter, that are more widely distributed than any
10 news organization site could ever be, but have
11 successfully avoided the bother and expense of
12 producing editorial content.

13 Google alone, one company, is on track to
14 surpass the entire newspaper industry in advertising
15 revenue within the next few years.

16 I want to just take one more minute on
17 this to just underline what the situation is from a
18 journalistic or content creator point of view.
19 Here's how we operated.

20 We, a magazine, a newspaper, just using,
21 say, The Washington Post as an example, would
22 assemble an audience and the audience would be, you
23 know, the Washington metro area newspaper
24 readership. It was a very big audience and thought
25 to be very desirable to advertisers. And with a lot

1 of exceptions, but the general rule was that if you
2 wanted to reach this audience, which you of course
3 would want to reach, because The Washington Post had
4 all this data that showed that, you know, their
5 readers bought a lot of products and were educated
6 and all those kinds of things, you had to buy an ad
7 in the whole paper. You didn't know which of the
8 million readers, let's say, on Sunday were reading
9 your ad or in any way responding to your ad, you
10 were kind of out of luck from that standpoint. You
11 had to buy a rather expensive ad in the whole paper
12 because that was, you thought, your only way of
13 reaching these people.

14 Now, if you are the advertiser, the auto
15 dealer, the department store, whatever, you know,
16 you could have a meeting back at your office, I
17 assume, and somebody would say, why do we have to do
18 this? Why can't we put up a billboard? Why can't
19 we hand out flyers directly? Why do we need to go
20 through The Washington Post as our sort of medium to
21 get to our audience?

22 And I guess what would happen in those
23 conversations, which I wasn't in, was something
24 like, you know, The Washington Post has established
25 so much trust and so much sort of essentiality with

1 its editorial content, that just being in the
2 neighborhood of it clearly differentiated from it
3 some of that trust kinds of rubs off on you. That
4 people are subliminally saying, well, if it's in The
5 Washington Post, then Ourisman Chevrolet must be a
6 good place to buy a Chevrolet.

7 So that was the world I grew up in and
8 that's the world that's being kind of obviously
9 blown apart online. And when The Washington Post,
10 say, built up a very large, much larger than in
11 print, notion of online circulation. It thought,
12 well, we can just go to the same advertisers and
13 say, pay us the same cost per thousand readers to
14 reach our online audience.

15 And the horrible surprise of the last, you
16 know, five to ten years has been the advertisers
17 say, no, sorry. We don't do that online. And
18 there's a lot of debate, I'm sure we'll hear about
19 this today, as to why they've said that.

20 One item is that online advertisers can
21 only buy part of the audience much more easily.
22 They don't have to buy the whole audience. Also, as
23 I mentioned, you have the social media sites and
24 search sites as competitors, offering you very, very
25 targeted, you know, don't you just want to reach

1 people who we know have thought about buying a
2 Chevrolet in last month? Because we can deliver you
3 those people.

4 And also, it turns out that The Washington
5 Post reader online will spend 10 seconds or so per
6 visit, as opposed to an hour with the print paper,
7 so the advertiser isn't buying so much attention.
8 And this creates a sense bordering on desperation in
9 folks who are creating editorial news content about
10 what in the world are we going to do because this is
11 collapsing so quickly. We have to find some way to
12 remake our compact with advertisers.

13 The legacy publications are, you know, in
14 a pickle. The new publications aren't socialized in
15 the world of the Chinese Wall or the Church/State
16 Divide, and so it creates the kind of chaotic
17 situation that existed in the days when the FTC was
18 created.

19 So the online news organizations have
20 begun a wide variety of advertising practices that
21 we're here to discuss today, and so have advertisers
22 as well. I want to stress again, these are
23 inventions mothered by necessity in a business
24 sector where, to put it gently, fewer than half the
25 entities, as far as I can tell, are operating

1 profitably online. It may be even more than that.

2 I'm not going to go into detail about
3 native advertising, sponsored content, sponsored
4 micro-sites, paid links, product placement, and so
5 on because other presenters will do that indeed.

6 I'm pleased to be here today so I can
7 listen to this, because you all know a lot more
8 about this world than I do. My assignment was to
9 provide a historical baseline and that's what I've
10 tried to do.

11 I'll end just by saying that there is no
12 perfect, naturally occurring, set of standards for
13 the relationships between and among advertisers,
14 news organizations, and audiences. Such standards
15 are always created in an atmosphere of some
16 contention and then they have to be enforced. No
17 one here today should be discouraged that this
18 subject is something that we all have to sit down
19 and discuss. It was ever thus.

20 Thank you.

21

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1 PANEL 1: SPONSORED CONTENT IN DIGITAL PUBLICATIONS:
2 THE FORMS IT TAKES AND HOW IT OPERATES

3 MS. SULLIVAN: Thank you, Professor
4 Lemann, for providing that wonderful baseline for us
5 to start the discussions today.

6 As Chairman Ramirez mentioned, the first
7 panel were going to dive a little bit into how
8 native advertising works. What it looks like, what
9 the relationships are in creating it, and touch upon
10 the issue of transparency in native advertising.

11 We have a wonderful panel today. We have
12 representatives from, what we like to say, all sides
13 of the ecosystem. With us are Adam Ostrow from
14 Mashable, Tessa Gould from Huffington Post, and Todd
15 Haskell from Hearst Corporation, Hearst Digital.
16 And they will be, you know, representing the
17 publisher side of the mix here.

18 We also have some who occupy the middle
19 in this native advertising landscape. Jon Carmen
20 from Adiant and Lisa LaCour from Outbrain.

21 And finally, wrapping up the panel -- and
22 you know, bear with us, it's a large panel here.
23 Hello down there to Chris and Steve. We have Chris
24 Laird from P&G and Steve Rubel from Edelman.

25 And to open up, I wanted to pose a

1 question to all of you. And first of all, I want to
2 thank you for being here and, to kind of frame the
3 discussion for the audience, it's been mentioned --
4 native advertising has been defined to kind of cover
5 a large and broad category of advertising.

6 Today, our focus is looking at advertising
7 that mimics the format or matches the format and the
8 function of editorial content and looking at the
9 blurring of the lines between advertising and
10 editorial.

11 The first question I'd like to pose to
12 you, to everyone here on the panel, is to give us a
13 little background on what types of native
14 advertising products that you offer, your companies
15 offer, develop, or use and, you know, where your --
16 you know, provide a little background on your role
17 in the ecosystem. And, Adam, could you start us off?

18 Mr. OSTROW: Sure. Thanks, Laura, and
19 thank you to the FTC for inviting Mashable to
20 participate today.

21 For those of you who aren't familiar with
22 Mashable, we are a digital media company founded in
23 2005. We cover innovation, ideas, and culture. We
24 reach an audience of nearly 30 million people every
25 month and we like to think of ourselves as one of

1 the most social publishers on the web. We have more
2 than 13 million people that follow us across
3 Twitter, Facebook, Pinterest, and other social
4 networks. More than a third of our traffic actually
5 comes from those sites. And each piece of content
6 that we publish on Mashable is shared more than 2,500
7 times in total.

8 Now, I'm thinking about the branded
9 content, native advertising discussion, whatever you
10 want to call it. It's really been something that's
11 been a part of our business since we started
12 thinking about how to monetize the site five or six
13 years ago. And our approach has always been to
14 marry the themes and ideas and topics that are
15 relevant to brands with editorial content on
16 Mashable that isn't promoting the brand, talking
17 about their products, but aligns with the themes
18 that they're interested in.

19 So a few examples of that that you can see
20 on the screen, one of them is American Express, who
21 came to us looking to reach female small business
22 owners. So what we created on Mashable was a site
23 called -- sorry, a content series, including videos
24 and articles and info-graphics called "The Female
25 Founders Series" where we profiled female

1 entrepreneurs in technology, profiles and videos and
2 vignettes, that we published on Mashable that were
3 presented by American Express.

4 Another example is with Qualcomm, who
5 makes lots of the chips that go inside the devices
6 you are probably carrying with you today. And we
7 call that series "What's inside?" So we took a look
8 at devices like the Nike FuelBand or Google Glass
9 and talked about how they're actually made. We
10 didn't talk about why Qualcomm chips are amazing,
11 but it was all about how the devices that you use
12 every day are made, which is thematically relevant to
13 Qualcomm.

14 A similar example with Marriott, we didn't
15 write about why you should stay at a Marriott hotel,
16 but we created a series called the future of travel,
17 looking at things like the accessories that you can
18 use when you're traveling to charge your gadgets
19 or different apps you can use on your smart phone
20 that help travelers. Next slide.

21 And this really goes into how we disclose
22 it on Mashable, in terms of our transparency. So
23 this is a piece of branded content on Mashable that
24 is part of our Lenovo tech innovators series. So a
25 few different things to take a look at. It has the

1 look and feel of a standard Mashable article, but
2 you can see all the different disclosures I have
3 highlighted in the screenshot.

4 You see immediately above the article,
5 below the lead image, you see the Lenovo logo, as
6 well as text saying this series is presented by
7 Lenovo, and clearly explaining the relationship
8 between Mashable and the advertiser. Elsewhere on
9 the page, immediately above the article we have what
10 we call our story screen. So we don't like to do
11 one-off pieces of branded content. Generally
12 speaking, our advertisers do what we call series
13 with us. A series of five or more articles of
14 branded content. And through the story stream,
15 users can navigate between different articles that
16 are part of that series. And again, up there is a
17 disclosure saying it's presented by Lenovo.

18 Beyond that, there is the display
19 advertising, banner ads as you might call them, for
20 Lenovo that surround the content. Now, this is part
21 of the value to advertisers, but also I think helps
22 disclose the relationship even further to
23 advertisers. And one additional thing to draw your
24 attention to is, on the right rail of the site,
25 immediately below the square-shaped Lenovo display

1 advertisement, you can see what we call our social
2 widget. So this is a promotion for Lenovo's
3 Facebook page, for their Twitter account. Again,
4 this is a value to the advertiser, but I also think
5 something that adds in the transparency that we are
6 able to provide our readers. Next slide.

7 And this is what that looks like on mobile
8 devices. And this is an important issue that I know
9 we'll get into more later today, but Mashable has
10 seen its mobile traffic go from about 10 percent of
11 our audience two years ago to about 40 percent
12 today. So disclosing these relationships on mobile
13 is incredibly important as well.

14 So you can see a similar treatment here.
15 Immediately below the lead image of the story is
16 a -- basically a disclosure, identifying the
17 relationship between Lenovo as the advertiser, and
18 explaining it clearly to our readers. And at the
19 bottom of the article, a display advertisement for
20 Lenovo. Next slide.

21 And finally, this is really Mashable's
22 native ad unit. This is something we call Mashable
23 Lift, which is used to basically amplify and promote
24 the branded content that we work with our partners
25 to create. So similar to how Twitter has promoted

1 tweets and Facebook has sponsored stories, Mashable
2 has Mashable Lift.

3 And what this essentially does is take one
4 of those pieces of branded content and feature it in
5 a unit that lives in the stream on Mashable's home
6 page and can drive traffic to those articles. And
7 you can see how this is labeled. It's -- this is a
8 piece we created for Samsung, it was an info-graphic
9 about how much does it cost to be Spiderman that we
10 created as part of a Comicon sponsorship. And you
11 can see that it is labeled, sponsored by Samsung.

12 One of the interesting things to note
13 about these units is that they are served in a way
14 that's similar to display advertising. As the
15 professor was just talking about, one thing that
16 enables us to do is target content. So if an
17 advertiser only wants their content marketing to
18 appear in certain geographies or on certain devices,
19 we are able to offer that type of targeting as well.

20 That's it. Thanks.

21 MS. SULLIVAN: Thank you, Adam.

22 MS. GOULD: Hi, everyone. I'm Tessa
23 Gould. I'm at the Huffington Post. I'm not sure if
24 it needs any introduction to you all, but if you're
25 not familiar with the platform, it was founded in 2005

1 by Arianna, who is the editor-in-chief today, and a
2 number of other people who you might also be
3 familiar with including Buzz Feed's Jonah Peretti
4 and Kenneth Lerer.

5 So Huffington Post is a super viral
6 platform. We are currently the most shared
7 publisher on Facebook. We've actually been doing
8 native advertising since 2008, when we launched our
9 very first partnership with IBM called Smarter
10 Ideas, which still exists today.

11 I like to think about offering, in the
12 native advertising space, as having three key
13 elements. The first element is content creation
14 services via our HuffPost Partner Studio, which is a
15 team of editors, content creators, social media
16 strategists, that help brands tell stories that
17 resonate with The Huffington Post audience. So
18 these stories can be told through a number of
19 different editorial products. They can be told
20 through slide shows, through feature articles,
21 through quizzes, info-graphics, video. I think we
22 actually have around 15 different types of editorial
23 products that we can recommend to advertisers for
24 storytelling.

25 The second element of our offering is the

1 promotion of this content. So once it's created, we
2 promote it through premium, in-stream, native ad
3 units on The Huffington Post platform.

4 And the third and final element of our
5 offering is the socialization of that content we've
6 created on social media. And as part of the
7 HuffPost Partner Studio offering, we have dedicated
8 separate social media accounts that are separate
9 from the Huffington Post editorial accounts.

10 So I think it's very helpful if I show you
11 this through an example. So if you look on the
12 slide that is up here, you can see that this here is
13 a sponsored listicle that we recently did for Sony
14 Xperia.

15 So as background, Sony Xperia recently
16 released a new product called the Xperia Tablet Z,
17 which is a waterproof tablet. And they wanted to
18 align themselves with some interesting content that
19 would appeal to people who would be interested in
20 potentially buying a waterproof tablet.

21 So we came up with some content ideas for
22 them including this one, which was a listicle which
23 highlighted the eight most fun and interesting water
24 festivals from around the world. In terms of the
25 integration and how it was differentiated from other

1 editorial content, so you can see there on what we
2 call the left screenshot, you can see what we would
3 call sort of an article preview unit. So this is
4 how the Huffington Post entertainment page would
5 appear to people before they click into a unit. And
6 you can see here that the unit that the content
7 appears in has a pill at the top that is colored
8 that says "Presented by Sony." The box is also
9 outlined with a gray line.

10 And then when you click into that box,
11 into the actual article, that same sponsor pill, or
12 the? Presented by Sony" pill will appear. You'll
13 also see that, within the article, we actually
14 identify the reason for the content. So we actually
15 specifically call out that the content was created
16 in part of a relationship with Sony and that, you
17 know, we worked with them to create the content.

18 You can't actually see it on the
19 screenshot, but the advertiser always gets 100
20 percent of the ads on the page as well. So this
21 screenshot was taken before the campaign went live,
22 but you would normally see at least three ad units
23 from Sony on the page as well.

24 Then, the final element is when you are on
25 this article page and if you want to share the

1 content to social media, so you click on the Twitter
2 share button, it will auto-populate a tweet that's
3 been created by our team. And that tweet will, as a
4 best practice, reflect HuffPost Partner Studio as
5 the author. So you know that this content was
6 created by HuffPost Partner Studio, which is our
7 brand and content division, not by our editorial
8 team.

9 And in the next example, this is a brand
10 blog that we did for L'Oreal. And this is a little
11 bit different to the previous version that I showed
12 you in that our blog, or our sponsor blog, brand
13 blog product, is really much more of a thought
14 leadership piece. And in this instance, it is
15 typically the brand, or one of their
16 representatives, creating the content and not
17 HuffPost Partner Studio.

18 So here, L'Oreal has invested a lot of
19 money and time in raising awareness and trying to
20 encourage women to get into innovation and enter
21 innovative fields. And Rachel Weiss, who heads up
22 their digital innovation program, was keen to write
23 a blog on our platform and to promote the program.

24 So HuffPost Partner Studio, we worked with
25 them to come up with ideas for the content that we

1 thought would resonate with our audience, she wrote
2 the copy, we copy edited it, made recommendations
3 and, you know, tweaks and suggestions for how it
4 should be headed up on social media and on the
5 platform, and then we published it.

6 But you can see, it appears differently on
7 the site to the other piece of content in that she's
8 directly attributed as the author in both the
9 article preview, so you can see Rachel's photo and
10 her name. There's still the "Presented by L'Oreal"
11 pill and the box that surrounds the content. And
12 that also appears once you click into the blog.
13 Similarly, had you clicked into the blog while the
14 campaign was live, you would have seen at least
15 three L'Oreal ads on the page as well.

16 And finally, the third element of our
17 offering is the socialization piece. So as I
18 alluded to earlier, we have dedicated HuffPost
19 Partner Studio accounts. So when we socialize the
20 content ourselves, on Twitter, Facebook,
21 StumbleUpon, Pinterest, we have our own accounts
22 that we will publish the content to. As a best
23 practice, we will also tag or identify the brand and
24 the content. If they have a relevant social media
25 account or if they have a relevant hashtag, we will

1 do so. You can see here, here's an example at the
2 bottom of the page that we did for Netflix. And
3 when you click to share that Netflix content to
4 Twitter, in this instance, the NetflixHoliday
5 hashtag appears.

6 Our editorial accounts at Huffington Post
7 may share our sponsored content, but to ensure it's
8 clear to readers who created the content, they can't
9 share it in their own right. They must only
10 re-tweet it verbatim, as it is from our accounts, to
11 make sure it's always 100 percent transparent and
12 clear that the content came from HuffPost Partner
13 Studio. And that's it.

14 MR. HASKELL: Hello, everybody. I'm Todd
15 Haskell from the Hearst Cooperation. We are best
16 known in the magazine space for brands such as Elle,
17 Harper's Bazaar, Good Housekeeping, Esquire, Popular
18 Mechanics, about 20 magazine brands, all of whom
19 have a very vibrant presence on the web.

20 But overall, I think we are the only
21 legacy publisher represented on this panel, because
22 we've actually been in this business for about 125
23 years. And whether it's with our magazine brands or
24 our newspaper brands, these are brands that are
25 built upon a relationship of trust with our readers

1 that goes back, as I said it, 125 years.

2 So I think, as we think about, as an
3 organization, how we are going to approach the ideas
4 around native content, it is grounded in that
5 underlying idea which is that, above all else, our
6 readers trust us for information, for entertainment,
7 and for ideas and that we can't do anything that
8 would in any way violate that trust of the reader.

9 So everything you are going to see today
10 reflects that underlying assumption. So a couple of
11 examples. This is an example that we did with our
12 Harper's Bazaar brand where Harper's Bazaar --
13 excuse me, where Nordstrom and their partner, Ugg
14 shoes, asked us to create some original content on
15 their behalf to talk about, and this is clearly a
16 big issue for everyone as we head into the winter,
17 how to transition from city to country.

18 So what we did here is, Harper's Bazaar is
19 actually one of the most widely followed brands on
20 Pinterest, so we created custom Pinterest boards and
21 created editorial that you are seeing here, how the
22 reader would interact with this, which was really
23 about how a reader could explore the collection of
24 shoes that Nordstrom and Ugg was presenting.

25 What the reader could then do after is

1 look through this curated collection of content and
2 then, not only browse through shoes, but then also
3 share them, whether it was on their own Pinterest
4 board, through Facebook, or on Twitter. When you
5 were able to click through, it actually linked
6 through to a fully functional e-commerce experience.

7 But overall, what the underlying strategy
8 was, was that our readers come to us for, in the
9 case of Harper's Bazaar, for ideas about what they
10 should be wearing for this season. So how can we
11 present an advertiser's message in a way that was
12 very clear to the reader that it was coming from an
13 advertiser, it has the Ugg and Nordstrom logo on
14 every page, but do it in a way that takes into
15 account what we know makes readers take action. And
16 that's what we did in this case.

17 In the next case that I'll show you was an
18 example of where an advertiser came to us and said,
19 can you actually help us curate your existing
20 content and create a really powerful experience for
21 advertisers. And in this case, it was for a brand
22 called Tyson Nudges. Dog lovers might remember this
23 brand, it was essentially a dog treat.

24 So here's what we did is, instead of -- we
25 took our existing content and for our magazines like

1 Country Living and Woman's Day and Good
2 Housekeeping, very high percentages of dog owners,
3 so what we did is we created some of our best
4 collection of content and embedded it in ways that
5 are very clear to the reader. You'll see here on
6 this example on Country Living, you can play the
7 video, as the reader goes through it, you'll see
8 very clear advertising messages that are completely
9 transparent to the reader. Click on those, it will
10 actually take you to the Tyson Nudges Facebook page,
11 let you look through our collection of Instagram
12 photos of the best dogs. My dogs are not in the
13 picture but they should be.

14 But as you can see here, it really goes
15 through fully curated collection of some of our best
16 content relating to dogs and their parents and why
17 people love them. So it's a little different then I
18 think what you hear about from folks like my
19 colleagues here at Mashable and Huffington, but
20 again it's the same idea of taking the DNA of why
21 people interact with our editorial content and
22 presenting advertising in ways that take that
23 essence, but do it in a way that's completely
24 transparent to the reader so the reader knows
25 exactly what it is.

1 The last example I'll show very quickly is
2 with an example that we did with our Seventeen
3 magazine brand, to show that also these things can
4 very effectively live on mobile platforms. But the
5 underlying assumption is very much the same, it has
6 to be very clear to the reader.

7 So here what we did with the Keds brand
8 was to present the best kicks for the back-to-school
9 season. You can play the video now, if you wouldn't
10 mind. As you see here, you're reading an article,
11 as you get to the bottom, it's a little slow, but
12 you will see, at the bottom, is a traffic driver
13 which says "Take a look at these great new shoes for
14 the season." There it is right there. It appears
15 to be locked up, but it essentially says, "Great
16 kicks for the season, presented by Keds." You then
17 click through to there and you'll see content on
18 great shoes, presented in a way that is very
19 consistent with the way we present our editorial
20 content, but in a way that is always very clearly
21 labeled.

22 So overall, we find this to be very
23 consistent with our values and what we've used to
24 build our businesses over the past 125 years. And
25 interestingly enough, we've been doing this for a

1 number of years now. The feedback we've actually
2 gotten from readers has been very, very positive.
3 In the same way that people pick up a copy of Elle
4 or Harper's Bazaar, advertising is a critical part
5 of the equation. It's part of the reader
6 experience, it adds to the value of that reader, why
7 they pick up the magazine.

8 We feel that advertising, presented in a
9 way that is transparent and of a high quality
10 manner, done online using those same ideas, is a
11 value to the reader, as long as it's done well. And
12 that, I think, is what you're going to hear from
13 everyone here. One of the critical facets of native
14 advertising is that, what someone said very
15 famously, it shouldn't suck. When native
16 advertising is done well, as I think you've seen in
17 these examples, it's really powerful and it's really
18 good for the reader and it's good for these
19 businesses, but it needs to be done well.

20 So, thank you.

21 MR. CARMEN: Hi, there. My name is Jon
22 Carmen, I'm the senior vice president of operations
23 for Adiant. And thanks for having us on this panel,
24 we really appreciate it.

25 So Adiant is the parent company for the

1 Adblade content style ad platform. We also just
2 recently acquired the Industry Brains product from
3 MarchEx. Both AdBlade and Industry Brains offer
4 content-style advertising.

5 We consider native advertising to be a
6 subset of content-style advertising, so six years
7 ago, we created the News Bullet Ad Unit, so News
8 Bullets are set up to resemble a news headline and
9 are typically displayed inside the content of
10 national and local news websites.

11 We work with a wide variety of advertisers
12 from the paid discovery advertisers, like Sports
13 Illustrated or Time, direct response advertisers
14 like Lower My Bills, as well as brand advertisers
15 like American Express. Our network of publishers is
16 approximately 80 to 90 percent of the national and
17 local news websites in the U.S., reaching about 300
18 million monthly uniques. And we also offer a
19 self-service advertising platform where advertisers,
20 large and small, can create their own content-style
21 advertising platforms.

22 MS. LACOUR: I'm Lisa LaCour, vice
23 president for global marketing at Outbrain.
24 Outbrain is a content recommendation that you've
25 probably used many times. We are presented mostly

1 at the bottom of article pages of all of the major
2 publishers across the web. We have a global reach
3 of about 390 million UVs.

4 What Outbrain does is we actually provide
5 content recommendations to the online audience, and
6 that's either or editorial page content. So the
7 difference between us and a lot of others is that we
8 only allow content in our network. So we have
9 strict editorial guidelines that we abide by and
10 we -- to echo what Todd was talking about, we put
11 the audience and the audience trust factor, at the
12 forefront of everything we do. So we actually
13 reject about 50 percent of the content that comes
14 into our network. We always have the audience
15 trust, to make sure that we are providing in
16 anything in our network is actually good, high
17 quality content.

18 We perceive ourselves as we don't
19 necessarily claim to do native advertising, the
20 way -- the same as some of our publisher clients
21 may, but we are absolutely natively placed within a
22 customer -- a consumer environment and linked to
23 content, which is part of the content well.

24 So if you look at the example -- there's
25 an example on the screen right now. This is a good

1 example of how we are placed on the page. There's
2 two parts to our widget. One is the "Recommended
3 for you" at the top of the page. As you can see,
4 there's a mix of editorial and sponsored content
5 here. There's a couple of disclosures that we have.
6 The two to the -- depending on where you are
7 sitting, the right or the left, you'll see there's
8 target on Smithsonian and gray comments on the side.
9 Those are the paid content links that actually link
10 out to the third-party site. And also the
11 "Recommended by Outbrain" that you'll see throughout
12 the web in a variety of fashions and forms. When
13 you click on that, we're very explicit in saying
14 that the content that is linking out to third
15 parties is actually paid from an advertiser.

16 On the bottom part, "From Around the Web"
17 on the left-hand side, you can see that we have a
18 mix of publishers and brands that use Outbrain to
19 drive traffic to their content. You can see, again,
20 in the gray at the end of each article, link, or
21 paid link, you can see that we disclose the
22 advertiser and the third-party link that you're
23 going to.

24 If you go to the next page, here's another
25 example. The top part of this, "More from ABC News"

1 is actually those three links, link-out to videos
2 that are actually editorial content on ABC. And
3 below that, again, where you'll see, from around the
4 web, there is three paid links there as well.

5 And then of course the mobile shot. Very
6 similar, we make sure that we have the same
7 disclosure for mobile.

8 MR. LAIRD: Thank you. Hey, everybody, I'm
9 Chris Laird. I'm from Procter & Gamble. And thank
10 you very much to the FTC for inviting P&G here
11 today. It's a privilege.

12 I work in the brand operations part of our
13 marketing organization, so I don't work on one
14 specific brand. I work on what is essentially a
15 service organization that serves the brands and puts
16 them in contact with great partners in spaces like
17 media, promotions, et cetera. to make sure those brands
18 can deliver on their marketing objectives.

19 So as you probably know, P&G is a leading
20 consumer products manufacturer. We have \$20 billion
21 brands globally. We compete in dozens and dozens of
22 categories and most of our brands are number one or
23 two in their category. And we are, first and
24 foremost, a brand-building company. So you'll see a
25 lot of my comments today are based on the notion

1 that we're here for the long-term. We are here to
2 build long-term, sustaining brands that have a lot
3 of trust and are transparent to consumers.

4 And so the way we approach this area is
5 based on that, so my examples will kind of touch on
6 that as well.

7 So here's a pretty basic example. Secret
8 is the number one female deodorant in North America.
9 It is obviously all about wetness protection and
10 deodorizing, but it's also about confidence as a
11 high-order benefit. And so the brand wants to,
12 wherever possible, in the consumer's mind, link the
13 brand name to the equity, to the higher order equity
14 of confidence. So this is a tactic that the Secret
15 brand used with our partners at BuzzFeed to sponsor
16 content that is basically engaging, entertaining
17 content, humorous content, about people who think
18 they -- who have a lot of confidence, and maybe too
19 much. It's very well branded and it's actually
20 quite funny stuff.

21 And if you click on the link, you go to
22 the open content page, which has a series of videos
23 that's branded Secret and you can share it through
24 social channels. This is a very similar example to
25 some that you've seen. Importantly, the brand

1 travels with the content as it goes across, through
2 the social channels. That's critical. That's the
3 reason we do it, so the brand is linked to not only
4 the content, but also it's driving the equity, so
5 you see the word confidence in the headline of the
6 content as it's shared out through Facebook.

7 The next example is a bit more
8 sophisticated. Our Pantene brand partners with a
9 company called Studio One, which is a combination of
10 a content producer as well as a distributor. In
11 partnership with Studio One, but at total
12 arm's length, Studio One produced a content
13 publication called "The Style Glossy." Pantene is
14 obviously a shampoo brand, but it also wants to
15 stand in consumers' minds for concepts like style
16 and getting the look that you want.

17 And so Pantene wanted to really attach
18 itself and drive a high order of benefit of that
19 through this native advertising execution. So
20 basically what Studio One does, it will, at
21 arm's length, go off and hire writers to create the
22 content around Style Glossy, it will then help us
23 distribute that content through the Internet,
24 through what they call syndication. So other
25 publications and other media channels around the web

1 will use Style Glossy content on their publication
2 to highlight or to create content for a specific
3 category.

4 So in this case, it's Newschannel5.com.
5 When you open the article again, the brand continues
6 to travel with the content as it moves across the
7 web and through social channels, and when it's
8 Tweeted out or shared on Facebook, so amplified
9 through social media.

10 It's important to know that one of the key
11 reasons we do this is we feel, in many, many
12 respects, native advertising is more shareable. So
13 a huge percentage of the reach and the amplification
14 that we get from this isn't from the actual traffic
15 to the destination, it's from what gets distributed
16 out across the web.

17 The last example I really like, because
18 it's actually part of a much broader idea for the
19 Tide brand. So Tide obviously, the number one
20 detergent in America, stands for superior cleaning
21 in the category and has a unique content production
22 ecosystem with our partners that allows it to
23 capitalize on current events and link the branding
24 to that current event.

25 So in this case, I'm not sure if anybody

1 saw this, but a while ago there was a NASCAR race,
2 there was a spill, an oil spill on the track, and
3 Tide was actually used to clean up the oil spill,
4 okay? Our agile content production ecosystem
5 created content around that, actually a 15-second TV
6 commercial was created and a whole long tail of
7 content was created around that. And one of the
8 channels we pushed that content out through was
9 syndication through publications like Parent
10 Society. But obviously the brand followed it the
11 whole way through that ecosystem. In fact, the whole
12 point of doing it is to link the content and link
13 the story with the Tide brand.

14 That's it.

15 MR. RUBEL: So hi. I'm Steve Rubel. I'm
16 a chief content strategist for Edelman.

17 And if you're not familiar with Edelman,
18 we are the world's largest public relations firm and
19 we're headquartered in New York and Chicago, with
20 offices around the world.

21 If you think about our business, we have
22 had largely one kind of relationship with the news
23 media for our 61-year history. And that has been
24 grounded in working with editors and reporters and
25 journalists to give them what they need to do their

1 job and to tell their own story, in their own voice,
2 in a balanced kind of way. And that's been the
3 point of our business and how we've, you know,
4 extended that out through social media and kind of
5 what we call, or what the industry might call
6 so-called earned media, in the sense that we have to
7 earn the right to be written about or covered.

8 As native advertising and sponsored
9 content has blossomed, it's obviously become very
10 interesting to our business. And so we now see it
11 as kind of one arrow in our quiver of different
12 things that we can do, which also includes what we
13 call so-called owned media, which is creating
14 websites or experiences for our large clients, which
15 include mostly large multinationals.

16 We really gave a lot of thought to where
17 sponsored content and native advertising should fit
18 in a PR-centric service mix. And we have a model,
19 which is on the screen right now, that we call the
20 Edelman Media Cloverleaf, that basically
21 characterizes different types of channels. Not so
22 much by ownership, but by characteristics, whether
23 they be traditional media companies, hybrid media
24 companies, which are digitally natives such as
25 Mashable and Huffington Post, brand or corporation

1 as a media company, in that lower left quadrant, and
2 then the social channels. And we view this as a
3 whole ecosystem, where we have a whole different
4 array of places we have to help our clients tell
5 stories.

6 At the center, we have three different
7 strategic assets at our disposal. One is the use of
8 search, and to think about the impact search has in
9 helping people discover content, we have visual
10 storytelling, an icon there, to kind of symbolize
11 the fact that a lot of what we have to do has to
12 start with content. And then we -- and this, in our
13 organization, is an important tool for us. We did
14 not have any kind of way to represent paid. We
15 really didn't have any sort of large paid business
16 for a long time.

17 We gave a lot of thought to it and
18 we now think of sponsored content and native
19 advertising specifically as it relates to paid
20 amplification. We use the different platforms, we
21 work with the publishers, we work with the
22 technology companies, to use sponsored content to
23 amplify either earned messages that we already have
24 secured, such as the technologies that let you pay
25 to have that content discovered, or to create or

1 co-create earned -- I mean new content that would
2 sit on media company channels.

3 We are -- in no way do we feel that
4 sponsored content should trump so-called earned
5 media and what journalists do and write and say in
6 their own voice, nor do we see it in any way as a
7 replacement for that kind of work. We believe the
8 two can sit together very nicely, to complement each
9 other and to make sure that our clients' messages
10 and their point of view is communicated to as broad
11 an audience as possible, around the themes that they
12 want to be known for.

13 So that is currently how we use sponsored
14 content and native advertising. For us, it is a way
15 to have a wider relationship with the media that is
16 grounded on the publishing side of the house, the
17 sales side, where as most of the work that we've
18 done has been editorial. We've been very thoughtful
19 about where this sits in our mix and that's how
20 we're pursuing it. It's one part of what we do that
21 coexists with everything else that we've done for 61
22 years.

23 MS. SULLIVAN: Thank you. We've heard
24 today that, in many ways, this form of advertising
25 is not a new phenomenon. But in digital, it may

1 present new opportunities. It may work differently.

2 And, Todd, as a -- coming from a legacy
3 publisher perspective, what do you see as the new
4 opportunities in digital, as opposed to maybe how
5 Hearst has been working with this type of
6 advertising for many, many years?

7 MR. HASKELL: Sure.

8 MS. SULLIVAN: Offline.

9 MR. HASKELL: Sure. Well, I believe one
10 of the things that makes a difference is we have the
11 ability, when we create one of these experiences on
12 behalf of an advertiser, we have much more ability
13 to cross-promote it across multiple brands.

14 You know, so historically in the days of a
15 print advertorial, if we did an advertorial in Good
16 Housekeeping, we generally could not drive traffic
17 to it, per se, from Woman's Day, in the print
18 products.

19 All of a sudden now, we have the
20 opportunity, as an ecosystem with significant scale
21 across our 20 sites, now to cross-promote and drive
22 traffic into these sponsored content experiences.
23 So all of a sudden, they can scale much, much
24 greater than, in many ways, then we used to be able
25 to with our legacy products.

1 And then working with, you know, partners
2 like Outbrain, we can actually work with third
3 parties to help drive people from outside of our own
4 ecosystem into these experiences. So we can scale
5 them much more.

6 And then, on the opposite side, what we
7 also have the ability to do is, when these things
8 are created well -- and again, that is the
9 underlying concept with this is, when they are
10 created well, readers want to share them out. So
11 all of a sudden, our reader, which is our most
12 important asset, is all of a sudden actually
13 becoming even more important, because they are
14 sharing it and they are giving their own sort of
15 stamp of approval on this content, when it is
16 produced well, and they actually distribute it
17 themselves through social media.

18 And we think that is something that's a
19 really unique opportunity. But again, it raises
20 different issues, because you have to make sure that
21 it is very clear to everyone as to how it is
22 produced and how it was recommended by an individual
23 reader.

24 But again, we think that, in many ways,
25 this is sort of a game changer for us and that we

1 are uniquely positioned to take advantage of that
2 among sort of publishers that have been around for
3 more than 100 years.

4 MS. SULLIVAN: Tessa, would you like to
5 comment on that, what Huff Post sees as the
6 opportunities with digital?

7 MS. GOULD: Sure. I think, compared to
8 traditional media and -- because native advertising
9 and sponsored content really has been around for
10 years and years and years, but I think digital presents
11 some really unique opportunities, particularly
12 around engagement, right? Sharing sponsored content
13 on an advertorial that was only available previously
14 in a magazine actually required you probably like
15 rip out the page and like put it in an envelope and
16 send it to your friend, right? Now, that is a
17 totally different process now with digital. It's so
18 much easier and has the ability to like get so many
19 more eyeballs. I think that's one really big,
20 really big benefit.

21 I think another benefit is the increased
22 sophistication that comes with technology, right?
23 If you're sending out print publications, you have a
24 clear idea of who lives in the household, but you
25 don't actually know who is going to open it up, and

1 if they're actually going to even read it.

2 Where as there is technology, obviously
3 online, where you can actually target the content,
4 and Adam alluded to this as well, you can actually
5 target the sponsored content or the ad to the
6 relevant demographic or the relevant DNA that you're
7 trying to reach. And you can actually more easily
8 track who's viewed it and if it was actually viewed,
9 which is huge.

10 And then I think finally the other
11 opportunity that digital presents is the timelines
12 and the ability to participate and have a point of
13 view and tell a story, it is so much easier. The
14 timelines are so much shorter that brands have the
15 opportunity to participate in a much more real-time
16 environment then they have previously. And I think
17 that's hugely powerful.

18 MS. SULLIVAN: I think, you know, in terms
19 of, we are talking about sharing of content, we are
20 talking about the new opportunities here, and in
21 digital, there also have been concerns cited as,
22 you know, native advertising has become a more
23 popular product, advertising product in this space,
24 concerns about transparency.

25 And I wanted to ask the panel, you know,

1 why, I mean, why is or isn't transparency important.
2 Some of you have already touched upon that it is,
3 but why is transparency important to your
4 businesses? And what are the risks if you don't do
5 it right?

6 MR. OSTROW: I mean, for us at Mashable,
7 transparency has always been front and center. I
8 mean, our readers are savvy, they are sophisticated.
9 I think if we were to mislead them, mislabel things,
10 we would quickly lose their trust. And I think
11 that's been the case in media for a really long
12 time.

13 One thing that we see though with the
14 branded content that we create, a really interesting
15 stat actually, is it is our most engaging content on
16 the site, in terms of time people are spending with
17 it. And I think there's a few reasons behind that.
18 I mean, number one, with branded content, you're
19 talking about more evergreen things. We are not
20 creating news content at the behest of advertisers.
21 Like I talked about in the introduction, it's more
22 about thematically-aligned content that tends to be
23 more featurey, more evergreen, and that content is
24 incredibly engaging.

25 And, you know, as I demonstrated earlier, I

1 think we label it in an incredibly transparent way
2 and the numbers are showing that our readers
3 actually really enjoy that content. It gets shared
4 just as much as our organic content. The units on
5 the homepage that I demonstrated get significantly
6 higher click-throughs than display advertising, you
7 know eight to 15 times in some cases, and I think that's
8 really important.

9 I think, you know, talking about some of
10 the opportunities in this space, I think the big
11 trends that are driving this current fascination, I
12 would call it, with branded content and native
13 advertising, is where consumer attention is going,
14 right? People are living in the streams and they
15 are living in those social streams on their mobile
16 devices.

17 So clients are coming to us because they
18 want to be relevant there. And really, some of the
19 points that Chris mentioned, in terms of what works
20 on social, what do people actually want to follow,
21 what brands do they want to follow, what publishers
22 do they want to follow? They want to follow the
23 brands and publishers that are creating content
24 that's entertaining, that's useful, that's
25 inspiring, and they don't want to just be bombarded

1 with promotions. So smart publishers and brands are
2 creating content that, I think, both has a ton of
3 value for readers, but is also completely
4 transparent to consumers.

5 MS. SULLIVAN: And in terms of
6 transparency, so that we're all operating from the
7 same playbook, I think for the general audience, and
8 correct me if I'm wrong, in saying that transparency
9 means that your readers understand the distinction
10 between what is advertising and what is editorial
11 content that you're providing.

12 MR. HASSELL: And I think -- if I can just
13 tag on to what Adam said, I think one of the other
14 parts, something that is incumbent upon the
15 publisher is also to exercise discretion and
16 judgment in who we work with. And this is something
17 that, you know, for those of us who grew up through,
18 you know, through a sales organization, discretion
19 and judgment is not what salespeople are known for.
20 Which is actually why it's really important for
21 organizations to think about, okay, how can you make
22 sure that you have that injected into the sales
23 process.

24 I think everybody knows about the
25 Scientology kerfuffle with The Atlantic about a

1 year, 18 months ago. And so what we look at at the
2 Hearst Corporation is we want to make sure that we
3 partner with the right brands where the context is
4 appropriate.

5 So you know, having Nordstrom do a
6 high-quality content experience with Harper's Bazaar
7 makes sense. You know, if it was a brand
8 that was just, that just felt off-brand, that wanted
9 to be in Harper's Bazaar or Elle, it is incumbent
10 upon the organization leadership to say, is this
11 going to be jarring to the reader? Is this going to
12 just feel exploitative, that we just took money, you
13 know, for -- because it was a check?

14 And that's something that is really, really
15 important that I think that all of us would express is
16 you have to use good judgment in these things. You
17 have to be partners with the right kinds of brands.
18 You know, we are really proud of the types of things
19 that we've done with the brands that we've partnered
20 with, and I think that's absolutely critical.

21 MS. SULLIVAN: Chris, from P&G's
22 perspective, when you are working with this type of
23 advertising and using it to promote your products
24 and services, where do you see the risk if
25 transparency isn't done right, in terms of from an

1 advertiser's, from a brand's perspective?

2 MR. LAIRD: Yeah, I think the risk was --
3 kind of been stated already which is, I think if you
4 lose -- as a brand-building company, right, if you
5 lose trust with the reader or the consumer of that
6 content, you'll hurt your equity over time.

7 In fact, I'd almost flip it and say, I
8 view transparency less as a requirement, I see it
9 more as a brand-building imperative. It's -- you
10 want to link your brand to the content and you want
11 that link to be all the way through every channel
12 where the consumer would consume the content.

13 So an example I love to use is something I
14 called Dawn ducks. So Dawn is a dish detergent, not
15 very glamorous, and it's the number one dish
16 detergent and it's all about grease-fighting.

17 But Dawn was also being used to help save
18 birds in oil spills, to get the grease out of their
19 feathers. And it's not only a great content
20 platform, it's a great brand-building idea because
21 it communicates both efficacy as well as gentleness,
22 because you can use it on birds.

23 So Dawn has created beautiful content
24 across many, many channels around this concept of
25 environment, of oil spill cleanup, et cetera that's

1 linked to the brand, and importantly linked to the
2 brand. So as it gets shared out, it's linked to the
3 brand, but it's great content that people want to
4 share. It's entertaining, it's informative, et
5 cetera.

6 So I would view it as a brand-building
7 imperative, not as a requirement.

8 MS. SULLIVAN: In those instances where
9 maybe brand equity isn't in the forefront, and I'd
10 like to direct this question to Lisa and Jon, who
11 deal with maybe a broader swath of advertisers.
12 When brand equity isn't in the forefront, you know,
13 what is the importance of it being transparent, if
14 you're moving more towards content style formats for
15 advertising, that readers understand, if you're
16 partnering with a publisher website, that they
17 understand what is advertising and what is editorial
18 content on the site?

19 MR. CARMEN: That's very important to us.
20 And it comes down to, you know, not only trust with
21 reader, but it comes down to a financial aspect as
22 well for everyone involved.

23 So we place our ads on a publisher's
24 website and the publisher makes money on that,
25 clearly. The publisher gets a rev share or some --

1 whatever the agreement is with the publisher, they
2 make some of that money from those ads.

3 So if it's not stated as advertisements,
4 the click-through rates would be higher, but the
5 back end, for those people, either the refinance
6 advertisers or Time and Sports Illustrated that are
7 trying to do an arbitrage model to generate page
8 views or the brand advertiser, the result on the
9 other end, if it's not set up and stated as
10 advertisement, is a lot worse, really, than when we
11 do put advertisement, and we do on all of our ads.

12 The result is better because the advertiser
13 knows -- sorry, the user knows that they're clicking on
14 an ad. And they know that they are going to fill out a
15 form to refinance with Lower My Bills or whoever it
16 is. Or they're going to see 20 images of some
17 baseball player on Sports Illustrated. And you
18 know, they understand that that's what they're going
19 to do as opposed to, oh, this is an ad? Or I thought
20 this was content? So it's very important to us, for
21 advertisers and publishers.

22 MS. LACOUR: And Outbrain takes a
23 different approach, where we don't have
24 content-style ads, we have links to content, right?
25 And some of them are paid and some of them are

1 editorial, and we're pretty explicit in saying that.

2 And because we're within the editorial
3 well, we understand that the audience that's reading
4 within that well is actually in what we call content
5 consumption mode. They're, you know -- and if they
6 click on a piece of content, whether it's editorial
7 or paid, that their mindset is that they're really
8 self-selecting to read another piece of content,
9 right?

10 And, yes, there are ads that we've seen,
11 right? There's the difference between content,
12 editorial or paid content, and blatant
13 advertisements. And that, I think, is where it's
14 really important, what Jon was just saying, is that
15 the difference between going to a landing page that
16 says, buy something, versus another piece of content
17 again, whether it's sponsored or paid.

18 And if it's sponsored, great for the
19 advertiser, right? They're getting someone who is
20 coming from Outbrain. The advertiser, if they're
21 providing another piece of content, that's great and
22 really engaging and adds value, then the audience is
23 happy, just as well as the publisher and the advertiser.
24 It's a win-win for all three.

25 And on the other question, I just want to

1 clarify that the industry is not the only ones
2 pushing for this native advertising and sponsored
3 content, the consumer is also asking for it from
4 brands. Like, we're seeing that in social. There's
5 a lot of research out there saying that the
6 expectation, from a consumer point-of-view, is that
7 they want to engage with the brand. They want more
8 information from the brand. It's not -- they don't
9 want the brand to just sell things to them. They're
10 asking for it as well as the advertisers.

11 MS. SULLIVAN: You mentioned that the
12 readers or consumers might be asking for this type
13 of content, but I also -- to those that are sitting
14 in the middle here, between the brands, between the
15 publisher websites -- and I know that it's not as
16 much of a model that Huff Post and Mashable and
17 Hearst may use, but in terms of, in terms of the
18 publisher websites with which you're working, is
19 there a drive or are you seeing a trend where you
20 want advertising that is styled like content, as
21 opposed to other ad formats that are out there?

22 You know, I think we're all familiar with
23 ad networks and we know that banners are somewhat
24 frowned upon these days. But there are different
25 formats that exist and, you know, I direct to the

1 people sitting in the middle whether you're also
2 hearing from the publisher websites that you're
3 working with that that's the type of advertising
4 that they want an intermediary to place on their sites?

5 MR. CARMEN: Well, I think you guys will
6 attest to this, it's a hard time to be a publisher,
7 a digital media publisher. I mean, newspapers are
8 going out of business and really struggling and the
9 digital media is trying to catch up.

10 And at the end of the day, we are all
11 trying to make money. And you know, we're not doing
12 this for charity. So you know, the ads that are
13 placed on the websites are the ads that produce the
14 highest revenue for the publisher, at the end of the
15 day. And they have to -- you have to make a moral
16 judgment of whether those are the ads you want to
17 present and those are the people you want to work
18 with. But at the end of the day, you know,
19 banners -- banners are not dead, they're just
20 background, you know? They're still there. And
21 honestly, they're not going to go away. Billboards
22 are still around, you know? Nobody -- you can't
23 really track them, but they're still around. People
24 still use them.

25 But the content style ads are really --

1 it's the next generation. And honestly, if it makes
2 money for publishers and it works for advertisers
3 and companies like ourselves can provide a service,
4 it makes sense for everybody. Is it the end-all
5 be-all? I don't think so. But I think it's the
6 next generation of advertising and I think it's
7 allowing publishers to actually generate revenue
8 that they're missing from the newspapers.

9 MS. LACOUR: Outbrain feels really good
10 about the content in our network. And the reach
11 that we have and the placement that we have on very
12 premium publisher sites, sometimes homepages of very
13 premium publisher sites, speaks a lot to, I think,
14 their, you know, stamp of approval for Outbrain and
15 the content that's in our network.

16 And we are a great revenue source for
17 premium publishers, but also we're providing that
18 premium -- we are providing that monetization
19 opportunity for publishers, while also providing the
20 audience with a great content experience. And
21 that's kind of where -- that's our point of view.
22 And the publishers, I'm sure, can speak -- we're not
23 the only two platform technology companies that
24 publish --

25 MR. CARMEN: Sure we are.

1 MR. OSTROW: We think the mix between
2 advertising types is really important. I would echo
3 the sentiments that display isn't dead. Actually
4 for us, we see display as an incredibly powerful
5 complement to branded content.

6 As I showed in the example earlier, on all
7 of our branded content, it is what we refer to in
8 the industry as road-blocked by advertising for the
9 brand that is sponsoring that piece of content.

10 And what we see with that, I mentioned how
11 branded content actually gets higher engagement than
12 all other content on Mashable is, as a result, the
13 click-through rates on that display advertising is
14 actually 2 times as high as when brands are just
15 purchasing run of site advertising.

16 So we feel it is a really strong
17 complement, actually, and as I mentioned earlier, I
18 think it also goes a long way in helping make clear
19 the relationship between Mashable and the advertiser
20 that is presenting the content.

21 MR. RUBEL: So one thing we would like to
22 add. We, you know, in our business, we think a lot
23 about trust. We have been a tracking story that
24 we've been running on for over a decade, and I'd
25 invite you to go look at it on our site. And we think

1 a lot about the role of transparency in the relation
2 that creates -- towards creating trusting
3 relationships.

4 The key thing that we also think a lot
5 about in our business is the triangulation between
6 the interests of, in our case, the clients, the
7 marketers, the publishers, and like I said, for most
8 of those years, it's been solely the working
9 journalists, and then the audience.

10 And we really believe our role is to
11 navigate that complex relationship, at times,
12 always. And transparency plays a role in that. In
13 all of these different discussions that the industry
14 is having towards sorting out all of the necessary
15 issues here, we hear a lot from the publishers. We
16 hear a lot from the marketers. And we hear a lot
17 from the folks that connect the marketers to the
18 publishers. And I love this sandwich we have going
19 here, I think it's -- I don't know if that was by
20 design or if it was just a metaphor, but I love it.

21 And what needs to happen -- one thing that
22 we would like to see is the audience role in this
23 and have the audience have a voice. You know, they
24 are going to have a voice through clicks. They are
25 going to have a voice through comments and things

1 like that, but bringing them into the conversation
2 and having them be part of the transparent
3 discussion about why this model is happening.

4 There's been studies shown that -- I think
5 Pew has done a study that less than a third of the
6 U.S. population is aware of the media's financial
7 difficulties. And many of them may live where I
8 live, in New York, and other large cities where
9 there's a lot of discussion about these topics.

10 So we'd like to see, in the role of
11 transparency, the audience to have some sort of way
12 to engage in this conversation as well.

13 MR. HASKELL: I'll say, on the publishers'
14 side, I completely agree. I will say though that,
15 in my experience, readers are not shy. You know,
16 and that's the case at the Hearst Corporation with
17 our readers. I spent 10 years before that at The
18 New York Times, and when we did innovative things,
19 you know, readers will express, in no uncertain
20 terms, whether they like it or whether they hated
21 it.

22 And I do think, you know, there has been a
23 lot of debate about, well, is the banner ad dead?
24 You know, to quote the Buggles, radio did -- you
25 know, video did not kill the radio star and native

1 is not going to kill the display advertising
2 business. I think it's going to be an ecosystem
3 that becomes more complex and there will be more
4 parts about it, but one is going to support the
5 other. The native business is supported by the
6 display business, because the display business helps
7 you drive into these native and branded content
8 experience. Folks, you know, like Outbrain and
9 Adiant are going to help us drive it.

10 The whole environment becomes more
11 complex, but ultimately the readers are going to
12 vote with their eyeballs. And if readers feel that
13 they're being -- that they've lost the trust of a
14 publication, whether it be a legacy publisher or a
15 pure play digital publisher, they will vote with
16 their fingertips and move on elsewhere. And I think
17 that's what is really incompetent upon all of us to
18 do, is to make sure that that doesn't happen.

19 But we generally go into this with the
20 idea that readers are really smart and they know
21 what they're doing. And if they don't like
22 something or if they feel that they are being
23 misled, they will go elsewhere.

24 MR. LAIRD: Laura, I have a comment. Can
25 I go?

1 MS. SULLIVAN: Sure, okay. Yes, Chris, go
2 ahead.

3 MR. LAIRD: You asked earlier what is
4 different about digital and why we like digital and
5 what opportunities does digital -- for us, as
6 brand-builders and as, you know, I don't want to be
7 overly jargon, but we think of it as a big purchase
8 funnel, right? And when you think about content,
9 you think about it at the top of the purchase
10 funnel. And what you're trying to do is get a
11 consumer to try and love and become loyal to your
12 brand.

13 And what we love about this version, of
14 all the other versions in history of sponsored
15 content, et cetera, is that we can immediately
16 measure the impact that it's having on our business
17 results. Which is, does she come to our owned
18 asset, right?

19 Like a lot of the examples I shared were
20 not on our owned assets, they were paid or earned,
21 but does she come from those assets to our owned
22 asset? And once she's on our owned asset, does she
23 come and download a coupon or request a sample or
24 post a review or actually go to Amazon and purchase
25 a product?

1 And the more consumers are doing that, the
2 more we can, very quickly, in real time, measure
3 whether or not we are being relevant and it's
4 impacting in our business and whether or not she is
5 engaging.

6 MS. SULLIVAN: I'm hearing that, you know,
7 audience feedback, you know, digital environment,
8 measuring what people do and how they interact with
9 the content, is something that may be a vehicle
10 that's available to you that wasn't available to
11 publishers in the past, as well as advertisers.

12 But I mean, we were talking about
13 transparency and whether you don't want to
14 jeopardize maybe your readership's trust in your
15 brand, whether you're an advertiser, whether you're
16 a publisher, are you also using that audience
17 feedback to assess that, whether your readership
18 understands these new forms of advertising, how they
19 work and, you know, that they -- that it is
20 advertising and it is differentiated from the other
21 forms of content that you offer?

22 MS. GOULD: I can speak to that. I think,
23 at The Huffington Post, we treat transparency sort
24 of as a given. It's not negotiable.

25 But when it comes to the reader and the

1 engagement, I think they are smart and they are
2 sophisticated. And we always disclose about
3 content, but what they are great for is, if they
4 don't like it and they think it's crappy, they'll be
5 the first to tell you. They will be the first to
6 rip it up in the comment section, tell you how they
7 feel on Twitter.

8 And I think that's why it's important that
9 we just treat transparency as a given. I think if
10 we were not transparent that the content was
11 sponsored, you know, you would see so much more of
12 this sort of stuff. So I think we see reader
13 feedback and engagement way more as a gauge of like
14 the quality of the content, how authentic it is to
15 the platform to our audience and to the brand, than
16 to the transparency factor. Because we just take
17 that out of the equation.

18 MS. SULLIVAN: Let's move on to techniques
19 used to make it transparent. It sounds like
20 everyone is in agreement that transparency is
21 important. Well, how do you go about doing that?

22 What techniques and methods -- some of you
23 touched on them in your opening presentations, but
24 how do you look at it? And what do you do to make
25 it -- make advertising transparent?

1 Todd, would you like to comment on this?

2 MR. HASKELL: Sure. You know, it's
3 different on each one of our brands, because the
4 most important thing is it needs to be sort of
5 natural to the brand. So it needs to -- and with 20
6 different brands, they are going to look a little
7 bit different in each place.

8 I will say that one of the things that we
9 do feel strongly about is that it needs to be very
10 visible. And we actually generally use logos of the
11 advertiser everywhere that we do that. Because we
12 do think that sometimes, you know, just you know
13 just a typed slug someplace isn't always -- it can
14 sometimes just sort of become background noise to
15 the reader. So we use -- if you notice on some of
16 the examples, whether it is "Presented by Keds" or
17 "Sponsored by Nordstrom Ugg" or the third one -- oh,
18 my dog treat one, the Tyson Nudges thing. We always
19 use the logos, because we do think it's really
20 important.

21 It's just -- knowing how readers do
22 eye-tracking, you see how readers do it, they notice
23 logos, and it just is more visible than type. But
24 clearly, when you talk about video, that's harder to
25 do. So it needs to be natural and organic to the

1 environment, so it's really up to each individual
2 brand.

3 MR. RUBEL: Laura, from our side on the
4 transparency, of the house, we look to the
5 publishers to -- because it is different with every
6 single publisher, often, how that is done, in every
7 different kind of environment.

8 But what we do is, we think we -- we think
9 it's equally important for the publishers to have,
10 you know, proper policies around that as it is for
11 the marketers to ask the right questions. And we,
12 to that end, have put out, within our company, an
13 ethical framework, as it relates to sponsored
14 content, that all of our employees have to equip
15 them and ask the right questions of publishers and
16 technology companies around disclosures.

17 So while it's different across, asking
18 those questions is, on the marketers' side, is
19 critical as well.

20 MS. SULLIVAN: Is that a conversation
21 that's occurring? Tessa, are you -- I mean, in
22 terms of who makes the -- Huff Post implements the
23 way that you differentiate the sponsor content from
24 your other content on your site, but is that a
25 conversation that you are also having with the

1 advertisers? Who makes the decision and who
2 implements it?

3 MS. GOULD: Yeah. I mean, we have the
4 one-size-fits-all approach. We try to keep things
5 as consistent as possible across the board, so that
6 it doesn't vary from advertiser to advertiser. And
7 it's, you know, pre-sales collateral. You know,
8 it's the same for everyone.

9 So when our sales team is going out and
10 pitching our offering to brands, it's all throughout
11 the collateral. We have a pretty vigorous review
12 process, we have a kick-off call with the client and
13 their team, things have to go through legal review.

14 So I think at every step of the way, there
15 is reinforcement of our offering. And, sure, brands
16 might ask from time to time for a different version,
17 but we -- this is one thing we don't really
18 negotiate on. We stay pretty clearly with our
19 transparency.

20 MS. SULLIVAN: Adam, is that something --

21 MR. OSTROW: Yeah.

22 MS. SULLIVAN: Is that consistent with how
23 Mashable approaches it?

24 MR. OSTROW: Absolutely. And I talked
25 already a good bit about how we label things on the

1 site. But I think to echo Tessa, it is incredibly
2 important to stand firm with your policies. No
3 doubt advertisers are always going to ask you to
4 change the rules for them or make an exception or do
5 something different to make it less obvious to
6 consumers. And I think you have to -- it means you
7 need to stand firm. Which is why, for us, it is
8 really important that we treat branded content as
9 editorial content.

10 Much of what we do in the branded content
11 team, as in that example I shared earlier with
12 Qualcomm, where we talk about what's inside some of
13 the different gadgets we all use every day, much of
14 that content was actually written by our technology
15 editors and our technology reporters. And it
16 actually provided us with an opportunity to go
17 deeper on Google Glass, for example, than we might
18 ordinarily in the day-to-day hustle and bustle of
19 the newsroom.

20 So for us, I think it's all about standing
21 firm on the policies and making sure that, at the
22 end of the day, to avoid one of those catastrophic
23 situations like Todd mentioned earlier, you need to
24 have editorial checks and balances.

25 MS. SULLIVAN: And again, Jon, from

1 Adiant's perspective, I mean, how does it work?
2 When, you know, looking at the examples you
3 provided, it looked like there was a tag of
4 advertisement on the content style links that you
5 were presenting, who controls the labeling? I mean,
6 who makes the decision? Is that something that
7 carries with the ad, the advertisement, or is that
8 something that is done at the destination, at the
9 publisher website on which --

10 MR. CARMEN: It's a mix, but we always
11 insist that it's somewhere. Whether the publisher
12 has specific guidelines, as far as what we need to
13 put there, and those are always things that we have
14 no problem with. If nothing is said, if there
15 hasn't been a conversation about that, then we
16 always put advertisement or sponsored links at the
17 top or somewhere very visible in that box, so that
18 it is very clear that it's a paid advertisement.

19 MS. SULLIVAN: Looking across your
20 examples, and you know, just among the small group
21 here, there was a range of terminology that was used
22 to differentiate this content.

23 And I want to pose the question to the
24 group, if any would want to comment on it, I mean,
25 is there room here, do you see that there might be

1 room for industry, advertisers, publishers, or ad
2 networks to coalesce around some type of framework
3 or consistency or maybe smaller sets of ways to kind
4 of differentiate this type of content for readers?

5 Or on the flip side, are there reasons
6 against that? Todd, do you have any thoughts on
7 this?

8 MR. HASKELL: Well, I think there is
9 clearly benefit to having sort of some consistent
10 principles, in terms of how we do this. I think,
11 you know, in our world the IAB has provided great
12 leadership, in terms of coming around. They, just
13 this morning, issued some guidelines and some
14 principles around this. The OPA, the Online
15 Publishers Association, has also been very actively
16 involved in providing really great sort of supports
17 so that publishers are working off of a consistent
18 set of understanding and principles.

19 But I think that ultimately you're talking
20 about, you know, thousands upon thousands of
21 different brands with different experiences on every
22 one and different practices. So I personally think
23 that it's critical that publishers have the
24 flexibility to do what they think is right for their
25 environment, for their readers, for their brands,

1 but be supported with some sort of best practices,
2 that the industry could be very, very effective in
3 helping to help develop.

4 MR. OSTROW: Yeah. I don't think it's
5 really about whether you use the words presented by
6 or sponsored by or supported by. I think it's a lot
7 more about the aesthetics and the optics and, echoing
8 what Todd said, in terms of really making it crystal
9 clear on your site and in your environment, as a
10 publisher, that the content that you're seeing is
11 being presented by an advertiser.

12 So I think best practices and guidelines,
13 yes. But kind of absolutes, in terms of terminology
14 and pixels and things like that, gets really
15 complicated and incredibly difficult to make
16 universal, given the way content travels today
17 across social, across search, across all of these
18 different platforms.

19 MS. SULLIVAN: And why is there a need for
20 such a range of terminology? I mean, I -- Tessa, do
21 you have any thoughts on that? I mean, is it
22 something --

23 MS. GOULD: I think part of it is just
24 legacy, right? This isn't new. We've been doing
25 this since 2008, it's just that there's a lot more

1 conversation and dialogue around it now.

2 So there are a lot of things that,
3 policies and practices that publishers have been
4 using for years and years and years, and it's just
5 now that we are starting to talk about consistency
6 across different platforms.

7 And I think the biggest opportunity here
8 actually is for publications or players in the space
9 that aren't currently actually doing anything, or
10 are not using any disclosure, as opposed to saying,
11 you know, like, oh it should be sponsored feature
12 and not presented by brand X. I think that's
13 probably a little bit more of an opportunity. Maybe
14 longer term, there could be an opportunity for some
15 increased consistency, in terms of the actual labels
16 used, but I think it needs to be specific enough to
17 the group, right? Like, are you talking about like
18 news publishers versus content recommendation
19 widgets, versus women's lifestyle properties. I
20 think the needs vary by property.

21 MS. SULLIVAN: One question for Lisa is,
22 in terms of the format, when you have a group of
23 listings together, and in talking about it, it
24 sounds like there may be two different forms, there
25 may be editorial content that is featured with -- for

1 example, on The Washington Post, there may be links
2 to an article on The Wall Street Journal, editorial
3 articles.

4 But it also may be used by brands to
5 distribute, you know, their branded content. And
6 how do you go about, when you have a mix of those
7 two different types, go about signaling to the
8 reader what is what?

9 MS. LACOUR: Right. So first I should
10 clarify, this is the jargon part, so I apologize,
11 but just to clarify, when I was speaking about
12 editorial content versus paid content, I was
13 actually talking about where the host site, if you
14 will -- so ABC News, for example, there's two parts
15 of our platform. There's the paid links part and
16 then there's what we just give as a value-add to our
17 partners publishers' sites, which is just serving up
18 more of their own editorial content to drive their
19 audience deeper into the site.

20 So within the paid part of our
21 recommendation widget, the brands and publishers
22 both use us.

23 So back to your example about -- which, I
24 don't know if that happens, so we'll pretend.

25 MS. SULLIVAN: Okay, hypothetically.

1 MS. LACOUR: This is all hypothetical. On
2 The Wall Street Journal, if there are links, paid
3 links, to The Washington Post, those are -- again, we
4 clarify that third-party links are all paid for.
5 Whether they are going to another publisher's site
6 or they are going to a brand site. And a lot of
7 brands, by the way, have pretty robust content
8 sites, right? I think that's also a nuance.

9 We do it in a variety of ways. One is
10 that we actually -- we consider ourselves a guest on
11 publisher site. So we have a lot of best practices
12 that we recommend, but ultimately it is up to the
13 publisher, and we work closely with the publisher,
14 to make sure that we're respecting their look and
15 feel and they actually have a lot of say in how our
16 links are presented. We are all in the agreement
17 that they need to be disclosed if they are paid for,
18 but the way that they are actually presented is --
19 it varies from publisher to publisher, because we
20 work with them and --

21 MS. SULLIVAN: So the publisher -- you
22 have a conversation with, you know, the publishers
23 in terms of how it should be labeled or
24 differentiated?

25 MS. LACOUR: Correct. And how it looks.

1 Sometimes it's a lot of links. Sometimes it's video
2 thumbnails. Sometimes it's just different images
3 that they want to use. It looks a variety of
4 different ways.

5 We're also -- we can be placed on the
6 right rail, we can be placed below article pages.
7 We are -- it's just, it's very flexible. And so we
8 just work with them to take on their look and feel
9 and however their editorial --

10 MS. SULLIVAN: And in terms of
11 implementation, is it implemented by the publisher,
12 at the destination website, or does it carry with
13 the content or the links that you are providing,
14 delivering?

15 MS. LACOUR: A little bit of both. So
16 it's code that the publisher places on their page
17 and then it takes on whatever the customized look
18 and feel that we have, within that environment.

19 MS. SULLIVAN: Jon, do you have anything
20 to add to that in terms of, you know, what -- how it
21 works with Adiant? With working with the publishers
22 and, you know, how much of it is on the publisher
23 website as opposed to carrying with the advertising
24 that you deliver.

25 MR. CARMEN: Stating that it's an

1 advertisement? Well, that's where it is -- so, just
2 like Outbrain, we give the publishers code. It's
3 basically an ad tag. And they hard code it into
4 their website. And at that point, we work with the
5 publisher to create the look and feel, what works
6 best for the publisher.

7 After that, once the user clicks on an ad,
8 whether it is, you know, Time or Sports Illustrated
9 or Lower My Bills or American Express, it's really
10 all bets are off from our concerns at a certain
11 point.

12 So again, we have a self-service ad
13 platform. We receive, you know, some days over a
14 hundred ads submitted a day, from a wide variety of
15 advertisers. You know, from everything from small
16 little affiliates to large brands. And I think you
17 said this as well, we reject half of them. We go
18 through them, literally by hand, every single one of
19 them, to make sure they are not trying to deceive a
20 consumer and that they are not trying to do
21 something, let's say, shady.

22 You know, the internet is full of people
23 doing things shady. And unfortunately, that's what
24 it's come to, in our job as, let's say, the gatekeeper
25 with a self-service platform, is to be really hard-

1 nosed about it and reject the ones that actually don't
2 fall in line. And they can resubmit until it's right.

3 And then if a publisher -- if an
4 advertiser --

5 MS. SULLIVAN: If we could just -- I mean,
6 in terms of the actual, on the publisher website.

7 MR. CARMEN: Yes.

8 MS. SULLIVAN: If it is differentiated as
9 an advertisement as opposed to some other -- as
10 opposed to the other editorial content, if it has
11 the same look and feel or whatever, that label, is
12 that something you work with the publisher in what
13 type of terminology that would be used and, you
14 know, how it would be differentiated? Or is that
15 something that Adiant?

16 MR. CARMEN: Again, it depends on the
17 publisher.

18 MS. SULLIVAN: Okay.

19 MR. CARMEN: Some publishers will say you
20 have to say advertisement or you have to say
21 sponsored links. And then some just say just note
22 it somewhere, you know. Or don't get us in trouble,
23 you know.

24 But for us, if they don't say anything, we
25 are going to, by default going to say advertisements

1 or sponsored links. And sometimes we'll say both.

2 MS. SULLIVAN: Steve, did you want to --

3 MR. RUBEL: So I think what --

4 MS. SULLIVAN: Well, in terms of the --
5 like, how does the --

6 MR. RUBEL: Well, there's two -- there's a
7 couple of ways to look at this, right? There's many
8 ways to look at this, but one way to look at this
9 is, if there's a common language everyone uses, then
10 it's a level playing field and, you know, it is very
11 cut and clearly communicated. And I can see a case
12 for that.

13 But I think, as you know, this is a -- and
14 certainly anyone on this side of the table can
15 attest, and this side, too, your competition is a
16 click away here. Everyone's competition is one
17 click away. And there's a handful of companies that
18 have a lot of, you know, ability to move people from
19 one site to the other.

20 So one argument is, well, if there is
21 clear and consistent labeling, then that's one place
22 to start. But I actually think that it's better to
23 have a more open marketplace, where all different
24 kinds of ideas around disclosure come to the
25 forefront. And there will be some who are

1 exceedingly transparent, going far, testing -- you
2 know, Huffington Post does a lot of testing with
3 headlines, for example. There will be companies
4 that test all different kinds of words and phrases
5 and logos and sizes.

6 And you know what? In the end, it's quite
7 possible that the ones that are the most transparent,
8 the most -- you know, using the best language, the
9 most clear language, will have a competitive
10 advantage in this space with the audience, first, and
11 then obviously the marketers follow right in lockstep
12 there. And that kind of environment, where the
13 industry sorts it out itself and there's an innovation
14 race and different, you know, players come and test
15 different ideas and the good ideas start to win out,
16 which they will, is a great thing to see happen.

17 So I think that's a more favorable outcome
18 of all of this different use of labelings and words,
19 rather than saying that they all have to say the
20 same thing. Because you know, internationally also,
21 too, a lot of sites, you know, sites expand
22 worldwide. And there it's obviously a very
23 different situation and that varies
24 country-by-country as well.

25 MS. SULLIVAN: In terms of, I mean, moving

1 outside of what the labeling would be, but Chris,
2 like, from the advertiser's perspective, if you're
3 using these different channels and transparency is
4 important to you, what tools are available to you to
5 ensure, regardless of maybe some things that may be
6 outside of the advertiser's control, that you can
7 have some level of transparency about the source or
8 the content? Or are there? Or is it something that
9 you --

10 MR. LAIRD: I'm not sure I understand the
11 question.

12 MS. SULLIVAN: I mean, what can the
13 advertiser do? Is it, is it that -- if you are
14 using a syndication channel, for example --

15 MR. LAIRD: Yeah.

16 MS. SULLIVAN: -- to redistribute branded
17 content.

18 MR. LAIRD: Yeah, I got it. Yeah.

19 MS. SULLIVAN: You know, what -- is it
20 something that you have to rely upon the
21 intermediaries on the publisher website or is there
22 something that P&G does? Or is it that, at the time
23 someone arrives at the content that they are told
24 that it is coming from P&G?

25 MR. LAIRD: Yeah.

1 MS. SULLIVAN: What's it -- I mean, from
2 the advertiser's perspective, how do you -- on the
3 -- I mean, what kind of control do you have over
4 that?

5 MR. LAIRD: Okay. We first, to start, we
6 have a set of internal guidelines and policies that
7 we follow with respect to native advertising and
8 third-party content. I've got it right here and
9 it's what I work with our legal department on with
10 every single touch-point that the consumer is going
11 to see that we distribute across the internet. So I
12 know that sounds like a lot of work, and it is, but
13 whenever we go to market with a marketing
14 initiative, we review it with our legal department.

15 I would also say the other stakeholder is
16 our finance department. Because in reality, if it's
17 not transparent and it erodes trust with the
18 consumer, over time the ROI, return on investment,
19 will be low and we just won't invest in that
20 anymore. So I think there's two stakeholders within
21 the company, including marketing, that have the
22 vested interest in making sure that guidelines are
23 followed, principles are followed, and we are doing
24 things that are actually building our brands.

25 And I mean, I'll say it again, I think

1 it's really kind of a brand-building imperative that
2 the brand follow content in almost every case, so.

3 MS. GOULD: I have a related comment to add
4 to that, that I think helps get to the point. So
5 Chris, if you were to take that listicle that you
6 guys do with BuzzFeed, right?

7 MR. LAIRD: Yes.

8 MS. GOULD: And you were to promote it,
9 say, by Outbrain.

10 MR. LAIRD: Yes.

11 MS. GOULD: How would that be labeled and
12 disclosed? Like who is the advertiser there?
13 Because it's sponsored content, right?

14 MR. LAIRD: Yes.

15 MS. GOULD: Who would be the --

16 MR. LAIRD: Who would review what the link
17 looks like?

18 MS. GOULD: Well, yeah. Who controls that
19 and then what is the wording?

20 MR. LAIRD: Yeah. The publisher would
21 control that, right? And because we are -- so I'm
22 thinking this through as I talk, but because we are,
23 because we are -- yeah, I'm thinking this through as
24 I talk.

25 MS. GOULD: Like, how does the reader know

1 that what they're clicking on, when it says
2 BuzzFeed, is not BuzzFeed editorial content or a
3 sponsored listicle from you guys?

4 MR. LAIRD: Well, I think the easy answer
5 is in social channels, so in social channels, we
6 review what the link is going to look like on
7 Twitter or on Facebook and whether or not the
8 branding is there and whether or not it is fully or
9 transparently disclosed.

10 On the Outbrain widget, I'm not actually
11 sure where the review process would be. Maybe you
12 know more than I do --

13 MS. LACOUR: Yes, I --

14 MR. LAIRD: -- because we work together.

15 MS. LACOUR: It's up to you, Chris. It
16 is. It's part of that process, right, of you are
17 the advertiser and you are -- so we're talking about,
18 just to clarify, the link that would show up in an
19 Outbrain widget, right? What would that say and
20 where does it go, that I would -- it's usually --
21 first of all, it's usually the headline of whatever
22 the piece of content is, and then we adjust based on
23 what the advertiser's goals and needs are.

24 And for the most part, I would assume,
25 based on what you just said, that Tide would be

1 probably --

2 MR. LAIRD: The link --

3 MS. LACOUR: -- both the link and in the
4 actual disclosure of where it's going.

5 MR. LAIRD: So the link copy itself, just
6 like in Google, the search results copy is approved
7 by the brand, the link copy would be approved by the
8 brand --

9 MS. LACOUR: Right.

10 MR. LAIRD: Because we're buying media
11 through Outbrain. It's just another source of media
12 and traffic, right?

13 MS. LACOUR: Right.

14 MR. LAIRD: I think it would then be up to
15 the publisher to determine formatting, right --

16 MS. LACOUR: Correct.

17 MR. LAIRD: -- correct me if I'm wrong, to
18 their formatting and what other verbiage or
19 formatting will be on the site to distinguish it as
20 sponsored content.

21 MS. LACOUR: I think there's two
22 distinctions. There's what the widget looks like,
23 right? The container, if you will, that holds the
24 links, which is up to the publisher. And then
25 there's the links within that -- I should say the

1 paid links within that, and those change based on
2 the advertiser's needs.

3 MR. OSTROW: Something that's important to
4 remember here though, as publishers, there is only
5 so much we can do to control how our content travels
6 on the web.

7 Increasingly, in a world being driven by
8 social, we can't tell our readers what to Tweet when
9 they share out a Mashable link, whether it's branded
10 or not. So for us, I mean, the major focus is on
11 transparency on the actual content when the reader
12 arrives there.

13 And talking about an Outbraining, we've
14 seen examples where, both with our branded and
15 organic content, either a PR agency or a media
16 agency or the brand themselves, is actually buying
17 Outbrain traffic to direct to an article that they
18 like, for whatever reason, on Mashable. We have no
19 control over that, nor would we want to have any
20 control over it. It's an activity that is taking
21 place completely outside of our brand.

22 MS. SULLIVAN: Todd, would you like to
23 comment on -- I mean, that gets to the next topic,
24 and maybe we can quickly touch on it.

25 But at the opening, one of the benefits is

1 that, you know, this content can be shared.

2 MR. HASSELL: Mm-hmm.

3 MS. SULLIVAN: And there are many
4 different channels that readers, consumers can
5 encounter it. What steps are available as it's
6 shared? I mean, Adam mentioned that it is somewhat
7 outside of the publisher's control, but are there
8 some steps that you can take to make it transparent?

9 MR. HASSELL: Sure. Well, I think there's
10 two things. Yes, there is only a certain amount of
11 control the publisher has, in terms of what the copy
12 is if somebody else is linking and promoting it.
13 But there is control that the publisher has as to
14 what the default is.

15 So you know, our perspective is the
16 default always says, you know, if it's Keds content
17 that we produced and presented in a native manner,
18 Keds will be in the description as the default. If
19 the reader then elects to take that out of that
20 abstract, God bless. But we are going to present it
21 that way first.

22 And I think -- so that gets to sort of an
23 underlying philosophy is, respect the reader, you
24 know, suggest the way that you think is best, but
25 then ultimately, the reader has control. And if he

1 wants to put something witty and snarky, you know,
2 God forbid that happens on social media, they can.
3 And it might go even more viral, and then that's
4 great.

5 But we do think that there's probably a
6 way -- as a publisher, we do have a responsibility
7 to provide a default that is as transparent as
8 possible.

9 MS. GOULD: I agree with that. I showed
10 you guys on the slides earlier today that, for all
11 of our content that we can control on the article
12 page 100 percent, what the pill says and even
13 call-out language about the brand. And when it is
14 shared to social media, we can pre-populate those
15 social shares and the wording that goes there, but I
16 can't control if you were to delete it out and put
17 something else and be like, this sucks, or whatever
18 you want to write. We can't control that, but we
19 can try to influence your choice by pre-populating
20 it and indicating that HuffPost Partner Studio,
21 which is our branded-content arm, created the
22 content.

23 Similarly, we can, you know, take a best
24 foot when it comes to sharing the content on social,
25 so we only share it through our dedicated social

1 media accounts. It can be re-tweeted or re-shared
2 however someone -- by whoever and whomever they
3 like on social media. We can't influence that, but
4 we can try to steer them the best way forward.

5 MS. SULLIVAN: I mean, I think that, you
6 know, just to sum up, and we have maybe a minute or
7 two left, but I'll direct this question to Lisa. In
8 terms of the long-term viability of this type of
9 advertising, you know, whether we call it content
10 style, whether we call it sponsored content, what
11 risks are there to the long-term viability, if any,
12 do you see?

13 MS. LACOUR: There's a lot of ways to
14 think about that. I mean, maybe what you're getting
15 at is the type of content? Is that what you're
16 talking about, the actual content?

17 MS. SULLIVAN: Well, I mean, if that is
18 one part of it is that, you know, are there trends
19 that you're seeing that could cause concern in terms
20 of whether this is going to be a viable solution
21 going forward?

22 MS. LACOUR: Absolutely. And I think
23 we've all spoken about it in various forms. We saw
24 it in search. We're starting to see it in content,
25 which is what we call black hat content marketing.

1 It's very similar to black hat search techniques,
2 right? Where it goes back to trust and
3 transparency. Not duping the reader, making sure
4 that the content that we're all either putting on
5 our site or linking to, from an Outbrain
6 perspective, is actually free of scams and is
7 actually legitimate and authentic types of content.

8 Some content may be better than others,
9 but Outbrain has taken many, many steps to the point
10 of, a year ago, we actually fired in a large chunk
11 of some of our highest paid advertisers because we
12 found out, on the backend, they were using content,
13 but really they were using content to hide
14 continuity programs and scams and things like that.
15 Those types of things, we have a couple of partners
16 put in place that we try our best to avoid bringing
17 those -- allowing those things into our network.

18 And I think that's really -- it goes back
19 to the audience trust. It goes back to all of our
20 responsibilities at this table and in this room to
21 make sure that the audience is getting trustworthy,
22 authentic content, that they are not getting scammed
23 on the backend.

24 MS. SULLIVAN: And even in the context
25 and, you know, I don't mean to imply -- I mean, a

1 lot of it is great content, it's engaging content.
2 But just generally, is transparency the key issue
3 for you going forward? I mean, there's the quality
4 of the content, there's the potential for fraud, but
5 even when the content is engaging and good and it's
6 a series of articles by a technology company on a
7 topic of interest to your readership, is
8 transparency important to the long-term viability of
9 this form of advertising?

10 MR. RUBEL: We think there's four things,
11 you know, to be watching for the long-term
12 viability. Number one is the quality. And it's a
13 range. Some of it is excellent, some of it isn't.
14 And quality on the Internet, as we've seen in terms
15 of content, often wins. That's one.

16 Transparency is another one, another
17 pillar that is critical towards the viability of
18 this. But there's, you know, a great interest by
19 the publishers to make this work, because this is
20 the -- especially as more of the consumption becomes
21 mobile, it's going to be a key way that they are
22 going to try to control their own monetization
23 destiny.

24 I think communication is another one. How
25 to really kind of tell the community what's

1 happening and why. Because again, I don't think the
2 awareness is there, why this is going to be the new
3 normal for advertising.

4 And then finally, what's also worth
5 watching out for, especially on the marketing side,
6 is we like, sometimes, shiny objects. And there
7 might be an overuse. I don't think they'll be a
8 misuse, I think they'll be an overuse. And that
9 could impact quality as well.

10 So that's just another -- transparency is
11 only one of the different things that will be
12 rutters in the long-term viabilities of the
13 platforms.

14 MR. LAIRD: And my last build on that is,
15 and does it deliver business results for the end
16 supplier, right? If, in the end, this is a shiny
17 object and we're creating a lot of great content
18 that users are engaging with and loving, but it's
19 not linked to the brand equity and it's not driving
20 down the purchase funnel, as we call it, then the
21 ROI will be terrible and my financial stakeholders
22 will not want to do it anymore.

23 MS. SULLIVAN: On that point, I think
24 we'll wrap up the panel.

25 MR. CLELAND: Just one thing before we

1 break for lunch. I want to remind you, be mindful
2 of the fact you have to go back through security to
3 get back in after lunch. We'll start again at about
4 1:30.

5 Thank you.

6 (Whereupon, there was a recess
7 for lunch.)

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AFTERNOON SESSION

MR. CLELAND: Our first speaker this afternoon is Bob Garfield. Bob is a columnist for Media Post and The Guardian and a cohost of On the Media. He is going to talk to us about native advertising, of course.

Bob will be followed by two panels, the first focusing on consumer understanding in this area and the other focusing on best practices. Michael Ostheimer will moderate the first panel and Mary Engle, the associate director for the Division of Advertising Practices, will moderate the second panel.

Now, I would like to introduce -- have Bob come up, Bob Garfield.

1 THE LESSONS OF NAURU

2 MR. GARFIELD: Thank you very much, Rich.

3 Thank you, ladies and gentlemen.

4 The very first thing I want to say is that
5 I am here not to address the Federal Trade
6 Commission. I am not here representing National
7 Public Radio, On the Media, Media Post, The
8 Guardian, or any of the media organizations through
9 which I've agitated against the current practice of
10 so-called native advertising. I am here
11 representing myself, concerned media consumer and
12 noted hothead, to speak not to the government, but
13 to anybody else paying attention to this event.

14 My guess is is that this workshop
15 represents a very efficient way of reaching all
16 interested parties in publishing and advertising,
17 consumer protection and the world of brand
18 marketing.

19 Apologies, in advance, if I repeat stuff
20 that has come up in the morning session. As a
21 major, major multimedocrity, I just blew in to do
22 this and I'm going to blow right back out. So if it
23 gets repetitive, I apologize.

24 And I also apologize to those who may be
25 watching the webcast. For some technical reason,

1 the delightful little font that I used, the people
2 in the live room will be saying is not available to
3 you, but you know, as they say, close enough for
4 government work.

5 And let me repeat, once I got past the
6 metal detectors downstairs, the venue itself became
7 irrelevant to me. I'm in this for the audience.

8 So audience, if you would please, just
9 look at the upper right-hand corner of this map. I
10 don't know what that is, I think I'm on the phone.
11 I think I'm actually on the phone. I thought I was
12 advancing the slide and I think I may have someone's
13 cell phone.

14 Oh, grandpa. That's the garage door
15 opener, grandpa. You know, it's funny. This did
16 not happen to me when I was 30. Oh, look. Here is
17 another electronic device of approximately the same
18 size. I don't know if I ever had moral authority,
19 but I believe I have just lost it.

20 Please look at the upper right-hand corner
21 of this map. Oh, my goodness gracious. I want my
22 mommy.

23 Let's see what's happening here. That's
24 the disclaimer side, remember that disclaimer you
25 heard a moment ago? Here we go. Here's the map.

1 Look at the upper right-hand corner. This was going
2 so splendidly.

3 That little dot, ladies and gentlemen, way
4 larger in scale than the actual island it
5 represents, is the Republic of Nauru, an eight-
6 square-mile speck of Micronesia.

7 For most of the post-World War II period,
8 it boasted the highest per capita income in the
9 world. And that was especially notable since almost
10 none of those 9,000-some capitas was employed.

11 Rather, Nauru was a perfect welfare state, providing
12 for all of the populous' needs with export revenue
13 from a single economic sector. Mining.

14 The actual running of the heavy equipment
15 was handled by migrant Fijians, while the natives
16 mainly drove around the island's perimeter in jeeps,
17 drank beer, and listened to the one radio station.
18 Nauruans were blessed that God had bestowed upon
19 them a valuable natural resource. That resource was
20 seagull shit.

21 Yes, it was a guano island which, over the
22 ions, had yielded a crust of mineralized phosphate
23 highly prized for fertilizer and other basic animal
24 products. It was just a question of scraping it
25 off the surface, loading the stuff on freighters,

1 and fattening the national treasury. And every
2 month, every islander received a generous check from
3 the government. Life was good.

4 Now, kindly hold that thought for a
5 moment, because at this point I want to just ponder
6 something very different and quite depressing. In
7 the world of publishing, online and off, life is
8 very, very not good. Just as a great and sainted
9 visionary predicted in as early as 2005, the digital
10 revolution has decoupled and all but destroyed a
11 magnificent symbiosis of mass media and mass
12 marketing that underwrote the media culture going
13 back 350 years.

14 You know, first there was fragmentation,
15 the enemy of reach, which is to say the mass in mass
16 media. Then there's the pesky law of supply and
17 demand. In a web universe with nearly infinite
18 content, there is therefore nearly infinite ad
19 inventory and rates that can be fetched for
20 advertising have been driven down, down, down.

21 And then there is ad avoidance. Long
22 before the digital era, all the data showed that we
23 all trust word-of-mouth endorsements from friends,
24 colleagues, relatives, neighbors, and near total
25 strangers more than anything promulgated by a

1 self-interested brand.

2 But now, suddenly the consumer is actively
3 avoiding advertising messages of all kinds, in a way
4 he never did in the analog good old days. And
5 why? DVR fast-forwarding -- I know it's vulgar, but
6 it's to the point. DVR fast-forwarding, Ad Blocker
7 Plus, spam filters, the option not to click on a
8 banner ad, which we as a public avail ourselves of
9 99.8 percent of the time, those are what current
10 reality is all about.

11 And so instead, for brand information, we
12 turn to social media. And the result is yet another
13 body-blow to the advertising economy, which clearly
14 nobody would mind, if that economy didn't pay the
15 bills for journalism and entertainment, infotainment
16 and the rest of the media universe we so cherish.

17 Yes, publishers are facing a very real
18 existential crisis and are on a trajectory to go the
19 way of all things, like the dinosaur or the gold
20 standard or -- oh my gosh, there's the punchline.
21 Wait, let me try this one. It was working.

22 There's no -- no matter how long they've
23 been around and no matter how symbiotically they've
24 become part of our lives, things just go away. And
25 there's no reason to think that Time magazine, The

1 Washington Post and, for that matter, The Huffington
2 Post won't be among them. Yes, all are
3 experimenting with other revenue streams, but you
4 can only generate so much revenue running
5 conferences and producing white papers.

6 So desperate to save themselves from
7 extinction, publishers have chosen to go back to the
8 future and bring to the digital age what we have
9 always called the advertorial. It's almost always
10 drivel, but most publishers, historically at least,
11 have been scrupulous about mandating distinct
12 typefaces and fenced-in borders, gray or color
13 screens, wider or narrower column formats, and the
14 prominent display of the word advertising to
15 demarcate the difference between promotional copy
16 and editorial matter.

17 The advertiser's bet was that the mere
18 editorial look, in combination with proximity to
19 actual editorial, conferred some degree of
20 credibility to their claims. Borrowed interest,
21 that's called.

22 Now me, when presented these splendors of
23 Penticton itself, I'm inclined to just pass right
24 over it. Others, that code word that the FTC often
25 refers to as the most credulous consumer, and whom I

1 simply call suckers, may think that the Daily News
2 actually broke the big Viagra option scoop.

3 In any case, because the lines of
4 distinction were so sharply drawn, advertorials were
5 never either a particularly big revenue generator or
6 a particularly big ethical problem. Yeah, well, that
7 was then, this is now.

8 Maybe it's unfair to be probably the sixth
9 person today to cite this, the most obvious and
10 egregious example of media prostitution in the
11 native advertising era. Admittedly, there is
12 nothing else out there nearly as incriminating as
13 this, but I'm going to argue that The Atlantic and
14 The Atlantic Scientology fiasco was actually less
15 worrisome than four less lurid publisher advertiser
16 dalliances. Because this was so over-the-top that
17 it was instantly pounced on by pretty much everyone
18 in the world, including, I think, Kim Jong-un and,
19 like, Manson.

20 The real dangers, the real dangers lurk in
21 the stuff that comes and goes more or less
22 undetected. That black box on the right is an IBM
23 ad. On its left is also an IBM ad, although a
24 reader would be hard-pressed to figure that out.
25 Instead, the reader would be thinking that Atlantic

1 had weighed in on the importance of social media to
2 your business and deemed IBM to be the ideal single
3 authoritative source.

4 Now, wherever I go on stage to debate the
5 native crowd, invariably my adversary in the debate
6 format will say something like, Bob, are you telling
7 me that IBM doesn't have expertise on social media?
8 Perhaps even more than some random Atlantic
9 journalist? And then they do this deal here. You
10 know, they dance around the ring as if they've
11 staggered me with a left hook.

12 But that's the wrong question, ladies and
13 gentlemen. The first right question is, doesn't the
14 reader have the right to know whose interests are
15 being served by the content? Media means in
16 between. The whole idea is to have intermediaries,
17 third-parties with an arm's length relationship to
18 the assertions within. So there's that.

19 And the second question that should be
20 asked is, if IBM is such a legitimate and
21 authoritative source, why the charade? Why the
22 charade? Why do they have to pretend to be
23 showcased by The Atlantic? Why don't they proudly
24 slap their authoritative logo over everything?

25 And the answer is because, as all data

1 demonstrates, then it would obviously be an ad that
2 nobody would read. That is the central truth here
3 and there is no rationalizing that away. It's all
4 based on the reader or viewer being confused.

5 A study designed by an ad agency holding
6 company unit called IPG Media Lab, and sponsored by
7 the native ad company Sharethrough, represented here
8 today, found that study subjects were 25 percent
9 more likely to look at a native ad than a banner.
10 And then they looked at the native ads 53 percent
11 more frequently.

12 And they're proud of this, like a three-card
13 monte dealer proud of his quick hands. Indeed
14 native advertising is not merely a deception, with
15 publishers and agencies, it is a conspiracy of
16 deception. It is a hustle, a racket, a grift. And
17 those are all counterfeit, by the way, every last
18 one of them. And it gets harder and harder to spot
19 them, because at the moment, the biggest part of the
20 native economy isn't even the fake content spread,
21 it is the fake link.

22 There is an industry within an industry of
23 widget providers offering click-bait headlines that
24 publishers post on their sites as if they had been
25 editorially generated.

1 Hey, US Today has a juicy item about
2 Clinton from Wall Street Daily. What's that hound
3 dog up to now? You know, you've got the editor of
4 the nation's newspaper all wound up and they want to
5 pass it along.

6 See that at the top? Can you see where it
7 says, "In a world of liars, the truth starts here."
8 No. In a world of liars, the lies start there.
9 This is the rabbit hole that you tumble into when
10 you click on what turns out not to be an editorial
11 link of any kind. There is no Clinton story. And
12 by the way, Wall Street Daily isn't a newspaper.
13 It's a wrapper for some sleazy, get-rich-quick
14 scheme targeted at conspiracy-minded suckers.
15 Thanks a lot, USA Today.

16 Now, maybe you think none of that matters.
17 Any dope who would follow this particular trail
18 deserves what he gets. Or maybe you think, don't
19 condemn an entire industry over a few bad apples.
20 But if you think that, you're missing the larger
21 point. There is a lot more at stake here than the
22 fate of advertisers or even the protection of
23 consumers, and I'll get to that in my big finish
24 very shortly.

25 But first, I want to just mention a less

1 obvious and potentially very pernicious aspect of
2 insufficiently disclosed branded content. Now
3 that's a native ad from Forbes.com, one of the most
4 aggressive players in the branded content business.
5 Forbes is also one of the most straightforward.

6 Although the word advertising is not, as I'd
7 like to see it, plastered all over the page and the type
8 treatment does, in a way that I despise, mimic the
9 rest of the publication, the brand voice logo you
10 see in the upper left-hand corner is prominent. And
11 so is the disclosure that it is linking the audience
12 to marketers. And plus, there's a link explaining
13 the whole relationship, should anybody be curious
14 enough to want to click through.

15 The problem is that this is the digital
16 world that we're talking about. That content may be
17 born under a brand voice logo on Forbes.com, but it
18 doesn't stay there. No, it migrates. And within
19 eight hours of this native ad being posted, it has
20 also shown up, no doubt with the sponsor's help, on
21 162 other sites. And as far as those sites were
22 concerned, the source was not the native advertising
23 section of Forbes, it was simply Forbes.

24 Look at the last item here, above the
25 Starbuck's Food Fight. If you come to this

1 particular piece of branded content the way most
2 people will, through an outside aggregator, you will
3 do so with zero disclosure about the prominence of
4 the item. The internet doesn't know you're a dog
5 and the internet doesn't know you're an ad.

6 And yet -- and yet here we are today
7 talking about this as if it were some sort of
8 savior. And yet, from a study released in July, 73
9 percent of the Online Publishers Association
10 membership reported that they already accept native
11 advertising, with another 17 percent doing so by the
12 end of this year. This despite the fact that, as I
13 think I've shown, as currently deployed, native
14 advertising typically violates the most basic
15 publishing ethics.

16 How can this possibly be happening?
17 Answer: Existential crisis is always a bull market
18 for noble ends being invoked to justify dubious
19 means. In this case, the noble end is to save media
20 from imminent destruction. We need entertainment
21 and we certainly need journalism for our democracy
22 so, you know, why quibble over a Scientology puff
23 piece here and there or a bogus link to the
24 occasional sleaze merchant? We are saving the
25 media, for crying out loud. And it sounds like a

1 worthy goal.

2 But first, you must examine the cost, so
3 just let me offer an analogy. You know, in most
4 jurisdictions the police are severely underfunded.
5 I have the most wonderful idea. The police
6 department should sell uniforms and badges to anyone
7 that wants to have one. Not only will it help the
8 cops raise some sorely needed revenue, the folks who
9 buy the uniforms can go around the community and,
10 you know, sometimes help old ladies cross the street
11 and sometimes just deter crime by their very
12 presence. Or you know, that. But don't judge a
13 valuable program by a few bad apples.

14 Do I make my point, ladies and gentlemen?
15 Trust is not meant to be a barter item. When
16 someone can purchase the trappings of the
17 trustworthy to earn the public's trust, the public
18 is exposed to danger. By the way, that other item
19 on this page, Stock Market Picks, courtesy of WGM?
20 Well, that's an impersonator, too. That's a native
21 ad and they want your money. Is that how you want
22 to save the media? Saving the media, presuming that
23 anybody or anything is being saved at all.

24 Rather, I believe quite the contrary.
25 Note Dean Wasserman's formulation here, because

1 this, I believe, gets to the very heart of the
2 matter. To demonstrate the true stakes and to, at
3 long last, conclude my remarks, let me just please
4 take us back to where I began, and that is with the
5 Republic of Nauru.

6 I mentioned that Nauru, for most of the
7 post-World War II period, enjoyed the highest per
8 capita income in the world. Well, not anymore. Per
9 capita income is now down to about 200 dollars per
10 month. Unemployment is 90 percent. And that's
11 because the phosphate resource that took eons to
12 accumulate took only 50 years to deplete.

13 And, thus, the greatest threat of native
14 advertising is not the deception of consumers and
15 not the unmet needs of brands; the gravest threat is
16 to the media themselves. With every transaction,
17 publishers are mining and exporting that rarest of
18 rare resources, trust. Those deals will not save
19 the media industry. They will, in a matter of
20 years, destroy the media industry, one boatload of
21 shit at a time.

22 Thank you.

23

24

25

1 PANEL 2: CONSUMER RECOGNITION AND UNDERSTANDING
2 OF NATIVE ADVERTISEMENTS

3 MR. OSTHEIMER: Good afternoon, everyone.
4 My name is Michael Ostheimer. I'm an attorney in
5 the Division of Advertising Practices and I'd like
6 to welcome everyone to our second panel of the day,
7 the Consumer Recognition and Understanding of Native
8 Advertisements.

9 On this panel, we'll have a number of
10 people with expertise in consumer understanding.
11 And we'll start the panel off with presentations
12 from some of them on their relevant expertise about
13 how do consumers recognize and understand either
14 native advertising or similar advertisements that may
15 be relevant for today's discussion.

16 I'd like you all to welcome our first
17 presenter, Chris Hoofnagle from the Berkeley Law and
18 Technology Center.

19 MR. HOOFNAGLE: Thank you. I have slides,
20 so shall I stand?

21 MR. OSTHEIMER: You can still do it --

22 MR. HOOFNAGLE: I can do it from here?

23 Great.

24 MR. OSTHEIMER: Yes.

25 MR. HOOFNAGLE: Do you mind if I stand?

1 MR. OSTHEIMER: Yeah, sure.

2 MR. HOOFNAGLE: I'm more comfortable
3 standing, because I'm a lawyer.

4 So thank you for having me. I commend the
5 Federal Trade Commission and Michael and Laura for
6 having the prescience and ability to bring together
7 this event. I also thought it was really neat to
8 see the presentations by Lesley Fair and Professor
9 Lemman because I teach a course on the Federal Trade
10 Commission at Berkeley.

11 And one of the things you learn, when you
12 really think about the Federal Trade Commission
13 deeply, is that it has a long history. And many
14 different industries come to the Federal Trade
15 Commission angry that the agency is critical of its
16 practices.

17 But really, there's nothing new here.
18 This stuff is -- it's the old stuff, old practices,
19 being repeated in new context. And when you know
20 about the history of the Federal Trade Commission,
21 some of its actions make much more sense and don't
22 appear so surprising.

23 So let me get on to my thing, and I
24 promise I'll be quick here. First of all, at
25 Berkeley I do computer crime law and privacy law.

1 And as part of that research program, I happened to
2 test a native ad. So my underlying research is not
3 about native advertising, it just happens to have a
4 question in it about native ads.

5 So why study this? I think we all know
6 that it's an exciting topic. If you read Gawker,
7 Gawker had information about sponsored links just
8 yesterday. There is a post by Hamilton Nolan, where
9 people were trying to pay him to put sponsored links
10 into his posts.

11 So we know that it gets people's
12 attention. We know that it's an important business
13 model for some people. We are interested in -- what
14 we are testing at Berkeley are ideas that are widely
15 discussed in the deception literature. There's very
16 good papers out there about how people are deceived,
17 the types of factors that make them vulnerable to
18 deception, what deception is, et cetera. We are
19 very interested in implicit deception, and I have
20 some citations on the slide, and the issue of
21 manipulation of schema.

22 So here, between these two different
23 ideas, we are interested in determining whether
24 these native ads cause people to be confused about
25 the source of the information and whether there is

1 misleadingness based on the lack of disclosure of
2 information. And again, these underlying papers
3 explain this in detail.

4 So our research questions are, would
5 respondents identify a sponsored report as written
6 by the publication or by someone else? And here we
7 are looking at Hastak and Mazis and their idea that
8 deception is sometimes caused by source-based
9 misleadingness and sometimes by manipulating schema.

10 And we're also looking at endorsements.
11 And I'm not going to talk about that today, that's
12 for another workshop, but would people be confused
13 by endorsements.

14 So here are our methods. This is an
15 online survey and I want to make it really clear
16 that it's not random. Online surveys are inherently
17 not random, so how much this can be extrapolated to
18 the general public is an issue.

19 Also, we did something very special in our
20 study. Again, I mentioned at the beginning, we
21 weren't studying native advertising specifically, we
22 are actually studying targeted advertising. So what
23 we did is we bought lists of consumers. And one
24 tranche are consumers who are vulnerable because of
25 some situational factor in their life. Another

1 tranche of the data were consumers who were vulnerable
2 because they had some underlying condition. Another
3 tranche were subscribers to financial journals. And
4 I'm sorry, I'm looking at the participant from The
5 Wall Street Journal here. And then finally, a
6 control group of randomly selected internet users.

7 We are at the very beginning of the study.
8 I just got the data back two weeks ago, there's a
9 lot more work that needs to be done, but I'll just
10 give you an idea of what we did here.

11 We put a native advertisement, and this is
12 a real one, this is one we found in a magazine, and
13 we repackaged it and put it in the context of a
14 blog. And when you look at it in more detail,
15 you'll see that it's an advertisement, it looks a
16 little bit like a news article, but it's an
17 advertisement for special diet pills.

18 The disclosure is that it's a sponsored
19 report. It has this interesting endorsement in it
20 and the endorsement is ambiguous. It's not clear
21 who the speaker is. She might look like she has a
22 medical background, but she lacks the traditional
23 garb. There's no stethoscope, there's no lab coat,
24 right? So what does the reader think of this person
25 is something we're looking at. And one of the

1 things we did in the experiment is we manipulated
2 the background. We subtracted out the blue
3 background to see if that was relevant.

4 And I can sum up with this slide. We
5 asked our respondents, about 600 people, was the
6 material on diet pills written by journalists and
7 editors working for the website or by someone else?
8 And our results say that 27 percent said journalists
9 or editors, 43 percent said someone else, and 29
10 percent didn't know. And we didn't find significant
11 differences between my different groups, my
12 different groups of vulnerable consumers versus
13 readers of financial newspapers and the like.

14 And I think that concludes it. My email
15 is there. If you want my slides, just send an
16 email to that address and my responder will send you
17 a link to the slides. Thank you.

18 MR. OSTHEIMER: Thank you, Chris. And now
19 we'll hear from David Franklyn of the University of
20 San Francisco School of Law.

21 MR. FRANKLYN: Thank you. I'm going to be
22 equally brief. I'm a law professor, teaching
23 intellectual property law, including unfair
24 competition and trademark law and run the McCarthy
25 Institute for Intellectual Property Law there and

1 also something that we call the Center for the
2 Empirical Study of Trademark Law and Consumer
3 Perceptions on the Internet.

4 And we got interested in conducting a
5 series of studies, starting about three or four
6 years ago, on -- not on native advertising, per se,
7 but on search engine search results and what, in
8 particular, people recognize about labels, like
9 sponsored ads, what they understand those labels
10 to mean, whether they understand the difference
11 between paid and unpaid advertising, whether it
12 matters to them to understand the difference between
13 paid and unpaid advertising, and we asked people if
14 they would click more, for example, if they thought
15 it was paid advertising.

16 We asked people a bunch of questions. We
17 showed them screenshots of actual search results, we
18 zoomed in on them. The surveys took 10, 15, 20
19 minutes to complete. We surveyed over 10,000 people
20 in several countries, we've collected the data, we
21 have two published papers. I'm not going to, you
22 know, bury you in numbers. I could do that, and if
23 you want to get into it in Q&A, I would be happy to
24 do that.

25 I'm going to go ahead, for now, and just

1 skip my slides and read you what I think the
2 takeaways are from the research. People -- we found
3 that people often skip over labels, they don't even
4 notice them, like the word sponsored. We asked
5 them, how many had they remembered seeing in the
6 last year or two. People, large numbers of people,
7 a majority, more than 50 percent, don't know what
8 the word sponsored means.

9 So if the industry practice here is going
10 to be that it can be solved by using the word
11 sponsored, we need some more empirical research to
12 justify that that clears up the question.

13 Number three, sometimes people don't even
14 understand what the word ad means. And even though,
15 in like a medium gray tone, it says ad next to a
16 search result that clearly is an ad, with a pop-up
17 screen with that label right in front of them, as
18 much as 35 percent of people say it's not an ad.

19 So the notion I heard earlier this morning
20 that it's in the best interest of all of these
21 companies to make sure everybody knows this is
22 native advertising is not (a) necessarily true,
23 because we do not have a homogeneous group of
24 consumers, we do not have a homogeneous group of
25 consumers, in terms of what their expectations are,

1 and we do not have a homogeneous group of consumers
2 in terms of what they want, what they're looking for
3 out of this.

4 All right. So another finding that we
5 have is that people struggle with differentiating
6 paid from unpaid advertising. Approximately 60 to
7 66 percent of people got it wrong when we marked out
8 regions of the page and asked them what's paid and
9 unpaid. 33 to 40 percent, depending on the study,
10 got it right.

11 People remember seeing labels that have
12 never been there, that have never existed, that we
13 just fancifully created to see if they would say
14 they remember seeing them. People are highly
15 conditioned to see what they've been conditioned to
16 see through graphic context. Context matters more
17 than labels. And I think this business model that
18 we're hearing about here proves that, it depends on
19 it. People, when they are presented with a story
20 that looks like a story, they think it's a story.

21 Context is extremely important if we are
22 talking about deception. Context was a different
23 matter offline than it is online. And it's a
24 different matter on a mobile phone than it is on a
25 laptop. As we move in this space, context is key.

1 Substantial numbers of consumers report
2 that they feel confused about the difference between
3 paid and unpaid ads. Interestingly, some of them
4 say, like a third, they don't care. Interestingly,
5 like a third of people say they would click on
6 something more knowing that it's an ad. And this
7 does start to justify this feeling in the room, this
8 assertion in the first panel, that people -- when we
9 are talking about protecting the consumer. From
10 what? If what they want is to be entertained by a
11 paid placement and don't care that much about
12 whether it is differentiated, it's a very important
13 baseline question, what are we protecting the
14 consumer from? Because we found real differences
15 and preferences about what consumers want.

16 Consumers -- we also tested disclosures
17 and disclaimers to see how much they are noticed and
18 how effective they are. It's highly context-
19 specific and highly specific to what is said in the
20 disclaimer.

21 We also found that, as a general matter,
22 initial attention is higher to labels that are at
23 the top of the ad and the left side, as opposed to
24 someplace else.

25 So that's some empirical findings. What

1 it all means in terms of policy, I'm not sure, but
2 we continue to find consistently -- and this has
3 caused, in Europe and in the United States, deep
4 confusion about the difference between paid and
5 unpaid content.

6 Thank you.

7 MR. OSTHEIMER: Next, I'd like to
8 introduce Jamie Cole of the Red Barn Media Group.

9 MR. COLE: Well, first I'll explain my
10 presence here. I work both in the custom content
11 industry and on the media effects side of research.
12 Our company, Red Barn Media Group, is a small
13 start-up in Birmingham, Alabama, in case you can't
14 tell by the accent, and we work primarily in the
15 agricultural and rural life markets. We do custom
16 magazines that are sent directly to customers. They
17 are clearly branded, but they do take a journalistic
18 approach to story-telling.

19 Once inside these magazines, the approach
20 is less about brand and more about brand values and
21 the values of the customers of the brand. But we
22 also leverage that content out to the brand's social
23 media channels, whether it be Facebook, Twitter,
24 corporate blog, email newsletters, corporate
25 websites. And there is a destination site that all

1 of that links to, which is another branded website
2 where all the content is curated.

3 We offer stories that we like to think
4 entertain, compel, and help customers of brands
5 solve problems. While product is sometimes
6 presented in helping solve those problems, that only
7 happens when the customers present that within the
8 context of the story.

9 This example story is from a magazine we
10 produced for Massey Ferguson tractors called Farm
11 Life that deals with estate planning and one family's
12 solutions for a complicated business plan. Brand
13 values are reflected, but it's really about helping
14 the customer solve an issue. And the magazine is
15 presented to recipients as a benefit of being a
16 customer, not as a sales or promotion tool.

17 You'll hear a lot of names thrown around
18 in regards to content marketing, thought leadership,
19 custom content, brand journalism, advertorials,
20 native advertising, but it's all within one big pot
21 of content marketing. And in the interest both
22 the business that I was starting and in working on a
23 master's thesis at the University of Alabama, myself
24 and one of the leading experts in the field of media
25 effects credibility, Dr. Jennifer Greer, recently

1 published a paper in Journalism and Mass
2 Communication Quarterly called "Audience Reactions
3 to Brand Journalism." And brand journalism is
4 another piece of this content marketing puzzle.

5 And while we were primarily interested in
6 the credibility of brand journalism or custom
7 content, we also explored attitude toward the brand
8 and purchase intent, to give it a little bit more of
9 a marketing perspective as well.

10 Now, two disclosures right up front. This
11 was a print-only study, so we were looking at custom
12 magazines as our stimulus. And also, just from a
13 media effects research perspective, media effects
14 research tends to be more reactive. It comes behind
15 the trend to evaluate it and, in some ways, it has
16 to because new media trends really need to propagate
17 before you can evaluate it. So this was in print,
18 not digital.

19 We also looked at product involvement,
20 which is a fairly well-recognized marketing scale,
21 to make sure that our variables were not affected by
22 someone's previous thoughts or involvement with the
23 product.

24 So our methodology, we created four
25 versions of a magazine article in different stages

1 of commerciality and they're here on the slide.
2 Visual cues in the commercial frames included
3 corporate logos, a corporate name for the magazine,
4 and really heavy-handed product placement.

5 In the editorial frame, there was little,
6 if any, corporate presence in the visuals and it
7 looked just like a straight magazine.

8 So the key finding probably won't be
9 terribly surprising. The least commercial stimulus
10 material, the editorial frame with the peer source
11 quoted in the story, was rated as the most credible,
12 with credibility ratings decreasing as an article
13 package became more commercial.

14 Also, product involvement, if you already
15 knew something about the product you were reading
16 about, was the biggest driving factor for any
17 variable. And that tends to make sense, especially
18 for custom magazines, because most of that is
19 targeted at customers or hand-raisers.

20 What makes this relevant in many ways to
21 native advertising is the difficulty of recognition.
22 And it was one of the biggest issues we had in our
23 research. One of the major limitations with
24 researching this type of content is how to make the
25 cues clear enough so that participants understand

1 commercial versus editorial, and we had a great deal
2 of trouble with that.

3 Only about two-thirds of the participants
4 in our study recognized our commercial framing
5 devices in the form of visual cues, even though it
6 was done in a laboratory setting and they were
7 clearly told, pay attention to this. More were able
8 to recognize the differences in the type of sources,
9 whether it was corporate versus peer, but not near
10 100 percent.

11 That makes this research relevant, of
12 course, to discussions of native advertising, as one
13 of the key questions is whether consumers can
14 recognize the difference. And based on our media
15 effects research, the likely answer is they can't.

16 We did review similar and historical
17 precursors to native advertising in the literature
18 that led to our research questions and assumptions
19 and similarly, in advertorial, peer-to-peer,
20 straight advertising. Unless participants in
21 studies were explicitly made aware of the
22 subtleties, they often weren't aware of them at all.

23 Our research does seem to indicate that
24 the editorial, journalistic approach to advertising
25 or story-telling helps bridge the credibility gap,

1 when compared to more commercial approaches,
2 especially if the consumer is already engaged with
3 the brand or product.

4 MR. OSTHEIMER: Thank you very much.
5 Next, I'd like to introduce Jeff Johnson of UI
6 Wizards.

7 MR. JOHNSON: Okay. I just returned from
8 teaching human/computer interaction in New Zealand
9 so, good day.

10 All right. So my role here is to provide
11 background on human visual perception and how it
12 affects our ability to spot ads among other content.
13 Human perception has five characteristics that are
14 relevant to the issue of native advertisements.
15 They are these, the ones that are on the slide in
16 front of you, which is that human perception is high
17 resolution only in the center 1 percent of the
18 visual field. It's active, goal-oriented and
19 attention-limited; color discrimination is limited;
20 visual hierarchy indicates connection; and common
21 visual problems can diminish the ability to spot
22 ads. I will cover each of those briefly, with some
23 examples.

24 So let's start with peripheral vision. In
25 the center of your visual field is a small area

1 where you have high resolution vision. Everywhere
2 else, your eye has very low resolution, very low.
3 You could say that, outside of the center, you are
4 legally blind. This chart shows the relative size
5 of pixels in our visual field as you move from the
6 center out to the edge.

7 I want everyone in the room to hold out
8 your arm and stick up your thumb. Look at your
9 thumbnail, look squarely at your thumbnail. Your
10 thumbnail at arm's length covers the area where you
11 have high resolution vision. That's 1 percent of
12 your visual field. In that small area, which is
13 called the fovea, normal human vision has a
14 resolution of about 300 dots per inch at
15 arm's length.

16 At the edges of your vision, the
17 resolution is not 300, it's 3. And it's not dots
18 per inch, it's dots per foot, okay? That's how low
19 it is.

20 So let's look at what happens when we
21 read. Our eyes don't move smoothly over the text;
22 they jump from one important word to the text.
23 While they move, they see nothing. When they stop
24 on a word, they see mainly that word and little
25 else, as is shown here on the bottom line.

1 Now, when you first land on a page like
2 this on a website, your eyes presumably focus
3 initially on the top left heading. So I'll show you
4 that in a second, but first scan the whole page.
5 Everyone see the whole page? Okay, so now here's
6 how the page looks when your eyes are fixed on the
7 word "dining" at the upper left. Until your eyes
8 move, that's what they see.

9 Then, if you scan the box on the left with
10 your eyes, your brain builds a picture of that box,
11 but it could still have only a vague idea of what is
12 in the box on the right. You might assume that the
13 blurred blob at the upper right of the right box
14 says "blog listings" even though it really says
15 "sponsored content."

16 The second characteristic of visual
17 perception is that it is strongly goal-oriented.
18 Where our eyes move on a page is determined largely
19 by what we are trying to do.

20 Suppose you were in Dallas looking for
21 weather information, where would you look on this
22 page? I think you can all figure that out. What if
23 you were looking for things to do in Dallas? Well,
24 there are at least two places on that page you might
25 look. Things unrelated to your goal might be

1 unnoticed, like labels on ads.

2 Characteristic three of vision is that we
3 don't see absolute brightness levels, we see edges
4 and contrasts. See the squares on the checkerboard
5 marked A and B? Does everyone see those squares
6 marked A and B? What if I told you they were the
7 same shade of gray? They are the same shade of
8 gray. You don't believe me, of course. So let's
9 cover it up, one piece at a time. Voila.

10 So what that tells us as content designers
11 is that we should not rely solely on color or shade
12 to convey information or to mark things; we should
13 use color redundantly with other cues. For example,
14 the travel site ITM.net marks your current step in
15 booking a flight, hotel, or car with pale yellow.
16 Does everyone see that we are on step two? No, you
17 don't, because it's too pale. So that's not good
18 enough.

19 So some people won't be able to see it and
20 some displays won't show it. So the current step
21 should be marked with bold, as well as with a
22 brighter color. In other words, use multiple cues
23 redundantly.

24 A fourth characteristic is visual
25 hierarchy. As our visual system scans a display, it

1 uses visual hierarchy to segment the page into
2 meaningful parts. The stronger the hierarchy
3 created by a web designer, the easier it is for
4 people to see what goes together with what. On the
5 left, we have an example of a weaker visual
6 hierarchy. The sponsored links label is meant to be
7 a heading for all of the items below it, but it
8 looks like a peer item. That's weak hierarchy.

9 On the right is an example of stronger
10 visual hierarchy. The visual system instantly sees
11 what is covered by the sponsored label and what
12 isn't.

13 Similarly, in these two examples, we have
14 weaker visual hierarchy on the left and stronger
15 hierarchy on the right. Now the color contrast on
16 the right is too low, but the visual hierarchy there
17 is good.

18 Our final characteristic of visual
19 perception is that many common vision problems or
20 issues can hinder people's ability to spot ads. For
21 example, if you view a web page indoors on your
22 mobile phone, it might look like this, easy to see
23 the ad markers. But if you look at that in your
24 backyard or if you have high sensitivity to glare,
25 it might look like this. Now where did those ad

1 markers go?

2 Here we have a page that marks ads with a
3 yellow background and a couple of gray labels.
4 That's fine. But for those of us who are over 45,
5 and I want everybody in the room who is over 45 to
6 raise their hands, come on, admit it, all right, and
7 have some yellowing in our lens due to a lifetime of
8 exposure to ultraviolet light, those ad markers
9 might not be so easy to see. Take a look at it. If
10 we've got yellowing in our lens, how well is that
11 marked?

12 Thank you very much. I look forward to
13 the discussion.

14 MR. OSTHEIMER: I'd now like you to
15 welcome Dan Greenberg of Sharethrough.

16 MR. GREENBERG: So I'm not 45, yet. But
17 some people say I'm an old man.

18 Nice to meet everybody. I'm Dan
19 Greenberg, founder and CEO of Sharethrough, and also
20 cochair of the IAB committee on native ads. So I've
21 been working on this and thinking about this a lot
22 this year.

23 I do want to start just by giving a little
24 bit of background as to why I'm here and the context
25 that I'm coming from. Before I started

1 Sharethrough, I was doing research at Stanford in a
2 lab called the persuasive technology lab. And the
3 whole purpose of this lab was about taking what we
4 know from the thousands of years of human-to-human
5 persuasion and replacing one of those humans with a
6 computer, the idea being if you can figure out what
7 still worked, you could make it to scale.

8 Very sort of scary, powerful stuff, but we
9 used it for things like how do you use mobile phones
10 to get people to stop smoking cigarettes, how do you
11 use the power of persuasive text messages to get
12 people to study more often, really sort of
13 save-the-world type things. Health persuasion,
14 things like that.

15 I think the lab, though, opened my eyes to
16 the power of both persuasion and credibility on the
17 web. And so when I started Sharethrough, it came
18 from the point of view of the power of content and
19 the power of persuasion. I mean, I was going to
20 joke before but someone had to say it, with great
21 power comes great responsibility, which is both a
22 Voltaire and a Spiderman quote. But I think that's
23 a lot of the theme of today and I think that's why
24 this is such a hot-button topic for the entire year,
25 actually, both in terms of industry and venture

1 capital being invested into this space, but also in
2 terms of self-regulation and really figuring out
3 where this industry needs to go.

4 I do want to say something very clearly to
5 start out and then I'm actually going to show some
6 research. You guys have my slides, right?

7 I'm going to say very clearly that the
8 folks in the room that have locked arms in the IAB
9 committee and are in the space to talk about this
10 realize that the promise of native advertising is
11 not about tricking users with ads disguised as
12 content. It's not about that. It's not about the
13 yellows, it's not about the sponsored word, it's not
14 about the word promoted, and it's not about finding
15 the ways to trick people into thinking something is
16 content that's not.

17 Yes, there's things on the edges that try to
18 trick you into buying belly fat pills or trying to get
19 you to buy teeth whitening or whatever, but the real
20 movement here, this real movement towards meaningful
21 content, is about a macro-shift in the ad industry from
22 ads that are obnoxious and interrupt to brands actually
23 creating meaningful content. That's what this movement
24 is about. That's where the venture capital money is
25 being invested, that's where the revenue and the

1 industry is shifting.

2 That's why Facebook and Twitter have emerged
3 as something like 20 to 25 percent of the display ad
4 business. It's not about tricking people from the
5 homepage of Facebook to go buy credit card offers.
6 It's about delivering content that actually has value.

7 When I started Sharethrough, I really did
8 start it with this in mind, that we believe in the
9 power of meaningful content, both from brands and
10 publishers. Sharethrough, just for a little bit of
11 context, is a software company that powers in-feed
12 ads for major publishers, essentially helps brands
13 to create content distributed through this new form
14 of ads.

15 So for example, you'll have Coke or Pepsi
16 create a music video, just the same way they would
17 for TV, but instead of interrupting somebody with
18 it, they'll integrate it into the natural feed of a
19 site. Facebook does this through sponsored stories;
20 Twitter does this through promoted Tweets; and
21 Instagram is now doing this through promoted photos.
22 And now the rest of the editorial web has caught on
23 and said let's do this, too, but in a way that is
24 clearly disclosed.

25 Sharethrough, again, just for context, I'm

1 going to go through the disclosure research, 100
2 percent of what we run and 100 percent of the ad
3 placements that we power always say either
4 advertisement or sponsored or promoted. Now, that
5 said though, I -- and I don't think the other folks
6 in the room that power technology companies are
7 wedded to those words.

8 So we do research, and some of the stuff
9 you guys just talked about was incredibly
10 interesting. If we did research that says that it
11 has to be a phrase that says "This story is an ad
12 paid for by the brand, make sure you don't get
13 tricked." We'll find a way to get that into the
14 placements. And so maybe that's a good jumping off
15 point for this research.

16 So what I wanted to do here is present
17 very preliminary data on a pretty preliminary study.
18 I was not going to present it, but then the data
19 came in and it looks kind of interesting, so just
20 bear with me on this. Hit me with the first slide
21 here. Wow, my young eyes can't even read that
22 either.

23 So the research question, we started out
24 with the concept that we were going to truly test
25 sponsored versus promoted versus featured versus

1 suggested versus advertisement, ad, et cetera. And
2 I think what we realized, through the preliminary
3 research, is that that requires a much more in-depth
4 study. So what we end up doing here is sort of a
5 very simple research question and a very simple
6 research outcome, where we essentially just wanted
7 to ask a binary question. Does the language used to
8 disclose in-feed and native ads have an impact on
9 whether or not a consumer perceives a story or an
10 item as being paid for by a brand?

11 So the operative word is language. Does
12 the language have an impact. I totally agree that
13 visual cues have an impact, I totally agree that
14 constructs and context probably have more impact
15 than language even, but I wanted to do a preliminary
16 study that is language something that we really
17 should focus in on. And I think a lot of publishers
18 and tech companies are talking a lot about promoted
19 versus around the web versus featured versus
20 sponsored and so I wanted to look at essentially a
21 delta between user understanding for each of those
22 different words.

23 The study, again, is simple. And I'll
24 just tell you the answer, right off the bat, is that
25 the preliminary data shows that yes, there is

1 statistical significance in users' understanding of
2 words like sponsored, featured, promoted,
3 advertisement, et cetera. I think actually riffing on
4 what David was just talking about, too, none of our
5 cases -- we had a bunch of cases where we showed a
6 user an image of a website, a generalized website,
7 just a normal feed, and some of them had no ad. And
8 when you asked the user, is there a piece of content
9 paid for on this page by a brand and in a pretty
10 significant percentage of cases, people would say
11 yes, there is. Even if nothing is even paid for.
12 Nothing is yellow, there is nothing even on the page
13 paid for by a brand, no disclosure, no word
14 "advertisement."

15 So we dug in a little deeper and we asked
16 people what is really going on. And I think it sort
17 of speaks to the sad state of editorial right now,
18 to be a little bit of a downer about it, that people
19 would say things like, well, that's a Britney Spears
20 music -- maybe not Britney Spears, Miley Cyrus music
21 video story, of course she paid for it. Well, she
22 didn't pay for it as an ad, she paid for it in that
23 she has a manager and, you know, a production
24 company and she paid to create it. So I think it
25 does speak to whether consumers even fully

1 understand what ad means or what does paid for by a
2 brand mean.

3 So 3,000 participants took this study. We
4 tested 15 different common disclosure statements.
5 Again, not to cast judgment on, you know, good
6 versus bad, but really just to show a generalized
7 page and say, on this page, does the word sponsored,
8 promoted, advertisement, paid for by the brand,
9 impact somebody's perception. And the question was,
10 is there any item on this page that was paid for by
11 a brand. Which, you know, in retrospect, is
12 probably too obscure of a question, because a lot of
13 people don't even know what the word "brand" means.
14 A lot of people don't even know what "item" on this
15 page means, and so there's obviously more
16 wordsmithing to be done. Or paid, yeah.

17 So we tested both mobile and desktop, both
18 just generalized feeds to take sort of the branded
19 context out of it. And this is too much text for
20 the slides here, but I wanted to give a couple
21 caveats. Again, this is preliminary data.

22 One, context does have a major impact on
23 perception. This test really only limited to mobile
24 and desktop, one ad and one feed. And yes, we got
25 3,000 people to look at it, but we didn't slice it

1 by demographic, we didn't slice it by language. I
2 honestly think to do this now, after doing this
3 preliminary research, which took maybe four weeks,
4 this is probably 100,000 participant type study.
5 This is probably a cross-country, cross-platform,
6 cross-content type student.

7 I think the other thing that we realize
8 is, you know, we've talked about banner blindness
9 for years in the industry and a lot of what is going
10 on here is banner blindness. I think it is similar
11 to what you just talked about, that people will see
12 a page and you'll ask them, is there an item on this
13 page paid for by a brand. And it's not a question
14 of whether they realized that an individual item was
15 paid for or not, it's literally that they just
16 didn't see it. They scanned the feed. And you know
17 how you do that, you know, you have your phone and
18 you scan through a feed, you see some of them and
19 you don't see others. The fact that you didn't
20 realize one of those stories is paid doesn't mean
21 that you were tricked, it means that you just
22 literally didn't see it. So finding some way to
23 decouple that would be important.

24 Again, not trying to cast light on which
25 are better, which are better and which are worse, I

1 just wanted to show deltas. From the baseline of no
2 disclosure, you know, no disclosure and no ad on the
3 page, to sponsored, featured, promoted, presented
4 by, even one of these I think said, this is an ad
5 paid for by a brand. Like, that was the text we
6 used in it. Even in that case, it wasn't 100
7 percent, I think we got up to probably 70
8 percent-ish yes's on this is an ad paid for by a
9 brand. Again, the point though is that there is a
10 statistically significant delta.

11 This is probably too much for now, so I'll
12 just skip past it, but as we have more discussions
13 about research, there are some pretty specific
14 recommendations around isolating the effect of
15 realizing the content is paid versus the effect of
16 users even noticing the content. I think there's
17 questions around testing user sentiment that will be
18 important. Did users expect to leave a page? Do
19 users expect that the editorial is paid for? What
20 is the user expectation? And you know, obviously
21 testing multiple various content types, Instagram
22 photos, app downloads on Facebook, videos, editorial
23 stories, all of this comes together.

24 And as I started to cross the data and
25 really look at the pivot tables behind the data, I'm

1 realizing that there are so many ways to slice it.
2 If you're talking about even just language, before
3 you talk about visuals and before you talk about
4 context, this probably ends up being a pretty huge
5 study. I'm not going to be the one to take it on,
6 but I'm excited that somebody in this room will take
7 it on. And I can say pretty strongly that
8 Sharethrough and the other tech companies that I
9 know in the room, when and if the FTC or, you know,
10 a self-governing body says, here's what we want to
11 do and here's where we need to go and here's the
12 language and here's the structure that we need to
13 use, everybody is ready to step-up and do that.
14 Maybe I can speak for myself, but everybody that I
15 consider our peers and folks that we respect, are
16 ready to do that because, again, native advertising
17 is not about tricking the user, it is about content.
18 It's about brands creating actually meaningful,
19 valuable content, whether it is delivered in a way
20 that says sponsored or in a way that's yellow or in
21 a way that's bold or italic, it matters, but it
22 doesn't really matter. What matters at the core is
23 that it's content.

24 And because it's content, it doesn't work
25 in banners in the corner. And because it's content,

1 it doesn't work as an interruptive interstitial or
2 pop-up. Because it's content, it has to be treated
3 in this new form.

4 So thanks for listening and hope you found
5 it interesting.

6 MR. OSTHEIMER: Now I'd like to introduce
7 Michelle DeMooy from Consumer Action.

8 MS. DEMOY: Hi, I'm Michelle DeMooy.

9 MR. OSTHEIMER: DeMooy.

10 MS. DEMOY: From Consumer Action. That's
11 okay, you're not the first person.

12 Consumer Action is a 42-year-old national
13 nonprofit based in San Francisco. We seek to
14 empower underrepresented consumers in the
15 marketplace. The DC office is focused on advocacy
16 issues like credit cards, housing, insurance, and my
17 work focuses on digital privacy, but that sort of
18 has started to intersect with data fairness and some
19 other issues that are periphery to it.

20 We focus our work on low income and
21 underrepresented communities, some minority
22 communities, non-English speaking communities, which
23 are incidentally the fastest growing users of mobile
24 technology and also the most likely victims of
25 privacy and data harms like identity theft and

1 fraud. So some of my comments today I will try to
2 focus on that.

3 You know, I do think that one added
4 comment that I would make is that, in my intro, is
5 that source really matters. You know, I think --
6 people have gone to jail for lesser things, right?
7 The source of information is incredibly crucial, not
8 just for the viability of the web, but in terms of
9 consumers going online, being able to trust brands,
10 trust sites and information that they come to rely
11 on.

12 And it actually is funny, it made me think
13 of an example. Over Thanksgiving, I was at home
14 with my parents and my dad saw me working on
15 something that said "native advertising" and it was
16 just those two words. And he said, so you're
17 working on renaming the Redskins?

18 And I was stunned and speechless and it
19 made me realize, of course, that -- and I laughed
20 and turned it over and it said Federal Trade
21 Commission Workshop on Native Advertising, and then
22 of course he got it.

23 But it just kind of underscores the point
24 to me that, you know, everyday people, it's easy to
25 say, well, they're just not savvy. But context and

1 source, of course, are crucial.

2 MR. OSTHEIMER: Thank you. Now, I'd like
3 to introduce Chris Pedigo of the Online Publishers
4 Association.

5 MR. PEDIGO: Thank you. I'm Chris Pedigo,
6 Online Publishers Association. We represent 60+
7 member companies, premium publishers. According to
8 comScore, 100 percent of the US online population
9 will visit at least one of our member sites every
10 month.

11 We conducted a survey earlier this year on
12 what our members were doing and experiencing with
13 regard to native advertising and found that, by the
14 end of this year, 90 percent of our member companies
15 will offer some form of native advertising.

16 I think also a really telling stat is that
17 71 percent reported that they were hearing no
18 complaints at all with regard to their native
19 advertising launch and just 29 percent were hearing
20 very few complaints. And I think that's telling for
21 a couple of reasons. One is, we also found on that
22 survey that our member companies go to great lengths
23 to label and provide a lot of transparency around
24 what is native and differentiate between editorial.

25 And secondly, they -- and I think it's

1 sort of lost in this particular debate is that, our
2 member companies look at native advertising as
3 another way to provide value for the consumer. That
4 it's -- instead of just another advertisement, this
5 is something that they're interested in. They know
6 their audience well and they work with that
7 advertiser to produce content that's appealing to
8 them.

9 And so I think native, you know, if done
10 properly and done well, offers a true benefit, I
11 think, for the advertiser, for the publisher, and
12 for the consumer.

13 MR. OSTHEIMER: Thank you very much. I'd
14 like to use the remaining half of our panel to have
15 a discussion with some questions.

16 My first question is, do consumers view
17 information differently, in terms of credibility,
18 depending on whether they perceive something to be
19 advertising as opposed to editorial content, and
20 what evidence suggests that?

21 David, would you like to take a shot at
22 answering that question?

23 MR. FRANKLYN: Yes. The answer is mixed.
24 Some consumers, in our reports, and I could give you
25 a little bit more specific breakdowns, but sort of

1 like there are pluralities here. Some consumers say
2 that it would not matter to them to have more of an
3 assurance about whether something is paid or unpaid,
4 in terms of whether they trust what they are looking
5 at and whether they are going to go and click and
6 continue to click and buy.

7 Other consumers, about 40 percent, say
8 they want more clear and conspicuous differentiation
9 between paid and unpaid content and that they would
10 click on unpaid content less, or once having figured
11 out, go back to it less, if they knew the
12 difference.

13 So it's not a singular response. I think
14 what we're -- and for me, a bit of a takeaway, very
15 briefly, of that is that we now have immersed
16 ourselves and our culture so much in this world that
17 a growing number of consumers don't care and enjoy
18 it. They enjoy the hyperstimulation of the work
19 that the people in this room do. Not all of them,
20 not all of them, by any means, but a percentage
21 enjoy getting all of this content that's
22 entertaining. And they don't care whether it's paid
23 or unpaid, they just want to sift through it and
24 enjoy it like People magazine, you know? They know
25 they paid for that.

1 MR. OSTHEIMER: Might that depend on
2 context?

3 MR. FRANKLYN: It does depend on context,
4 yes. I think it is context-dependent and it also
5 depends on sort of a matter of degree, but it was
6 something that we definitely struggled about as we
7 went into our research, not to make just an
8 assumption that we knew what consumers wanted.

9 We wanted to find out what they wanted and
10 we found out they want different things.

11 MR. OSTHEIMER: Thank you. Jamie, do you
12 have any response?

13 MR. COLE: Sure. Well, as I mentioned,
14 message credibility in our studies did steadily
15 climb from our most commercial condition up to our
16 least commercial condition. So the more we see the
17 appearance of editorial, the more credible it seemed
18 to be in our study.

19 But it's always worth pointing out that a
20 consumer's previous involvement or engagement with a
21 product or brand or idea might influence that. So
22 we want to make sure that we're not assigning some
23 variable to whether it's paid advertising or
24 editorial, but it's explained by something else.

25 A good example of that to explore might be

1 -- I'll be the next one to pile on The Atlantic, the
2 Scientology piece. Based on our research, my bet
3 would be that credibility was affected, one way or
4 another, if you had previous notions about
5 Scientology. And it would have been true,
6 regardless of the visual cues, whether it was
7 commercial or editorial, whether you perceived it to
8 come from The Atlantic or from somewhere else. And
9 our literature review revealed that those
10 perceptions about brand or an idea or a product are
11 long-lasting and stable. They don't change much.

12 The other question I think is interesting
13 to explore about credibility, especially in regard
14 to native advertising is, from where is the consumer
15 drawing this idea of credibility? Is it from the
16 information itself because it's well-done and
17 helpful and serviceable? Again, is it from the
18 previous engagement with the brand or the idea? Is
19 it from the mere appearance of the look and feel of
20 the editorial, just because it's packaged like a
21 news story? Or is it from the credibility of the
22 material around the content, which is where context
23 comes into play. If it looks and feels like The
24 Atlantic, same font, same style, same voice, then is
25 it attempting to draw on the credibility of The

1 Atlantic and not standing alone.

2 MR. OSTHEIMER: Thank you.

3 MS. DEMOY: Michael, can I comment on one
4 thing here?

5 MR. OSTHEIMER: Yes.

6 MS. DEMOY: I just want to say, you know,
7 I think with credibility there's one issue that you
8 don't often talk about which is, what's missing,
9 right?

10 So the content may appear credible, you
11 know, and for example WebMD, we'll just have another
12 target that we can beat up for a little bit, has
13 been traditionally sort of unbiased medical
14 information. They've started doing native
15 advertising, which I think makes it difficult to
16 discern sometimes.

17 But of course there's that issue and
18 there's the issue of credibility, but then the
19 question of what is missing from the information
20 that's given to somebody. And in that case, and I
21 think in financial and health and other sorts of
22 cases like that, has real cost, not just in
23 credibility.

24 MR. OSTHEIMER: Thank you. I'm going to
25 move on to my next question.

1 Are there reasons to believe that certain
2 ways of distinguishing native advertising from
3 editorial content are more or less effective? Why
4 don't we start with Dan?

5 MR. GREENBERG: I think you guys pretty
6 much know our point of view. I think yes, it's
7 incredibly important. It's incredibly important
8 across platforms. I didn't really dive into my
9 recommendations for future research, but maybe I'll
10 give a little bit of thought right now on it.

11 One of the most important things is going
12 to be figuring out by platform. If you are on
13 Facebook and you see a sponsored story, people know
14 enough to be annoyed by those sponsored stories,
15 right? Your friends know it. On Instagram, those
16 new Instagram photo ads, Instagram promoted photos,
17 they do use the word promoted and it's just a single
18 word, eight characters or seven characters, whatever
19 promoted is, but if you look at the comment threads,
20 the comment threads are all about the fact that it's
21 advertising. Yes, I'm sure plenty more people saw
22 it than actually commented on it, but I think the
23 context of the platform truly matters.

24 So if you are on WebMD and you see an
25 article about new Viagra or something, you're

1 probably not expecting that to be sponsored, even if
2 it says sponsored. Sponsored might mean something
3 very different on WebMD than sponsored means on
4 Facebook, where they've been using the word
5 sponsored story and suggested post for years. At
6 Twitter, promoted tweets, that little yellow icon on
7 Twitter, I think it speaks to -- maybe riffing on
8 Jeff, too, a little bit, I've been thinking a lot
9 lately about these tiny visual cues. And even on
10 Twitter, you see that little blue dot. Who actually
11 has Twitter, I'm curious, in the room? Oh, that's
12 good. Everybody knows that. That's an addictive
13 blue dot. When you open Twitter and that little at
14 sign -- it's a tiny blue dot, like 5 pixels, you
15 have to click on it. You don't miss it, you don't
16 ignore it, you know it's there. It's a little
17 visual blue dot.

18 So the same thing with that little yellow
19 tag on Twitter, when you see that little yellow tag,
20 you know that that means promoted. That yellow tag
21 on WebMD or on Forbes or People definitely doesn't
22 mean promoted.

23 So I think yeah, there's definitely
24 questions to dive into and that's where I focused.

25 MR. OSTHEIMER: Jeff, are there reasons to

1 believe that certain ways of distinguishing native
2 advertising from editorial will likely be more or
3 less effective?

4 MR. JOHNSON: Yes. As I mentioned
5 earlier, you know, the use of strong visual
6 hierarchy. Someone on one of the earlier panels
7 mentioned containers, container widgets. So
8 basically to create a strong visual hierarchy,
9 basically what you have to do is to show someone
10 that there is a scope in which the stuff inside that
11 scope is sponsored. And it has to be, you know, it
12 has to be clear.

13 So when I gave some examples of strong
14 versus weak visual hierarchy, those are examples of
15 well-presented and poorly presented disclosures.

16 MR. OSTHEIMER: When an ad is specifically
17 designed to look and feel like the surrounding
18 editorial content, are there reasons to believe that
19 even clear advertising disclosures might be
20 ineffective for a significant percentage of
21 consumers?

22 Chris, Chris Hoofnagle, do you have a
23 view?

24 MR. HOOFNAGLE: Yes. You know in our
25 study, 27 percent of the users thought that the

1 material was written by a journalist, even though
2 there was a disclosure in the title of the blog post
3 saying sponsored report.

4 You know, I think there's some underlying
5 issues here that are important to surface. One is
6 that, you know, 27 percent is a sufficient number to
7 be considered a reasonable consumer. And one of the
8 underlying legal issues here is whether or not these
9 ads, these practices, are likely to mislead the
10 reasonable consumer to her detriment. And you know,
11 the FTC has won cases where just 5 percent of people
12 have been deceived by a practice. So we have -- you
13 know 27 percent is pretty comfortable there, showing
14 some level of deception.

15 But I also wanted to mention there is
16 large gulfs between how publishers and advertisers
17 are talking about consumers and how those consumers
18 might perceive these disclosures.

19 So during the last panel, we heard
20 publishers say, well, our readers are very smart.
21 Well, that's no doubt true, but in some sense, it
22 doesn't matter because all that needs to happen is
23 to have some percentage of reasonable people
24 confused by the disclosure.

25 But also, even really smart people may

1 come to different conclusions about what "sponsored
2 by" means. I'll just give an example. Panel One
3 for me was a real eye-opener because when I hear
4 sponsored by, I think about things like PBS. You
5 know, when you watch MacNeil/Lehrer Show, it starts
6 out with the "Brought to you by BP" but I would
7 never think that BP told the television show what
8 stories to run. What I assume from that
9 representation is that BP provided underwriting that
10 laid the groundwork for the good reporting at PBS.

11 But during Panel One, I heard the exact
12 opposite. I heard that the advertiser is coming and
13 saying, I want you to run a story that is compatible
14 with my product. And it doesn't have to promote my
15 product, but it has to somehow puff it up in some
16 ways. And for me, that's a completely opposite
17 mental model. I myself, even though I consider
18 myself a reasonably smart consumer, I would be
19 totally confused by that idea that the direction of
20 the advertisement is actually -- the direction is
21 actually going from advertiser to publisher, rather
22 than the publisher creating independent content and
23 then reaching out to advertisers and saying, why
24 don't you sponsor our content?

25 MR. FRANKLYN: I agree with everything you

1 said. And to speak directly to the question, I
2 mean, there has been inversion of the relationship
3 between content and advertising, that has been made
4 clear in the industry. Therefore, whatever somebody
5 would have thought a label meant before that
6 inversion doesn't mean they understand it in the
7 context of that inversion, that the content is
8 coming from the company.

9 But the other point I wanted to make, to
10 give you a hard number, is we recently tested pop-up
11 disclosures by some search engines that we are
12 experimenting with, how to make it more clear what
13 the word "sponsored" means. And we found that
14 roughly 44 percent of people, out of 3,500 people
15 surveyed, said it made them more confused about the
16 relationship between the content and other non-paid
17 content on the page.

18 So -- your question is, if it is really
19 clear. Well, they tried to make it really clear in
20 a few sentences, so that it was economically, you
21 know, presentable in a box on a page, and it
22 confused 48 -- it greater confused 44 percent of
23 people. So there is evidence that it's difficult to
24 communicate the complexity of the source of
25 information in simple statements.

1 MR. PEDIGO: Michael, can I jump in on
2 this one?

3 I think it's interesting, I think native
4 advertising, you know, as Dan noted, it's not an
5 attempt to deceive the consumer. I think that's a
6 lose for everybody. It's short-sighted. I think
7 it's ineffective.

8 The problem is for native is that it
9 enhances the user's experience on the site. I mean,
10 our members have been around, in some cases for
11 centuries, and have very loyal audiences. Actively,
12 highly-engaged audiences. So that if they change
13 the font on a site, they're going to hear about it.
14 You know, some are going to love it and the others
15 are sure as heck not going to be afraid to share
16 their opinion about it. So I think it's tough.

17 Again, I'll point out, in our survey, 71
18 percent of our members that are offering native
19 advertising haven't heard any complaints and 29
20 percent have only heard a few. And I think that's
21 partly because they are doing a lot around
22 transparency to make it clear that this is
23 advertising, but I think it's also equally
24 attributable to the fact that it's attractive
25 content. The reason that they're coming to the site

1 is to engage with this kind of content. Whether
2 it's from the advertiser or from the publisher, you
3 know, I think the consumer doesn't really care.

4 MS. DEMOY: Can I just ask one question?
5 So I as a consumer, I don't even know where I would
6 complain, you know, for something like that. And
7 exactly how do you complain about something -- you
8 know, I think I was deceived, but --

9 MR. PEDIGO: They find a way.

10 MS. DEMOY: -- I'm not sure, because I
11 was deceived. But anyway, we hear from some of
12 those people maybe.

13 The other point that I just wanted to make
14 about platform, and Dan brought this up, platform is
15 really huge in terms of perception. I know everyone
16 has sort of discussed -- discussions have touched on
17 that, but if you are in our communities, you know,
18 most of the people that we work with are using
19 mobile devices. And they have very low bandwidth
20 and they load very slowly. And a huge percentage of
21 people don't speak English that well, so there's a
22 lot of perception difficulties inherent already.

23 You know, if it's not clear and
24 conspicuous in some way that follows to the
25 platform, that follows to the mobile device, not

1 just other sorts of platforms, but to the device
2 platforms themselves, then I think then it's going
3 to be useless.

4 MR. OSTHEIMER: Let's talk about certain
5 aspects of disclosures. We've heard various terms
6 used during the day. Native advertisements have
7 been identified by terms such as advertisement,
8 sponsored, promoted content, from around the web,
9 you might also like.

10 I believe this has already been touched
11 upon a little bit, but is there a basis for
12 evaluating how effective any of these terms, by
13 themselves, are in signaling that content is
14 advertising or for evaluating their relative
15 effectiveness?

16 MR. FRANKLYN: For us, the most -- we just
17 did nine or ten different terms including sponsored,
18 sponsored links, commercial ads, ads, placed by.
19 There was no clear winner. They were like, you
20 know, small gaps. The winner was commercial ads,
21 commercial advertisements. Not ads standing alone,
22 not sponsored, not sponsored link, but this is a
23 commercial advertisement, in sufficiently large
24 lettering and in the right place. But again, not by
25 a ton. Like 13 percent and everything else got 6

1 percent. So we found some level of greater
2 preference amongst consumers, or at least
3 recognition of that.

4 The word sponsored has really traveled a
5 difficult path. You know, it -- we talk about all
6 of this -- native advertising has been around I
7 don't know how many years. The last ten years, in
8 this way, to this degree, but it's come on the
9 platform of search and the monetization of search
10 and the chains of search from 10 blue algorithmic
11 links to up to 70 or 80 percent of the page of paid
12 ads, some of which have the label "ads" and some of
13 which have the label "sponsored."

14 And so you've gotten people used to
15 finding what they want in that soup, in that
16 melange. And therefore when you start asking them
17 to disaggregate which of these signals is more
18 likely to tell them what's going on, it gets really
19 difficult, because they've already been conditioned.

20 And I wanted to make this point about
21 trust, because this was really bandied about this
22 morning. And I don't want to get on a high horse
23 about it, but trust isn't that important. What's
24 important is migration of consumers with the brand
25 through new iterations. I mean, trust might be

1 important morally or legally, but not as much in a
2 business way as people are making it sound. You can
3 make a very successful business with very partial
4 trust. I think our data shows that and that's
5 really the truth that needs to be told, before
6 people just say, oh well, we would always do the
7 right thing, because if we don't, it's bad for
8 business. That's just not true. I'm sorry, it's
9 just not true. And we still live in the United
10 States of America where you can say the truth. It's
11 not true, okay?

12 MR. OSTHEIMER: Okay, thank you. Just in
13 the -- I do have a number of questions I'd like to
14 make it through and we probably have only about a
15 half an hour left, so if we keep the answers brief.

16 MR. FRANKLYN: No problem.

17 MR. OSTHEIMER: Jeff --

18 MR. FRANKLYN: I apologize.

19 MR. JOHNSON: Well, what I wanted to add
20 to what David said is, you know, a large part of the
21 reason for the noise in the data in that kind of
22 study has to do with the fact that many people
23 didn't see any labels at all. They just didn't see
24 them.

25 I can believe everyone in this room

1 should, at some point soon, sit through a usability
2 study of someone using a website in which they
3 were asked to do a specific task. You will be
4 amazed at what they do not see. You will be looking
5 at them doing the task, their brain will be engaged
6 in the task, the goal that you gave them. Your
7 brain is not engaged in that task, your brain is
8 engaged in watching them; therefore, you will see
9 all the things that they don't see and you will be
10 -- your jaw will fall on the ground, I promise it.

11 And that's where a lot of the noise in
12 this -- in many of these studies comes from. It
13 comes from the fact that people don't see 90 percent
14 of what is on the web pages that they visit and
15 click on.

16 MR. OSTHEIMER: Dan, does your survey
17 allow one to accurately evaluate the relative
18 effectiveness of the various disclosures such as
19 sponsored, promoted content, advertisement?

20 MR. GREENBERG: Yeah, I don't think ours
21 really speaks to the relative efficacy of each
22 specific word, but I think it's a jumping off point.

23 I do have something interesting, maybe
24 hopefully interesting, it may be an interesting
25 tangent around what Jeff just said. I think

1 historically advertising proclaims itself as
2 advertising, usually through interruption. So
3 there's no question that if your usability user is
4 trying to get flight results and has a pre-roll play
5 over the entire page, she has no choice but to
6 realize there's advertising on the page. You know,
7 I think if there is a homepage takeover on the
8 homepage of the New York Times and banner ads are
9 everywhere, there is no choice but to see that
10 they're there. They are interruptive. You're
11 watching TV, autoplay, pre-roll, interstitials, et
12 cetera, especially on mobile, if you are on mobile,
13 on your phone, trying to read an article and, no
14 offense to Forbes, but Forbes does it every time,
15 every article you try to read has an interstitial
16 before it. You have no choice but to realize there
17 was an ad at that moment.

18 Now however, talking about internet, I
19 think the open question is what happens when ads
20 stop being obnoxious? I mean, that's what this room
21 is about today. What happens when ads are not as
22 obnoxious? I saw something -- and this is a
23 mini-little thing -- but I saw something yesterday
24 and it was a Taco Bell story about a Taco Bell ad
25 campaign. They made 64 different 15 second

1 pre-rolls for YouTube. Each 15 second pre-roll was
2 specifically created for a search result.

3 So like I just searched for happy pandas
4 eating lunch on YouTube, to watch a happy panda
5 video, and the pre-roll would say, hey man, I know
6 you're trying to watch this happy panda eating lunch
7 video, but I'm going to have to interrupt you for a
8 second. I'm really sorry for doing that, but here's
9 my Taco Bell lunch and it costs five dollars for six
10 tacos. But I'm really sorry and now you can go back
11 to your happy panda eating tacos video.

12 And people were delighted by it because,
13 all of the sudden, advertising that was intrusive
14 was relevant and, in a way, native to the experience
15 on YouTube.

16 And so I don't have the answer, but I
17 think it is an interesting question to pose which
18 is, what happens when ads stop being obnoxious and
19 stop proclaiming themselves as advertising by
20 saying, here I am, you have to look at me.

21 MS. DEMOY: See, I think you have some
22 good indications in that story that, first of all,
23 it's not about language. I think language is
24 absolutely useless, personally. I don't think it's
25 even worth the FTC really going down that -- I think

1 that's kind of a waste of your time.

2 I think when you look at visuals, the
3 design, the coding of how these go across and
4 migrate across the web, of course the context, and
5 the fact that it is completely and utterly
6 straight-forward. It's an advertisement, it's a
7 commercial, and it's something that's based on what
8 people already know, right? So you're used to the
9 commercial interruption and you've accepted it, to a
10 certain extent.

11 So I think all of those pieces are the way
12 to move forward --

13 MR. OSTHEIMER: I have one more question
14 about language. What variation of the language --
15 what if instead of saying "sponsored" or "promoted"
16 it says, "sponsored by McDonald's" or "Promoted by
17 Ford Motors" or by mustang? Is there a basis for
18 believing that that would be any more effective than
19 the terms sponsored or promoted or ad, if it
20 actually means a brand name specifically, than the
21 word itself?

22 Anyone have a view on that? Michelle?

23 MS. DEMOY: Yes, I always have a view.
24 It's part of my job.

25 I think that -- you know, I can't speak

1 with any evidence, unfortunately, it's just my
2 opinion and some experience working with consumers,
3 but I think the brand name, it really depends on the
4 context, but for the most part, people are used to
5 the brand paying for the show. You know, speaking
6 about the web or, like someone was talking about on
7 "Meet the Press" or something like that. You are
8 used to it being underwritten, the shell of the
9 program.

10 Consumer Action gets corporate money.

11 Does that make me less, you know, credible here?

12 Well no, because it has nothing to do with the
13 editorial content. It underwrites, you know, sort
14 of our operations.

15 So I think when people see that, they can
16 understand intuitively the relationship. But when
17 it just says the brand, I don't think it conveys the
18 fact that the brand has actually created the
19 content.

20 MR. FRANKLYN: We did not test that.

21 That's a good thing to test.

22 But I would add, you know, one of the
23 things that I think we are going to test is not just
24 "Sponsored by Apple" but "Text Created by Apple" to
25 see if that makes a difference. Because we are

1 talking about understanding who wrote or who
2 originated the content, if they care.

3 To say that again, if they care, then you
4 need to figure out how to get them to know that.
5 And simply saying sponsored by and the name of the
6 company, my hypothesis would be that that won't
7 materially increase that sort of awareness, but we
8 will test it.

9 MR. PEDIGO: Michael, I have a point of
10 view on that, too. I don't think there is a magic
11 silver bullet, you know, one specific term that will
12 work in all of these different formats.

13 It's not just different platforms, like
14 Twitter and Facebook and all of that, it's different
15 kinds of audiences that go to different publisher's
16 sites, right? I mean, you have Seventeen magazine.
17 Well, terms are going to work differently with a
18 16-year-old girl than they are with Home and Garden
19 magazine.

20 It's partly on the publisher for figuring
21 out what -- how to best communicate with your
22 audience and publishers know that really well. And
23 it's also partly working with the advertiser, who
24 are they trying to target and who is likely to click
25 on that. That kind of language or, you know,

1 context -- every site has a different feel to it as
2 well, so trying to differentiate content, editorial
3 from advertising, is challenging. But I don't think
4 there's a magic silver bullet, I think it's a -- I
5 think an earlier panel noted, instead of trying to
6 come up with a set of best practices, a specific set
7 of things you must do, it may be better to come up
8 with a set of best practices that are more
9 principles-based, that transparency is an important
10 principle.

11 MR. HOOFNAGLE: If I may comment on this,
12 you know, we tested "sponsored by." And one the
13 things I noticed from the first panel is many of the
14 companies that employed "sponsored by" used a
15 smaller font and used a gray font, rather than a
16 black font, for the disclosure. And sometimes it
17 would be "sponsored by" and then the logo of the
18 company. So there's a huge disparity between the
19 kind of qualification and then the disclosure, Ford,
20 or whatever the brand is. I think that's really
21 important.

22 I also think it's really important to
23 think carefully about how people might understand
24 words like partnership. So when we look at
25 Huffington Post, Huffpo Partners Studio, this is a

1 -- it is claimed that this clearly discloses to
2 consumers that this is an advertisement. I wouldn't
3 think that at all. As a lawyer, I would say, well,
4 partnership means shared risk, shared profit.
5 Partner has a legal meaning in the world. It
6 doesn't mean at arm's length.

7 And we literally had a panelist say, with
8 one of our partners, at arm's length, which is
9 impossible. At least to -- if you think about
10 Washington D.C., which is 90 percent lawyers, that's
11 a deceptive statement.

12 But let me just make a critical point
13 about the law, and this is something that is not
14 well understood about the Federal Trade Commission
15 and Section 5. Intent does not matter. The FTC
16 does not have to prove that a company intended to
17 deceive the public.

18 So talking about the idea that native ads
19 aren't intended to deceive anyone, aren't intended
20 to trick, that doesn't matter legally. The question
21 is, it looks much more like strict liability, is
22 whether the practice causes detriment, misleads a
23 consumer and causes detriment.

24 And that actually raises a different issue
25 that is really interesting, if you think about

1 Professor Franklyn's research. So intent doesn't
2 matter, but detriment does. And what Professor
3 Franklyn has argued is that some people want this
4 stuff, so maybe there's no detriment.

5 MR. FRANKLYN: Well, there is detriment,
6 to some people. But if you are the FTC, who are you
7 protecting?

8 MS. DEMOY: And again, I think that part
9 of the problem, the knot that the FTC has to unwind
10 is what is missing. So the detriment can be
11 sometimes what is not in the content.

12 For example, with a WebMD or something
13 that talks about a Viagra pill, but doesn't talk
14 about the fact that you can get the same results
15 doing it a holistic way, but nobody is paying for
16 that part, right? And so the public is getting one
17 piece of information, not getting another piece,
18 what is the cost of that? What's the detriment
19 there to, you know, sort of the negative?

20 MR. OSTHEIMER: Let's talk about a
21 somewhat related but somewhat different technique.

22 Some players in the native ad ecosystem
23 use hyperlinks that are labeled "What's This?" or
24 they use icons to help identify native advertising.
25 The American Society of Magazine Editors new

1 guidance recommends a "What's This?" rollover at the
2 top of the advertising unit.

3 And Jeff's presentation earlier in the
4 panel included an ad that was only identified by the
5 AdChoices logo. Does anyone have any information
6 about how likely consumers are to notice or
7 understand and click on such links or understand
8 what advertising-related icons mean? David, do you
9 have a --

10 MR. FRANKLYN: Yes. In a recent study of
11 3,500 people, we found that only 11 percent said
12 they were likely to rollover the icon to get the
13 explanation. And then of those people, we asked how
14 many of them understood it, and 44 percent said it
15 made them more confused, in that particular wording.
16 But you are talking about a pretty low baseline of
17 icon rollover as an attention-getting device in this
18 space, in this research, in this one study.

19 MR. OSTHEIMER: Anybody else?

20 MR. GREENBERG: Yeah, I would speak to
21 that. I always think in funnels, conversion
22 funnels, and I think, going back to my point before
23 with advertising traditionally being an
24 interruption, 100 percent of people who saw an
25 interruptive takeover ad realized it right at that

1 first moment, because there was no conversion
2 passing funnel -- you're talking now about feeds, so
3 let's just pick on Facebook, I guess.

4 In a Facebook feed, the conversion funnel
5 to you in realizing disclosure is opening the feed,
6 scrolling through the feed to get to the ad itself,
7 having your brain recognize the story, before you
8 are going to realize it's an ad, deciding to click
9 on it, and maybe only at that point is where
10 disclosure matters. Before I decide to click on
11 something, I need to realize this is an ad, so maybe
12 that's one point.

13 Take it even a step further though, maybe
14 I click on it, not realizing it's an ad, only
15 another 50 percent, if that, are going to actually
16 read the story they click on, probably less than
17 that. And so now you are talking about, from the
18 person who opened their Facebook app, who had a
19 native ad in it, instead of it being 100 percent of
20 people realizing, like, oh crap, there's an ad right
21 now, you're probably down to 1 percent of people who
22 are even going to notice and see that ad, let alone
23 realize that it was an ad.

24 So I think the question of, you know,
25 conversion funnels really impacts this concept of

1 where you are going to put the disclosure in the
2 funnel. Because I know if it's up to the publisher,
3 the advertiser, or the FTC to decide, you have to
4 tell the user, maybe when you open up your Facebook
5 app, there has to be an interstitial on the page
6 saying, as you scroll through your feed, there will
7 be an ad for Nike. Get ready. That's how
8 traditional advertising would work, but I think --
9 that sounds silly, but maybe that is the answer.

10 MR. PEDIGO: I think that icons tend to
11 work, they tend to work well in more standardized
12 formats, right? Like display advertising and things
13 like that.

14 Standardized -- native advertising, by
15 nature, it's high touch, it tends to be customized.
16 It's very different and it looks different on
17 different sites, just as everybody's editorial feed
18 looks different. So for that reason, I'm not sure
19 that icons, you know, are going to work. I mean,
20 they might be part of the solution, but again, I
21 think we've got to go back to the sort of principle
22 of transparency and then there's multiple different
23 ways to get to that.

24 MR. OSTHEIMER: Jeff.

25 MR. JOHNSON: Very quickly. I worked at

1 Xerox, where the icon was invented. The icon was
2 never intended to -- icons do not convey meaning to
3 those who do not know what they mean. Basically,
4 what an icon, or what they were intended to do
5 originally is remind you of the function that you
6 already know about, like printing or deletion or
7 whatever it is.

8 And so it's very hard, it's extremely
9 difficult for any graphic artist, no matter how
10 talented, to create an icon that's, you know, 24 x
11 24 pixels or less, that will tell someone what this
12 means, if they don't know already.

13 MR. OSTHEIMER: So we've already talked
14 about language. Let's talk a little bit about
15 design techniques, what design techniques might make
16 it either more clear or less clear that something
17 that is a native ad.

18 How can design techniques like print
19 contrast, either good contrast or bad contrast,
20 boxing an ad, shading it to filling, how can those
21 techniques make it more or less likely that
22 consumers will recognize an ad for an ad? Jeff.

23 MR. JOHNSON: I'm sorry, I didn't hear all
24 of the question.

25 MR. OSTHEIMER: Oh, sure. I was asking

1 about how various design techniques like contrast,
2 boxing, different shading --

3 MR. JOHNSON: Right. Okay, so again I'll
4 come back to the visual hierarchy, but again, all
5 that strong visual hierarchy can do, all that
6 boldness can do, all that good placement can do, all
7 that can do is increase probability that foveas will
8 look in that direction. It can't guarantee
9 anything. The eyes move randomly -- actually, not
10 quite randomly. They move semi-randomly based on
11 people's goals. If people's goals have nothing to
12 do with wherever an ad is placed, they won't go
13 there.

14 As many people who design ads know, one
15 thing that will move an eye in that direction is
16 movement, because you don't know if it's a leopard
17 or not. No, I'm serious, right? The eye has -- the
18 periphery has no idea what it is that moved, it just
19 needs to move the fovea over there. So movement
20 actually will get the eye to move there.

21 But again, the important thing is, what
22 has the fovea scanned. Anything the fovea has not
23 scanned is not seen.

24 MR. OSTHEIMER: Are there things that you
25 could do to recommend that it would be more or less

1 likely that an ad would be -- that disclosure would
2 be effective or that an ad would be noticed as an
3 ad?

4 MR. COLE: I'd like to add just one little
5 thing. I think one thing to get back to is the
6 intent or the goal of branded content, native
7 advertising, whatever you want to call it, is not
8 necessarily disclosure. If you are drawing
9 credibility from the context, from the content
10 around it, the idea is to make it look as much like
11 that content around it as you can.

12 And so while we can discuss effective
13 techniques, I think it's important to remember that,
14 in a lot of these cases, the less you disclose, the
15 more effective it can be, according to credibility
16 research.

17 MS. DEMOY: But that just means you've
18 effectively tricked people, doesn't it?

19 MR. COLE: That's exactly -- yeah, that's
20 what the research shows, yeah.

21 MR. FRANKLYN: So back to the question
22 about tricking people. I mean, it depends, right,
23 on the context of what you are -- may I speak to
24 this, about you're talking about.

25 Like if you are talking about something

1 like internet search, we found that chopping up the
2 page in a more clear way, that really consumers can
3 rely on, like ads are only going to be on the right
4 side and nonpaid algorithmic results are going to be
5 on the left side, and that's never been mandated,
6 it's migrated all over the page. But if you could
7 have architectural -- and I'm not proposing this, by
8 the way, architecturally mandated segmentation, then
9 people can learn. That's how people learn, to know
10 it's something that -- that's the best evidence I've
11 seen.

12 Now how that applies to native
13 advertising, I don't know. Because native
14 advertising fills up the page of all kinds of stuff
15 that's mishmashed together, including -- you know,
16 we heard this morning, we want our content to about
17 L'Oreal and we want, again, not to pick on L'Oreal,
18 and we want to have three ads for L'Oreal and we've
19 got it all going on on this page. You could say the
20 whole page is paid. The entire page is paid, so
21 there's nothing to segregate once somebody gets to
22 that page.

23 So architecture is not a solution, in my
24 view, on that. And so you say, well, what is?
25 You're going to have the FTC mandate a trigger? A

1 pop-up dot that says, "Warning: You are on a paid
2 page. Proceed if you'd like to be there." You
3 know? I mean, it's a little bit hard to start
4 imagining. I mean, I think we can knock out a lot
5 of these potential solutions. The hard thing is,
6 what you're reaching for. The question is, what is
7 a solution if the goal is clear differentiation and
8 better understanding to consumers?

9 That's really hard, because of the blurred
10 lines. The market has overwhelmingly blurred the
11 lines in a way that consumers have accepted because
12 -- and I have a theory about this. They've accepted
13 it because search is free and the internet is
14 largely free. And you're not paying for it and so
15 you'll just sort of take it, because it's
16 stimulating. If you had to pay 50 bucks a month for
17 all of this, people might get more annoyed at it,
18 but it's free to the consumer. It's a three-sided
19 market, or a four, or a five-sided market, in which
20 the consumer has been conditioned to acquiesce in
21 the exchange of her personal information for
22 targeted advertising in any form that creative
23 people in this room can think of to make money. And
24 as long as that bargain is going on, in my view,
25 it's going to be very hard to regulate.

1 MS. DEMOY: Can I make one suggestion? I
2 think some of this is analogous, at least in
3 solution, to the do not track mechanism that, you
4 know, is sort of the simple but effective way to
5 illuminate something, to bring it out of the
6 shadows, this online tracking that is going on and
7 collection that consumers aren't really aware of.

8 You know, of course people are happy that
9 the web is free, they're not going to ask to pay for
10 it. But yes, they are paying for it with their
11 personal information. And I think advertisers are
12 asking us now to pay for it with our skepticism,
13 with our trust, our credibility meters. And I think
14 that's a mistake, brand-wise.

15 I do think trust is a foundation of the
16 web. Having been someone who started out in the
17 nineties when nobody trusted the web. It was
18 ludicrous to think of going online to do banking or
19 any kind of transaction before privacy innovations.
20 And I think in this way, you know, people have
21 accepted what they've sort of been given. There
22 hasn't been a choice.

23 So when I'm talking about do not track,
24 where there's sort of a choice, there's sort of more
25 transparency, and something that migrates with the

1 information, with the advertisement, so that no
2 matter where the ad ends up -- you know, a lot of
3 Spanish language sites aggregate information and a
4 lot of our Spanish-speaking consumers, you know, end
5 up with all kinds of information from all over the
6 place. And their sources are dubious and difficult
7 to track down.

8 So that would just be one -- you know, I
9 don't have really any idea of how you might make
10 that work, but I always thought that was a pretty
11 effective, not only public education vehicle, but
12 way, a simplistic way of sort of having a header or
13 something that goes before and migrates with the
14 information.

15 MR. PEDIGO: Michelle, I just quickly want
16 to take issue with the point you made there and I
17 think there is choice here, for consumers. If they
18 go to a premium publisher, any publisher for that
19 matter, and feel they are being duped by a native
20 advertisement or feel that experience is not to
21 their liking, they don't trust it, there's a million
22 other websites they can go to to get any kind of
23 content that they want.

24 And our members, at least, are incredibly
25 sensitive to that, as they make this transition.

1 Many of them are legacy publishers, like Hearst,
2 making a transition online. And if they lose that
3 consumer trust, they lose out completely to
4 pure-plays, you know, your Joe Blow blogger down the
5 street they could lose out to.

6 So I think consumer trust is important and
7 I do think there is choice here. And I think that's
8 a key factor.

9 MR. OSTHEIMER: Chris.

10 MR. HOOFNAGLE: I'm a veteran of a lot of
11 Federal Trade Commission workshops and you always
12 hear the rationale choice theory rear its head. But
13 you know, behavioral economics shows that almost all
14 those assumptions are wrong. And when we look at
15 what people are doing online, they're goal-oriented.
16 And so there may be choice, but if the immediate
17 goal is to figure out X or Y, there isn't this kind
18 of perfect landscape where people can weigh every
19 option and think about it in some type of perfect
20 sense.

21 I would also mention that while a lot of
22 these services appear to be free, in a price
23 context, if one applies a transaction cost analysis
24 to the bargain, a very different outcome emerges,
25 where there are many costs to the consumer that they

1 cannot foresee nor incorporate into a bargain.

2 So there really isn't a market, in the
3 traditional sense. And the word free ends up really
4 confusing people. And this is even recognized by
5 the Federal Trade Commission, if you read its
6 guidelines on the use of the word "free" I think the
7 very first sentence is that free has this powerful
8 psychological effect on the listener. And it has
9 caused people to behave uneconomically.

10 MR. FRANKLYN: I agree.

11 MR. JOHNSON: Yes. And to follow-up,
12 everyone should read Dan Kahneman's book, Thinking
13 Fast and Slow.

14 MR. OSTHEIMER: Are there reasons to
15 believe that certain -- we're almost out of time, we
16 only have a couple more minutes left.

17 Is there any reason to believe that
18 certain subpopulations will have greater or lesser
19 problems in recognizing native advertising for what
20 it is? Jeff.

21 MR. JOHNSON: Seniors. And I think that,
22 with any luck at all, most of the people in this
23 room will get old.

24 MR. FRANKLYN: Lower socioeconomic and it
25 does vary based on race.

1 MR. OSTHEIMER: In what way?

2 MR. FRANKLYN: Minority groups are
3 recognizing it less.

4 MR. OSTHEIMER: Michelle?

5 MS. DEMOY: Yeah, I think part of that
6 plays into, you know, I guess the device that you're
7 using, it can make it much more difficult to do some
8 of the recognition that was already very difficult
9 to do, on a smaller screen, in a language that you
10 may not understand, slower download.

11 And also, like I said, some of the sites
12 that we've seen in Spanish languages, especially
13 entertainment sites, are often aggregators of
14 information that's been translated from English
15 sites and kind of thrown up on to Spanish sites and
16 it's very, very unclear where the information comes
17 from. And I think if you are a Spanish-speaking
18 consumer, you know, it's very difficult to discern
19 how you would even figure out where something came
20 from. I don't even know what I would tell a
21 Spanish-speaking consumer.

22 But also the economic idea that people who
23 are in underserved communities, and that's typically
24 low income, minority communities, are at more
25 financial risk of things like fraud and being duped,

1 in terms of their online experience. And this has,
2 you know, been documented. So I think they deserve
3 special protections in regulation and law, in terms
4 of, you know, if that is the case and there is hard
5 data that shows that, then they should not only be
6 in special protection maybe as a class, but also in
7 terms of what they're viewing. So financial product
8 websites where, if you're getting financial advice,
9 but again, not the other side of the story, that
10 that should be something that's drawn up, something
11 that has financial impact or health impact, more
12 sensitive data categories.

13 MR. OSTHEIMER: I'd like to thank our
14 panelists. We're out of time. We're now going to
15 take a 15 minute break and return with our third and
16 final panel. Thank you.

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1 PANEL 3: THE WAY FORWARD ON TRANSPARENCY:

2 A DISCUSSION OF BEST PRACTICES

3 MS. ENGLE: If everybody could take their
4 seats? Good afternoon, everybody. I'm Mary Engle,
5 the associate director for Advertising Practices
6 here at the FTC and I'll be moderating the third and
7 final panel of our workshop today, which will
8 discuss possible best practices for native
9 advertising and sponsored content, whatever you want
10 to call it.

11 We have a terrific group of panelists who
12 can offer a variety of perspectives on whether and,
13 if so, how and when sponsored content should be
14 labeled or made identifiable as such to consumers.

15 With me this afternoon are Laura Brett,
16 staff attorney at the National Advertising Division.
17 That's a self-regulatory group, a part of the
18 Council of Better Business Bureaus.

19 Sid Holt, who is chief executive of the
20 American Society of Magazine Editors.

21 Amy Mudge of the Venable law firm, who
22 represents a number of brands.

23 Jon Steinberg, President and COO of
24 BuzzFeed.

25 Robin Riddle, Global Publisher of Wall

1 Street Journal Custom Content Studios.

2 Robert Weissman, president of Public
3 Citizen, a public advocacy group.

4 And Mike Zaneis, senior VP of the
5 Interactive Advertising Bureau or IAB.

6 So for this panel, we are not going to
7 have any formal presentations as we did on the prior
8 panels. Instead, we'll go right into a discussion
9 of some of these issues that have been -- we'll try
10 to delve a little bit deeper into some of the issues
11 that have been surfacing so far and we're going to
12 do that through a number of hypothetical scenarios.

13 I always hate it when people ask me
14 hypothetically, does this violate the FTC Act or
15 not, so I'm not going to have to answer these
16 questions today, but I'll put them to our panelists
17 to weigh in on different scenarios, different types
18 of sponsored content, and whether they need to be
19 labeled, how they should be labeled, if they should,
20 and so forth.

21 And we'll have some mock-ups on the screen
22 to help us kind of all picture what it is in these
23 different scenarios and help us keep it in our
24 minds.

25 So with that, we'll go with the first

1 slide. Okay, so this is a mock up of a typical
2 publisher website. We have here the main page and,
3 you know, an article on the top, climate change.
4 And then you see in the middle there, in the
5 headline, "American Eyesight Much Worse Than
6 Imagined: Are Mobile Devices to Blame?" And it is
7 labeled "Sponsored" across the top.

8 So that's kind of, I think, a typical
9 example of native advertising. And so what we're
10 going to talk about here is different scenarios for
11 that article.

12 So imagine then that an eyeglass or
13 contact lens company paid to have that article
14 inserted here. That, you know -- and so the
15 question would be, you know, I think, probably, but
16 maybe not, does anybody have any thoughts on whether
17 that would, you know, does it need to be labeled as
18 sponsored or identified as advertising? Or does
19 anybody think it should not, does not need to be
20 labeled? Or does it matter exactly what the article
21 says, does it matter if it doesn't mention, you know
22 -- it talks about mobile devices' effect on
23 eyesight, it doesn't mention what you might do to
24 correct your eyesight. Let's talk about that.

25 MR. RIDDLE: The subject matter really

1 shouldn't be important. What is important is the
2 commercial relationship there and it's the
3 commercial relationship that the consumer should be
4 aware of, if they decide to click on that.

5 MS. BRETT: I would say that there are a
6 lot of different perspectives from which we can look
7 at this and that sounds like it's an editorial
8 perspective, written from the perspective of the
9 publisher or an editor.

10 I think, from an advertising industry
11 perspective and whether or not there is potential to
12 mislead consumers, it really will depend on the
13 content of the article and whether or not it makes
14 any kind of claims or leaves you with any impression
15 about the advertiser's product or service, or the
16 advertiser in general.

17 So I do think that, a lot of times, that
18 it is the content of the article that matters and
19 that defines whether or not it needs a sponsor
20 label, at least from the perspective of whether or
21 not consumers are going to be confused.

22 MS. MUDGE: And I couldn't agree more. I
23 mean, we have to go back -- Lesley Fair started us
24 this morning with starting with Section 5. I think,
25 you know, when she gets her tattoo of Section 5, I

1 might get excerpts on my tattoo of the deception
2 policy statement.

3 You have to look at if there is an
4 omission, so there's an omission to explain that
5 money changed hands here in some sense, is it
6 material to a decision to buy or use a product?

7 And if we're not talking about content
8 that relates to a specific product or a product
9 category or product attributes, I don't think that
10 is something that rises to a need to disclose under
11 Section 5. Certainly, we heard this morning about
12 the different perspectives about transparency as a
13 brand imperative. There might be lots of other
14 reasons for that, but I'm just -- I don't think all
15 of these rise to a legal requirement to disclose a
16 relationship between a brand and a publisher.

17 MR. HOLT: Leaving aside Section 5, the
18 issue from a journalistic point of view is, who is
19 talking here. And it's not clear who is talking
20 here. And it comes down to a matter of, frankly,
21 journalistic ethics, it comes down to a matter of
22 brand integrity, and frankly it comes to a matter of
23 good manners.

24 If somebody calls you on the telephone,
25 you hope that they will identify themselves before

1 you buy something from them. And that's basically
2 what is happening here. You don't know who is
3 talking to you.

4 MS. ENGLE: So suppose the article -- and
5 I think we had, I forget what it was this morning, a
6 similar example, but suppose the article was,
7 instead of on eyesight worsening, suppose it was
8 just on the top natural wonders to visit in the U.S.
9 And it had nothing to do with, you know, eyewear,
10 other than you need your eyes to see, you need to be
11 able to see when you go visit these natural wonders.

12 Suppose, for whatever reason, the brand
13 wants to associate itself with this idea of the
14 natural wonders to go visit in the U.S. Even in
15 that situation, would that -- and the article was
16 paid for by the eyewear manufacturer, would that
17 need to be identifiable as sponsored?

18 MR. HOLT: Well, I think they wouldn't
19 derive any advertising benefit if they didn't have
20 themselves, you know, associated with it in some
21 way.

22 You know, to answer the question in an
23 overarching fashion, I think there is really two
24 prongs of tests that we want to look at in this,
25 which is a clear identification of who the creator

1 or the presenter of the content is. On a lot of
2 open platforms, where people are not paying, whether
3 someone posts a Facebook -- a brand posts a Facebook
4 or does a Tweet or Tumblr or even on Buzzfeed,
5 brands are able to post content without paying, but
6 they need to identify who is the speaker of that
7 content.

8 And then the second prong that needs to be
9 looked at is what is the paid relationship. Is that
10 content being promoted in some fashion, where there
11 is a paid media relationship. When I looked at
12 these two examples, from page one and page two,
13 taken in conjunction, on the first page, which is on
14 the screen right now, you see that this placement
15 here is paid for. I would probably like to see who
16 is the speaker of this. Is it For Eyes, which is
17 the name of the brand that we see on the subsequent
18 page, which is the post page? The page where the
19 content is actually being posted may, in fact, not
20 be paid for. For Eyes may be able to post to the
21 Post Gazette in the same way they could to Facebook
22 or Twitter or Tumblr or even Buzzfeed.

23 So there may not be a media relationship
24 here, but there still needs to be a statement of who
25 is the speaker whose voice is being expressed in

1 this piece of content.

2 MS. ENGLE: Any other thoughts on that?

3 MR. ZANEIS: Yeah. I think this is a
4 challenge that gets to the heart of the FTC's
5 enforcement in this area, which is when to enforce
6 and how do we have kind of uniform standards.

7 It's not an area -- it's so dynamic, it is
8 so many different variables of what type of content,
9 the number of speakers, is it an actual
10 advertisement, which is really a legal issue. It
11 doesn't really lend itself to kind of a
12 one-size-fits-all notification requirement.

13 I think we can all agree, we can look at
14 the first page and say this is a pretty good
15 disclosure to consumers. We all, I think, would
16 agree that this is a model implementation of
17 consumer notification and disclosure. We should do
18 this --

19 MR. HOLT: I have to disagree.

20 MS. ENGLE: But what about --

21 MR. ZANEIS: Just a second. But the fuzzy
22 area is, what if this was just a bunch of links that
23 were paid for by a hundred different companies? And
24 it may not be very compelling content, but since we
25 are having a policy panel today, where we are trying

1 to come up with standards or regulatory enforcement,
2 consistency, it's very difficult.

3 MR. HOLT: I have to disagree. I don't
4 think this is clear at all. I don't know what
5 sponsored means in this context. I don't know who
6 sponsored it. I don't know where the content came
7 from. This is totally oblique.

8 You know something is wrong, as it were,
9 with this content, but you don't know what it is.

10 MS. ENGLE: So you would feel --

11 MR. HOLT: Or you know something is
12 happening --

13 MS. ENGLE: -- that it's not sufficient to
14 have "sponsored" across the top there. And if you
15 clicked on it and you went to the article, then you
16 would see "Sponsored Content Provided by For Eyes."
17 Do you think maybe that kind of disclosure would be
18 needed on the headline? Is that --

19 MR. HOLT: I think it needs to be clear
20 that it's advertising. I think it needs to be clear
21 who created the content. I think it needs to be
22 clear who paid for the content to be placed here.

23 MS. ENGLE: And is that getting -- I
24 thought it was interesting what came up with the
25 last panel about the difference -- that the word

1 "sponsored" might be ambiguous and we might think,
2 oh yes, that means advertisement. But in certain
3 context, I think the example was the MacNeil/Lehrer
4 Show that was used, that you understand it to be
5 that that company paid for -- underwrote the
6 content, but didn't have any connection with what
7 the actual content was or any influence on that.

8 So I think it's interesting, in this
9 context, it's very different, right? Or it could
10 be. Because it could be that the advertiser
11 actually wrote the article, it could be that they
12 just paid for it to appear there, it could be that
13 they worked with the publisher to write the article,
14 it could be that they just ask that the brand be
15 mentioned in the article.

16 So is sponsored -- does sponsored cover
17 all of those scenarios? I know Robert expressed a
18 concern about that --

19 MR. WEISSMAN: Yeah. I think that's
20 right. So I think we don't have a consensus.
21 Unfortunately, we don't all agree that it's an
22 adequate disclosure. I think for all the reasons
23 that were stated, but also the one that you are
24 getting at.

25 Why do people prefer the word sponsor to

1 advertisement? Because advertising would actually
2 notify customers or people about what's being done
3 to them. The whole point of using the word sponsor
4 is to avoid exactly the disclosure that ought to be
5 made.

6 MR. STEINBERG: Well, what's interesting
7 is Google changed it from sponsored listings to ads
8 and click-through rates went up because people
9 didn't see that -- because ad is a smaller, two
10 letter word, right?

11 So I think it has to do with the length as
12 much as anything. I think most of the publishers
13 you talk to, we are all -- I can't speak for all of
14 us, but we are somewhat agnostic as to what the
15 terminology is. Ad, A-D, is fine. Advertisement is
16 fine. You know, what Google or Facebook does -- or
17 what Facebook and Twitter does, there is some
18 industry pressure to move into alignment with that,
19 because those are such major sources that they've
20 sort of shaped what the public comes to view as
21 content.

22 So should we then do "promoted by" which I
23 think is what Twitter does, or "sponsored listing"
24 which is what LinkedIn does. The big media players
25 probably have more influence than anything in

1 setting up what consumers come to recognize as
2 advertisements.

3 MS. MUDGE: And I sit back and I say,
4 if -- this example that's on the screen now, I
5 think, is ambiguous. We do need to know more about
6 what is in the content of the article to understand
7 if this is talking product, product attributes, or
8 product placement.

9 If it's the example that Mary gave the
10 spin on this, if this is an article about the top
11 natural wonders to visit in the U.S., that For Eyes
12 has sponsored, has encouraged this publication to
13 print, I do not think there is a need to disclose.

14 But before we get to is it sponsored, is
15 it ad, anything else, I do not believe that that is
16 --

17 MR. WEISSMAN: I think there's a need to
18 disclose, leaving aside the FTC Act. I think the
19 underlying issue for the public or for consumers is
20 recognizing that this item does not appear here
21 because of the independent editorial judgment of the
22 Post Gazette. It appears there because someone
23 paid, whoever it is, For Eyes, for it to appear
24 there. And that is what -- that's the first thing
25 that consumers need to know.

1 And they need to also know about the --
2 you know, all kind of detailed information about who
3 is doing it and exactly these other questions. You
4 know, what actually is the document going to be
5 linked to and so on.

6 But they have to know that this thing is
7 not there because of independent editorial judgment,
8 because it actually is a placed ad.

9 MR. RIDDLE: And I think that's a very
10 good point. You know, the consumers place a degree
11 of trust in us as media owners. And that trust is
12 based on the fact that we are making editorial
13 decisions about content we bring to them and place
14 in certain places.

15 Once you go down the path of saying, we'll
16 make a separate decision that says that you can buy
17 a place within that environment, then that's a
18 completely different decision.

19 So the context around what that content
20 says should be irrelevant, in my view, whether
21 that's an ethical decision or whether that's a legal
22 decision is a separate conversation. Probably more
23 ethical, but I think it speaks to the level of trust
24 and maintaining that level of trust that consumes
25 having those as media brands.

1 And if you get into the conversation
2 around looking at the content of the article and
3 saying, well, what's the derived benefit? What's
4 the connection to the brand? And I think that then
5 becomes the degree of subjective judgment, what
6 really is the key point that makes it different, you
7 go down a different path with this, is the fact that
8 it is as a direct result of a commercial
9 relationship.

10 MS. ENGLE: Okay, so I think I'm hearing
11 from some of the panelists that it almost doesn't
12 matter what the content is, if it was paid to be
13 there by a brand or -- then that would need to be
14 labeled, but I'm hearing from others that it really
15 does.

16 So what about in the context of an article
17 that -- so an example, it's an example for healthy
18 habits for maintaining optimal eyesight. And in one
19 of these articles, it's a series -- and on the
20 second page, it would have, you know, find your
21 focus. And you know, one of the articles is "The
22 failure of most Americans to replace their eyewear
23 as frequently as is recommended for optimum eye
24 health."

25 So again, it's not mentioning a particular

1 brand, but it's kind of advocating for proper
2 replacement of your eyewear. Amy, you have --

3 MS. MUDGE: That's an ad. I think we can
4 -- I don't know where the line is exactly, but that
5 is over the line and that is an ad.

6 MS. BRETT: And I would say, from an NAD
7 perspective, we would absolutely agree that once you
8 start promoting the use of a particular product,
9 that that's an ad and that needs to be disclosed to
10 consumers.

11 MS. ENGLE: Even if it's not a particular
12 product, but it's a general product of eyewear.
13 It's not a particular brand or company.

14 MS. BRETT: Yes, and this is where Amy and
15 I might disagree. Even if it were fashion eyewear
16 for fall, I would say that you need to disclose that
17 they sponsored it. And you may disagree with that.

18 MS. MUDGE: I never like to disagree with
19 the entity if I can help it.

20 I think the only -- the decision that you
21 issued in Qualcomm, I think that's a very -- where
22 the content was -- it was things that make your cell
23 phone work and they were sponsoring a series of
24 articles about other stuff that makes other cool
25 stuff work.

1 And I think you concluded in that case
2 that a sponsorship disclosure was appropriate. I
3 think that's one where that's a really hard one. I
4 think that really is right on the line. So I think
5 if we disagree, it really is on the margins.

6 I think we do come back to, you know, we
7 are at the FTC today. We're here to talk about
8 whether the Bureau of Consumer Protection has a role
9 in giving guidance or stepping in in this area, so I
10 think we do have to come back and focus on, is there
11 a consumer protection harm in any of these
12 scenarios.

13 MS. ENGLE: And either of these two, of
14 course it's been acknowledged publishers may have
15 reasons --

16 MS. MUDGE: Right.

17 MS. ENGLE: -- and there may be ethical
18 reasons to disclose things that maybe the law
19 doesn't require, certainly that's always true.

20 Okay, so one more hypothetical on the
21 article here. Suppose that an eyewear manufacturer
22 sponsors an article that discusses the increased
23 risks of cataracts associated with the lens
24 technology used by a competitor.

25 MS. BRETT: Absolutely you have to

1 disclose. If that's your content --

2 MS. MUDGE: That's an ad, right.

3 MS. BRETT: Right. You're disparaging a
4 competitor.

5 MS. ENGLE: Anybody disagree that that
6 kind of article --

7 MR. STEINBERG: I don't disagree with
8 that, but I think there's a distinction to be made
9 between an ad and labeling who the content is from.
10 Because a lot of platforms are open and brands are
11 able to post without actually paying for
12 advertising. That's the truth, as I mentioned, with
13 Facebook or Twitter or Tumblr or Pinterest and so on
14 and so forth, with our platform, with other
15 journalists' platforms as well.

16 In that case, the competitor, let's say
17 Company A is criticizing something about Company B.
18 It needs to be known that Company A is the byline on
19 that piece. That Company A is responsible for
20 posting that piece of content, but I wouldn't
21 necessarily term that an advertisement, because they
22 may be doing that freely and they may be doing that
23 without the use of paid media.

24 So there's a difference between
25 identification of who the contributor is and

1 identification that a paid media advertisement
2 relationship is going on.

3 MS. ENGLE: And so that segues into my
4 next question, which is to think about whether the
5 answer to these questions varies, depending on who
6 created the content. We know that sometimes it's
7 the publisher works with the advertiser to write the
8 article, sometimes the advertiser writes the article
9 and the publisher may just edit it and include it.

10 So do any of the panelists think that that
11 affects whether or not something should be legal as
12 advertising or identifiable as advertising? So for
13 the first example where the publisher actually wrote
14 the article, they created it for the advertiser, but
15 it's about the advertiser's product, so it's
16 publisher written and created, but paid for and
17 about the advertiser's product.

18 MR. HOLT: But the publisher paid to place
19 it.

20 MS. ENGLE: The advertiser paid to place
21 it.

22 MR. HOLT: I'm sorry, the advertiser paid
23 to place it.

24 MS. ENGLE: Yeah, yeah.

25 MR. HOLT: That's an ad.

1 MS. BRETT: I really do think it would
2 depend on the article that was being written. If
3 the -- and really the creation of that article,
4 whether it was being created at the behest of the
5 advertiser. You know, the editor created it, but it
6 was based on a discussion about content that the
7 advertiser wanted to be created.

8 You know, if it is that article about the
9 impact of cataract surgery on your eyes and, you
10 know, the advertiser had the ability to shape the
11 content of the article, or at least the -- not the
12 content of the article, but the actual subject of
13 the article, then I think you need to disclose it.

14 If the editor had written an article on
15 something related to your eyes and then sought a
16 sponsor for it, I don't know necessarily that you'd
17 have to disclose that the content is sponsored in
18 the same way you would if they were somehow jointly
19 responsible for the creation of the article, if you
20 understand the distinction.

21 I think very -- if the editor creates the
22 content, without consultation of an advertiser and
23 seeks advertising for it, I don't see how that's any
24 different than ordinary advertisements that run with
25 an article.

1 MR. HOLT: Well, the difference is that
2 when an ad runs with it, it's obviously an ad. If
3 they wanted to place the article, but for the
4 payment by the so-called sponsor, then it does need
5 to be me to be disclosed, it seems to me. It's not
6 obviously an ad and it needs to be disclosed as one.

7 MS. BRETT: And certainly my view would
8 change if you mention the actual, the sponsor of the
9 product in the article. I think, in many
10 circumstances, then you would have absolutely have
11 to disclose it.

12 But I feel like if it is a subject matter
13 article, and they seek a sponsor for it after it's
14 already written, depending on the connection between
15 the content and the advertiser, you may or may not
16 need that sponsor label.

17 MR. HOLT: It's very dangerous to suggest
18 that there's a marketplace for specific articles
19 that can be sponsored by advertisers.

20 MS. BRETT: And I guess all I'm trying to
21 say is that we look at this from the perspective of
22 consumer confusion and whether or not you are
23 misleading consumers.

24 And so if we were going to be looking at
25 an advertisement like this, if the question arose

1 whether or not the advertising was in a deceptive
2 format, we would look to whether or not consumers
3 were actually confused about the independence of the
4 article in any way. And so it would matter to us
5 who was responsible for creating it.

6 MS. MUDGE: I think I come down to, it's
7 going to matter what the content itself is. And I
8 don't know if it's necessarily -- I don't think it's
9 dispositive as to whether the advertiser wrote the
10 content, participated in the content, or had nothing
11 to do with the content. You've got to look at,
12 Laura, to your point, are consumers deceived by the
13 content.

14 And I mean, in counseling brands, at the
15 end of the day, the brand is going to want to have
16 some editorial right over the content, if for no
17 other reason, if it's a piece that is going to be
18 about the product or about the product category, if
19 the journalist just gets it wrong and ends up making
20 outrageous claims about the brand, that the brand
21 couldn't make itself, the brand wouldn't want to be
22 associated with that.

23 MS. ENGLE: Well, so --

24 MR. WEISSMAN: But don't you think, if
25 that relationship exists and the advertiser has that

1 authority over the content that sort of per se
2 consumers have reason to want to know about it?

3 MS. MUDGE: Robert, I don't think we're --
4 I don't think this, again, comes down to whether
5 consumers have a right to -- I come back to, is
6 there an obligation under Section 5 for disclosure.
7 And I think those are two very different things, as
8 to whether consumers might be interested in a piece
9 of information, versus whether there is a disclosure
10 obligation under the law.

11 MS. ENGLE: So say for example a
12 newspaper, the Wall Street Journal, Washington Post,
13 whoever, reviews a new car which is on the market,
14 which they do. You know, it's a car review guy and
15 he writes a review. And he really likes this
16 particular car, so whoever the automobile
17 manufacturer is naturally wants to disseminate that
18 review far and wide, like when you go to Five Guys or
19 whatever and you see the positive reviews on that
20 wall. Well, in the digital environment, they want
21 to get that out there and they paid to have a link
22 to the article placed in BuzzFeed or Huffington Post
23 or Wall Street Journal or wherever, hoping that
24 consumers will click on it and read this great
25 review, which was independently written. Does that

1 need to be labeled as an ad or a sponsored --

2 MR. STEINBERG: Well, the promotion --
3 first, we don't do that, so I haven't totally
4 thought it through. We don't do that right now, we
5 don't take -- it would be paid media, actually,
6 promoting an existing article, not unlike what some
7 of those link services do. So as long as the
8 payment of the ad placement is disclosed, I think it
9 would be fine.

10 Mary, where actually you were going with
11 this is, when you were talking about Wall Street
12 Journal, I thought you were talking about print.
13 What's amazing to me is I think this is an
14 overarching question about labeling and whether or
15 not the media is paid.

16 You know, when you watch television at
17 night, they don't show sponsored or paid
18 advertisements when the video, which is sort of a
19 blurring of lines, between the video of the show and
20 the video of the commercial comes out. And in a lot
21 of cases, you'll see an advertisement for a product
22 which may be an actor or an actress just being
23 interviewed in the subsequent segment, so there's a
24 blurring that occurs there as well.

25 Similarly, in paid print sections as well,

1 you have these adjacencies and labeling issues. So
2 it is somewhat quizzical that this is focused so
3 much online, when I think that this is more of a
4 global labeling issue which is occurring in
5 television as much as anywhere.

6 MS. ENGLE: Yeah. Well, I think today we
7 are focusing on the digital environment, because
8 certainly it's been an issue. And we saw this
9 morning, you know, it started in print and has been
10 an issue in television, but it seems to me it
11 raises -- there is a whole lot more variations
12 online, different varieties and formats that native
13 takes place.

14 But you're right, absolutely. I mean,
15 this is an issue across the board.

16 MR. HOLT: I don't think it's an issue of
17 labeling, it's an issue of whether or not consumers
18 can recognize it as an advertisement. And in some
19 cases, advertisements do need to be labeled in
20 print, as well as in digital.

21 Apparently, consumers understand when they
22 see an ad on TV that's it an ad on TV. Going back
23 to something that was said on the last panel, the
24 reasons why consumers understand "commercial ad"
25 more clearly than they do "ad" for example is because

1 television is such a dominant medium, advertising
2 medium.

3 MS. ENGLE: Right. And I should say, I
4 think I used the word labeling. I just shouldn't,
5 it's kind of a shorthand, but yeah, the concept
6 would be that the ad is identifiable, in however --
7 it might not be labeled, it might be something else.
8 It might be shading. We saw earlier, you know,
9 boxing, outlined boxes, whatever. The idea is that
10 it would be recognizable in some way to consumers as
11 paid content.

12 MR. ZANEIS: I think the Commission has,
13 in certain instances, recognized the difference
14 between online and offline media, rightly or
15 wrongly. Just look at endorsements and testimonial
16 guidelines and, you know, the fact that you don't
17 have to disclose a review when you got a free
18 product, because it appears in print, but you would
19 have to -- that would be an endorsement, that you
20 got same product, when you did an online blog post
21 about it.

22 I don't think that -- much of that helps
23 provide a lot of guidance. Unfortunately, I'm kind
24 of -- I'm here in Washington, I'm one of the few
25 that are based here in D.C., so I'm kind of bound by

1 this bubble that we live in and how the FTC might
2 actually enforce under their Section 5 authority.
3 So that's what I view this under, as deception,
4 consumer deception, as Amy has rightly pointed out.

5 So what I think is -- hopefully we can
6 achieve today is to give a little more clarity to
7 the Commission, and thusly to the industry, on when
8 it's appropriate and when it's necessary. But I'm
9 not sure just focusing on commercial nature is
10 really going to get us there. It's one factor, but
11 just one of many.

12 MS. ENGLE: So I just have to correct the
13 statement about the endorsement guides. So what we
14 say is, it depends upon whether the reader
15 understands that the reviewer received the free,
16 whether it's online or offline, it doesn't matter.
17 It's whether the context -- the context of the
18 review has made the reader understand that the
19 reviewer got it for free or not. And if not, then
20 --

21 MR. ZANEIS: And there's an assumption
22 then that the average consumer would understand that
23 New York Times book reviewer received the book for
24 free, which I don't disagree with. But then a
25 legitimate digital media source that consumers

1 wouldn't understand --

2 MS. ENGLE: No, no, no.

3 MR. ZANEIS: So there is a bifurcation.

4 MS. ENGLE: Well, okay. Let's save that
5 topic for a different day, but I just wanted to --
6 in case, you know, anybody thought my not saying
7 anything I agreed with what was said.

8 MS. MUDGE: Mary, I think your
9 hypothetical that you would pose though with Five
10 Guys, so if somebody -- and you've given us so much
11 good guidance in other context that we all draw on,
12 to be able to advise in this area, like the
13 endorsement guides, the dot com disclosure guides,
14 et cetera.

15 But if in the case of your Five Guys
16 example, it is somebody who was not given a free
17 burger, no free fries, and they wrote an article,
18 they wrote "I love this." And Five guys wanted to
19 promote it, there's no material connection between
20 that endorser and Five Guys, but I guess Five Guys
21 would want to amplify that or push that out, I don't
22 -- I don't think that is always going to be
23 necessarily something that you've got to say, this
24 is a Five Guys ad. I think it's going to be
25 contextual dependent, but not always. If there is

1 that material connection between the two, always,
2 always need to disclose.

3 MR. WEISSMAN: Well, but the other
4 material can actually be where it's placed, right?
5 So it's a legitimate review, but it then suddenly
6 starts appearing on the front page of the Wall
7 Street Journal, not because Joe decided to write
8 about Five Guys, but because Five Guys paid for it
9 to appear there, then it does need to be --

10 MS. BRETT: I would agree with that, I
11 think that's right. I mean, if Five Guys posted it
12 in a restaurant, you know that Five Guys posted it
13 there. But if it is placed in an alternative
14 publication, I think you, at the very least, we need
15 to know that someone is paying to have it posted in
16 that publication.

17 MR. RIDDLE: Well, because the original
18 review wasn't paid. There was no money that
19 exchanged hands in order for a positive review to be
20 written in the first instance. But where the
21 amplification comes in, that's where the
22 relationship changes and it becomes a commercial
23 one.

24 MS. ENGLE: Okay, so assuming -- not that
25 we have perfect agreement on whether something needs

1 to be identifiable as sponsored or as advertising,
2 but assuming that something does need to be
3 identifiable as advertising, let's talk a little bit
4 more about ways in which that might be accomplished.

5 We had some really interesting research
6 presented in the last panel on this. Do the
7 panelists have thoughts about the terms that are
8 most commonly used today, sponsored, presented by,
9 or what about this you see "From Around the Web" or
10 "You May Also Enjoy" or "Top Picks" all of those
11 kinds of things are being used. What about those?

12 MS. BRETT: A lot of it is contextual.
13 And I will say that some things are more clear and
14 some things may be more clear three years from now
15 than they are right now.

16 I mean, I would say right now "sponsored
17 by" I think consumers generally, and the research
18 from the last panel says maybe I'm wrong, but I
19 think "sponsored by" generally denotes to consumers
20 that somebody has paid to have that placed.

21 I'm not as sure about "presented by" and
22 I'm even less sure when you see something like "You
23 May Like" but we would definitely be looking at the
24 context and reviewing whether or not it was
25 confusing to consumers, at NAD, and other tags that

1 would indicate that somebody has paid for that
2 content to be placed.

3 MR. ZANEIS: And the label is just one
4 indicator, right? I think people understand when a
5 promoted Tweet promoted works on that platform.
6 They also have other indications, like shading or
7 different coloring, and I think that works pretty
8 well. It may not work on a different platform.

9 MR. WEISSMAN: Yeah, I would agree with
10 that. On the last panel, I think the -- I have to
11 pay more attention to these things since knowing I
12 was going to appear on this panel.

13 You know, the "Around the Web" thing,
14 including in the local paper, The Washington Post,
15 it is impossible to know those are ads. I mean,
16 people in this room might know, but this is a
17 seriously nonrepresentative sample. And there's
18 just no way. So I think those are obviously no
19 good, unless you view that there needs to be no
20 disclosure in the first place. But if there needs
21 to be a disclosure, I think those completely fail.

22 I mean, I see the case for "sponsored by"
23 but I also think, you know, in light of some of the
24 presentations in the last panel, but also just
25 thinking about the sort of softness of that word

1 and why that is a preferred word as opposed to
2 advertisement suggests that it doesn't adequately
3 disclose and communicate to consumers what's going
4 on. I do think it conveys -- you know, sponsored
5 by, like the nightly news is sponsored by Excedrin
6 or whatever, a football game is sponsored by, it
7 doesn't suggest that the payer actually controlled
8 the content or had any influence over the content,
9 but I don't like that word.

10 MR. STEINBERG: And that knife cuts both
11 ways, right? In some cases -- part of my objection
12 to the term sponsored is, in some cases, it's
13 actually not sponsored. In some cases, it's created
14 by, an advertisement from, it's branded content
15 from. They are not just sponsoring something, they
16 are creating the content. There needs to be a
17 description if there is a paid relationship, but the
18 word "sponsor" is just the wrong English word for
19 what's going on.

20 MR. RIDDLE: Sponsored by wouldn't be
21 strong enough. It wouldn't go far enough where
22 you've got content that was produced specifically
23 for a marketer. Because for us, "sponsored by" is a
24 term we reserve for editorial content, where the
25 marketer hasn't had any input into it, exactly what

1 Jon cites there.

2 So for us, if we were to label something
3 as "sponsored by" it would suggest that the brand
4 has had no involvement and it is simply a
5 sponsorship which they put their logo against. They
6 may have things to say in other areas, but as far as
7 that piece of editorial content is concerned,
8 they've absolutely had no input into it.

9 For content where they have had input into
10 it, we reserve a different attribution and that's
11 "sponsor generated content." We feel that is a
12 phrase that more clearly represents the sponsor's
13 involvement in the creation of that content.

14 MS. ENGLE: And that's a very interesting
15 distinction, sponsor versus sponsor-generated. It
16 is more specific and clear. Do you require the name
17 of the sponsor? You know, generated by whomever or
18 --

19 MR. RIDDLE: Yeah. I mean, you know, we
20 are getting into labeling now in quite some detail,
21 which is probably the place that we need to go, but
22 yes, we do. I mean, we reserve the byline where we
23 actually call it out. We say it's by WSJ Custom
24 Content Studios for Brand X.

25 And to answer the question for the

1 marketing we were looking at before, and the
2 question has been raised a few times about whether
3 the sponsor's logo should be included or not, we
4 think that the logo should be included, because
5 that's another visual clue to the reader that says
6 that this is there as a result of a commercial
7 relationship, rather than an editorial decision.

8 MR. STEINBERG: And with a few word tweaks
9 here and there, that's what we do as well. Brand
10 logo included and presented by and then terminology
11 that it's paid for.

12 So we think the icons -- but look, the
13 brand wants to drive brand value. We want people to
14 know that the brand, when they see that that
15 headline is coming from the brand, we want to create
16 lift before they even click-through and consume the
17 piece of content.

18 MS. ENGLE: So why or why not use the term
19 advertisement? Or commercial advertisement, as was
20 suggested earlier.

21 MS. MUDGE: Sometimes it is and sometimes
22 it's not. If it is talking about the brand, it's an
23 ad. If you've got to -- to go back to your first
24 example of For Eyes that wants to sponsor seven
25 wonders of the world travel sites. I mean, they're

1 sponsoring it, there's a reason why they want to be
2 behind this message, but it's not an ad for their
3 product.

4 And we've all struggled with that in the
5 context of sponsored Tweets as well, but I don't
6 know what I know anymore after the last panel. I
7 think, well, it's -- I think the whole world is sort
8 of turned upside down. But in looking at what the
9 actual words mean, an advertisement is a very
10 specific thing. And sometimes this stuff is an ad
11 and sometimes it's not. Sometimes it is content.

12 MR. HOLT: At the risk of sounding very
13 simple minded, if it's paid media, it's an ad, from
14 my perspective. I think that the key here is not so
15 much the language or the nature of the label. It
16 would be great if all words meant the same thing
17 across every publication, but I think that is
18 probably going to be an impossible goal to achieve.

19 The key here is that we are signaling that
20 this is some form of special content. So if
21 sponsored content, brought to you by, presented by,
22 if you are not going to use the word ad or
23 advertisement, and there are reasons why people -- I
24 think there are reasons why ad and advertisement is
25 not used, and that's that it is disruptive to the

1 reader experience, from the marketer's perspective.
2 If you are not going to use that term, then you can
3 use any word you want and signal it, but then you
4 have to explain what it is what is key here is that,
5 "What is this?", rollover or linked or whatever this
6 is, on this particular page.

7 MS. ENGLE: Any other thoughts on that?

8 MR. WEISSMAN: You know, I think that's
9 exactly right, except that the question of
10 disruptive, what does that, you know -- disruptive
11 cuts both ways. I totally get that it's better not
12 to be disruptive, from the advertising point of
13 view.

14 But another way to understand disruptive
15 is actually the meaning was absorbed by the
16 consumer, right? Because someone actually had
17 noticed this is an ad, not something that their eyes
18 kind of quickly glossed over and skipped over. You
19 know, there may be a big consumer interest in
20 exactly that kind of disruption, which is
21 uncomfortable for the advertisers.

22 MR. ZANEIS: I don't know. I think
23 advertising wants to be disruptive. I mean, we want
24 to get your attention, that's the whole goal.
25 That's the beauty of, especially digital

1 advertising, where it can reach out and kind of grab
2 you.

3 Whether you use one label or not, I think
4 in some ways that sort of assumes a very
5 well-curated site, which isn't always the case. And
6 again, one-size-fits-all doesn't necessarily work
7 here. I think it's best practice, I think it works
8 really well for consumers. And we ought to continue
9 to educate and make sure that we are meeting
10 consumers' expectations around disclosure, so there
11 isn't confusion, but to have just one way to do it I
12 don't think works because then you get blindness to
13 that as well.

14 MR. HOLT: I just want to go back to the
15 disruption question. I think the nature of -- my
16 understanding of what native advertising is is that
17 the intention is to not disrupt the reader
18 experience with advertising.

19 MR. ZANEIS: No, it's to be part of the
20 experience. It's not -- I mean, it is to be part --
21 to engage the consumer in a way that the content is
22 engaging. But it's still engagement. If it's not
23 disruptive and you don't get their attention, it's
24 meaningless.

25 MR. STEINBERG: Yeah. And I can also say,

1 just to comment on that, the reason why these
2 products arose is they create a vastly better
3 consumer experience and a vastly better ad
4 experience that translates into better awareness and
5 product purchase intent and all of those things.
6 Consumers, by and large, complain far more about any
7 other advertisement about those welcome screen ads
8 that block you from getting an article. I can't
9 imagine that you possibly like those.

10 What we find with the native format is,
11 when you have an ethical publisher that properly
12 identifies it, the consumer sees what it is, they
13 click on it. If they like the content, they share
14 it out. They are basically doing word-of-mouth in
15 process. We are creating an experience which works
16 better for the advertiser, better for the end
17 consumer, and definitely needs to be clearly labeled
18 and clearly identified for who is behind it and who
19 is paying for the media, but this is solving a very
20 broken ad economy problem, which is anticonsumer
21 experience. It doesn't work for the brand.

22 MS. ENGLE: So what do people think about,
23 assuming you have a bunch of headlines and you click
24 on to a link to an article, maybe it's paid, maybe
25 it's not. We've seen those.

1 How important is it for the initial
2 headline to be identifiable? So that before you
3 click on it, you know you are getting into paid
4 content, versus you click on it and then there may
5 be a good disclosure or label or identification of
6 sponsored content. Do people think it matters
7 whether or not the initial headline is identifiable
8 or not? Any view on that? Anybody?

9 MS. BRETT: I'll weigh in. I mean, I
10 think we get into what Lesley spoke about earlier,
11 which is the deceptive door opening, right? You
12 know, is it deceptive to link somebody to content
13 without them knowing that they are linking to
14 advertising content.

15 And you know, I think in cases where you
16 need to label it as advertising content, you
17 probably need to tell consumers before you get there
18 that they are going to advertising content. But it
19 would depend, to some degree, on what the content
20 is. But I think if we're going to accept that this
21 is content that needs to be labeled as advertising
22 content, then I would say, yes. Before you get to
23 that page, you should tell them that they are
24 linking to advertising content.

25 MR. RIDDLE: At the risk of sounding

1 boring, but consistent, I'm going to say that if
2 it's there as the result of a commercial
3 relationship, then it should be called out.

4 MS. MUDGE: And I think -- and I don't
5 know if I disagree, I just think that there is a
6 difference between someone coming into your home,
7 they are actually in the door, and between clicking
8 on something. I just don't -- when I think about
9 sort of what, you know, what is the consumer harm
10 here? Like, how difficult is it to click back? You
11 know, I'm not anti-disclosure. I'm not suggesting
12 that --

13 MS. ENGLE: Part of it might be, you know,
14 to the extent that consumers, you know, don't
15 necessarily notice everything, they might be less
16 likely to even notice or look for the sponsored
17 label if they haven't -- you know, if they're not
18 thinking about it. At least some of the research
19 earlier suggests that people have a single-minded,
20 they are kind of looking for a certain purpose.

21 So if you think that maybe, like, the
22 prize promotion, the direct-mail piece that we saw
23 Lesley's presentation that looked like it came from
24 the California Department of Promotions or
25 whatever. Well, you know, you might never opened

1 that envelope, right? You wouldn't have, if you
2 knew what it was. So, it could be that idea.

3 MR. HOLT: But going back to something you
4 were speaking about in the last panel, about the
5 kind of information that consumers can absorb. We
6 can only provide them information. We can't make
7 them consume it.

8 MS. ENGLE: Right. And the goal is to
9 make it engaging and that's why --

10 MR. HOLT: Right. Both from an editorial
11 standpoint, from an advertising standpoint, and in
12 terms, specifically, of these kinds of labels that
13 we're talking about.

14 MS. ENGLE: Right. And actually, you
15 know, it may be more than we can do here, but -- we
16 talk about labels, but I was going to ask about
17 other visual cues.

18 And you heard earlier that for some people
19 may be labeling isn't effective. Other visual cues
20 that might be used to set off the sponsor content,
21 yet that feels somewhat at odds with the whole
22 purpose of sponsored content or native advertising,
23 which is to look and feel like the surrounding
24 editorial. So what do people think about that? I
25 know that ASME guidelines do suggest a pretty good,

1 you know, distinction.

2 MR. HOLT: Right. So we feel very clearly
3 that native advertising ought to be labeled and I
4 think everybody agrees that there ought to be
5 complete transparency. We believe that native
6 advertising ought to be labeled, clearly labeled, as
7 advertising, if not using that term, then whatever
8 term is being used should be explained in some way
9 that the content was created or provided by a
10 marketer.

11 And not that content should not look like
12 editorial content. That's really the third aspect
13 of that, that the content should not look like
14 editorial content and should be somehow separated
15 from editorial content, that's probably the most
16 controversial part of the ASME guidelines as they
17 now stand.

18 MS. ENGLE: Yeah.

19 MS. BRETT: And I would say, from NAD
20 cases, if disclosure is needed, it's really got to
21 be clear and conspicuous. So you know, if light
22 gray or shading doesn't -- is not clear and
23 conspicuous to consumers, then we'll take a good
24 hard look at that.

25 But it's very helpful to have some of that

1 research being done on what consumers are seeing, or
2 not seeing. But I do agree with Sid that, to some
3 extent, also what we need to safeguard is that the
4 disclosure is there and that people are looking for
5 it, or so that they can see it. Not necessarily if
6 some people disregard it or don't care that it's
7 there.

8 MS. ENGLE: So we also heard this morning
9 about the importance of social, social media here,
10 and how, you know, ideally consumers will pass on
11 and share this content that they're enjoying.

12 And so what about when it's shared and
13 redistributed in that way? Is it important for
14 whatever identifying tags or labels or whatever to
15 be carried through if a consumer shares it? And
16 does it matter whether it's coming from the
17 publisher or the brand?

18 MR. STEINBERG: So this is why I kind of
19 opened with that two-prong test, because sharing is
20 so important for what we do. We think it is the way
21 the content ultimately is spreading more than ever
22 in media.

23 If a brand creates a piece of content and
24 the user gets to that piece of content, either
25 through a paid placement or what not, they clearly

1 know that it's created by a brand because it's
2 labeled by the brand or what not. And then if they
3 choose to share that on, say, Facebook or Twitter,
4 that's not a paid action, so it shouldn't be labeled
5 as a paid action.

6 The same way on Twitter that if a user
7 were to follow, let's say, Coca-Cola. And Coca-Cola
8 tweeted something and someone chose to re-tweet
9 that. Or someone saw a Coca-Cola message on
10 Facebook and chose to re-share that, they are able
11 to do that without any kind of connotation of
12 payment because there is no paid advertising going
13 on.

14 It needs to be clear that Coca-Cola is the
15 creator of that content. It is Coca-Cola content
16 that is being re-tweeted or re-shared on Facebook,
17 but it is not a paid media relationship.

18 MS. ENGLE: So how is it going to be clear
19 that Coca-Cola created that content?

20 MR. STEINBERG: Well, I would say that in
21 the -- right now, Twitter allows in sharing for you
22 to put in the name of the brand. So that if someone
23 were to share an article, you could put in the
24 brand's hashtag or Coca-Cola or this is from
25 Coca-Cola or what not.

1 Facebook is actually an open issue.
2 Facebook will not allow publishers to put in the
3 name of the brand when a piece of content is shared
4 out through Facebook. So if Facebook terms of
5 services were changed, we would gladly put brand
6 names into the branded content when it is shared
7 from our publisher's site on to Facebook.

8 MR. RIDDLE: Also, I think the point is,
9 when the original piece of content is written,
10 actually clearly labeled, and that falls as part of
11 the previous sort of part of the conversation that
12 we had around labeling. The point when it gets
13 picked up by, say, me when I read the Five Guys
14 review and think that's actually quite interesting.
15 I'm going to share that to my network, whether it's
16 on Facebook or I tweet about it or whatever.
17 That's, for all intents and purposes, me making an
18 editorial decision, right? Because we are all
19 publishers today.

20 We hear a lot of people talk about that.
21 We are all publishers, we've all got our
22 communities, some bigger than others. But for all
23 intents and purposes, we are editors of our own
24 social media channels and we are making those
25 decisions as to whether we think that it's right and

1 applicable to send that content out to our audience.

2 And we have to think about our own brands.

3 If we care about the people who are in our

4 community, and I would assume that everybody does,

5 and we want to remain credible, we are going to

6 think about the kinds of content what we share

7 before we share it. And at that point, we put our

8 name on it.

9 Now, if the question is, should we be paid

10 for that, well maybe. There are models where that

11 kind of thing does happen, but in this instance that

12 we are giving out now, it's an organic decision that

13 somebody is making to share a piece of content, so

14 that doesn't need to be disclosed.

15 MS. ENGLE: So does it suggest then that

16 it's important for the original content to be

17 labeled or identified in a way that carries through,

18 right?

19 MR. HOLT: Why?

20 MS. ENGLE: Because then the person who

21 receives it secondarily -- so that they will know

22 who's responsible for the original content.

23 MR. HOLT: All they need to know is where

24 the content came from.

25 MS. ENGLE: Well, that's -- you mean --

1 MR. HOLT: And it came from your friend.

2 MS. ENGLE: So you don't think that it
3 matters then --

4 MR. HOLT: If you don't want to get a
5 dancing cat, take it up with your friend.

6 MR. RIDDLE: That's true. That's exactly
7 the point. Because if you keep sending dancing cats
8 to people that don't want dancing cats, you're going
9 to find yourself with very, very few friends soon.

10 MR. STEINBERG: Well, people actually
11 really do like dancing cats.

12 MR. WEISSMAN: If the dancing cat is
13 drinking a can of Coke, you should know that that
14 was a Coke ad in the first place, right? I think
15 that was the point that was being raised.

16 MS. ENGLE: Right. So going back to this
17 article on, say, "American Eyesight: Much Worse
18 than Imagined." If that is being shared, and let's
19 say the article actually talks about a particular
20 brand, and let's say when it's published, you've got
21 links there, so it is easily shared, wouldn't the
22 idea that it's actually an ad -- in the case, it's
23 an ad. Okay, it's talking about a specific product,
24 everyone would agree that that's an ad and it should
25 be identifiable.

1 MR. STEINBERG: Well, no. Hold on. I
2 don't agree with that. It's not an ad, it's a piece
3 of content that a brand created. Now, it needs to
4 be clear that the brand created that piece of
5 content, but they may have done that on an open
6 platform, without paid media. They may have posted
7 that content to their Tumblr, they may have posted
8 that content to Facebook that somebody then shared
9 from Facebook to Twitter. It should be clear that
10 the brand created it, may it not be a paid action at
11 that point.

12 MS. ENGLE: Well, that's one scenario. So
13 I was imagining a scenario where they did actually
14 pay to have this article placed in the Post Gazette
15 and then it gets shared. And so, you know, right
16 now the example we have right here, "Sponsored
17 content provided by For Eyes" are you saying that it
18 wouldn't matter if that that gets carried through
19 when it's shared? It just starts with the headline,
20 "American Eyesight: Much Worse Than Imagined."

21 MR. ZANEIS: The original publisher
22 doesn't have any control over how that content gets
23 shared, especially if it gets shared on a different
24 platform, a social network and so they don't have
25 any control -- require that there is some sort of

1 label or icon. You know, we all use link shorteners
2 when we tweet things out, so there's just there's no
3 mechanism for doing that. It's a completely
4 different relationship and it's a completely
5 different expectation from the consumer. Because
6 they are consuming that original commercial message
7 on a completely different platform, in a different
8 way, probably from one of their friends.

9 MS. MUDGE: I think there's two different
10 issues here. If I'm linking out to this article
11 that we are looking at here, your eyesight can be
12 damaged by excessive mobile use. And if my mom
13 wants to share that with me -- she loves to send me
14 medical advice. So if I get that from my mom, and I
15 decide not to ignore it, and I decide to actually
16 look at it, when I going back to that article, then
17 I'm going to understand, oh, a-ha, this comes from
18 For Eyes.

19 If it's a situation where my new friend
20 Sid has sent me dancing cats, because that's what he
21 does, and the dancing cat is holding a can of Coke,
22 in Robert's scenario, that in and of itself -- we've
23 done that. It's product placement. We've got
24 really cleared guidance from you, Mary, that not all
25 examples of simple product placement are going to

1 require a disclosure anywhere.

2 MR. HOLT: But again, if your friend sends
3 you a dancing cat with a can of Coke, and your
4 friend likes to share advertising with you, that's
5 something, again, you need to take up with your
6 friend. And not with Coca-Cola or the publisher of
7 the dancing cat.

8 MR. WEISSMAN: Except if the original --
9 and I'm not sure that we are really disagreeing
10 about too much on this panel. But if Coke produced
11 the thing in the first place, the dancing cat with
12 the Coke, then you need to know that when you get
13 there.

14 MR. HOLT: Yeah, yeah. Exactly.

15 MR. WEISSMAN: Maybe the tweet didn't have
16 to tell you that, but when you get there, you have
17 to know.

18 MR. HOLT: Exactly. I think we agree.

19 MS. BRETT: So we agree that, when you get
20 there, you have to know, whether it's a dancing cat
21 holding Coke or it's an article on --

22 MR. STEINBERG: Yeah. I mean, otherwise
23 we are going to be regulating people's tweets and
24 how they are allowed to tweet and Facebook articles
25 that they find.

1 MR. HOLT: Cut and paste function.

2 MR. STEINBERG: Yeah, I mean --

3 MS. MUDGE: And if just a dancing cat with
4 a can of Coke, I don't see why that's different from
5 product placement on television, which we don't need
6 to disclose.

7 MR. STEINBERG: Or if I see a television
8 commercial --

9 MR. WEISSMAN: That's another panel.
10 Another panel.

11 MR. STEINBERG: I think we have to keep
12 the digital analogues next to what is actually
13 happening in the real world. If I see a great
14 Toyota commercial and I say, Amy, you look like you
15 need a new car, this and Toyota Corolla is the ideal
16 car for you, I don't have to say like,
17 "#sawitonacommercialallastnight."

18 MS. ENGLE: Okay, so let's move to another
19 to another mockup. And there's an article here that
20 is an actual article, so we're not talking about the
21 article, we're talking about what you find along the
22 right-hand side.

23 At the bottom, "Recommended and Most Read
24 From Around the web." And we have different, you
25 know, you'll some things -- on "Most Read" the

1 second link there -- it says sponsored. And at the
2 bottom, "From Around the Web" one of the links is
3 indicated as sponsored.

4 What do people think about those sorts
5 of -- I'll call them labels because here they are
6 labels? What kinds of content recommendations need
7 to be distinguished as or labeled as sponsored?

8 You know, in some cases some of these
9 articles are actually -- there's links. These
10 headlines are links to other articles from this
11 publisher, say the Post Gazette. And in some case,
12 they might be links to ads. You don't really know
13 that, just looking at this box. Is that a problem
14 or is it sufficient for just what is sponsored to be
15 so labeled?

16 MR. RIDDLE: You can make this really easy
17 and you can say that it's there as a result of a
18 commercial relationship, so it needs to have a
19 number of things which call that out in that way.

20 So for me, it would need to have clearer
21 labeling. Where it says sponsored, we would want to
22 see it saying, "sponsor generated content." I
23 notice that the font is the same font as the "Most
24 Read" sections above it and below it, so I would
25 want that to be different. The color of the

1 headline is the same, so that should be different,
2 to give the visual clues to the reader that there is
3 something different going on here, and then the
4 background as well. It should also include a --
5 whoever it is that is sponsoring it, their logo.

6 One good thing I would say about it is
7 that it's clearly demarcated in an area, which is
8 sort of noted by the grayed out box.

9 MS. BRETT: I would just say I think that
10 there's room for a lot of confusion here. The
11 consumer doesn't know who is recommending this
12 content or why this content from around the web is
13 coming to them.

14 And the disclosure that these boxes
15 include some sponsored content and some editorial
16 content, are really, if they are there at all, they
17 are really hard to -- and some of them are placed in
18 places that, we learned in the last panel, aren't
19 places where consumers are likely to look.

20 But it really goes to whether or not they
21 are clear and conspicuous, so I do think there is a
22 lot of room for consumer confusion with these
23 recommendation widgets and who is recommending the
24 content and whether or not all of those posts
25 somebody is paying to promote.

1 MR. ZANEIS: To me, it's simple. I mean,
2 you've got a sponsored box "From Around the Web" and
3 a "What is this?" link up there. And you have a
4 sponsored box around "What Are The Most Read
5 Stories?" Those look to me to be the
6 advertisements.

7 If something under recommended is a paid
8 link, then that's a problem. But we don't know what
9 that is. I assume reading this, that's probably
10 other first-party content, but I don't know that
11 because we are working on hypotheticals in, you
12 know, Latin.

13 Mr. WEISSMAN: Well, from the "Around The
14 Web" part, I would disagree. I think those
15 disclaimers are awful. They're almost
16 unidentifiable, unless you -- with respect, unless
17 you are in the business of knowing that these things
18 are ads and you should expect them to be ads, oh, by
19 the way, here's the confirmation, no way does this
20 tell you that this is an advertisement.

21 In my experience in clicking on "What is
22 this?" on actual websites, not this one, I can't
23 figure out even after I read it what the
24 relationship is. And you know, I'm not in the ad
25 business, but I have pretty decent reading

1 comprehension and I can't get it.

2 So I think those kinds of disclosures are
3 horrible. And on the "Most Read" one, I think
4 Robin's sort of categorization was pretty good.

5 MR. RIDDLE: We basically go for five
6 different things that we apply in this situations to
7 make sure that it's clear, which you could say is
8 perhaps, you know, sort of belt and braces type
9 approach. But the other thing that we are looking
10 to try to do is graceful transparency.

11 So we're not trying to say to people,
12 don't read this. We're not trying to say there is
13 any less value necessarily in reading it, we just
14 want to make sure that it is clearly called out in a
15 way and aim for graceful transparency.

16 MS. BRETT: But even on the "Most Read" a
17 question comes up whether or not it's placed there
18 because it's most read and it happens to be
19 sponsored or that all of these other articles are
20 most read, but somebody has sponsored that article
21 to be placed under that heading.

22 So I do think there is room for a little
23 more clarity, even on the most read section.

24 MS. ENGLE: I think that's a really
25 interesting point. Do others have views on that?

1 Is it legitimate if that's not actually most read,
2 it's just play there for payment, to include it
3 under that banner?

4 MR. HOLT: You know, if it's most read,
5 it's editorial content. Presumably, it's content
6 from the site. I would assume that this sponsored
7 piece of content is most read, achieving some sort
8 of marketing nirvana, that this piece of marketing,
9 this piece of sponsored content is a most read piece
10 of content on the site. If that's not the case,
11 then the level of disclosure here is really
12 substandard, I think everybody would agree, just
13 from a consumer perspective.

14 MS. ENGLE: Right. Does anybody disagree
15 that it ought to be -- if it is going to be under
16 the "Most Read" heading, then it actually ought to
17 be most read. And yes, maybe it did achieve
18 marketing nirvana and the sponsored content was most
19 read, so they could include it there. Or can that
20 just be an ad inserted into the most read column?

21 MS. MUDGE: I'm not going to disagree -- I
22 mean, this is a weird one. Most read? How do you
23 tell which ads are most read?

24 I have a feeling that this is one -- I
25 know, you know, the BCP is sponsoring this workshop

1 today, but I have a feeling if we talk to our
2 friends at the Bureau of Economics or the Bureau of
3 Competition, they'd say the market will take care of
4 this.

5 I'm just hearing from every publisher here
6 today that trust is important and they don't want to
7 do something like this that consumers are going to
8 be inherently suspicious of. So this seems to me
9 something that probably wouldn't happen and there
10 wouldn't be a need for regulation to step in and fix
11 something like this.

12 MR. STEINBERG: And Amy, I think a good
13 example of that is when people starting doing
14 pop-unders, sites that did pop-unders and installed
15 toolbars and did all of that stuff, back in the
16 early nineties, like those sites aren't around
17 anymore. Because people felt really deceived and
18 kind of messed up by those sites and the market
19 worked it out.

20 MS. ENGLE: Well, the FTC takes a law
21 enforcement -- and I would just say that I still see
22 a lot of, you know, "One weird trick for a tiny
23 belly" so we haven't gotten away completely.

24 MR. STEINBERG: Yeah.

25 MR. HOLT: I think this is an editorial

1 practices issue and not an advertising issue, per
2 se.

3 MS. ENGLE: You don't think the "Most
4 Read" column --

5 MR. HOLT: It should be most read.

6 MS. ENGLE: So assuming it's most read,
7 then it's okay.

8 Let's see. So what if the recommended
9 column includes links to branded content within that
10 publisher's website? So not the pure editorial, but
11 the branded content, won't that be set-off there?

12 MR. ZANEIS: Is it actually "most read"
13 are we still on --

14 MS. ENGLE: No, we're on to recommended.

15 MR. ZANEIS: I assume that's what it is,
16 right? When I read that, I assume that that is
17 other first-party content. It may not be Post
18 Gazette, but it is a wholly-owned subsidiary or --
19 you know, lots of big media companies have tons of
20 different brands that are not under a similar
21 branding.

22 MS. ENGLE: So I meant not another -- I
23 mean, I know it's hard to -- the terminology, but
24 not another article produced by the writers or
25 journalists, but a sponsored piece, a sponsored

1 article. So presumably wherever it is appearing
2 elsewhere, it is labeled as sponsored. Should that
3 be labeled here, under the recommended column? So
4 on the link. Is that question clear?

5 MS. MUDGE: I think in some ways, you've
6 got to keep your eyes on the prize and decide what
7 disclosure is important. If you've got disclosures,
8 disclosures, disclosures everywhere, you are really
9 going to lose consumers.

10 I mean, I think we've heard in our last
11 panel, it's hard to get them anyway, but to the
12 extent that you've got one or two shots on a page,
13 it seems to me that you would want to focus really
14 clearly on, on this page, where on this page is
15 going to take me to ads? And that's this stuff on
16 the bottom for 200 pounds instantly and things like
17 that.

18 To the extent that, in the recommended
19 column, maybe one of these pieces is going to take
20 me to some sponsored content, I'm going to know that
21 when I'm there. And I would just be worried about
22 muddling up a page with too much disclosure as to
23 whether we are going to lose people entirely.

24 MR. WEISSMAN: But then you're just
25 muddling the page up with too much advertising. I

1 mean, you can't just not disclose it because it's
2 inconvenient.

3 I mean, if our premise coming in should be
4 a link to sponsored content should be disclosed at
5 the point of the link, how does it change just
6 because you've got a lot of it on the page?

7 MS. MUDGE: I'm just posing it as a
8 question. I do think there is some real -- that you
9 do want to look and you do want to consider as to
10 how are we going to call out what we need to call
11 out clearly and conspicuously.

12 MR. WEISSMAN: But --

13 MS. MUDGE: And I don't think we want to
14 tell the Wall Street Journal that they can't
15 recommend -- only in recommended can be editorial
16 content.

17 MR. WEISSMAN: Oh, it's not prohibiting.
18 This was a disclosure question right now. I mean,
19 to me, I like the "Most Read" which is like an
20 objective measure. So it's a point that I hadn't
21 thought of before, but it is misleading in a way.
22 If you are calling it "Most Read" and the fact that
23 it is not most read and you just stuck this thing in
24 there. But recommended, yeah. It is recommended.
25 You're recommending it because it's a paid

1 relationship. And if you disclose it, you're not
2 deceiving people. But if you say you are
3 recommending it because of a paid relationship, if
4 you say you are recommending it, and you're doing
5 that because of a paid relationship, but you don't
6 disclose the fact of that paid relationship, then I
7 think you are being deceptive.

8 MS. MUDGE: I still think we've got to be
9 careful and we've got to look as to how to make
10 those recommendations clearly.

11 I don't disagree with you. I'm not
12 anti-disclosure, but I do think -- and you've seen
13 this in the dot com workshop, that so much
14 disclosure can muddle things and can end up adding
15 to confusion and not clearing it up.

16 MS. ENGLE: Right. And as far as, on the
17 earlier panel, the presentation about what
18 disclosures were -- I forget the terms he used, it
19 wasn't salient, but which worked better, and there
20 was a distinction between -- and like this example
21 at the bottom, "From Around the Web" and "Most Read"
22 you have one and, you know, sometimes you'll see two
23 or three of the listings will be labeled as
24 sponsored or presented by so-and-so.

25 Whereas he had the idea of, if you just

1 have one label at the top, you don't know which ones
2 within the group are sponsored and which ones
3 aren't, versus grouping together very solidly all of
4 the sponsored ones and then having the non-sponsored
5 ones separately.

6 So what do you think about that? Would
7 that address your concern about too much verbiage?
8 You would just have --

9 MS. MUDGE: I mean, it would solve that
10 issue. I suspect that it would hamper the native
11 feel. So I think we are inherently balancing
12 between disclosure and between making an experience
13 that users want to interface with.

14 MR. ZANEIS: But Mary, I don't think this
15 is actually a hard case at all. You've got a bunch
16 of content on here, some of which is very -- some of
17 which is pretty clearly labeled as sponsored. We
18 can argue whether the "Around the Web" is clear
19 enough labeling, but you have some that is labeled
20 as advertising.

21 If you have an advertisement right next to
22 it that is not labeled, that's not acceptable. I
23 mean, that's pretty -- I don't think this is a hard
24 question, with what we have in front of us.

25 MS. ENGLE: Okay, so now we are going to

1 move to some new examples involving mobile.

2 So the first -- this slide here is the
3 main page of a mobile website of a magazine, the
4 Your Child magazine. And the magazine has a section
5 called learning, which is sponsored, in this case,
6 by TotSmart. And so you see that, in the middle,
7 Learning presented by TotSmart, and then there are a
8 few articles within that section.

9 So based upon this presentation of how
10 these articles are organized, what are your views
11 about whether or not these articles would be
12 sponsored content? Anybody have thoughts?

13 MR. STEINBERG: I mean, it looks like a
14 banner to me. So my view on that would be that --
15 not knowing, but just looking at this, I would think
16 that these articles are editorial content and that
17 all that TotSmart has said is that they want to be
18 affiliated and they want to be adjacent to an
19 independent editorial section on child care.

20 MR. RIDDLE: And I would agree with that.
21 It just looks to me like a straight-forward
22 sponsorship.

23 MR. HOLT: I would agree with that, too.

24 MS. ENGLE: Okay, okay. So what happens
25 -- let's see. If you click -- actually, we'll go

1 back to that.

2 So assuming then though that actually
3 TotSmart had paid for one or more of those articles,
4 then you would think that additional disclosures or
5 clearer distinctions would need to be made to
6 indicate that actually those articles themselves
7 were paid for?

8 MR. STEINBERG: Yes.

9 MR. RIDDLE: Yes.

10 MR. STEINBERG: It's confusing the way it
11 is now.

12 MS. ENGLE: Okay. So assuming you clicked
13 on the article, "Helping Your Child to Read Early
14 and Like It" and you were taken to an article that
15 was about a reading program, an early reading
16 program that TotSmart sells. How would you
17 recommend that that link can be changed to make that
18 clear? Assuming you would.

19 So that link, that first article, "Helping
20 Your Child to Read Early and Like It" that link, or
21 the headline is to an article that discusses a
22 TotSmart learning product.

23 MR. RIDDLE: That article is custom
24 content that has been created specifically for
25 TotSmart?

1 MS. ENGLE: Yes, yes.

2 MR. RIDDLE: And what about the articles
3 below it? The one on autism and strategies for
4 finding the right schools.

5 MS. ENGLE: Say they were not.

6 MR. RIDDLE: They were not. Then in my
7 opinion, you'd have to go back to the things that,
8 you know, I've been suggesting all along, which is
9 you've got to put some visual clues in there and
10 then you've got to put written clues in there.

11 So I'd want to see a clearly demarcated
12 area that highlights the fact that this is something
13 which is different than the content underneath it.
14 And I want to see "sponsor generated content" on
15 the -- and I want to see, if there is a byline in
16 there, it should be clear on the byline that it's --
17 who it's by. And it's written for brand, so in our
18 case, it would be by the WSJ Custom Content Studios
19 for brand TotSmart. So basically, I want to see
20 much clearer labeling around it.

21 MS. ENGLE: Any other views on that?

22 Okay, so suppose then when you click
23 through on the article, I heard that, yeah, the
24 article itself should be clearly labeled.

25 How do you feel about that presentation?

1 The script is in Latin or something -- Robin you had
2 mentioned a byline. Do other people feel a byline
3 is needed or, you know, actually it's interesting
4 because the 1968 policy statement that the FTC put
5 out on advertising that appears in the form of
6 editorial, in addition to saying it should be
7 labeled as advertising, and actually discourages the
8 use of bylines, because they would suggest that it
9 was an article, an editorial, and not an
10 advertisement. So I guess depending on what the
11 byline says --

12 MR. RIDDLE: Well, exactly. I mean, we're
13 making it perfectly clear that we've written it for
14 a client and we're saying client that it is and you
15 would include a client logo.

16 But we actually go one stage further with
17 the article page as well. We include most of those
18 elements of labeling I referred to earlier, but then
19 on the actual article page itself, we include a
20 disclaimer that would say, "The Wall Street Journal
21 News Department was not included in the creation of
22 this content." And that would appear at the bottom
23 of the article.

24 MS. ENGLE: Anybody else have any thoughts
25 about the presentation?

1 MR. STEINBERG: I mean, the issue with
2 this one is it's confusing for somewhat
3 unintentional reasons.

4 The challenge is that TotSmart has
5 theoretically sponsored the whole section. They've
6 also created certain branded content articles that
7 they are the author of or they are the hirer of the
8 studio that created the content. So you end up with
9 a design that would be a little bit awkward, but I
10 think what you would probably have is you would keep
11 the sponsorship, and then somewhere down here,
12 "Helping Your Child to Read Early and Like It." To
13 Robin's point, I would say, "Created by TotSmart" or
14 "Presented by TotSmart" or something along those
15 lines as well. You almost need two indications, one
16 of the sponsorship of the section, one that the
17 brand is behind the creation of the content.

18 MS. BRETT: I would agree what when you're
19 recommending a product, your own product, the
20 advertiser's own product, the disclosure really
21 needs to be clear and conspicuous. You need to make
22 that connection with consumers so that they're not
23 confused.

24 They need a filter when they read that
25 content. And if the entire section is sponsored by

1 TotSmart, I'm just concerned that that doesn't
2 necessarily clear up that this recommendation is
3 necessarily created and sponsored by TotSmart.

4 MS. ENGLE: And what if the article -- it
5 was one of the other articles that had to do with
6 autism or detecting early signs of autism, so
7 TotSmart is still sponsoring this learning section,
8 but the article itself doesn't have anything to do
9 with the TotSmart product.

10 MR. STEINBERG: Well, then the question
11 is, are they very involved in the creation of the
12 content or not?

13 So for example, Ford could sponsor the
14 entire automotive section of a publication and not
15 be involved in the creation of any of the articles
16 or some of the articles.

17 If TotSmart is sponsoring a section,
18 theoretically there would be a learning section on
19 yourchild.com that would be created independent of
20 TotSmart's desire, and then they just have to label
21 which of the articles in there they are involved in
22 the creation of.

23 MR. ZANEIS: You'd have to label the
24 native ad, right? I mean that's what we are talking
25 about. Otherwise, it's just a sponsorship of --

1 MR. STEINBERG: Otherwise, it's just a
2 sponsorship.

3 MS. ENGLE: Okay. So it sounds like there
4 is kind of agreement here that, at least in the
5 context, in the mobile context, that each individual
6 article, the headline, the link, needs to be
7 labeled.

8 MS. MUDGE: Depending on the content. I
9 mean, this is a pretty explicit example of -- as I
10 understand what we are talking about is this,
11 "Helping Your Child to Read Early and Like It" is
12 all about their product. They've written the
13 content, it's -- so that maybe -- I don't think
14 that's going to be the case in every situation.

15 MS. ENGLE: So this, what I have up on the
16 screen right now, it's "Super Foods for Expecting
17 Moms" and it's still sponsored by TotSmart, but
18 there's no indication of that, because it has
19 nothing -- TotSmart doesn't sell super foods.

20 MS. MUDGE: They just want to be sort of
21 related, that they're -- related to good foods and
22 health foods and that's a good thing.

23 MS. ENGLE: They are showing -- they are
24 sponsoring the whole section of, you know, sort of
25 the various stages when you're expecting, when

1 you've got an infant, when you've got a toddler.
2 They want to, you know, associate themselves with,
3 people should think of them when they're raising
4 their children, expecting children.

5 So they've sponsored this section,
6 sponsored the article, but they don't actually sell
7 the foods.

8 MS. MUDGE: And I come back to where I
9 started. I don't think this is -- I mean, this is
10 content. This is not an ad. I think if TotSmart
11 wants to say, hey, I'm bringing you this really
12 interesting content and I want to share this with
13 you, so I'm sponsoring this, that's appropriate.
14 But I don't think, under Section 5, there's an
15 obligation to disclose that TotSmart has sponsored
16 this particular article.

17 MR. ZANEIS: And I think that's exactly
18 right. And it gets into a slippery slope. What if
19 the sponsor just does contextual advertising and,
20 you know, they want food products and they want to
21 sponsor any page with food products? If it's not
22 related, if they're not involved commercially in the
23 creation of that content and that message, then it's
24 just advertising.

25 MS. ENGLE: Okay. Any other thoughts on

1 that? Okay.

2 So the next couple of slides were really
3 just variations on the theme. I feel like we've
4 kind of covered them.

5 I think the next one, again, that was
6 going to the issue of having articles on different
7 topics. And on, you know, I have -- there were
8 certain views as to whether, it depends on what the
9 content is. If it's promoting, directly or
10 indirectly, the advertiser's product, people think
11 it should be labeled, or others think that -- you
12 know, I'm also hearing the other views that,
13 regardless, as long as it's paid for, that fact
14 needs to be indicated.

15 So the panel will have to agree to
16 disagree on that, right?

17 MS. MUDGE: Correct. I think mobile
18 presents an interesting -- I mean, this is, you
19 know -- it presents an interesting challenge because
20 the space is at such a premium that it's almost --
21 you take away from so much of, there's a lot going
22 on on the page. And when you're focusing here, it
23 seems to me like there is -- in your examples, if
24 this is what YourChild looks like, there are some
25 pretty good opportunities for simple, clear

1 disclosures that aren't going to get lost in the
2 shuffle.

3 MS. ENGLE: Okay, so we actually have time
4 for questions, if anybody has questions. I know we
5 haven't had time in the last couple of panels, but
6 we said we would try to take questions.

7 So I see one question. Ron? Can you
8 identify -- well, I'll say that's Ron Urbach from
9 Davis & Gilbert.

10 MR. URBACH: The question that I've
11 thought about -- here's the question, there seems to
12 be a conversation ongoing about what one sees as
13 advertising, whether it's a sponsored advertisement,
14 and then the second discussion is about the need to
15 disclose who it's from.

16 And when I look to any print medium, I
17 know by context -- I know by context that it is
18 advertising. I may not know who the advertiser is,
19 but that's a brand choice. I may not know the
20 product, I may not know the advertiser, but I know
21 it's advertising. So why should it be different in
22 the online space?

23 MS. ENGLE: So the question is, if I can
24 summarize it, is that there is sort of a distinction
25 between disclosing the fact that something is an

1 advertisement versus who is the advertiser, who is
2 sponsoring it, and why is it necessary or important
3 to disclose the who.

4 MR. URBACH: Yes. Legally, why is it
5 necessary.

6 MS. ENGLE: Legally.

7 MS. BRETT: I would say, a lot of the
8 time, it really depends on what the content is. I
9 mean, if you're looking at the online -- I mean, the
10 mobile advertisements you were just looking at where
11 we are talking about helping your child learn early
12 to read and you're recommending a product that is a
13 product of the sponsor's, then I think consumers, in
14 order to be able to review that advertising in
15 context, for them to understand where that
16 recommendation is coming from, they need to know who
17 the sponsor of that content is.

18 So I think when you're specifically
19 talking about content that recommends a product or a
20 service, then the consumers do have an interest in
21 knowing who the sponsor of that content is. And I
22 think that would actually apply across the board,
23 whether or not you are looking at content in print
24 or on television, if you are specifically looking at
25 recommendations.

1 I mean, I think some of the conflict that
2 you are expressing really comes because, very often
3 what you're reading in a magazine article may have
4 more product attributes that it discusses in there
5 than you get in a 15 second commercial on
6 television.

7 So I think very often when you're reading
8 content, you are reading specific content about
9 product, and that's an area where you would
10 certainly want to know who the sponsor is.

11 MR. URBACH: What I was really referring
12 was not a disclosure that is required, the content
13 triggering additional disclose, but seeming to come
14 across that there was a mandatory obligation,
15 regardless of context, like the cat drinking
16 Coca-Cola. Somehow that people may need to want to
17 know about that -- that's a business call, versus
18 some other need because of the content, which
19 requires a disclosure.

20 MR. STEINBERG: First of all, thank you
21 for the question. I think it's a great question.
22 And I think it's a scrutiny question, as to where we
23 are in the cycle.

24 I don't agree that television commercials
25 are totally obvious. I think a lot of times, you

1 turn on the television and you're not even sure what
2 you're watching. Is it a newscast? It's kind of
3 pretending to be a newscast, but it's really a
4 commercial for someone who gets super-energized when
5 they drink a beverage. Television commercials can
6 be equally confusing. And in fact, there is a whole
7 type of ad campaign which is the teaser campaign,
8 where you see on television or you see at a bus stop
9 an ad from the Ministry of Information, which is
10 really -- and that they reveal over two months that
11 it's a sci-fi flick involving some hero.

12 We would love to be able to do those
13 campaigns on BuzzFeed. We think that they can be
14 done ethically and legally and all of those things,
15 but there's so much scrutiny on the space right now,
16 we don't even know how to do a teaser campaign.

17 So when I say it should be clearly labeled
18 who it's from, I feel like that's a public hot
19 button issue more than it is -- because TV
20 commercials, you're right, half the TV commercials,
21 they don't even tell you what it's from. What movie
22 is that going to be? What is Tom Cruise doing
23 spinning in the air? You don't know. You can't do
24 that online now because there's an FTC panel about
25 this kind of stuff.

1 MR. ZANEIS: But you guys certainly can
2 flight your creative for -- a campaign and tease out
3 the message. You certainly can do that.

4 MR. STEINBERG: Right. We had a debate on
5 this last week. We thought maybe what we should put
6 on the unit is, "This is a teaser campaign." They
7 want to do a really fun teaser campaign, but we're
8 so afraid that everyone is going to get cheesed off
9 about it.

10 MR. ZANEIS: So I think what you're
11 hearing from Jon is that they're ultra-sensitive to
12 it and they've got some model implications, and
13 Robin likewise. But legally speaking, that
14 shouldn't be and that can't be the standard. There
15 can't be a legal requirement to label it with the
16 sponsor, with the name. That isn't part of Section
17 5 and that's not part of the deception.

18 We're talking about the confusion for the
19 consumer between editorial content and the marketing
20 message. Plain and simple. That's the law.

21 Now some people go really above and beyond
22 and, of course, if you're doing sponsorships, if
23 you're a curated media company and you're doing
24 sponsorships with big brands, they are going to want
25 to have their brand associated with, not only the

1 content, but the ad itself. That's great, I think
2 that's model, but that can't be the law.

3 MS. MUDGE: And you come back to the
4 deception policy statement. To the extent that, if
5 you are saying sponsored, but not disclosing the
6 brand, that's an omission of the brand. When is the
7 omission of the brand going to be material to the
8 consumer's decision to purchase the product or to
9 use the product?

10 It might be -- I think it definitely would
11 be in your disparaging context. So we have that
12 hybrid and -- so if it's, your Ford hybrid is going
13 to fall apart tomorrow, the fact that it is brought
14 to you by Toyota, that's going to be important
15 information. So that's an example, I think, in a
16 disparagement case where, if you don't have that
17 brand disclosure, it probably is a significant
18 problem. I'm hard-pressed to come up with another
19 such example under Section 5.

20 MS. BRETT: Also, to some extent, you've
21 heard a split on this panel with regard to when
22 things need to be labeled and when not labeled. And
23 I think you've got a lot of different interests
24 represented on this panel, to the credit of the FTC,
25 but when you're looking at it from an editorial or

1 publisher's perspective, they have a lot of
2 responsibilities that they want to protect
3 themselves. So they may have an interest in
4 protecting it that may be separate from whether or
5 not there's consumers confusion or whether or not
6 consumers are being misled.

7 MS. ENGLE: And that's actually a perfect
8 segue to this question that someone in the audience
9 submitted which is, what about -- in the enforcement
10 context, what about if the publisher helps create
11 the content, do they become potentially liable under
12 Section 5 if the content is misleading or is
13 deceptive about, you know, the attributes or
14 features of the product? Are they kind of like an
15 ad agency then or what is their -- have people
16 thought about that, have publishers thought about
17 that at all?

18 As you may know, the FTC holds ad agencies
19 liable if they participate in creating an ad or
20 disseminating the ad and knew, or should've known,
21 it was deceptive. So what about publishers who
22 create content?

23 MR. RIDDLE: First of all, we don't do
24 product endorsements, so when we do do content, it
25 is produced under a co-brand. We wouldn't get into

1 the level of detail of talking about specific
2 products or making endorsements of those products,
3 so that kind of answers that question.

4 What I would say is that we uphold the
5 standards that we create custom content to the same
6 standard that the newsroom would want to create
7 standard, there is complete separation. We have a
8 completely separate team, even to the point that we
9 are in completely separate buildings.

10 But we still write to the same standard,
11 because we want to maintain that sense of trust and
12 loyalty and integrity around the brand. So I would
13 say that anything that we produce is legal, decent,
14 honest, and truthful. And it has to be.

15 MS. BRETT: To dip my toe in here, I mean,
16 I think at NAD we are always worried about getting
17 into First Amendment arguments with publishers. But
18 to the extent a publisher is acting like an
19 advertiser, then we could see potentially holding
20 them responsible for whether or not there is some
21 consumer confusion stemming from their
22 advertisement.

23 But generally, we don't want to get into
24 those First Amendment issues, so we would really be
25 looking specifically at whether or not the

1 publisher, in that circumstance, was actually acting
2 more like an advertiser than a publisher.

3 MS. MUDGE: I think to the extent that can
4 they be liable, I would say to a publisher, if I was
5 asked, that the FTC certainly will attempt to hold
6 you liable if the conduct is egregious enough. If
7 we are talking about, you know, health claims,
8 curing cancer, disease things. I mean, really
9 bordering on the fraud, I can't imagine that you
10 wouldn't try to hold everybody on the chain that
11 touched that liable. So I think that's one where,
12 be careful.

13 MS. ENGLE: Okay. Here's a question, and
14 we've touched on it, but I think it would be
15 interesting to explore it a bit.

16 So in the example of the For Eyes
17 sponsoring the article on the seven wonders of
18 the -- you know, the most beautiful landmarks or
19 whatever in the U.S. What is the consumer harm in a
20 consumer clicking on the link or even reading it if
21 they find it interesting?

22 So it goes to the question of materiality.
23 Is it material to consumers whether or not the brand
24 sponsored the placement of that article? And of
25 course under the test, you know, for deception under

1 the FTC act, it has to be material. So I know Amy
2 thinks it's not material.

3 MS. MUDGE: Well, if you tell me to go to
4 the Grand Canyon, am I going to go, oh gosh, I gotta
5 buy glasses now. No.

6 MS. ENGLE: But I would like to hear from
7 Robert, perhaps, on that point of the materiality to
8 the consumer that the brand paid for that article,
9 even though it really, you know, has nothing to do
10 with the brand. It's just an interesting article on
11 the seven natural wonders of the U.S.

12 MR. WEISSMAN: You know, the test can't be
13 whether it's interesting. I've spent more time on
14 Buzzfeed over the last few days than I have in
15 previous periods and the ads are all extremely
16 interesting.

17 MR. STEINBERG: Oh, good. I thought you
18 were going to say our ads aren't interesting.

19 MR. WEISSMAN: No, they are super
20 entertaining. But I still want to know that they're
21 ads.

22 MR. STEINBERG: And you do, don't you?

23 MR. WEISSMAN: We had to sort of look at
24 all of them. The Marketplace thing was horrible
25 about you guys, but I think it was unfair.

1 MR. STEINBERG: Which one?

2 MR. WEISSMAN: The Marketplace -- did you
3 not see this? Marketplace did its own little quiz
4 comparing sponsored content with unsponsored
5 content, and unless you knew the trick, there was no
6 way to figure out which was which. But I think they
7 were unfair to you.

8 MR. STEINBERG: Okay. I didn't read it,
9 so that's good.

10 MR. WEISSMAN: You've got your device,
11 check it out. Now I just shared their unfair --
12 slandered them.

13 But I think what is the consumer interest?
14 The consumer is interested in the first place about
15 what was the editorial judgment? Why was I being
16 directed to this page? Was it honestly the decision
17 of just a, you know, to take the web page example,
18 was it just the web publisher made the decision to
19 direct them to the seven wonders of the world, or
20 ten wonders, whichever number we're using, or did
21 someone pay them.

22 And if For Eyes paid them -- again, they
23 didn't do it out of community service. They did it
24 for some commercial purpose and the consumer has a
25 reason to know about that.

1 MS. MUDGE: The question was is their
2 consumer harm. Not does the consumer have an
3 interest or a reason to be curious.

4 MR. WEISSMAN: Yeah, that's the answer.
5 The consumer harm is being tricked about whether
6 they were being led there due to the independent
7 editorial judgment of the publisher or whether they
8 were led there because of a paid commercial
9 relationship.

10 MS. ENGLE: But is that an issue for the
11 publisher or is that an issue for the FTC?

12 MR. RIDDLE: Harm is in the eye of the
13 beholder. And you have a responsibility for your
14 whole audience and you could pretty well imagine
15 somebody is going to feel as though they've been
16 misled. So in that instance, you have to have
17 measures in place that protect everybody, not just
18 the people that don't feel they've been harmed or
19 don't feel they've been duped.

20 MR. WEISSMAN: So that example was, well,
21 that was a really interesting story, so I loved it.
22 But what if it was a stupid story? I mean, it's not
23 the same thing as being sold an unsafe medicine and
24 getting sick. Obviously -- if you totally disregard
25 it, all you do is click back, so it was a loss of

1 how many seconds of your life. That's the nature of
2 what harm on the internet is, right? That's the
3 whole nature of the advertising, these seconds
4 matter. So, you know, it's not trivial harm in that
5 context.

6 MS. MUDGE: But not for the FTC.

7 MS. ENGLE: Well, we'll be the judge of
8 that. No, I don't know the answer.

9 So here's a question that is probably good
10 for Robin, does the publisher's role in the creation
11 of native format article imply to the consumer
12 approval or endorsement of the product by the
13 publisher? You know, is that the standard to use,
14 that you would only publish -- you would only create
15 this content for -- or do you think there's no
16 endorsement message in there.

17 MR. RIDDLE: It's a great question, thank
18 you. And I think I'll phone a friend at this point.

19 So I think you've got to break that down
20 into a few parts. I think the first thing is, you
21 know, we're producing it, it carries our brand, so
22 we retain editorial control, which is an important
23 point. They are not going to say something that is
24 not true or legal, decent, or honest.

25 I mean, it's the same degree, and we heard

1 this much earlier this morning when we were
2 listening to some of those introduction talks
3 around, why do people advertise certain brands and
4 not other brands. And there is an implicit
5 agreement that when you are advertising in a certain
6 environment, that some of that equity rubs off,
7 right? I mean, we've been in the business for 150
8 or 170-odd years and that's the process or the model
9 that we use.

10 And that's why the Journal carries the
11 advertisement that it does and people come because
12 we've got a very credible brand and people want to
13 be seen in that environment. And it's the same with
14 branding, right? If you want to buy a BMW, you
15 expect a BMW showroom to look in a certain way and
16 the salespeople to act in a certain way, and the
17 showrooms to be located in certain places because
18 it's a premium brand, and therefore you would expect
19 a premium brand like BMW to be appearing in the
20 pages of the Journal or Bloomberg or Business Week
21 or The Economist or any one of those kind of
22 business publications.

23 MS. ENGLE: A number of the other
24 questions that we've received are not exactly on, I
25 don't know, not exactly on native advertising, may

1 be tangential to it. But I'll try one or two of
2 them.

3 So an example was given about, and when we
4 talk about TV, how this is an issue for TV and other
5 context as well, not just online or digital, but
6 what about when shows like "Modern Family" make the
7 whole episode around getting an iPad when
8 Disney/ABC, which "Modern Family" is on, has
9 connections to Apple? Let's not a -- I would say
10 that is kind of a product placement type of issue.
11 And I don't know whether others have considered --
12 have any of you ever addressed that kind of issue?

13 MS. BRETT: Not specifically, although I
14 will say that the "Modern Family" product tie-in,
15 what it did, maybe a few weeks ago, was something
16 that we were talking about in our office. It was
17 just an interesting use of advertising.

18 But I would say that, in that context, it
19 was pretty clear that that was an advertisement.
20 When they went and they moved between the episodes.
21 I mean, just to give a little bit of background,
22 "Modern Family," one of the television shows that I
23 don't watch, did a tie-in of a product where they
24 actually -- actually, it wasn't. It was a Target
25 commercial on "Modern Family" where they were tying

1 in the specific commercial between the episodes of
2 these different television shows.

3 And we were talking about that was an
4 interesting use of essentially what is sort of
5 native advertising in the television context. And I
6 think, in that context, it was clear they were
7 moving to an advertisement and it wasn't part of the
8 episode, so there was no consumer confusion.

9 But I think when you're specifically
10 talking about "Modern Family" and the children
11 playing on iPads, then I think you're looking at
12 more like product placement, that the FTC has
13 already addressed. And you're not specifically
14 making any claims about the product's attributes, so
15 it's not confusing or deceptive to consumers.

16 MS. ENGLE: Another question, which we'll
17 try to answer, which I'll answer with a non-answer,
18 is where does the FTC go from here? How dependent
19 will enforcement actions be on the industry setting
20 standards?

21 You know, I think -- I'm not sure, we're
22 going to have closing remarks from Jessica Rich,
23 who is the director of our Bureau of Consumer
24 Protection, and I think -- so I don't want to
25 preempt anything she might be saying, but I think,

1 from my perspective, we certainly have an open mind.
2 And this day has been terrific, in terms of getting
3 input. And it actually has raised more questions
4 than it's answered in my mind, to a surprising
5 degree.

6 And I knew, as we were getting into this,
7 that there were complexities. I was talking to
8 somebody about what was native advertising and, you
9 know, we are holding a workshop on it. And they
10 said, well that's just like an advertorial, so
11 what's the big deal? Everybody knows that's a way
12 of advertising. But as we've heard, there are way
13 more different varieties and different possible
14 presentations on it.

15 So I think I'll let Jessica answer the
16 question of where we go from here, but on the issue
17 of enforcement actions, I just feel like, I feel
18 like, yeah. We have hopefully -- I think, when we
19 do take enforcement actions, it's where there are
20 pretty clear-cut cases.

21 You know, some of these harder scenarios,
22 I think, you know, definitely more thought and some
23 more research would be very valuable on.

24 Does anybody have -- I'm sorry, I never
25 saw the people sitting down there. Does anybody

1 have any more questions from that part of the
2 audience?

3 Well, if there no more questions, then I
4 want to thank the panelists here for a very helpful
5 discussion.

6 I'd like to introduce Jessica Rich, the
7 director of the Bureau of Consumer Protection.

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1 CLOSING REMARKS

2 MS. RICH: Hi. I make this joke every
3 time about this darn high podium that I can't see
4 over, but they've taken the seats, so I can't sit
5 over there, so I've got to look over this podium.

6 Thank you so much for coming. This was an
7 incredibly interesting day. I wasn't able to be
8 here all day, but I was watching from my computer
9 back at the office. And I really want to thank
10 everybody, our panelists and our audience, for
11 coming, there are still a lot of people here.
12 Usually, by this time of day, people have streamed
13 out.

14 So one of the great things about the
15 Internet and digital media is that they are always
16 evolving and there are always new buzzwords. And
17 for now, it's native advertising. As we heard
18 today, the concept of native advertising isn't
19 really new, it's about the blurring of lines between
20 content and advertising and the corresponding need
21 for some form of disclosures. And these are
22 concepts, not at this level of complication, as Mary
23 noted, but these are concepts that -- the basic
24 concept that the Commission has addressed again and
25 again over the years. But today, the interest in

1 native advertising is stronger than ever and
2 revenues, we expect revenues to very quickly be
3 measured in the billions of dollars.

4 The drivers for native advertising are
5 obvious. We've learned that advertisers and
6 publishers want to achieve more than traditional
7 internet models alone offer. They are interested in
8 native advertising because it promises more revenues
9 for publishers, it's a way to reach more targeted
10 audiences and offer opportunities to track audience
11 response, I can offer opportunities for real-time
12 interactions and to build relationships with the
13 audience. It can be shared and seen in many
14 channels, it can allow advertisements to be placed
15 in better real estate, boosting visibility and brand
16 awareness.

17 And for consumers, it could mean the
18 delivery of interesting, useful, and entertaining
19 content and more relevant ads.

20 As we heard, native advertising takes many
21 forms and it may not be possible, or even necessary
22 or even desirable, to come up with a single
23 definition or common terminology.

24 Some, but not all, of the forms of native
25 advertising are likely to require disclosures to

1 prevent the ad from being deceptive. When that
2 happens, it's necessary to clearly distinguish
3 native advertising as advertising to prevent the ad
4 from being deceptive.

5 Even apart from the FTC and deception,
6 there appears to be a strong consensus about the
7 need for transparency in order to preserve trust and
8 protect or preserve the value associated with the
9 brand, whether it's the publisher's brand or the
10 advertiser's brand. But there are various
11 approaches and opinions with regard to the how. How
12 do we make it transparent? Are disclosures enough
13 Should different visual elements like font, spacing,
14 icons, layouts, et cetera, be used? How closely
15 should native advertising or brand content be
16 integrated into editorial content? How does context
17 influence our answers to these questions as well as
18 how we determine what consumers understand?

19 As we've heard, the research on consumer
20 understanding is sparse in this area and much of
21 what exists is in very preliminary stages. The good
22 news, however, is that is changing as more
23 stakeholders are undertaking research in this area.
24 We really look forward to learning more about
25 consumer protection of -- consumer perception of

1 native advertising, what different terms and labels
2 mean to consumers, how native advertising impacts
3 credibility in the eyes of consumers, and what
4 methods and context are more effective when it comes
5 to distinguishing advertising from editorial
6 content.

7 So where do we go from here? Mary was
8 suggesting I was going to have some pronouncement.
9 And I'm not. But as we heard, there is considerable
10 interest in developing best practices in this space
11 and we are very interested in encouraging that.

12 Obviously, there is a lot of work to be
13 done. Several initiatives have already been
14 announced, the Internet Advertising Bureau announced
15 recommendations based on different formats that
16 native advertising can take. The American Society
17 of Magazine Editors also issued guidelines. The
18 goal of these efforts is to ensure that consumers
19 are able to distinguish native ads from editorial
20 content, a goal we strongly support.

21 As stakeholders develop these guidelines
22 and strive for greater transparency, we do think the
23 updated guidance we recently issued on making
24 effective disclosures online aptly titled, "Dot Com
25 Disclosures" would be very helpful.

1 In terms of our own personal next steps,
2 we're going to think about that. We will consider
3 what we've learned here, and all the additional
4 questions it generated, and determine whether
5 additional guidance in this area would be useful
6 from us or not. And we are obviously going to
7 continue to study this issue and examine this issue
8 and there obviously could be opportunities for
9 enforcement, based on existing law and existing
10 standards we have.

11 In doing all of that, I'm going to -- I
12 know I'll be relying on the wonderful and brilliant
13 team that put this workshop together. It's Laura
14 Sullivan, Laura Sullivan, Michael Ostheimer, Will
15 Ducklow, TJ Peeler, Jessica Skretch, Lesley Fair,
16 Rich Cleland, and Mary Engle.

17 So thank you again for coming.

18 (Whereupon, the proceedings
19 ended at 5:40 p.m.)

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1 State of Maryland, County of Harford, to wit:

2

3 I STEPHANIE M. GILLEY, a Notary Public of
4 the State of Maryland, County of Harford, do hereby
5 certify that the within-named witness did appear at
6 the time and place herein set out.

7 I further certify that the proceedings
8 were recorded verbatim by me and this transcript is
9 a true and accurate record of the proceedings.

10 I further certify that I am not of counsel
11 to any of the parties, nor in any way interested in
12 the outcome of this action.

13 As witness my hand and notarial seal this
14 ____ day of _____, 2013.

15

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STEPHANIE M. GILLEY

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NOTARY PUBLIC

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21 My Commission expires on February 25, 2017.

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