FEDERAL TRADE COMMISSION

BLURRED LINES: ADVERTISING OR CONTENT?
AN FTC WORKSHOP ON NATIVE ADVERTISING

DECEMBER 4, 2013

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

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

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

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

Okay, all of you came in through security and you know that can be a bit of a hassle. Anyone who goes outside will be required to go back through security to come back through the conference center. We are going to have our lunch at about 12:30, depending on whether we can stay on schedule. We will reconvene at 1:30 and you will have to go back
1 through security, so please factor that into your
2 lunch plans.

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

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

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

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

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

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

So to start off the day, we are going to have a presentation from FTC Staff Attorney Lesley Fair, who is going to be setting the stage for us by examining the FTC's historical approach to native advertising, from advertorials to infomercials, sponsored posts, fake news sites, and paid search.
The leap from the printed page and from television to digital media presents advertisers with infinite ways to present brand information to consumers. Marketers have also moved past the banner ad into advertising that is more seamlessly and inconspicuously integrated into digital content. And the internet provides many new opportunities for advertisers, distributors, and publishers to collaborate on content creation and rapid fire ad delivery, so it's no surprise that the use of native advertising is growing rapidly.

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

But apart from technology, why has native advertising suddenly become so popular? Brands report that it helps them provide more relevant messages, increase consumer engagement, and generate awareness and buzz about products. Some marketers believe that integrating their ads into digital publications will help them capitalize on the
reputations of publishers. So not surprisingly, brands, publishers, and ad agencies overwhelming believe that native advertising adds value for consumers.

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

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

So we have a packed agenda for you. I am pleased to welcome to the FTC Nicholas Lemann, Professor of Journalism, Columbia University's 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
editorial content, including what content should be identifiable as advertising, what adequate disclosures should look like, and whether current self-regulatory efforts provide consumers and industry with the right amount and type of information.

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

With that, let me turn the floor over to Lesley. Thank you.
A HISTORICAL FTC PERSPECTIVE:

ADVERTORIALS, INFORMERCIALS, AND PAID ENDORSEMENT

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

But hold off on your tweet, because the product in question was the first electric vacuum cleaner. The case, Muenzen Specialty Company, appeared in volume one of FTC decisions published in 1917. So in response to the question, isn't this phenomenon of blurring sponsored content, native advertising new, my response, un-nuh, not so much. My job today is to recap the FTC's 100-year history in law enforcement history in this area in 15 minutes. So fasten your seatbelts.

From a consumer protection perspective, the conversation begins where it always does, with Section 5 of the FTC Act. You'll have to take my word for it, I do not have a tattoo, but if I did, here's what mine would say, "Unfair or deceptive
acts or practices in or affecting commerce are hereby declared unlawful." That's the standard that the FTC begins with in evaluating any form of advertising, including native advertising, sponsored content, blurred lines.

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

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

I'll use one example from the 1960s, what the FTC has always called deceptive door openers. Now, how did that work? In this instance,
door-to-door salespeople literally got their foot in the door by claiming to be conducting a survey. Once inside, however, what was the real pitch? They were selling encyclopedias. The Commission cited this as an example of deception in the Deception Policy statement and even added, specifically referring to this form of marketing, "When the first contact between the seller and the buyer occurs through a deceptive practice, the law may be violated, even if the truth is subsequently made known to the purchaser." That's from the Commission's Deception Policy statement.

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

In the example that the Commission addressed, these were local restaurants. The marketing promotion in question would often 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
5 And here's what the Commission concluded,
6 "The column uses the format and has the general
7 appearance of a news feature and/or article for
8 public information which purports to give an
9 independent, impartial, and unbiased view of the
10 cuisine facilities. Since the column, in fact,
11 consists of a series of commercial messages which
12 are paid for by the advertisers, the Commission is
13 of the opinion that it will be necessary to clearly
14 and conspicuously disclose that it is an ad."
15
16 I think it's important to note here that
17 the Commission considered not just what the
18 promotions said, but also the impression conveyed by
19 implication to consumers through the visual. That's
20 in keeping with the long-standing FTC principle that
21 the Commission examines an ad’s net impression that the
22 ad conveys to consumers. You know, put another way,
23 the FTC looks at the entire mosaic, rather than each
24 title separately, and that will often include an
25 evaluation of the visual conveyed to consumers.
26
27 The Commission has applied that same
28 principle over the years in numerous cases. Many
were ultimately resolved in settlement, but they do still offer insights into what the FTC has called “masquer-ads”, ads that look like something other than ads.

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

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

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

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

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

"Welcome to 'Consumer Challenge,' hosted by Jonathan Goldsmith. The show that examines popular new products for you, with investigative reporters Don Hale and Katherine Grant. On today's 'Consumer Challenge' we investigate BluBlockers.

New product innovation or consumer ripoff?"

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

I think there are two things that I'd like to emphasize with regard to this. First, the Commission's complaint did not in any way allege -- it did not challenge the underlying product claims. It did not address the underlying efficacy of what was said about the sunglasses. What the FTC charged in the complaint was that the advertiser falsely represented "Consumer Challenge" to be an independent investigative show, when it was really
The second thing I'd like to point out is, does this have like a total Ron Burgundy look to it or what, right? Since then, the FTC has challenged format as deceptive in numerous infomercial cases, both TV ads and alleged fake radio call-in shows. Here's an example from a case decided by the First Circuit that upheld a multi-million-dollar judgment for consumers. Not so much, said the FTC. This is a case where the Commission did challenge the underlying efficacy claims for the product, but also the notion that "Total Health" was conveyed to consumers as being independent content, rather than simply a 30-minute commercial. That brings us to the era of online advertising. I'd like to mention just one thing that I think sometimes we don't focus in on. When Congress passed the Can-Spam Act in 2003, one particular concern was commercial email that included what are called false headers, misleading information about who was sending the email and the nature of what the email was about. The Can-Spam law, again, passed by
Congress makes it very clear that, in certain circumstances, materially falsifying header information isn't just deceptive, it is a crime punishable by a fine, imprisonment, or both and enforceable by the United States Department of Justice. So this lets us know how seriously the notion of deceptive content in this way Congress took that to be in drafting the Can-Spam Act.

The FTC is still amid an ongoing battle against sites that appear to be affiliated with legitimate news outlets, but really are ads hawking weight-loss pills. These ads appear online and often had banners or headlines that called themselves "News 6 News Alert" or "Health 5 Beat." The FTC alleged that the sites falsely represented themselves that they were news reports that had appeared on ABC, FOXNews, CBS, CNN, USA Today, and even "Consumer Reports" magazine. Some claimed specifically that the reporter who was investigating it had had a great experience, losing 25 pounds using the product alleged to be investigated. The FTC has filed suit against roughly two dozen marketers behind these promotions at really every level of the advertising food chain. The FTC has challenged the work of the
people selling the diet pills, the people responsible for the new fake sites, and the affiliate networks that put them together.

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

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

That's the principle that undergirded the FTC's 2010 settlement with the PR firm hired by a video game and app developer. The FTC's complaint charged that the firm engaged in deceptive advertising by having employees pose as just regular consumers posting reviews on the iTunes store site, but not disclosing that the reviews came from people
The FTC did not challenge whether, in fact, this was an amazing new game or one of the best; the FTC's concern was about the format that the ads used.

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

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

And staff revisited that issue in 2013.
Fast-forward then and the FTC staff again expressed concern whether paid search results were appropriately distinguished from natural results. In letters sent to general purpose search engines as well as specialized search engines, the staff observed that, in recent years, paid search results have become less distinguishable as advertising.

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

The staff urged search engines to also have an eye out for the future. We encourage you to review your sites or other methods of displaying search engines, including your use of specialized search, and make any necessary adjustments to ensure you clearly and prominently disclose any advertising. In addition, as your business may 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
between editorial and advertising, its origins and purpose.

Please join me in welcoming Professor Lemann.
THE WALL BETWEEN EDITORIAL AND ADVERTISING:
ITS ORIGINS AND PURPOSE

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

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

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

In the United States, the early newspapers were owned and operated by printers, like Benjamin Franklin, or by political interests. In the mid-nineteenth century, the political parties were the main source of economic support for newspapers.
It was only after the Civil War that newspapers became a real business that required the development of fast rotary printing presses, and the growth of cities, which provided commercial newspapers with a sizable audience. Newspaper proprietors discovered that they could hire reporters and editors to assemble news quickly and expertly, print the fruit of their labor, and sell it in the streets of the city for prices ranging from a penny to a nickel. Anybody seen Newsies? You get the picture.

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

According to Hazel Dickens-Garcia's 1989 book called Journalistic Standards in Nineteenth
Century America, total newspaper advertising revenue was $1 million in 1850, $27.5 million in 1880, and $95 million in 1900.

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

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

As early as the 1870s, there were discussions of the kind we are having today about 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
Association immediately challenged the law on First Amendment grounds and the case made its way to the Supreme Court quickly. And in a 1913 decision, the ANPA lost and the law was upheld.

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

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

In the early twentieth century, when a national consumer market was being established, the largest advertising agencies and their clients perceived that it was in their interest, as they
sought to compete with more marginal entities, to make advertising respectable.

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

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

Advertisers who saw themselves as purveying a prestigious brand could be persuaded that a subscriber-based publication could bring their product to the attention of affluent, committed readers. Publications saw that, to make this system work, they had to keep both their
editorial and advertising content clean and classy
and obviously separate them from each other.

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

I should say, you know, per our discussion
and somewhat in this lingua franca of journalists,
these separations have names like The Church/State
And it may mark me as being of a certain age to say that
not all that long ago, at least in very established
news organizations, these separations were regarded
as absolute.

And again, I want to be clear, it was
partly a matter of sort of professional pride and
even vanity, on the part of journalists, and partly
a matter of self-interest. That the thought was the
value proposition, as management consultants would say, of the publication was a sense of trust around the editorial content and that that was what they were selling to their advertisers. And that if they vitiated that, they would be hurting themselves. And that was what led news organizations, the more prominent, established news organizations, mostly not to need a lot of prodding from our friends at the FTC to do this.

One unfortunate result, I would say as an aside, is that journalists, at least of my generation, grew up thinking that we never have to engage with these issues at all because they've all been settled for all time, which is unfortunate. Just as a little natural experiment, is anybody in this room a working journalist who isn't covering this event and is only here because you feel, as a journalist, this is a topic you should be of interest to you? That's about what I thought. I count two.

You know, my school, Columbia Journalism School, when it was founded by Joseph Pulitzer in 1903, he wrote a kind of manifesto and he said, I insist that no one who attends this school ever be 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
advertisers something special in exchange for their business. And even so, they're usually produced only by established players and mature industries. The online news landscape has relatively few inhabitants like that and it's important to understand, as a backdrop to the current situation, that news organizations in the so-called legacy media, which by the late twentieth century had become overwhelmingly economically dependent on advertising, are seeing alarming declines in their economic situation with no end to the trouble in sight.

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

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

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

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

We, a magazine, a newspaper, just using,
say, The Washington Post as an example, would
assemble an audience and the audience would be, you
know, the Washington metro area newspaper
readership. It was a very big audience and thought
to be very desirable to advertisers. And with a lot
of exceptions, but the general rule was that if you
wanted to reach this audience, which you of course
would want to reach, because The Washington Post had
all this data that showed that, you know, their
readers bought a lot of products and were educated
and all those kinds of things, you had to buy an ad
in the whole paper. You didn't know which of the
million readers, let's say, on Sunday were reading
your ad or in any way responding to your ad, you
were kind of out of luck from that standpoint. You
had to buy a rather expensive ad in the whole paper
because that was, you thought, your only way of
reaching these people.

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

And I guess what would happen in those
conversations, which I wasn't in, was something
like, you know, The Washington Post has established
so much trust and so much sort of essentiality with
its editorial content, that just being in the neighborhood of it clearly differentiated from it some of that trust kinds of rubs off on you. That people are subliminally saying, well, if it's in The Washington Post, then Ourisman Chevrolet must be a good place to buy a Chevrolet.

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

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

One item is that online advertisers can only buy part of the audience much more easily. They don't have to buy the whole audience. Also, as I mentioned, you have the social media sites and search sites as competitors, offering you very, very targeted, you know, don't you just want to reach
people who we know have thought about buying a
Chevrolet in last month? Because we can deliver you
those people.

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

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

So the online news organizations have
begun a wide variety of advertising practices that
we're here to discuss today, and so have advertisers
as well. I want to stress again, these are
inventions mothered by necessity in a business
sector where, to put it gently, fewer than half the
terities, as far as I can tell, are operating
profitably online. It may be even more than that. I'm not going to go into detail about native advertising, sponsored content, sponsored micro-sites, paid links, product placement, and so on because other presenters will do that indeed. I'm pleased to be here today so I can listen to this, because you all know a lot more about this world than I do. My assignment was to provide a historical baseline and that's what I've tried to do.

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

Thank you.
PANEL 1: SPONSORED CONTENT IN DIGITAL PUBLICATIONS:

THE FORMS IT TAKES AND HOW IT OPERATES

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

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

We have a wonderful panel today. We have representatives from, what we like to say, all sides of the ecosystem. With us are Adam Ostrow from Mashable, Tessa Gould from Huffington Post, and Todd Haskell from Hearst Corporation, Hearst Digital.

And they will be, you know, representing the publisher side of the mix here.

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

And finally, wrapping up the panel -- and you know, bear with us, it's a large panel here.

Hello down there to Chris and Steve. We have Chris Laird from P&G and Steve Rubel from Edelman.

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

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

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

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

For those of you who aren't familiar with Mashable, we are a digital media company founded in 2005. We cover innovation, ideas, and culture. We reach an audience of nearly 30 million people every month and we like to think of ourselves as one of
the most social publishers on the web. We have more than 13 million people that follow us across Twitter, Facebook, Pinterest, and other social networks. More than a third of our traffic actually comes from those sites. And each piece of content that we publish on Mashable is shared more than 2,500 times in total.

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

So a few examples of that that you can see on the screen, one of them is American Express, who came to us looking to reach female small business owners. So what we created on Mashable was a site called -- sorry, a content series, including videos and articles and info-graphics called "The Female 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
look and feel of a standard Mashable article, but you can see all the different disclosures I have highlighted in the screenshot.

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

Beyond that, there is the display advertising, banner ads as you might call them, for Lenovo that surround the content. Now, this is part of the value to advertisers, but also I think helps disclose the relationship even further to advertisers. And one additional thing to draw your attention to is, on the right rail of the site, immediately below the square-shaped Lenovo display
advertisement, you can see what we call our social
widget. So this is a promotion for Lenovo's
Facebook page, for their Twitter account. Again,
this is a value to the advertiser, but I also think
something that adds in the transparency that we are
able to provide our readers. Next slide.

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

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

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

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

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

That's it. Thanks.

MS. SULLIVAN: Thank you, Adam.

MS. GOULD: Hi, everyone. I'm Tessa Gould. I'm at the Huffington Post. I'm not sure if it needs any introduction to you all, but if you're 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.

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.

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.

The second element of our offering is the
promotion of this content. So once it's created, we promote it through premium, in-stream, native ad units on The Huffington Post platform.

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

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

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

So we came up with some content ideas for them including this one, which was a listicle which highlighted the eight most fun and interesting water festivals from around the world. In terms of the integration and how it was differentiated from other
editorial content, so you can see there on what we call the left screenshot, you can see what we would call sort of an article preview unit. So this is how the Huffington Post entertainment page would appear to people before they click into a unit. And you can see here that the unit that the content appears in has a pill at the top that is colored that says "Presented by Sony." The box is also outlined with a gray line.

And then when you click into that box, into the actual article, that same sponsor pill, or the? Presented by Sony" pill will appear. You'll also see that, within the article, we actually identify the reason for the content. So we actually specifically call out that the content was created in part of a relationship with Sony and that, you know, we worked with them to create the content. You can't actually see it on the screenshot, but the advertiser always gets 100 percent of the ads on the page as well. So this screenshot was taken before the campaign went live, but you would normally see at least three ad units from Sony on the page as well.

Then, the final element is when you are on this article page and if you want to share the
content to social media, so you click on the Twitter share button, it will auto-populate a tweet that's been created by our team. And that tweet will, as a best practice, reflect HuffPost Partner Studio as the author. So you know that this content was created by HuffPost Partner Studio, which is our brand and content division, not by our editorial team.

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

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

So HuffPost Partner Studio, we worked with them to come up with ideas for the content that we
thought would resonate with our audience, she wrote
the copy, we copy edited it, made recommendations
and, you know, tweaks and suggestions for how it
should be headed up on social media and on the
platform, and then we published it.

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

And finally, the third element of our
offering is the socialization piece. So as I
alluded to earlier, we have dedicated HuffPost
Partner Studio accounts. So when we socialize the
content ourselves, on Twitter, Facebook,
StumbleUpon, Pinterest, we have our own accounts
that we will publish the content to. As a best
practice, we will also tag or identify the brand and
the content. If they have a relevant social media
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
that goes back, as I said it, 125 years.

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

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

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

What the reader could then do after is
look through this curated collection of content and
then, not only browse through shoes, but then also
share them, whether it was on their own Pinterest
board, through Facebook, or on Twitter. When you
were able to click through, it actually linked
through to a fully functional e-commerce experience.
But overall, what the underlying strategy
was, was that our readers come to us for, in the
case of Harper's Bazaar, for ideas about what they
should be wearing for this season. So how can we
present an advertiser's message in a way that was
very clear to the reader that it was coming from an
advertiser, it has the Ugg and Nordstrom logo on
every page, but do it in a way that takes into
account what we know makes readers take action. And
that's what we did in this case.

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

So here's what we did is, instead of -- we
took our existing content and for our magazines like
1 Country Living and Woman's Day and Good Housekeeping, very high percentages of dog owners, so what we did is we created some of our best collection of content and embedded it in ways that are very clear to the reader. You'll see here on this example on Country Living, you can play the video, as the reader goes through it, you'll see very clear advertising messages that are completely transparent to the reader. Click on those, it will actually take you to the Tyson Nudges Facebook page, let you look through our collection of Instagram photos of the best dogs. My dogs are not in the picture but they should be.

But as you can see here, it really goes through fully curated collection of some of our best content relating to dogs and their parents and why people love them. So it's a little different then I think what you hear about from folks like my colleagues here at Mashable and Huffington, but again it's the same idea of taking the DNA of why people interact with our editorial content and presenting advertising in ways that take that essence, but do it in a way that's completely transparent to the reader so the reader knows exactly what it is.
The last example I'll show very quickly is with an example that we did with our Seventeen magazine brand, to show that also these things can very effectively live on mobile platforms. But the underlying assumption is very much the same, it has to be very clear to the reader.

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

So overall, we find this to be very consistent with our values and what we've used to build our businesses over the past 125 years. And interestingly enough, we've been doing this for a
number of years now. The feedback we've actually
gotten from readers has been very, very positive.
In the same way that people pick up a copy of Elle
or Harper's Bazaar, advertising is a critical part
of the equation. It's part of the reader
experience, it adds to the value of that reader, why
they pick up the magazine.
We feel that advertising, presented in a
way that is transparent and of a high quality
manner, done online using those same ideas, is a
value to the reader, as long as it's done well. And
that, I think, is what you're going to hear from
everyone here. One of the critical facets of native
advertising is that, what someone said very
famously, it shouldn't suck. When native
advertising is done well, as I think you've seen in
these examples, it's really powerful and it's really
good for the reader and it's good for these
businesses, but it needs to be done well.

So, thank you.

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

So Adiant is the parent company for the
Adblade content style ad platform. We also just recently acquired the Industry Brains product from MarchEx. Both AdBlade and Industry Brains offer content-style advertising.

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

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

MS. LACOUR: I'm Lisa LaCour, vice president for global marketing at Outbrain.

Outbrain is a content recommendation that you've probably used many times. We are presented mostly
at the bottom of article pages of all of the major publishers across the web. We have a global reach of about 390 million UVs.

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

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

So if you look at the example -- there's an example on the screen right now. This is a good
example of how we are placed on the page. There's two parts to our widget. One is the "Recommended for you" at the top of the page. As you can see, there's a mix of editorial and sponsored content here. There's a couple of disclosures that we have. The two to the -- depending on where you are sitting, the right or the left, you'll see there's target on Smithsonian and gray comments on the side. Those are the paid content links that actually link out to the third-party site. And also the "Recommended by Outbrain" that you'll see throughout the web in a variety of fashions and forms. When you click on that, we're very explicit in saying that the content that is linking out to third parties is actually paid from an advertiser.

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

If you go to the next page, here's another example. The top part of this, "More from ABC News"
MR. LAIRD: Thank you. Hey, everybody, I'm Chris Laird. I'm from Procter & Gamble. And thank you very much to the FTC for inviting P&G here today. It's a privilege.

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

So as you probably know, P&G is a leading consumer products manufacturer. We have $20 billion brands globally. We compete in dozens and dozens of categories and most of our brands are number one or two in their category. And we are, first and foremost, a brand-building company. So you'll see a lot of my comments today are based on the notion...
that we're here for the long-term. We are here to build long-term, sustaining brands that have a lot of trust and are transparent to consumers. And so the way we approach this area is based on that, so my examples will kind of touch on that as well.

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

And if you click on the link, you go to the open content page, which has a series of videos that's branded Secret and you can share it through social channels. This is a very similar example to 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, in a balanced kind of way. And that's been the point of our business and how we've, you know, extended that out through social media and kind of what we call, or what the industry might call so-called earned media, in the sense that we have to earn the right to be written about or covered.

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

We really gave a lot of thought to where sponsored content and native advertising should fit in a PR-centric service mix. And we have a model, which is on the screen right now, that we call the Edelman Media Cloverleaf, that basically characterizes different types of channels. Not so much by ownership, but by characteristics, whether they be traditional media companies, hybrid media companies, which are digitally natives such as 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
co-create earned -- I mean new content that would sit on media company channels.

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

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

MS. SULLIVAN: Thank you. We've heard today that, in many ways, this form of advertising is not a new phenomenon. But in digital, it may
1 present new opportunities. It may work differently.
2
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
8 MR. HASKELL: Sure.
9
10 MS. SULLIVAN: Offline.
11
12 MR. HASKELL: Sure. Well, I believe one
13 of the things that makes a difference is we have the
14 ability, when we create one of these experiences on
15 behalf of an advertiser, we have much more ability
16 to cross-promote it across multiple brands.
17
18 You know, so historically in the days of a
19 print advertorial, if we did an advertorial in Good
20 Housekeeping, we generally could not drive traffic
21 to it, per se, from Woman's Day, in the print
22 products.
23
24 All of a sudden now, we have the
25 opportunity, as an ecosystem with significant scale
26 across our 20 sites, now to cross-promote and drive
27 traffic into these sponsored content experiences.
28 So all of a sudden, they can scale much, much
29 greater than, in many ways, then we used to be able
30 to with our legacy products.
And then working with, you know, partners like Outbrain, we can actually work with third parties to help drive people from outside of our own ecosystem into these experiences. So we can scale them much more.

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

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

But again, we think that, in many ways, this is sort of a game changer for us and that we
are uniquely positioned to take advantage of that among sort of publishers that have been around for more than 100 years.

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

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

I think another benefit is the increased sophistication that comes with technology, right? If you're sending out print publications, you have a clear idea of who lives in the household, but you don't actually know who is going to open it up, and
if they're actually going to even read it. Where as there is technology, obviously online, where you can actually target the content, and Adam alluded to this as well, you can actually target the sponsored content or the ad to the relevant demographic or the relevant DNA that you're trying to reach. And you can actually more easily track who’s viewed it and if it was actually viewed, which is huge.

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

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

And I wanted to ask the panel, you know,
why, I mean, why is or isn't transparency important.
Some of you have already touched upon that it is,
but why is transparency important to your
businesses? And what are the risks if you don't do
it right?

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

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

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

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

So clients are coming to us because they want to be relevant there. And really, some of the points that Chris mentioned, in terms of what works on social, what do people actually want to follow, what brands do they want to follow, what publishers do they want to follow? They want to follow the brands and publishers that are creating content that's entertaining, that's useful, that's inspiring, and they don't want to just be bombarded
with promotions. So smart publishers and brands are creating content that, I think, both has a ton of value for readers, but is also completely transparent to consumers.

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

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

I think everybody knows about the 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
advertiser’s, from a brand’s perspective?

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

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

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

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

So Dawn has created beautiful content across many, many channels around this concept of environment, of oil spill cleanup, et cetera that's
linked to the brand, and importantly linked to the brand. So as it gets shared out, it's linked to the brand, but it's great content that people want to share. It's entertaining, it's informative, et cetera.

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

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

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

So we place our ads on a publisher's website and the publisher makes money on that, clearly. The publisher gets a rev share or some --
whatever the agreement is with the publisher, they
make some of that money from those ads.

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

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

MS. LACOUR: And Outbrain takes a
different approach, where we don't have
content-style ads, we have links to content, right?
And some of them are paid and some of them are
editorial, and we're pretty explicit in saying that. And because we're within the editorial well, we understand that the audience that's reading within that well is actually in what we call content consumption mode. They're, you know -- and if they click on a piece of content, whether it's editorial or paid, that their mindset is that they're really self-selecting to read another piece of content, right?

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

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

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

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

You know, I think we're all familiar with ad networks and we know that banners are somewhat frowned upon these days. But there are different formats that exist and, you know, I direct to the
people sitting in the middle whether you're also hearing from the publisher websites that you're working with that that's the type of advertising that they want an intermediary to place on their sites?

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

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

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

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

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

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

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

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

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

MR. RUBEL: So one thing we would like to add. We, you know, in our business, we think a lot about trust. We have been a tracking story that we've been running on for over a decade, and I'd invite you to go look at it on our site. And we think
a lot about the role of transparency in the relation that creates -- towards creating trusting relationships.

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

And we really believe our role is to navigate that complex relationship, at times, always. And transparency plays a role in that. In all of these different discussions that the industry is having towards sorting out all of the necessary issues here, we hear a lot from the publishers. We hear a lot from the marketers. And we hear a lot from the folks that connect the marketers to the publishers. And I love this sandwich we have going here, I think it's -- I don't know if that was by design or if it was just a metaphor, but I love it. And what needs to happen -- one thing that we would like to see is the audience role in this and have the audience have a voice. You know, they are going to have a voice through clicks. They are 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' side, I completely agree. I will say though that,
14 in my experience, readers are not shy. You know,
15 and that's the case at the Hearst Corporation with
16 our readers. I spent 10 years before that at The
17 New York Times, and when we did innovative things,
18 you know, readers will express, in no uncertain
19 terms, whether they like it or whether they hated
20 it.
21 And I do think, you know, there has been a
22 lot of debate about, well, is the banner ad dead?
23 You know, to quote the Buggles, radio did -- you
24 know, video did not kill the radio star and native
is not going to kill the display advertising business. I think it's going to be an ecosystem that becomes more complex and there will be more parts about it, but one is going to support the other. The native business is supported by the display business, because the display business helps you drive into these native and branded content experience. Folks, you know, like Outbrain and Adiant are going to help us drive it.

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

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

MR. LAIRD: Laura, I have a comment. Can I go?
MS. SULLIVAN: Sure, okay. Yes, Chris, go ahead.

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

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

Like a lot of the examples I shared were not on our owned assets, they were paid or earned, but does she come from those assets to our owned asset? And once she's on our owned asset, does she come and download a coupon or request a sample or post a review or actually go to Amazon and purchase a product?
And the more consumers are doing that, the more we can, very quickly, in real time, measure whether or not we are being relevant and it's impacting in our business and whether or not she is engaging.

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

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

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

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

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

MS. SULLIVAN: Let's move on to techniques used to make it transparent. It sounds like everyone is in agreement that transparency is important. Well, how do you go about doing that? What techniques and methods -- some of you touched on them in your opening presentations, but how do you look at it? And what do you do to make it -- make advertising transparent?
Todd, would you like to comment on this?

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

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

It's just -- knowing how readers do eye-tracking, you see how readers do it, they notice logos, and it just is more visible than type. But clearly, when you talk about video, that's harder to do. So it needs to be natural and organic to the
environment, so it's really up to each individual brand.

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

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

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

MS. SULLIVAN: Is that a conversation that's occurring? Tessa, are you -- I mean, in terms of who makes the -- Huff Post implements the way that you differentiate the sponsor content from your other content on your site, but is that a conversation that you are also having with the
advertisers? Who makes the decision and who implements it?

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

So when our sales team is going out and pitching our offering to brands, it's all throughout the collateral. We have a pretty vigorous review process, we have a kick-off call with the client and their team, things have to go through legal review. So I think at every step of the way, there is reinforcement of our offering. And, sure, brands might ask from time to time for a different version, but we -- this is one thing we don't really negotiate on. We stay pretty clearly with our transparency.

MS. SULLIVAN: Adam, is that something --

MR. OSTROW: Yeah.

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

MR. OSTROW: Absolutely. And I talked already a good bit about how we label things on the
1 site. But I think to echo Tessa, it is incredibly important to stand firm with your policies. No doubt advertisers are always going to ask you to change the rules for them or make an exception or do something different to make it less obvious to consumers. And I think you have to -- it means you need to stand firm. Which is why, for us, it is really important that we treat branded content as editorial content.

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

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

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
conversation and dialogue around it now.
So there are a lot of things that, policies and practices that publishers have been using for years and years and years, and it's just now that we are starting to talk about consistency across different platforms.
And I think the biggest opportunity here actually is for publications or players in the space that aren't currently actually doing anything, or are not using any disclosure, as opposed to saying, you know, like, oh it should be sponsored feature and not presented by brand X. I think that's probably a little bit more of an opportunity. Maybe longer term, there could be an opportunity for some increased consistency, in terms of the actual labels used, but I think it needs to be specific enough to the group, right? Like, are you talking about like news publishers versus content recommendation widgets, versus women's lifestyle properties. I think the needs vary by property.

MS. SULLIVAN: One question for Lisa is, in terms of the format, when you have a group of listings together, and in talking about it, it sounds like there may be two different forms, there may be editorial content that is featured with -- for
example, on The Washington Post, there may be links
to an article on The Wall Street Journal, editorial
articles.

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

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

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

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

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

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

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

MS. LACOUR: Correct. And how it looks.
Sometimes it's a lot of links. Sometimes it's video thumbnails. Sometimes it's just different images that they want to use. It looks a variety of different ways.

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

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

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

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

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

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

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

You know, the internet is full of people doing things shady. And unfortunately, that's what it's come to, in our job as, let's say, the gatekeeper with a self-service platform, is to be really hard-
nosed about it and reject the ones that actually don't fall in line. And they can resubmit until it's right. And then if a publisher -- if an advertiser --

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

MR. CARMEN: Yes.

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

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

MS. SULLIVAN: Okay.

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

But for us, if they don't say anything, we are going to, by default going to say advertisements
1 or sponsored links. And sometimes we'll say both.

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

    MR. RUBEL: So I think what --

    MS. SULLIVAN: Well, in terms of the --

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

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

    So one argument is, well, if there is clear and consistent labeling, then that's one place to start. But I actually think that it's better to have a more open marketplace, where all different kinds of ideas around disclosure come to the forefront. And there will be some who are
exceedingly transparent, going far, testing -- you know, Huffington Post does a lot of testing with headlines, for example. There will be companies that test all different kinds of words and phrases and logos and sizes.

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

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

MS. SULLIVAN: In terms of, I mean, moving
outside of what the labeling would be, but Chris, like, from the advertiser's perspective, if you're using these different channels and transparency is important to you, what tools are available to you to ensure, regardless of maybe some things that may be outside of the advertiser's control, that you can have some level of transparency about the source or the content? Or are there? Or is it something that you --

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

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

MR. LAIRD: Yeah.

MS. SULLIVAN: -- to redistribute branded content.

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

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

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

MR. LAIRD: Okay. We first, to start, we have a set of internal guidelines and policies that we follow with respect to native advertising and third-party content. I've got it right here and it's what I work with our legal department on with every single touch-point that the consumer is going to see that we distribute across the internet. So I know that sounds like a lot of work, and it is, but whenever we go to market with a marketing initiative, we review it with our legal department. I would also say the other stakeholder is our finance department. Because in reality, if it's not transparent and it erodes trust with the consumer, over time the ROI, return on investment, will be low and we just won't invest in that anymore. So I think there's two stakeholders within the company, including marketing, that have the vested interest in making sure that guidelines are followed, principles are followed, and we are doing things that are actually building our brands.

And I mean, I'll say it again, I think
it's really kind of a brand-building imperative that
the brand follow content in almost every case, so.

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

MR. LAIRD: Yes.

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

MR. LAIRD: Yes.

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

MR. LAIRD: Yes.

MS. GOULD: Who would be the --
MR. LAIRD: Who would review what the link
looks like?

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

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

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, if 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
MR. LAIRD: The link --

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

MR. LAIRD: So the link copy itself, just like in Google, the search results copy is approved by the brand --

MS. LACOUR: Right.

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

MS. LACOUR: Right.

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

MS. LACOUR: Correct.

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

MS. LACOUR: I think there's two distinctions. There's what the widget looks like, right? The container, if you will, that holds the links, which is up to the publisher. And then 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
4 MR. OSTROW: Something that's important to
5 remember here though, as publishers, there is only
6 so much we can do to control how our content travels
7 on the web.
8 Increasingly, in a world being driven by
9 social, we can't tell our readers what to Tweet when
10 they share out a Mashable link, whether it's branded
11 or not. So for us, I mean, the major focus is on
12 transparency on the actual content when the reader
13 arrives there.
14 And talking about an Outbraining, we've
15 seen examples where, both with our branded and
16 organic content, either a PR agency or a media
17 agency or the brand themselves, is actually buying
18 Outbrain traffic to direct to an article that they
19 like, for whatever reason, on Mashable. We have no
20 control over that, nor would we want to have any
21 control over it. It's an activity that is taking
22 place completely outside of our brand.
23 MS. SULLIVAN: Todd, would you like to
24 comment on -- I mean, that gets to the next topic,
25 and maybe we can quickly touch on it.
26 But at the opening, one of the benefits is
that, you know, this content can be shared.

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

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

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

And I think -- so that gets to sort of an underlying philosophy is, respect the reader, you know, suggest the way that you think is best, but then ultimately, the reader has control. And if he
wants to put something witty and snarky, you know, God forbid that happens on social media, they can. And it might go even more viral, and then that's great. But we do think that there's probably a way -- as a publisher, we do have a responsibility to provide a default that is as transparent as possible.

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

Similarly, we can, you know, take a best foot when it comes to sharing the content on social, so we only share it through our dedicated social
media accounts. It can be re-tweeted or re-shared however someone -- by whoever and whomever they like on social media. We can't influence that, but we can try to steer them the best way forward.

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

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

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

MS. LACOUR: Absolutely. And I think we've all spoken about it in various forms. We saw it in search. We're starting to see it in content, which is what we call black hat content marketing.
It's very similar to black hat search techniques, right? Where it goes back to trust and transparency. Not duping the reader, making sure that the content that we're all either putting on our site or linking to, from an Outbrain perspective, is actually free of scams and is actually legitimate and authentic types of content. Some content may be better than others, but Outbrain has taken many, many steps to the point of, a year ago, we actually fired in a large chunk of some of our highest paid advertisers because we found out, on the backend, they were using content, but really they were using content to hide continuity programs and scams and things like that. Those types of things, we have a couple of partners put in place that we try our best to avoid bringing those -- allowing those things into our network. And I think that's really -- it goes back to the audience trust. It goes back to all of our responsibilities at this table and in this room to make sure that the audience is getting trustworthy, authentic content, that they are not getting scammed on the backend.

MS. SULLIVAN: And even in the context 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
happening and why. Because again, I don't think the awareness is there, why this is going to be the new normal for advertising.

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

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

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

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

MR. CLELAND: Just one thing before we
break for lunch. I want to remind you, be mindful of the fact you have to go back through security to get back in after lunch. We'll start again at about 1:30.

Thank you.

(Whereupon, there was a recess for lunch.)
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.
THE LESSONS OF NAURU

MR. GARFIELD: Thank you very much, Rich.
Thank you, ladies and gentlemen.

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

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

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

And I also apologize to those who may be watching the webcast. For some technical reason,
the delightful little font that I used, the people in the live room will be saying is not available to you, but you know, as they say, close enough for government work.

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

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

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

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

Let's see what's happening here. That's the disclaimer side, remember that disclaimer you heard a moment ago? Here we go. Here's the map.
Look at the upper right-hand corner. This was going so splendidly.

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

For most of the post-World War II period, it boasted the highest per capita income in the world. And that was especially notable since almost none of those 9,000-some capitais was employed. Rather, Nauru was a perfect welfare state, providing for all of the populous' needs with export revenue from a single economic sector. Mining.

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

Yes, it was a guano island which, over the ions, had yielded a crust of mineralized phosphate highly prized for fertilizer and other basic animal products. It was just a question of scraping it off the surface, loading the stuff on freighters,
and fattening the national treasury. And every month, every islander received a generous check from the government. Life was good.

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

You know, first there was fragmentation, the enemy of reach, which is to say the mass in mass media. Then there's the pesky law of supply and demand. In a web universe with nearly infinite content, there is therefore nearly infinite ad inventory and rates that can be fetched for advertising have been driven down, down, down. And then there is ad avoidance. Long before the digital era, all the data showed that we all trust word-of-mouth endorsements from friends, colleagues, relatives, neighbors, and near total 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
Washington Post and, for that matter, The Huffington Post won't be among them. Yes, all are experimenting with other revenue streams, but you can only generate so much revenue running conferences and producing white papers. So desperate to save themselves from extinction, publishers have chosen to go back to the future and bring to the digital age what we have always called the advertorial. It's almost always drivel, but most publishers, historically at least, have been scrupulous about mandating distinct typefaces and fenced-in borders, gray or color screens, wider or narrower column formats, and the prominent display of the word advertising to demarcate the difference between promotional copy and editorial matter.

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

Now me, when presented these splendors of Penticton itself, I'm inclined to just pass right over it. Others, that code word that the FTC often 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
4 In any case, because the lines of
5 distinction were so sharply drawn, advertorials were
6 never either a particularly big revenue generator or
7 a particularly big ethical problem. Yeah, well, that
8 was then, this is now.
9
10 Maybe it's unfair to be probably the sixth
11 person today to cite this, the most obvious and
12 egregious example of media prostitution in the
13 native advertising era. Admittedly, there is
14 nothing else out there nearly as incriminating as
15 this, but I'm going to argue that The Atlantic and
16 The Atlantic Scientology fiasco was actually less
17 worrisome than four less lurid publisher advertiser
18 dalliances. Because this was so over-the-top that
19 it was instantly pounced on by pretty much everyone
20 in the world, including, I think, Kim Jong-un and,
21 like, Manson.
22
23 The real dangers, the real dangers lurk in
24 the stuff that comes and goes more or less
25 undetected. That black box on the right is an IBM
26 ad. On its left is also an IBM ad, although a
27 reader would be hard-pressed to figure that out.
28 Instead, the reader would be thinking that Atlantic
I had weighed in on the importance of social media to your business and deemed IBM to be the ideal single authoritative source.

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

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

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

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

See that at the top? Can you see where it says, "In a world of liars, the truth starts here."

No. In a world of liars, the lies start there. This is the rabbit hole that you tumble into when you click on what turns out not to be an editorial link of any kind. There is no Clinton story. And by the way, Wall Street Daily isn't a newspaper. It's a wrapper for some sleazy, get-rich-quick scheme targeted at conspiracy-minded suckers.

Thanks a lot, USA Today.

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

But first, I want to just mention a less
obvious and potentially very pernicious aspect of insufficiently disclosed branded content. Now that's a native ad from Forbes.com, one of the most aggressive players in the branded content business. Forbes is also one of the most straightforward.

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

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

Look at the last item here, above the Starbuck's Food Fight. If you come to this
particular piece of branded content the way most people will, through an outside aggregator, you will do so with zero disclosure about the prominence of the item. The internet doesn't know you're a dog and the internet doesn't know you're an ad.

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

How can this possibly be happening?

Answer: Existential crisis is always a bull market for noble ends being invoked to justify dubious means. In this case, the noble end is to save media from imminent destruction. We need entertainment and we certainly need journalism for our democracy so, you know, why quibble over a Scientology puff piece here and there or a bogus link to the occasional sleaze merchant? We are saving the 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
this, I believe, gets to the very heart of the matter. To demonstrate the true stakes and to, at long last, conclude my remarks, let me just please take us back to where I began, and that is with the Republic of Nauru.

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

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

Thank you.
PANEL 2: CONSUMER RECOGNITION AND UNDERSTANDING OF NATIVE ADVERTISEMENTS

MR. OSTHEIMER: Good afternoon, everyone.

My name is Michael Ostheimer. I'm an attorney in the Division of Advertising Practices and I'd like to welcome everyone to our second panel of the day, the Consumer Recognition and Understanding of Native Advertisements.

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

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

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

MR. OSTHEIMER: You can still do it --

MR. HOOFNAGLE: I can do it from here?

Great.

MR. OSTHEIMER: Yes.

MR. HOOFNAGLE: Do you mind if I stand?
MR. OSTHEIMER: Yeah, sure.

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

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

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

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

So let me get on to my thing, and I promise I'll be quick here. First of all, at Berkeley I do computer crime law and privacy law.
And as part of that research program, I happened to test a native ad. So my underlying research is not about native advertising, it just happens to have a question in it about native ads.

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

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

So here, between these two different ideas, we are interested in determining whether these native ads cause people to be confused about the source of the information and whether there is
1 misleadingness based on the lack of disclosure of information. And again, these underlying papers explain this in detail.

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

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

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

Also, we did something very special in our study. Again, I mentioned at the beginning, we weren't studying native advertising specifically, we are actually studying targeted advertising. So what we did is we bought lists of consumers. And one tranche are consumers who are vulnerable because of some situational factor in their life. Another
tranche of the data were consumers who were vulnerable because they had some underlying condition. Another tranche were subscribers to financial journals. And I'm sorry, I'm looking at the participant from The Wall Street Journal here. And then finally, a control group of randomly selected internet users.

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

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

The disclosure is that it's a sponsored report. It has this interesting endorsement in it and the endorsement is ambiguous. It's not clear who the speaker is. She might look like she has a medical background, but she lacks the traditional garb. There's no stethoscope, there's no lab coat, right? So what does the reader think of this person is something we're looking at. And one of the
things we did in the experiment is we manipulated the background. We substracted out the blue background to see if that was relevant.

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

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

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

MR. FRANKLYN: Thank you. I'm going to be equally brief. I'm a law professor, teaching intellectual property law, including unfair competition and trademark law and run the McCarthy Institute for Intellectual Property Law there and
also something that we call the Center for the Empirical Study of Trademark Law and Consumer Perceptions on the Internet. And we got interested in conducting a series of studies, starting about three or four years ago, on -- not on native advertising, per se, but on search engine search results and what, in particular, people recognize about labels, like sponsored ads, what they understand those labels to mean, whether they understand the difference between paid and unpaid advertising, whether it matters to them to understand the difference between paid and unpaid advertising, and we asked people if they would click more, for example, if they thought it was paid advertising.

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

I'm going to go ahead, for now, and just
skip my slides and read you what I think the
takeaways are from the research. People -- we found
that people often skip over labels, they don't even
notice them, like the word sponsored. We asked
them, how many had they remembered seeing in the
last year or two. People, large numbers of people,
a majority, more than 50 percent, don't know what
the word sponsored means.

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

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

So the notion I heard earlier this morning
that it's in the best interest of all of these
companies to make sure everybody knows this is
native advertising is not (a) necessarily true,
because we do not have a homogeneous group of
consumers, we do not have a homogeneous group of
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.
Substantial numbers of consumers report that they feel confused about the difference between paid and unpaid ads. Interestingly, some of them say, like a third, they don't care. Interestingly, like a third of people say they would click on something more knowing that it's an ad. And this does start to justify this feeling in the room, this assertion in the first panel, that people -- when we are talking about protecting the consumer. From what? If what they want is to be entertained by a paid placement and don't care that much about whether it is differentiated, it's a very important baseline question, what are we protecting the consumer from? Because we found real differences and preferences about what consumers want.

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

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

So that's some empirical findings. What
it all means in terms of policy, I'm not sure, but we continue to find consistently -- and this has caused, in Europe and in the United States, deep confusion about the difference between paid and unpaid content.

Thank you.

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

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

Once inside these magazines, the approach is less about brand and more about brand values and the values of the customers of the brand. But we also leverage that content out to the brand's social media channels, whether it be Facebook, Twitter, corporate blog, email newsletters, corporate websites. And there is a destination site that all
1 of that links to, which is another branded website where all the content is curated.

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

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

17 You'll hear a lot of names thrown around in regards to content marketing, thought leadership, custom content, brand journalism, advertorials, native advertising, but it's all within one big pot of content marketing. And in the interest both the business that I was starting and in working on a master's thesis at the University of Alabama, myself and one of the leading experts in the field of media effects credibility, Dr. Jennifer Greer, recently
1 published a paper in Journalism and Mass Communication Quarterly called "Audience Reactions to Brand Journalism." And brand journalism is another piece of this content marketing puzzle.

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

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

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

So our methodology, we created four 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
commercial versus editorial, and we had a great deal
of trouble with that.

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

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

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

Our research does seem to indicate that
the editorial, journalistic approach to advertising
or story-telling helps bridge the credibility gap,
when compared to more commercial approaches, especially if the consumer is already engaged with the brand or product.

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

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

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

So let's start with peripheral vision. In the center of your visual field is a small area
where you have high resolution vision. Everywhere else, your eye has very low resolution, very low. You could say that, outside of the center, you are legally blind. This chart shows the relative size of pixels in our visual field as you move from the center out to the edge.

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

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

So let's look at what happens when we read. Our eyes don't move smoothly over the text; they jump from one important word to the text. While they move, they see nothing. When they stop on a word, they see mainly that word and little else, as is shown here on the bottom line.
Now, when you first land on a page like this on a website, your eyes presumably focus initially on the top left heading. So I'll show you that in a second, but first scan the whole page. Everyone see the whole page? Okay, so now here's how the page looks when your eyes are fixed on the word "dining" at the upper left. Until your eyes move, that's what they see.

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

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

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

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

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

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

A fourth characteristic is visual hierarchy. As our visual system scans a display, it
uses visual hierarchy to segment the page into meaningful parts. The stronger the hierarchy created by a web designer, the easier it is for people to see what goes together with what. On the left, we have an example of a weaker visual hierarchy. The sponsored links label is meant to be a heading for all of the items below it, but it looks like a peer item. That's weak hierarchy.

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

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

Our final characteristic of visual perception is that many common vision problems or issues can hinder people's ability to spot ads. For example, if you view a web page indoors on your mobile phone, it might look like this, easy to see the ad markers. But if you look at that in your backyard or if you have high sensitivity to glare, 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
Sharethrough, I was doing research at Stanford in a lab called the persuasive technology lab. And the whole purpose of this lab was about taking what we know from the thousands of years of human-to-human persuasion and replacing one of those humans with a computer, the idea being if you can figure out what still worked, you could make it to scale.

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

I think the lab, though, opened my eyes to the power of both persuasion and credibility on the web. And so when I started Sharethrough, it came from the point of view of the power of content and the power of persuasion. I mean, I was going to joke before but someone had to say it, with great power comes great responsibility, which is both a Voltaire and a Spiderman quote. But I think that's a lot of the theme of today and I think that's why this is such a hot-button topic for the entire year, actually, both in terms of industry and venture
capital being invested into this space, but also in
terms of self-regulation and really figuring out
where this industry needs to go.

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

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

Yes, there's things on the edges that try to
trick you into buying belly fat pills or trying to get
you to buy teeth whitening or whatever, but the real
movement here, this real movement towards meaningful
content, is about a macro-shift in the ad industry from
ads that are obnoxious and interrupt to brands actually
creating meaningful content. That's what this movement
is about. That's where the venture capital money is
being invested, that's where the revenue and the
industry is shifting.  That's why Facebook and Twitter have emerged as something like 20 to 25 percent of the display ad business. It's not about tricking people from the homepage of Facebook to go buy credit card offers. It's about delivering content that actually has value. When I started Sharethrough, I really did start it with this in mind, that we believe in the power of meaningful content, both from brands and publishers. Sharethrough, just for a little bit of context, is a software company that powers in-feed ads for major publishers, essentially helps brands to create content distributed through this new form of ads.

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

Sharethrough, again, just for context, I'm
going to go through the disclosure research, 100 percent of what we run and 100 percent of the ad placements that we power always say either advertisement or sponsored or promoted. Now, that said though, I -- and I don't think the other folks in the room that power technology companies are wedded to those words.

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

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

So the research question, we started out with the concept that we were going to truly test sponsored versus promoted versus featured versus
suggested versus advertisement, ad, et cetera. And I think what we realized, through the preliminary research, is that that requires a much more in-depth study. So what we end up doing here is sort of a very simple research question and a very simple research outcome, where we essentially just wanted to ask a binary question. Does the language used to disclose in-feed and native ads have an impact on whether or not a consumer perceives a story or an item as being paid for by a brand?

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

The study, again, is simple. And I'll just tell you the answer, right off the bat, is that 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
tested 15 different common disclosure statements.
Again, not to cast judgment on, you know, good
versus bad, but really just to show a generalized
page and say, on this page, does the word sponsored,
promoted, advertisement, paid for by the brand,
impact somebody's perception. And the question was,
is there any item on this page that was paid for by
a brand. Which, you know, in retrospect, is
probably too obscure of a question, because a lot of
people don't even know what the word "brand" means.
A lot of people don't even know what "item" on this
page means, and so there's obviously more
wordsmithing to be done. Or paid, yeah.

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

One, context does have a major impact on
perception. This test really only limited to mobile
and desktop, one ad and one feed. And yes, we got
3,000 people to look at it, but we didn't slice it
by demographic, we didn't slice it by language. I honestly think to do this now, after doing this preliminary research, which took maybe four weeks, this is probably 100,000 participant type study. This is probably a cross-country, cross-platform, cross-content type student.

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

Again, not trying to cast light on which are better, which are better and which are worse, I
I just wanted to show deltas. From the baseline of no disclosure, you know, no disclosure and no ad on the page, to sponsored, featured, promoted, presented by, even one of these I think said, this is an ad paid for by a brand. Like, that was the text we used in it. Even in that case, it wasn't 100 percent, I think we got up to probably 70 percent-ish yes's on this is an ad paid for by a brand. Again, the point though is that there is a statistically significant delta.

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

And as I started to cross the data and really look at the pivot tables behind the data, I'm
realizing that there are so many ways to slice it. If you're talking about even just language, before you talk about visuals and before you talk about context, this probably ends up being a pretty huge study. I'm not going to be the one to take it on, but I'm excited that somebody in this room will take it on. And I can say pretty strongly that Sharethrough and the other tech companies that I know in the room, when and if the FTC or, you know, a self-governing body says, here's what we want to do and here's where we need to go and here's the language and here's the structure that we need to use, everybody is ready to step-up and do that. Maybe I can speak for myself, but everybody that I consider our peers and folks that we respect, are ready to do that because, again, native advertising is not about tricking the user, it is about content. It's about brands creating actually meaningful, valuable content, whether it is delivered in a way that says sponsored or in a way that's yellow or in a way that's bold or italic, it matters, but it doesn't really matter. What matters at the core is that it's content. And because it's content, it doesn't work in banners in the corner. And because it's content,
it doesn't work as an interruptive interstitial or pop-up. Because it's content, it has to be treated in this new form. So thanks for listening and hope you found it interesting.

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

MS. DEMOOG: Hi, I'm Michelle DeMooy.

MR. OSTHEIMER: DeMooy.

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

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

We focus our work on low income and underrepresented communities, some minority communities, non-English speaking communities, which are incidentally the fastest growing users of mobile technology and also the most likely victims of 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
source, of course, are crucial.


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

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

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

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

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

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

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

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

MR. FRANKLYN: Yes. The answer is mixed. Some consumers, in our reports, and I could give you 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.
MR. OSTHEIMER: Might that depend on context?

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

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

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

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

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

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

The other question I think is interesting to explore about credibility, especially in regard to native advertising is, from where is the consumer drawing this idea of credibility? Is it from the information itself because it's well-done and helpful and serviceable? Again, is it from the previous engagement with the brand or the idea? Is it from the mere appearance of the look and feel of the editorial, just because it's packaged like a news story? Or is it from the credibility of the material around the content, which is where context comes into play. If it looks and feels like The Atlantic, same font, same style, same voice, then is it attempting to draw on the credibility of The
Atlantic and not standing alone.

MR. OSTHEIMER: Thank you.

MS. DEMOOY: Michael, can I comment on one thing here?

MR. OSTHEIMER: Yes.

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

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

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

MR. OSTHEIMER: Thank you. I'm going to move on to my next question.
Are there reasons to believe that certain ways of distinguishing native advertising from editorial content are more or less effective? Why don't we start with Dan?

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

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

So if you are on WebMD and you see an 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
material was written by a journalist, even though there was a disclosure in the title of the blog post saying sponsored report.

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

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

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

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

MR. FRANKLYN: I agree with everything you
said. And to speak directly to the question, I mean, there has been inversion of the relationship between content and advertising, that has been made clear in the industry. Therefore, whatever somebody would have thought a label meant before that inversion doesn't mean they understand it in the context of that inversion, that the content is coming from the company.

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

So -- your question is, if it is really clear. Well, they tried to make it really clear in a few sentences, so that it was economically, you know, presentable in a box on a page, and it confused 48 -- it greater confused 44 percent of people. So there is evidence that it's difficult to communicate the complexity of the source of information in simple statements.
MR. PEDIGO: Michael, can I jump in on this one?

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

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

Again, I'll point out, in our survey, 71 percent of our members that are offering native advertising haven't heard any complaints and 29 percent have only heard a few. And I think that's partly because they are doing a lot around transparency to make it clear that this is advertising, but I think it's also equally attributable to the fact that it's attractive 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. DEMOOY: 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. DEMOOY: -- 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
MR. OSTHEIMER: Let's talk about certain aspects of disclosures. We've heard various terms used during the day. Native advertisements have been identified by terms such as advertisement, sponsored, promoted content, from around the web, you might also like.

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

MR. FRANKLYN: For us, the most -- we just did nine or ten different terms including sponsored, sponsored links, commercial ads, ads, placed by. There was no clear winner. They were like, you know, small gaps. The winner was commercial ads, commercial advertisements. Not ads standing alone, not sponsored, not sponsored link, but this is a commercial advertisement, in sufficiently large lettering and in the right place. But again, not by 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
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
important morally or legally, but not as much in a business way as people are making it sound. You can make a very successful business with very partial trust. I think our data shows that and that's really the truth that needs to be told, before people just say, oh well, we would always do the right thing, because if we don't, it's bad for business. That's just not true. I'm sorry, it's just not true. And we still live in the United States of America where you can say the truth. It's not true, okay?

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

MR. FRANKLYN: No problem.

MR. OSTHEIMER: Jeff --

MR. FRANKLYN: I apologize.

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

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

Now however, talking about internet, I think the open question is what happens when ads stop being obnoxious? I mean, that's what this room is about today. What happens when ads are not as obnoxious? I saw something -- and this is a mini-little thing -- but I saw something yesterday and it was a Taco Bell story about a Taco Bell ad 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. DEMOOY: 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. DEMOOY: Yes, I always have a view.
24           It's part of my job.
25           I think that -- you know, I can't speak
with any evidence, unfortunately, it's just my
opinion and some experience working with consumers,
but I think the brand name, it really depends on the
context, but for the most part, people are used to
the brand paying for the show. You know, speaking
about the web or, like someone was talking about on
"Meet the Press" or something like that. You are
used to it being underwritten, the shell of the
program.

Consumer Action gets corporate money.
Does that make me less, you know, credible here?
Well no, because it has nothing to do with the
editorial content. It underwrites, you know, sort
of our operations.

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

MR. FRANKLYN: We did not test that.
That's a good thing to test.

But I would add, you know, one of the
things that I think we are going to test is not just
"Sponsored by Apple" but "Text Created by Apple" to
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,
context -- every site has a different feel to it as well, so trying to differentiate content, editorial from advertising, is challenging. But I don't think there's a magic silver bullet, I think it's a -- I think an earlier panel noted, instead of trying to come up with a set of best practices, a specific set of things you must do, it may be better to come up with a set of best practices that are more principles-based, that transparency is an important principle.

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

I also think it's really important to think carefully about how people might understand words like partnership. So when we look at 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
Professor Franklyn's research. So intent doesn't matter, but detriment does. And what Professor Franklyn has argued is that some people want this stuff, so maybe there's no detriment.

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

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

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

MR. OSTHEIMER: Let's talk about a somewhat related but somewhat different technique. Some players in the native ad ecosystem use hyperlinks that are labeled "What's This?" or they use icons to help identify native advertising. The American Society of Magazine Editors new
guidance recommends a "What's This?" rollover at the top of the advertising unit.

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

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

MR. OSTHEIMER: Anybody else?

MR. GREENBERG: Yeah, I would speak to that. I always think in funnels, conversion funnels, and I think, going back to my point before with advertising traditionally being an interruption, 100 percent of people who saw an interruptive takeover ad realized it right at that
first moment, because there was no conversion passing funnel -- you're talking now about feeds, so let's just pick on Facebook, I guess.

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

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

So I think the question of, you know, conversion funnels really impacts this concept of
where you are going to put the disclosure in the funnel. Because I know if it's up to the publisher, the advertiser, or the FTC to decide, you have to tell the user, maybe when you open up your Facebook app, there has to be an interstitial on the page saying, as you scroll through your feed, there will be an ad for Nike. Get ready. That's how traditional advertising would work, but I think -- that sounds silly, but maybe that is the answer.

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

Standardized -- native advertising, by nature, it's high touch, it tends to be customized. It's very different and it looks different on different sites, just as everybody's editorial feed looks different. So for that reason, I'm not sure that icons, you know, are going to work. I mean, they might be part of the solution, but again, I think we've got to go back to the sort of principle of transparency and then there's multiple different ways to get to that.

MR. OSTHEIMER: Jeff.

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
9 And so it's very hard, it's extremely
difficult for any graphic artist, no matter how
talented, to create an icon that's, you know, 24 x
24 pixels or less, that will tell someone what this
means, if they don't know already.

MR. OSTHEIMER: So we've already talked
about language. Let's talk a little bit about
design techniques, what design techniques might make
it either more clear or less clear that something
that is a native ad.

How can design techniques like print
contrast, either good contrast or bad contrast,
boxing an ad, shading it to filling, how can those
techniques make it more or less likely that
consumers will recognize an ad for an ad? Jeff.

MR. JOHNSON: I'm sorry, I didn't hear all
of the question.

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
likely that an ad would be -- that disclosure would be effective or that an ad would be noticed as an ad?

MR. COLE: I'd like to add just one little thing. I think one thing to get back to is the intent or the goal of branded content, native advertising, whatever you want to call it, is not necessarily disclosure. If you are drawing credibility from the context, from the content around it, the idea is to make it look as much like that content around it as you can.

And so while we can discuss effective techniques, I think it's important to remember that, in a lot of these cases, the less you disclose, the more effective it can be, according to credibility research.

MS. DEMOOG: But that just means you've effectively tricked people, doesn't it?

MR. COLE: That's exactly -- yeah, that's what the research shows, yeah.

MR. FRANKLYN: So back to the question about tricking people. I mean, it depends, right, on the context of what you are -- may I speak to this, about you're talking about.

Like if you are talking about something
like internet search, we found that chopping up the page in a more clear way, that really consumers can rely on, like ads are only going to be on the right side and nonpaid algorithmic results are going to be on the left side, and that's never been mandated, it's migrated all over the page. But if you could have architectural -- and I'm not proposing this, by the way, architecturally mandated segmentation, then people can learn. That's how people learn, to know it's something that -- that's the best evidence I've seen.

Now how that applies to native advertising, I don't know. Because native advertising fills up the page of all kinds of stuff that's mishmashed together, including -- you know, we heard this morning, we want our content to about L'Oreal and we want, again, not to pick on L'Oreal, and we want to have three ads for L'Oreal and we've got it all going on on this page. You could say the whole page is paid. The entire page is paid, so there's nothing to segregate once somebody gets to that page.

So architecture is not a solution, in my view, on that. And so you say, well, what is? You're going to have the FTC mandate a trigger? A
A pop-up dot that says, "Warning: You are on a paid page. Proceed if you'd like to be there." You know? I mean, it's a little bit hard to start imagining. I mean, I think we can knock out a lot of these potential solutions. The hard thing is, what you're reaching for. The question is, what is a solution if the goal is clear differentiation and better understanding to consumers?

That's really hard, because of the blurred lines. The market has overwhelmingly blurred the lines in a way that consumers have accepted because -- and I have a theory about this. They've accepted it because search is free and the internet is largely free. And you're not paying for it and so you'll just sort of take it, because it's stimulating. If you had to pay 50 bucks a month for all of this, people might get more annoyed at it, but it's free to the consumer. It's a three-sided market, or a four, or a five-sided market, in which the consumer has been conditioned to acquiesce in the exchange of her personal information for targeted advertising in any form that creative people in this room can think of to make money. And as long as that bargain is going on, in my view, it's going to be very hard to regulate.
MS. DEMOOY: Can I make one suggestion? I think some of this is analogous, at least in solution, to the do not track mechanism that, you know, is sort of the simple but effective way to illuminate something, to bring it out of the shadows, this online tracking that is going on and collection that consumers aren't really aware of. You know, of course people are happy that the web is free, they're not going to ask to pay for it. But yes, they are paying for it with their personal information. And I think advertisers are asking us now to pay for it with our skepticism, with our trust, our credibility meters. And I think that's a mistake, brand-wise.

I do think trust is a foundation of the web. Having been someone who started out in the nineties when nobody trusted the web. It was ludicrous to think of going online to do banking or any kind of transaction before privacy innovations. And I think in this way, you know, people have accepted what they've sort of been given. There hasn't been a choice.

So when I'm talking about do not track, where there's sort of a choice, there's sort of more transparency, and something that migrates with the
information, with the advertisement, so that no matter where the ad ends up -- you know, a lot of Spanish language sites aggregate information and a lot of our Spanish-speaking consumers, you know, end up with all kinds of information from all over the place. And their sources are dubious and difficult to track down.

So that would just be one -- you know, I don't have really any idea of how you might make that work, but I always thought that was a pretty effective, not only public education vehicle, but way, a simplistic way of sort of having a header or something that goes before and migrates with the information.

MR. PEDIGO: Michelle, I just quickly want to take issue with the point you made there and I think there is choice here, for consumers. If they go to a premium publisher, any publisher for that matter, and feel they are being duped by a native advertisement or feel that experience is not to their liking, they don't trust it, there's a million other websites they can go to to get any kind of content that they want.

And our members, at least, are incredibly sensitive to that, as they make this transition.
Many of them are legacy publishers, like Hearst, making a transition online. And if they lose that consumer trust, they lose out completely to pure-plays, you know, your Joe Blow blogger down the street they could lose out to.

So I think consumer trust is important and I do think there is choice here. And I think that's a key factor.

MR. OSTHEIMER: Chris.

MR. HOOFNAGLE: I'm a veteran of a lot of Federal Trade Commission workshops and you always hear the rationale choice theory rear its head. But you know, behavioral economics shows that almost all those assumptions are wrong. And when we look at what people are doing online, they're goal-oriented. And so there may be choice, but if the immediate goal is to figure out X or Y, there isn't this kind of perfect landscape where people can weigh every option and think about it in some type of perfect sense.

I would also mention that while a lot of these services appear to be free, in a price context, if one applies a transaction cost analysis to the bargain, a very different outcome emerges, 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.
MR. OSTHEIMER: In what way?

MR. FRANKLYN: Minority groups are recognizing it less.

MR. OSTHEIMER: Michelle?

MS. DEMOOG: Yeah, I think part of that plays into, you know, I guess the device that you're using, it can make it much more difficult to do some of the recognition that was already very difficult to do, on a smaller screen, in a language that you may not understand, slower download.

And also, like I said, some of the sites that we've seen in Spanish languages, especially entertainment sites, are often aggregators of information that's been translated from English sites and kind of thrown up on to Spanish sites and it's very, very unclear where the information comes from. And I think if you are a Spanish-speaking consumer, you know, it's very difficult to discern how you would even figure out where something came from. I don't even know what I would tell a Spanish-speaking consumer.

But also the economic idea that people who are in underserved communities, and that's typically low income, minority communities, are at more financial risk of things like fraud and being duped,
in terms of their online experience. And this has, you know, been documented. So I think they deserve special protections in regulation and law, in terms of, you know, if that is the case and there is hard data that shows that, then they should not only be in special protection maybe as a class, but also in terms of what they're viewing. So financial product websites where, if you're getting financial advice, but again, not the other side of the story, that should be something that's drawn up, something that has financial impact or health impact, more sensitive data categories.

MR. OSTHEIMER: I'd like to thank our panelists. We're out of time. We're now going to take a 15 minute break and return with our third and final panel. Thank you.
PANEL 3: THE WAY FORWARD ON TRANSPARENCY:
A DISCUSSION OF BEST PRACTICES

MS. ENGLE: If everybody could take their seats? Good afternoon, everybody. I'm Mary Engle, the associate director for Advertising Practices here at the FTC and I'll be moderating the third and final panel of our workshop today, which will discuss possible best practices for native advertising and sponsored content, whatever you want to call it.

We have a terrific group of panelists who can offer a variety of perspectives on whether and, if so, how and when sponsored content should be labeled or made identifiable as such to consumers.

With me this afternoon are Laura Brett, staff attorney at the National Advertising Division. That's a self-regulatory group, a part of the Council of Better Business Bureaus. Sid Holt, who is chief executive of the American Society of Magazine Editors.

Amy Mudge of the Venable law firm, who represents a number of brands.

Jon Steinberg, President and COO of Buzzfeed.

Robin Riddle, Global Publisher of Wall
So for this panel, we are not going to have any formal presentations as we did on the prior panels. Instead, we'll go right into a discussion of some of these issues that have been -- we'll try to delve a little bit deeper into some of the issues that have been surfacing so far and we're going to do that through a number of hypothetical scenarios. I always hate it when people ask me hypothetically, does this violate the FTC Act or not, so I'm not going to have to answer these questions today, but I'll put them to our panelists to weigh in on different scenarios, different types of sponsored content, and whether they need to be labeled, how they should be labeled, if they should, and so forth. And we'll have some mock-ups on the screen to help us kind of all picture what it is in these different scenarios and help us keep it in our minds. 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.

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.

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?

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.

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
or the presenter of the content is. On a lot of open platforms, where people are not paying, whether someone posts a Facebook -- a brand posts a Facebook or does a Tweet or Tumblr or even on Buzzfeed, brands are able to post content without paying, but they need to identify who is the speaker of that content.

And then the second prong that needs to be looked at is what is the paid relationship. Is that content being promoted in some fashion, where there is a paid media relationship. When I looked at these two examples, from page one and page two, taken in conjunction, on the first page, which is on the screen right now, you see that this placement here is paid for. I would probably like to see who is the speaker of this. Is it For Eyes, which is the name of the brand that we see on the subsequent page, which is the post page? The page where the content is actually being posted may, in fact, not be paid for. For Eyes may be able to post to the Post Gazette in the same way they could to Facebook or Twitter or Tumblr or even Buzzfeed.

So there may not be a media relationship here, but there still needs to be a statement of who is the speaker whose voice is being expressed in
MS. ENGLE: Any other thoughts on that?

MR. ZANEIS: Yeah. I think this is a challenge that gets to the heart of the FTC's enforcement in this area, which is when to enforce and how do we have kind of uniform standards.

It's not an area -- it's so dynamic, it is so many different variables of what type of content, the number of speakers, is it an actual advertisement, which is really a legal issue. It doesn't really lend itself to kind of a one-size-fits-all notification requirement.

I think we can all agree, we can look at the first page and say this is a pretty good disclosure to consumers. We all, I think, would agree that this is a model implementation of consumer notification and disclosure. We should do this --

MR. HOLT: I have to disagree.

MS. ENGLE: But what about --

MR. ZANEIS: Just a second. But the fuzzy area is, what if this was just a bunch of links that were paid for by a hundred different companies? And it may not be very compelling content, but since we 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
"sponsored" might be ambiguous and we might think, oh yes, that means advertisement. But in certain context, I think the example was the MacNeil/Lehrer Show that was used, that you understand it to be that that company paid for -- underwrote the content, but didn't have any connection with what the actual content was or any influence on that. So I think it's interesting, in this context, it's very different, right? Or it could be. Because it could be that the advertiser actually wrote the article, it could be that they just paid for it to appear there, it could be that they worked with the publisher to write the article, it could be that they just ask that the brand be mentioned in the article.

So is sponsored -- does sponsored cover all of those scenarios? I know Robert expressed a concern about that --

MR. WEISSMAN: Yeah. I think that's right. So I think we don't have a consensus. Unfortunately, we don't all agree that it's an adequate disclosure. I think for all the reasons that were stated, but also the one that you are getting at.

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
setting up what consumers come to recognize as advertisements.

MS. MUDGE: And I sit back and I say, if -- this example that's on the screen now, I think, is ambiguous. We do need to know more about what is in the content of the article to understand if this is talking product, product attributes, or product placement.

If it's the example that Mary gave the spin on this, if this is an article about the top natural wonders to visit in the U.S., that For Eyes has sponsored, has encouraged this publication to print, I do not think there is a need to disclose. But before we get to is it sponsored, is it ad, anything else, I do not believe that that is --

MR. WEISSMAN: I think there's a need to disclose, leaving aside the FTC Act. I think the underlying issue for the public or for consumers is recognizing that this item does not appear here because of the independent editorial judgment of the Post Gazette. It appears there because someone paid, whoever it is, For Eyes, for it to appear there. And that is what -- that's the first thing that consumers need to know.
And they need to also know about the -- you know, all kind of detailed information about who is doing it and exactly these other questions. You know, what actually is the document going to be linked to and so on.

But they have to know that this thing is not there because of independent editorial judgment, because it actually is a placed ad.

MR. RIDDLE: And I think that's a very good point. You know, the consumers place a degree of trust in us as media owners. And that trust is based on the fact that we are making editorial decisions about content we bring to them and place in certain places.

Once you go down the path of saying, we'll make a separate decision that says that you can buy a place within that environment, then that's a completely different decision.

So the context around what that content says should be irrelevant, in my view, whether that's an ethical decision or whether that's a legal decision is a separate conversation. Probably more ethical, but I think it speaks to the level of trust and maintaining that level of trust that consumes having those as media brands.
And if you get into the conversation around looking at the content of the article and saying, well, what's the derived benefit? What's the connection to the brand? And I think that then becomes the degree of subjective judgment, what really is the key point that makes it different, you go down a different path with this, is the fact that it is as a direct result of a commercial relationship.

MS. ENGLE: Okay, so I think I'm hearing from some of the panelists that it almost doesn't matter what the content is, if it was paid to be there by a brand or -- then that would need to be labeled, but I'm hearing from others that it really does.

So what about in the context of an article that -- so an example, it's an example for healthy habits for maintaining optimal eyesight. And in one of these articles, it's a series -- and on the second page, it would have, you know, find your focus. And you know, one of the articles is "The failure of most Americans to replace their eyewear as frequently as is recommended for optimum eye health."

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.
And I think you concluded in that case that a sponsorship disclosure was appropriate. I think that's one where that's a really hard one. I think that really is right on the line. So I think if we disagree, it really is on the margins.

I think we do come back to, you know, we are at the FTC today. We're here to talk about whether the Bureau of Consumer Protection has a role in giving guidance or stepping in in this area, so I think we do have to come back and focus on, is there a consumer protection harm in any of these scenarios.

MS. ENGLE: And either of these two, of course it's been acknowledged publishers may have reasons --

MS. MUDGE: Right.

MS. ENGLE: -- and there may be ethical reasons to disclose things that maybe the law doesn't require, certainly that's always true.

Okay, so one more hypothetical on the article here. Suppose that an eyewear manufacturer sponsors an article that discusses the increased risks of cataracts associated with the lens technology used by a competitor.

MS. BRETT: Absolutely you have to
disclose. If that's your content --

MS. MUDGE: That's an ad, right.

MS. BRETT: Right. You're disparaging a competitor.

MS. ENGLE: Anybody disagree that that kind of article --

MR. STEINBERG: I don't disagree with that, but I think there's a distinction to be made between an ad and labeling who the content is from. Because a lot of platforms are open and brands are able to post without actually paying for advertising. That's the truth, as I mentioned, with Facebook or Twitter or Tumblr or Pinterest and so on and so forth, with our platform, with other journalists' platforms as well.

In that case, the competitor, let's say Company A is criticizing something about Company B. It needs to be known that Company A is the byline on that piece. That Company A is responsible for posting that piece of content, but I wouldn't necessarily term that an advertisement, because they may be doing that freely and they may be doing that without the use of paid media.

So there's a difference between identification of who the contributor is and
identification that a paid media advertisement relationship is going on.

MS. ENGLE: And so that segues into my next question, which is to think about whether the answer to these questions varies, depending on who created the content. We know that sometimes it's the publisher works with the advertiser to write the article, sometimes the advertiser writes the article and the publisher may just edit it and include it.

So do any of the panelists think that that affects whether or not something should be legal as advertising or identifiable as advertising? So for the first example where the publisher actually wrote the article, they created it for the advertiser, but it's about the advertiser's product, so it's publisher written and created, but paid for and about the advertiser's product.

MR. HOLT: But the publisher paid to place it.

MS. ENGLE: The advertiser paid to place it.

MR. HOLT: I'm sorry, the advertiser paid to place it.

MS. ENGLE: Yeah, yeah.

MR. HOLT: That's an ad.
MS. BRETT: I really do think it would depend on the article that was being written. If the -- and really the creation of that article, whether it was being created at the behest of the advertiser. You know, the editor created it, but it was based on a discussion about content that the advertiser wanted to be created.

You know, if it is that article about the impact of cataract surgery on your eyes and, you know, the advertiser had the ability to shape the content of the article, or at least the -- not the content of the article, but the actual subject of the article, then I think you need to disclose it.

If the editor had written an article on something related to your eyes and then sought a sponsor for it, I don't know necessarily that you'd have to disclose that the content is sponsored in the same way you would if they were somehow jointly responsible for the creation of the article, if you understand the distinction.

I think very -- if the editor creates the content, without consultation of an advertiser and seeks advertising for it, I don't see how that's any different than ordinary advertisements that run with an article.
MR. HOLT: Well, the difference is that when an ad runs with it, it's obviously an ad. If they wanted to place the article, but for the payment by the so-called sponsor, then it does need to be me to be disclosed, it seems to me. It's not obviously an ad and it needs to be disclosed as one.

MS. BRETT: And certainly my view would change if you mention the actual, the sponsor of the product in the article. I think, in many circumstances, then you would have absolutely have to disclose it.

But I feel like if it is a subject matter article, and they seek a sponsor for it after it's already written, depending on the connection between the content and the advertiser, you may or may not need that sponsor label.

MR. HOLT: It's very dangerous to suggest that there's a marketplace for specific articles that can be sponsored by advertisers.

MS. BRETT: And I guess all I'm trying to say is that we look at this from the perspective of consumer confusion and whether or not you are misleading consumers.

And so if we were going to be looking at an advertisement like this, if the question arose
whether or not the advertising was in a deceptive format, we would look to whether or not consumers were actually confused about the independence of the article in any way. And so it would matter to us who was responsible for creating it.

MS. MUDGE: I think I come down to, it's going to matter what the content itself is. And I don't know if it's necessarily -- I don't think it's dispositive as to whether the advertiser wrote the content, participated in the content, or had nothing to do with the content. You've got to look at, Laura, to your point, are consumers deceived by the content.

And I mean, in counseling brands, at the end of the day, the brand is going to want to have some editorial right over the content, if for no other reason, if it's a piece that is going to be about the product or about the product category, if the journalist just gets it wrong and ends up making outrageous claims about the brand, that the brand couldn't make itself, the brand wouldn't want to be associated with that.

MS. ENGLE: Well, so --

MR. WEISSMAN: But don't you think, if that relationship exists and the advertiser has that
authority over the content that sort of per se consumers have reason to want to know about it?

MS. MUDGE: Robert, I don't think we're -- I don't think this, again, comes down to whether consumers have a right to -- I come back to, is there an obligation under Section 5 for disclosure. And I think those are two very different things, as to whether consumers might be interested in a piece of information, versus whether there is a disclosure obligation under the law.

MS. ENGLE: So say for example a newspaper, the Wall Street Journal, Washington Post, whoever, reviews a new car which is on the market, which they do. You know, it's a car review guy and he writes a review. And he really likes this particular car, so whoever the automobile manufacturer is naturally wants to disseminate that review far and wide, like when you to Five Guys or whatever and you see the positive reviews on that wall. Well, in the digital environment, they want to get that out there and they paid to have a link to the article placed in Buzzfeed or Huffington Post or Wall Street Journal or wherever, hoping that consumers will click on it and read this great review, which was independently written. Does that
need to be labeled as an ad or a sponsored --

MR. STEINBERG: Well, the promotion --

first, we don't do that, so I haven't totally thought it through. We don't do that right now, we don't take -- it would be paid media, actually, promoting an existing article, not unlike what some of those link services do. So as long as the payment of the ad placement is disclosed, I think it would be fine.

Mary, where actually you were going with this is, when you were talking about Wall Street Journal, I thought you were talking about print. What's amazing to me is I think this is an overarching question about labeling and whether or not the media is paid.

You know, when you watch television at night, they don't show sponsored or paid advertisements when the video, which is sort of a blurring of lines, between the video of the show and the video of the commercial comes out. And in a lot of cases, you'll see an advertisement for a product which may be an actor or an actress just being interviewed in the subsequent segment, so there's a blurring that occurs there as well.

Similarly, in paid print sections as well,
You have these adjacencies and labeling issues. So it is somewhat quizzical that this is focused so much online, when I think that this is more of a global labeling issue which is occurring in television as much as anywhere.

MS. ENGLE: Yeah. Well, I think today we are focusing on the digital environment, because certainly it's been an issue. And we saw this morning, you know, it started in print and has been an issue in television, but it seems to me it raises -- there is a whole lot more variations online, different varieties and formats that native takes place.

But you're right, absolutely. I mean, this is an issue across the board.

MR. HOLT: I don't think it's an issue of labeling, it's an issue of whether or not consumers can recognize it as an advertisement. And in some cases, advertisements do need to be labeled in print, as well as in digital.

Apparently, consumers understand when they see an ad on TV that's it an ad on TV. Going back to something that was said on the last panel, the reasons why consumers understand "commercial ad" more clearly than they do "ad" for example is because
television is such a dominant medium, advertising
medium.

MS. ENGLE: Right. And I should say, I
think I used the word labeling. I just shouldn't,
it's kind of a shorthand, but yeah, the concept
would be that the ad is identifiable, in however --
it might not be labeled, it might be something else.
It might be shading. We saw earlier, you know,
boxing, outlined boxes, whatever. The idea is that
it would be recognizable in some way to consumers as
paid content.

MR. ZANEIS: I think the Commission has,
in certain instances, recognized the difference
between online and offline media, rightly or
wrongly. Just look at endorsements and testimonial
guidelines and, you know, the fact that you don't
have to disclose a review when you got a free
product, because it appears in print, but you would
have to -- that would be an endorsement, that you
got same product, when you did an online blog post
about it.

I don't think that -- much of that helps
provide a lot of guidance. Unfortunately, I'm kind
of -- I'm here in Washington, I'm one of the few
that are based here in D.C., so I'm kind of bound by
this bubble that we live in and how the FTC might actually enforce under their Section 5 authority. So that's what I view this under, as deception, consumer deception, as Amy has rightly pointed out. So what I think is -- hopefully we can achieve today is to give a little more clarity to the Commission, and thusly to the industry, on when it's appropriate and when it's necessary. But I'm not sure just focusing on commercial nature is really going to get us there. It's one factor, but just one of many.

MS. ENGLE: So I just have to correct the statement about the endorsement guides. So what we say is, it depends upon whether the reader understands that the reviewer received the free, whether it's online or offline, it doesn't matter. It's whether the context -- the context of the review has made the reader understand that the reviewer got it for free or not. And if not, then --

MR. ZANEIS: And there's an assumption then that the average consumer would understand that New York Times book reviewer received the book for free, which I don't disagree with. But then a 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
topic for a different day, but I just wanted to --
in case, you know, anybody thought my not saying
anything I agreed with what was said.

5 MS. MUDGE: Mary, I think your
9 hypothetical that you would pose though with Five
Guys, so if somebody -- and you've given us so much
good guidance in other context that we all draw on,
to be able to advise in this area, like the
endorsement guides, the dot com disclosure guides,
et cetera.

15 But if in the case of your Five Guys
example, it is somebody who was not given a free
burger, no free fries, and they wrote an article,
they wrote "I love this." And Five guys wanted to
promote it, there's no material connection between
that endorser and Five Guys, but I guess Five Guys
would want to amplify that or push that out, I don't
-- I don't think that is always going to be
necessarily something that you've got to say, this
is a Five Guys ad. I think it's going to be
contextual dependent, but not always. If there is
that material connection between the two, always,  
always need to disclose.

MR. WEISSMAN: Well, but the other  
material can actually be where it's placed, right?  
So it's a legitimate review, but it then suddenly  
starts appearing on the front page of the Wall  
Street Journal, not because Joe decided to write  
about Five Guys, but because Five Guys paid for it  
to appear there, then it does need to be --

MS. BRETT: I would agree with that, I  
think that's right. I mean, if Five Guys posted it  
in a restaurant, you know that Five Guys posted it  
there. But if it is placed in an alternative  
publication, I think you, at the very least, we need  
to know that someone is paying to have it posted in  
that publication.

MR. RIDDLE: Well, because the original  
review wasn't paid. There was no money that  
exchanged hands in order for a positive review to be  
written in the first instance. But where the  
amplification comes in, that's where the  
relationship changes and it becomes a commercial  
one.

MS. ENGLE: Okay, so assuming -- not that  
we have perfect agreement on whether something needs
to be identifiable as sponsored or as advertising,
but assuming that something does need to be
identifiable as advertising, let's talk a little bit
more about ways in which that might be accomplished.

We had some really interesting research
presented in the last panel on this. Do the
panelists have thoughts about the terms that are
most commonly used today, sponsored, presented by,
or what about this you see "From Around the Web" or
"You May Also Enjoy" or "Top Picks" all of those
categories of things are being used. What about those?

MS. BRETT: A lot of it is contextual.
And I will say that some things are more clear and
some things may be more clear three years from now
than they are right now.

I mean, I would say right now "sponsored
by" I think consumers generally, and the research
from the last panel says maybe I'm wrong, but I
think "sponsored by" generally denotes to consumers
that somebody has paid to have that placed.

I'm not as sure about "presented by" and
I'm even less sure when you see something like "You
May Like" but we would definitely be looking at the
category and reviewing whether or not it was
confusing to consumers, at NAD, and other tags that
would indicate that somebody has paid for that content to be placed.

MR. ZANEIS: And the label is just one indicator, right? I think people understand when a promoted Tweet promoted works on that platform. They also have other indications, like shading or different coloring, and I think that works pretty well. It may not work on a different platform.

MR. WEISSMAN: Yeah, I would agree with that. On the last panel, I think the -- I have to pay more attention to these things since knowing I was going to appear on this panel. You know, the "Around the Web" thing, including in the local paper, The Washington Post, it is impossible to know those are ads. I mean, people in this room might know, but this is a seriously nonrepresentative sample. And there's just no way. So I think those are obviously no good, unless you view that there needs to be no disclosure in the first place. But if there needs to be a disclosure, I think those completely fail. I mean, I see the case for "sponsored by" but I also think, you know, in light of some of the presentations in the last panel, but also just 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 as "sponsored by" it would suggest that the brand has had no involvement and it is simply a sponsorship which they put their logo against. They may have things to say in other areas, but as far as that piece of editorial content is concerned, they've absolutely had no input into it.
3 For content where they have had input into it, we reserve a different attribution and that's "sponsor generated content." We feel that is a phrase that more clearly represents the sponsor's involvement in the creation of that content.
4 MS. ENGLE: And that's a very interesting distinction, sponsor versus sponsor-generated. It is more specific and clear. Do you require the name of the sponsor? You know, generated by whomever or --
5 MR. RIDDLE: Yeah. I mean, you know, we are getting into labeling now in quite some detail, which is probably the place that we need to go, but yes, we do. I mean, we reserve the byline where we actually call it out. We say it's by WSJ Custom Content Studios for Brand X.
6 And to answer the question for the
marketing we were looking at before, and the
question has been raised a few times about whether
the sponsor's logo should be included or not, we
think that the logo should be included, because
that's another visual clue to the reader that says
that this is there as a result of a commercial
relationship, rather than an editorial decision.

MR. STEINBERG: And with a few word tweaks
here and there, that's what we do as well. Brand
logo included and presented by and then terminology
that it's paid for.

So we think the icons -- but look, the
brand wants to drive brand value. We want people to
know that the brand, when they see that that
headline is coming from the brand, we want to create
lift before they even click-through and consume the
piece of content.

MS. ENGLE: So why or why not use the term
advertisement? Or commercial advertisement, as was
suggested earlier.

MS. MUDGE: Sometimes it is and sometimes
it's not. If it is talking about the brand, it's an
ad. If you've got to -- to go back to your first
element of For Eyes that wants to sponsor seven
wonders of the world travel sites. I mean, they're
sponsoring it, there's a reason why they want to be behind this message, but it's not an ad for their product.

And we've all struggled with that in the context of sponsored Tweets as well, but I don't know what I know anymore after the last panel. I think, well, it's -- I think the whole world is sort of turned upside down. But in looking at what the actual words mean, an advertisement is a very specific thing. And sometimes this stuff is an ad and sometimes it's not. Sometimes it is content.

MR. HOLT: At the risk of sounding very simple minded, if it's paid media, it's an ad, from my perspective. I think that the key here is not so much the language or the nature of the label. It would be great if all words meant the same thing across every publication, but I think that is probably going to be an impossible goal to achieve.

The key here is that we are signaling that this is some form of special content. So if sponsored content, brought to you by, presented by, if you are not going to use the word ad or advertisement, and there are reasons why people -- I think there are reasons why ad and advertisement is not used, and that's that it is disruptive to the
reader experience, from the marketer's perspective. If you are not going to use that term, then you can use any word you want and signal it, but then you have to explain what it is what is key here is that, "What is this?", rollover or linked or whatever this is, on this particular page.

MS. ENGLE: Any other thoughts on that?

MR. WEISSMAN: You know, I think that's exactly right, except that the question of disruptive, what does that, you know -- disruptive cuts both ways. I totally get that it's better not to be disruptive, from the advertising point of view.

But another way to understand disruptive is actually the meaning was absorbed by the consumer, right? Because someone actually had noticed this is an ad, not something that their eyes kind of quickly glossed over and skipped over. You know, there may be a big consumer interest in exactly that kind of disruption, which is uncomfortable for the advertisers.

MR. ZANEIS: I don't know. I think advertising wants to be disruptive. I mean, we want to get your attention, that's the whole goal.

That's the beauty of, especially digital
advertising, where it can reach out and kind of grab you.

Whether you use one label or not, I think in some ways that sort of assumes a very well-curated site, which isn't always the case. And again, one-size-fits-all doesn't necessarily work here. I think it's best practice, I think it works really well for consumers. And we ought to continue to educate and make sure that we are meeting consumers' expectations around disclosure, so there isn't confusion, but to have just one way to do it I don't think works because then you get blindness to that as well.

MR. HOLT: I just want to go back to the disruption question. I think the nature of -- my understanding of what native advertising is is that the intention is to not disrupt the reader experience with advertising.

MR. ZANEIS: No, it's to be part of the experience. It's not -- I mean, it is to be part -- to engage the consumer in a way that the content is engaging. But it's still engagement. If it's not disruptive and you don't get their attention, it's meaningless.

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.
How important is it for the initial headline to be identifiable? So that before you click on it, you know you are getting into paid content, versus you click on it and then there may be a good disclosure or label or identification of sponsored content. Do people think it matters whether or not the initial headline is identifiable or not? Any view on that? Anybody?

MS. BRETT: I'll weigh in. I mean, I think we get into what Lesley spoke about earlier, which is the deceptive door opening, right? You know, is it deceptive to link somebody to content without them knowing that they are linking to advertising content.

And you know, I think in cases where you need to label it as advertising content, you probably need to tell consumers before you get there that they are going to advertising content. But it would depend, to some degree, on what the content is. But I think if we're going to accept that this is content that needs to be labeled as advertising content, then I would say, yes. Before you get to that page, you should tell them that they are linking to advertising content.

MR. RIDDLE: At the risk of sounding
boring, but consistent, I'm going to say that if it's there as the result of a commercial
relationship, then it should be called out.

MS. MUDGE: And I think -- and I don't know if I disagree, I just think that there is a
difference between someone coming into your home, they are actually in the door, and between clicking on something. I just don't -- when I think about sort of what, you know, what is the consumer harm here? Like, how difficult is it to click back? You know, I'm not anti-disclosure. I'm not suggesting that --

MS. ENGLE: Part of it might be, you know, to the extent that consumers, you know, don't necessarily notice everything, they might be less likely to even notice or look for the sponsored label if they haven't -- you know, if they're not thinking about it. At least some of the research earlier suggests that people have a single-minded, they are kind of looking for a certain purpose.

So if you think that maybe, like, the prize promotion, the direct-mail piece that we saw Lesley's presentation that looked like it came from the California Department of Promotions or whatever. Well, you know, you might never opened
that envelope, right? You wouldn't have, if you knew what it was. So, it could be that idea.

MR. HOLT: But going back to something you were speaking about in the last panel, about the kind of information that consumers can absorb. We can only provide them information. We can't make them consume it.

MS. ENGLE: Right. And the goal is to make it engaging and that's why --

MR. HOLT: Right. Both from an editorial standpoint, from an advertising standpoint, and in terms, specifically, of these kinds of labels that we're talking about.

MS. ENGLE: Right. And actually, you know, it may be more than we can to here, but -- we talk about labels, but I was going to ask about other visual cues.

And you heard earlier that for some people may be labeling isn't effective. Other visual cues that might be used to set off the sponsor content, yet that feels somewhat at odds with the whole purpose of sponsored content or native advertising, which is to look and feel like the surrounding editorial. So what do people think about that? I know that ASME guidelines do suggest a pretty good,
you know, distinction.

MR. HOLT: Right. So we feel very clearly that native advertising ought to be labeled and I think everybody agrees that there ought to be complete transparency. We believe that native advertising ought to be labeled, clearly labeled, as advertising, if not using that term, then whatever term is being used should be explained in some way that the content was created or provided by a marketer.

And not that content should not look like editorial content. That's really the third aspect of that, that the content should not look like editorial content and should be somehow separated from editorial content, that's probably the most controversial part of the ASME guidelines as they now stand.

MS. ENGLE: Yeah.

MS. BRETT: And I would say, from NAD cases, if disclosure is needed, it's really got to be clear and conspicuous. So you know, if light gray or shading doesn't -- is not clear and conspicuous to consumers, then we'll take a good hard look at that.

But it's very helpful to have some of that
research being done on what consumers are seeing, or not seeing. But I do agree with Sid that, to some extent, also what we need to safeguard is that the disclosure is there and that people are looking for it, or so that they can see it. Not necessarily if some people disregard it or don't care that it's there.

MS. ENGLE: So we also heard this morning about the importance of social, social media here, and how, you know, ideally consumers will pass on and share this content that they're enjoying.

And so what about when it's shared and redistributed in that way? Is it important for whatever identifying tags or labels or whatever to be carried through if a consumer shares it? And does it matter whether it's coming from the publisher or the brand?

MR. STEINBERG: So this is why I kind of opened with that two-prong test, because sharing is so important for what we do. We think it is the way the content ultimately is spreading more than ever in media.

If a brand creates a piece of content and the user gets to that piece of content, either 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.
Facebook is actually an open issue.

Facebook will not allow publishers to put in the name of the brand when a piece of content is shared out through Facebook. So if Facebook terms of services were changed, we would gladly put brand names into the branded content when it is shared from our publisher's site on to Facebook.

MR. RIDDLE: Also, I think the point is, when the original piece of content is written, actually clearly labeled, and that falls as part of the previous sort of part of the conversation that we had around labeling. The point when it gets picked up by, say, me when I read the Five Guys review and think that's actually quite interesting. I'm going to share that to my network, whether it's on Facebook or I tweet about it or whatever. That's, for all intents and purposes, me making an editorial decision, right? Because we are all publishers today.

We hear a lot of people talk about that. We are all publishers, we've all got our communities, some bigger than others. But for all intents and purposes, we are editors of our own social media channels and we are making those decisions as to whether we think that it's right and
applicable to send that content out to our audience. And we have to think about our own brands.

If we care about the people who are in our community, and I would assume that everybody does, and we want to remain credible, we are going to think about the kinds of content what we share before we share it. And at that point, we put our name on it.

Now, if the question is, should we be paid for that, well maybe. There are models where that kind of thing does happen, but in this instance that we are giving out now, it's an organic decision that somebody is making to share a piece of content, so that doesn't need to be disclosed.

MS. ENGLE: So does it suggest then that it's important for the original content to be labeled or identified in a way that carries through, right?

MR. HOLT: Why?

MS. ENGLE: Because then the person who receives it secondarily -- so that they will know who's responsible for the original content.

MR. HOLT: All they need to know is where the content came from.

MS. ENGLE: Well, that's -- you mean --
MR. HOLT: And it came from your friend.

MS. ENGLE: So you don't think that it matters then --

MR. HOLT: If you don't want to get a dancing cat, take it up with your friend.

MR. RIDDLE: That's true. That's exactly the point. Because if you keep sending dancing cats to people that don't want dancing cats, you're going to find yourself with very, very few friends soon.

MR. STEINBERG: Well, people actually really do like dancing cats.

MR. WEISSMAN: If the dancing cat is drinking a can of Coke, you should know that that was a Coke ad in the first place, right? I think that was the point that was being raised.

MS. ENGLE: Right. So going back to this article on, say, "American Eyesight: Much Worse than Imagined." If that is being shared, and let's say the article actually talks about a particular brand, and let's say when it's published, you've got links there, so it is easily shared, wouldn't the idea that it's actually an ad -- in the case, it's an ad. Okay, it's talking about a specific product, everyone would agree that that's an ad and it should be identifiable.
MR. STEINBERG: Well, no. Hold on. I don't agree with that. It's not an ad, it's a piece of content that a brand created. Now, it needs to be clear that the brand created that piece of content, but they may have done that on an open platform, without paid media. They may have posted that content to their Tumblr, they may have posted that content to Facebook that somebody then shared from Facebook to Twitter. It should be clear that the brand created it, may it not be a paid action at that point.

MS. ENGLE: Well, that's one scenario. So I was imagining a scenario where they did actually pay to have this article placed in the Post Gazette and then it gets shared. And so, you know, right now the example we have right here, "Sponsored content provided by For Eyes" are you saying that it wouldn't matter if that that gets carried through when it's shared? It just starts with the headline, "American Eyesight: Much Worse Than Imagined."

MR. ZANEIS: The original publisher doesn't have any control over how that content gets shared, especially if it gets shared on a different platform, a social network and so they don't have any control -- require that there is some sort of
label or icon. You know, we all use link shorteners when we tweet things out, so there's just there's no mechanism for doing that. It's a completely different relationship and it's a completely different expectation from the consumer. Because they are consuming that original commercial message on a completely different platform, in a different way, probably from one of their friends.

MS. MUDGE: I think there's two different issues here. If I'm linking out to this article that we are looking at here, your eyesight can be damaged by excessive mobile use. And if my mom wants to share that with me -- she loves to send me medical advice. So if I get that from my mom, and I decide not to ignore it, and I decide to actually look at it, when I going back to that article, then I'm going to understand, oh, a-ha, this comes from For Eyes.

If it's a situation where my new friend Sid has sent me dancing cats, because that's what he does, and the dancing cat is holding a can of Coke, in Robert's scenario, that in and of itself -- we've done that. It's product placement. We've got really cleared guidance from you, Mary, that not all 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.
MR. HOLT: Cut and paste function.

MR. STEINBERG: Yeah, I mean --

MS. MUDGE: And if just a dancing cat with a can of Coke, I don't see why that's different from product placement on television, which we don't need to disclose.

MR. STEINBERG: Or if I see a television commercial --

MR. WEISSMAN: That's another panel.

Another panel.

MR. STEINBERG: I think we have to keep the digital analogues next to what is actually happening in the real world. If I see a great Toyota commercial and I say, Amy, you look like you need a new car, this and Toyota Corolla is the ideal car for you, I don't have to say like, "#sawitonacommerciallastnight."

MS. ENGLE: Okay, so let's move to another to another mockup. And there's an article here that is an actual article, so we're not talking about the article, we're talking about what you find along the right-hand side.

At the bottom, "Recommended and Most Read From Around the web." And we have different, you know, you'll some things -- on "Most Read" the
second link there -- it says sponsored. And at the bottom, "From Around the Web" one of the links is indicated as sponsored.

What do people think about those sorts of -- I'll call them labels because here they are labels? What kinds of content recommendations need to be distinguished as or labeled as sponsored?

You know, in some cases some of these articles are actually -- there's links. These headlines are links to other articles from this publisher, say the Post Gazette. And in some case, they might be links to ads. You don't really know that, just looking at this box. Is that a problem or is it sufficient for just what is sponsored to be so labeled?

MR. RIDDLE: You can make this really easy and you can say that it's there as a result of a commercial relationship, so it needs to have a number of things which call that out in that way. So for me, it would need to have clearer labeling. Where it says sponsored, we would want to see it saying, "sponsor generated content." I notice that the font is the same font as the "Most Read" sections above it and below it, so I would want that to be different. The color of the
headline is the same, so that should be different,
to give the visual clues to the reader that there is
something different going on here, and then the
background as well. It should also include a --
whoever it is that is sponsoring it, their logo.

One good thing I would say about it is
that it's clearly demarcated in an area, which is
sort of noted by the grayed out box.

MS. BRETT: I would just say I think that
there's room for a lot of confusion here. The
consumer doesn't know who is recommending this
content or why this content from around the web is
coming to them.

And the disclosure that these boxes
include some sponsored content and some editorial
content, are really, if they are there at all, they
are really hard to -- and some of them are placed in
places that, we learned in the last panel, aren't
places where consumers are likely to look.

But it really goes to whether or not they
are clear and conspicuous, so I do think there is a
lot of room for consumer confusion with these
recommendation widgets and who is recommending the
content and whether or not all of those posts
somebody is paying to promote.
MR. ZANEIS: To me, it's simple. I mean, you've got a sponsored box "From Around the Web" and a "What is this?" link up there. And you have a sponsored box around "What Are The Most Read Stories?" Those look to me to be the advertisements.

If something under recommended is a paid link, then that's a problem. But we don't know what that is. I assume reading this, that's probably other first-party content, but I don't know that because we are working on hypotheticals in, you know, Latin.

Mr. WEISSMAN: Well, from the "Around The Web" part, I would disagree. I think those disclaimers are awful. They're almost unidentifiable, unless you -- with respect, unless you are in the business of knowing that these things are ads and you should expect them to be ads, oh, by the way, here's the confirmation, no way does this tell you that this is an advertisement.

In my experience in clicking on "What is this?" on actual websites, not this one, I can't figure out even after I read it what the relationship is. And you know, I'm not in the ad business, but I have pretty decent reading
comprehension and I can't get it.

So I think those kinds of disclosures are horrible. And on the "Most Read" one, I think Robin's sort of categorization was pretty good.

MR. RIDDLE: We basically go for five different things that we apply in this situations to make sure that it's clear, which you could say is perhaps, you know, sort of belt and braces type approach. But the other thing that we are looking to try to do is graceful transparency.

So we're not trying to say to people, don't read this. We're not trying to say there is any less value necessarily in reading it, we just want to make sure that it is clearly called out in a way and aim for graceful transparency.

MS. BRETT: But even on the "Most Read" a question comes up whether or not it's placed there because it's most read and it happens to be sponsored or that all of these other articles are most read, but somebody has sponsored that article to be placed under that heading.

So I do think there is room for a little more clarity, even on the most read section.

MS. ENGLE: I think that's a really 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
today, but I have a feeling if we talk to our
friends at the Bureau of Economics or the Bureau of
Competition, they'd say the market will take care of
this.

I'm just hearing from every publisher here
today that trust is important and they don't want to
do something like this that consumers are going to
be inherently suspicious of. So this seems to me
something that probably wouldn't happen and there
wouldn't be a need for regulation to step in and fix
something like this.

MR. STEINBERG: And Amy, I think a good
example of that is when people starting doing
pop-unders, sites that did pop-unders and installed
toolbars and did all of that stuff, back in the
early nineties, like those sites aren't around
anymore. Because people felt really deceived and
kind of messed up by those sites and the market
worked it out.

MS. ENGLE: Well, the FTC takes a law
effortment -- and I would just say that I still see
a lot of, you know, "One weird trick for a tiny
belly" so we haven't gotten away completely.

MR. STEINBERG: Yeah.

MR. HOLT: I think this is an editorial
practices issue and not an advertising issue, per
se.

MS. ENGLE: You don't think the "Most
Read" column --

MR. HOLT: It should be most read.

MS. ENGLE: So assuming it's most read,
then it's okay.

Let's see. So what if the recommended
column includes links to branded content within that
publisher's website? So not the pure editorial, but
the branded content, won't that be set-off there?

MR. ZANEIS: Is it actually "most read"
are we still on --

MS. ENGLE: No, we're on to recommended.

MR. ZANEIS: I assume that's what it is,
right? When I read that, I assume that that is
other first-party content. It may not be Post
Gazette, but it is a wholly-owned subsidiary or --
you know, lots of big media companies have tons of
different brands that are not under a similar
branding.

MS. ENGLE: So I meant not another -- I
mean, I know it's hard to -- the terminology, but
not another article produced by the writers or
journalists, but a sponsored piece, a sponsored
article. So presumably wherever it is appearing elsewhere, it is labeled as sponsored. Should that be labeled here, under the recommended column? So on the link. Is that question clear?

MS. MUDGE: I think in some ways, you've got to keep your eyes on the prize and decide what disclosure is important. If you've got disclosures, disclosures, disclosures everywhere, you are really going to lose consumers.

I mean, I think we've heard in our last panel, it's hard to get them anyway, but to the extent that you've got one or two shots on a page, it seems to me that you would want to focus really clearly on, on this page, where on this page is going to take me to ads? And that's this stuff on the bottom for 200 pounds instantly and things like that.

To the extent that, in the recommended column, maybe one of these pieces is going to take me to some sponsored content, I'm going to know that when I'm there. And I would just be worried about muddling up a page with too much disclosure as to whether we are going to lose people entirely.

MR. WEISSMAN: But then you're just muddling the page up with too much advertising. I
1 mean, you can't just not disclose it because it's inconvenient.

I mean, if our premise coming in should be a link to sponsored content should be disclosed at the point of the link, how does it change just because you've got a lot of it on the page?

MS. MUDGE: I'm just posing it as a question. I do think there is some real -- that you do want to look and you do want to consider as to how are we going to call out what we need to call out clearly and conspicuously.

MR. WEISSMAN: But --

MS. MUDGE: And I don't think we want to tell the Wall Street Journal that they can't recommend -- only in recommended can be editorial content.

MR. WEISSMAN: Oh, it's not prohibiting. This was a disclosure question right now. I mean, to me, I like the "Most Read" which is like an objective measure. So it's a point that I hadn't thought of before, but it is misleading in a way. If you are calling it "Most Read" and the fact that it is not most read and you just stuck this thing in there. But recommended, yeah. It is recommended. 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
7 So what do you think about that? Would
8 that address your concern about too much verbiage?
9 You would just have --
10
11 MS. MUDGE: I mean, it would solve that
12 issue. I suspect that it would hamper the native
13 feel. So I think we are inherently balancing
14 between disclosure and between making an experience
15 that users want to interface with.
16
17 MR. ZANEIS: But Mary, I don't think this
18 is actually a hard case at all. You've got a bunch
19 of content on here, some of which is very -- some of
20 which is pretty clearly labeled as sponsored. We
21 can argue whether the "Around the Web" is clear
22 enough labeling, but you have some that is labeled
23 as advertising.
24
25 If you have an advertisement right next to
26 it that is not labeled, that's not acceptable. I
27 mean, that's pretty -- I don't think this is a hard
28 question, with what we have in front of us.
29
30 MS. ENGLE: Okay, so now we are going to
move to some new examples involving mobile.

So the first -- this slide here is the main page of a mobile website of a magazine, the Your Child magazine. And the magazine has a section called learning, which is sponsored, in this case, by TotSmart. And so you see that, in the middle, Learning presented by TotSmart, and then there are a few articles within that section.

So based upon this presentation of how these articles are organized, what are your views about whether or not these articles would be sponsored content? Anybody have thoughts?

MR. STEINBERG: I mean, it looks like a banner to me. So my view on that would be that -- not knowing, but just looking at this, I would think that these articles are editorial content and that all that TotSmart has said is that they want to be affiliated and they want to be adjacent to an independent editorial section on child care.

MR. RIDDLE: And I would agree with that. It just looks to me like a straight-forward sponsorship.

MR. HOLT: I would agree with that, too.

MS. ENGLE: Okay, okay. So what happens -- let's see. If you click -- actually, we'll go
So assuming then though that actually TotSmart had paid for one or more of those articles, then you would think that additional disclosures or clearer distinctions would need to be made to indicate that actually those articles themselves were paid for?

MR. STEINBERG: Yes.

MR. RIDDLE: Yes.

MR. STEINBERG: It's confusing the way it is now.

MS. ENGLE: Okay. So assuming you clicked on the article, "Helping Your Child to Read Early and Like It" and you were taken to an article that was about a reading program, an early reading program that TotSmart sells. How would you recommend that that link can be changed to make that clear? Assuming you would.

So that link, that first article, "Helping Your Child to Read Early and Like It" that link, or the headline is to an article that discusses a TotSmart learning product.

MR. RIDDLE: That article is custom content that has been created specifically for TotSmart?
MS. ENGLE: Yes, yes.

MR. RIDDLE: And what about the articles below it? The one on autism and strategies for finding the right schools.

MS. ENGLE: Say they were not.

MR. RIDDLE: They were not. Then in my opinion, you'd have to go back to the things that, you know, I've been suggesting all along, which is you've got to put some visual clues in there and then you've got to put written clues in there.

So I'd want to see a clearly demarcated area that highlights the fact that this is something which is different than the content underneath it.

And I want to see "sponsor generated content" on the -- and I want to see, if there is a byline in there, it should be clear on the byline that it's -- who it's by. And it's written for brand, so in our case, it would be by the WSJ Custom Content Studios for brand TotSmart. So basically, I want to see much clearer labeling around it.

MS. ENGLE: Any other views on that?

Okay, so suppose then when you click through on the article, I heard that, yeah, the article itself should be clearly labeled.

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?
MR. STEINBERG: I mean, the issue with this one is it's confusing for somewhat unintentional reasons. The challenge is that TotSmart has theoretically sponsored the whole section. They've also created certain branded content articles that they are the author of or they are the hirer of the studio that created the content. So you end up with a design that would be a little bit awkward, but I think what you would probably have is you would keep the sponsorship, and then somewhere down here, "Helping Your Child to Read Early and Like It." To Robin's point, I would say, "Created by TotSmart" or "Presented by TotSmart" or something along those lines as well. You almost need two indications, one of the sponsorship of the section, one that the brand is behind the creation of the content.

MS. BRETT: I would agree what when you're recommending a product, your own product, the advertiser's own product, the disclosure really needs to be clear and conspicuous. You need to make that connection with consumers so that they're not confused. They need a filter when they read that content. And if the entire section is sponsored by
TotSmart, I'm just concerned that that doesn't necessarily clear up that this recommendation is necessarily created and sponsored by TotSmart.

MS. ENGLE: And what if the article -- it was one of the other articles that had to do with autism or detecting early signs of autism, so TotSmart is still sponsoring this learning section, but the article itself doesn't have anything to do with the TotSmart product.

MR. STEINBERG: Well, then the question is, are they very involved in the creation of the content or not?

So for example, Ford could sponsor the entire automotive section of a publication and not be involved in the creation of any of the articles or some of the articles.

If TotSmart is sponsoring a section, theoretically there would be a learning section on yourchild.com that would be created independent of TotSmart's desire, and then they just have to label which of the articles in there they are involved in the creation of.

MR. ZANEIS: You'd have to label the native ad, right? I mean that's what we are talking about. Otherwise, it's just a sponsorship of --
MR. STEINBERG: Otherwise, it's just a sponsorship.

MS. ENGLE: Okay. So it sounds like there is kind of agreement here that, at least in the context, in the mobile context, that each individual article, the headline, the link, needs to be labeled.

MS. MUDGE: Depending on the content. I mean, this is a pretty explicit example of -- as I understand what we are talking about is this, "Helping Your Child to Read Early and Like It" is all about their product. They've written the content, it's -- so that maybe -- I don't think that's going to be the case in every situation.

MS. ENGLE: So this, what I have up on the screen right now, it's "Super Foods for Expecting Moms" and it's still sponsored by TotSmart, but there's no indication of that, because it has nothing -- TotSmart doesn't sell super foods.

MS. MUDGE: They just want to be sort of related, that they're -- related to good foods and health foods and that's a good thing.

MS. ENGLE: They are showing -- they are sponsoring the whole section of, you know, sort of the various stages when you're expecting, when
you've got an infant, when you've got a toddler. They want to, you know, associate themselves with, people should think of them when they're raising their children, expecting children.

So they've sponsored this section, sponsored the article, but they don't actually sell the foods.

MS. MUDGE: And I come back to where I started. I don't think this is -- I mean, this is content. This is not an ad. I think if TotSmart wants to say, hey, I'm bringing you this really interesting content and I want to share this with you, so I'm sponsoring this, that's appropriate. But I don't think, under Section 5, there's an obligation to disclose that TotSmart has sponsored this particular article.

MR. ZANEIS: And I think that's exactly right. And it gets into a slippery slope. What if the sponsor just does contextual advertising and, you know, they want food products and they want to sponsor any page with food products? If it's not related, if they're not involved commercially in the creation of that content and that message, then it's just advertising.

MS. ENGLE: Okay. Any other thoughts on
that? Okay.

So the next couple of slides were really just variations on the theme. I feel like we've kind of covered them. I think the next one, again, that was going to the issue of having articles on different topics. And on, you know, I have -- there were certain views as to whether, it depends on what the content is. If it's promoting, directly or indirectly, the advertiser's product, people think it should be labeled, or others think that -- you know, I'm also hearing the other views that, regardless, as long as it's paid for, that fact needs to be indicated.

So the panel will have to agree to disagree on that, right?

MS. MUDGE: Correct. I think mobile presents an interesting -- I mean, this is, you know -- it presents an interesting challenge because the space is at such a premium that it's almost -- you take away from so much of, there's a lot going on on the page. And when you're focusing here, it seems to me like there is -- in your examples, if this is what YourChild looks like, there are some pretty good opportunities for simple, clear
disclosures that aren't going to get lost in the shuffle.

MS. ENGLE: Okay, so we actually have time for questions, if anybody has questions. I know we haven't had time in the last couple of panels, but we said we would try to take questions.

So I see one question. Ron? Can you identify -- well, I'll say that's Ron Urbach from Davis & Gilbert.

MR. URBACH: The question that I've thought about -- here's the question, there seems to be a conversation ongoing about what one sees as advertising, whether it's a sponsored advertisement, and then the second discussion is about the need to disclose who it's from.

And when I look to any print medium, I know by context -- I know by context that it is advertising. I may not know who the advertiser is, but that's a brand choice. I may not know the product, I may not know the advertiser, but I know it's advertising. So why should it be different in the online space?

MS. ENGLE: So the question is, if I can summarize it, is that there is sort of a distinction between disclosing the fact that something is an
advertisement versus who is the advertiser, who is sponsoring it, and why is it necessary or important to disclose the who.

MR. URBACH: Yes. Legally, why is it necessary.

MS. ENGLE: Legally.

MS. BRETT: I would say, a lot of the time, it really depends on what the content is. I mean, if you're looking at the online -- I mean, the mobile advertisements you were just looking at where we are talking about helping your child learn early to read and you're recommending a product that is a product of the sponsor's, then I think consumers, in order to be able to review that advertising in context, for them to understand where that recommendation is coming from, they need to know who the sponsor of that content is.

So I think when you're specifically talking about content that recommends a product or a service, then the consumers do have an interest in knowing who the sponsor of that content is. And I think that would actually apply across the board, whether or not you are looking at content in print or on television, if you are specifically looking at recommendations.
I mean, I think some of the conflict that you are expressing really comes because, very often what you're reading in a magazine article may have more product attributes that it discusses in there than you get in a 15 second commercial on television.

So I think very often when you're reading content, you are reading specific content about product, and that's an area where you would certainly want to know who the sponsor is.

MR. URBACH: What I was really referring was not a disclosure that is required, the content triggering additional disclose, but seeming to come across that there was a mandatory obligation, regardless of context, like the cat drinking Coca-Cola. Somehow that people may need to want to know about that -- that's a business call, versus some other need because of the content, which requires a disclosure.

MR. STEINBERG: First of all, thank you for the question. I think it's a great question. And I think it's a scrutiny question, as to where we are in the cycle.

I don't agree that television commercials 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.
MR. ZANEIS: But you guys certainly can flight your creative for -- a campaign and tease out the message. You certainly can do that.

MR. STEINBERG: Right. We had a debate on this last week. We thought maybe what we should put on the unit is, "This is a teaser campaign." They want to do a really fun teaser campaign, but we're so afraid that everyone is going to get cheesed off about it.

MR. ZANEIS: So I think what you're hearing from Jon is that they're ultra-sensitive to it and they've got some model implications, and Robin likewise. But legally speaking, that shouldn't be and that can't be the standard. There can't be a legal requirement to label it with the sponsor, with the name. That isn't part of Section 5 and that's not part of the deception.

We're talking about the confusion for the consumer between editorial content and the marketing message. Plain and simple. That's the law.

Now some people go really above and beyond and, of course, if you're doing sponsorships, if you're a curated media company and you're doing sponsorships with big brands, they are going to want 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
publisher's perspective, they have a lot of responsibilities that they want to protect themselves. So they may have an interest in protecting it that may be separate from whether or not there's consumers confusion or whether or not consumers are being misled.

MS. ENGLE: And that's actually a perfect segue to this question that someone in the audience submitted which is, what about -- in the enforcement context, what about if the publisher helps create the content, do they become potentially liable under Section 5 if the content is misleading or is deceptive about, you know, the attributes or features of the product? Are they kind of like an ad agency then or what is their -- have people thought about that, have publishers thought about that at all?

As you may know, the FTC holds ad agencies liable if they participate in creating an ad or disseminating the ad and knew, or should've known, it was deceptive. So what about publishers who create content?

MR. RIDDLE: First of all, we don't do product endorsements, so when we do do content, it is produced under a co-brand. We wouldn't get into
the level of detail of talking about specific
products or making endorsements of those products,
so that kind of answers that question.

What I would say is that we uphold the
standards that we create custom content to the same
standard that the newsroom would want to create
standard, there is complete separation. We have a
completely separate team, even to the point that we
are in completely separate buildings.

But we still write to the same standard,
because we want to maintain that sense of trust and
loyalty and integrity around the brand. So I would
say that anything that we produce is legal, decent,
honest, and truthful. And it has to be.

MS. BRETT: To dip my toe in here, I mean,
I think at NAD we are always worried about getting
into First Amendment arguments with publishers. But
to the extent a publisher is acting like an
advertiser, then we could see potentially holding
them responsible for whether or not there is some
consumer confusion stemming from their
advertisement.

But generally, we don't want to get into
those First Amendment issues, so we would really be
looking specifically at whether or not the
1 publisher, in that circumstance, was actually acting
2 more like an advertiser than a publisher.
3
4 MS. MUDGE: I think to the extent that can
5 they be liable, I would say to a publisher, if I was
6 asked, that the FTC certainly will attempt to hold
7 you liable if the conduct is egregious enough. If
8 we are talking about, you know, health claims,
9 curing cancer, disease things. I mean, really
10 bordering on the fraud, I can't imagine that you
11 wouldn't try to hold everybody on the chain that
12 touched that liable. So I think that's one where,
13 be careful.
14
15 MS. ENGLE: Okay. Here's a question, and
16 we've touched on it, but I think it would be
17 interesting to explore it a bit.
18
19 So in the example of the For Eyes
20 sponsoring the article on the seven wonders of
21 the -- you know, the most beautiful landmarks or
22 whatever in the U.S. What is the consumer harm in a
23 consumer clicking on the link or even reading it if
24 they find it interesting?
25
26 So it goes to the question of materiality.
27 Is it material to consumers whether or not the brand
28 sponsored the placement of that article? And of
29 course under the test, you know, for deception under
the FTC act, it has to be material. So I know Amy
thinks it's not material.

MS. MUDGE: Well, if you tell me to go to
the Grand Canyon, am I going to go, oh gosh, I gotta
buy glasses now. No.

MS. ENGLE: But I would like to hear from
Robert, perhaps, on that point of the materiality to
the consumer that the brand paid for that article,
even though it really, you know, has nothing to do
with the brand. It's just an interesting article on
the seven natural wonders of the U.S.

MR. WEISSMAN: You know, the test can't be
whether it's interesting. I've spent more time on
Buzzfeed over the last few days then I have in
previous periods and the ads are all extremely
interesting.

MR. STEINBERG: Oh, good. I thought you
were going to say our ads aren't interesting.

MR. WEISSMAN: No, they are super
entertaining. But I still want to know that they're
ads.

MR. STEINBERG: And you do, don't you?

MR. WEISSMAN: We had to sort of look at
all of them. The Marketplace thing was horrible
about you guys, but I think it was unfair.
MR. STEINBERG: Which one?

MR. WEISSMAN: The Marketplace -- did you not see this? Marketplace did its own little quiz comparing sponsored content with unsponsored content, and unless you knew the trick, there was no way to figure out which was which. But I think they were unfair to you.

MR. STEINBERG: Okay. I didn't read it, so that's good.

MR. WEISSMAN: You've got your device, check it out. Now I just shared their unfair -- slandered them.

But I think what is the consumer interest? The consumer is interested in the first place about what was the editorial judgment? Why was I being directed to this page? Was it honestly the decision of just a, you know, to take the web page example, was it just the web publisher made the decision to direct them to the seven wonders of the world, or ten wonders, whichever number we're using, or did someone pay them.

And if For Eyes paid them -- again, they didn't do it out of community service. They did it for some commercial purpose and the consumer has a reason to know about that.
MS. MUDGE: The question was is their consumer harm. Not does the consumer have an interest or a reason to be curious.

MR. WEISSMAN: Yeah, that's the answer. The consumer harm is being tricked about whether they were being led there due to the independent editorial judgment of the publisher or whether they were led there because of a paid commercial relationship.

MS. ENGLE: But is that an issue for the publisher or is that an issue for the FTC?

MR. RIDDLE: Harm is in the eye of the beholder. And you have a responsibility for your whole audience and you could pretty well imagine somebody is going to feel as though they've been misled. So in that instance, you have to have measures in place that protect everybody, not just the people that don't feel they've been harmed or don't feel they've been duped.

MR. WEISSMAN: So that example was, well, that was a really interesting story, so I loved it. But what if it was a stupid story? I mean, it's not the same thing as being sold an unsafe medicine and getting sick. Obviously -- if you totally disregard it, all you do is click back, so it was a loss of
how many seconds of your life. That's the nature of what harm on the internet is, right? That's the whole nature of the advertising, these seconds matter. So, you know, it's not trivial harm in that context.

MS. MUDGE: But not for the FTC.

MS. ENGLE: Well, we'll be the judge of that. No, I don't know the answer.

So here's a question that is probably good for Robin, does the publisher's role in the creation of native format article imply to the consumer approval or endorsement of the product by the publisher? You know, is that the standard to use, that you would only publish -- you would only create this content for -- or do you think there's no endorsement message in there.

MR. RIDDLE: It's a great question, thank you. And I think I'll phone a friend at this point. So I think you've got to break that down into a few parts. I think the first thing is, you know, we're producing it, it carries our brand, so we retain editorial control, which is an important point. They are not going to say something that is not true or legal, decent, or honest.

I mean, it's the same degree, and we heard
this much earlier this morning when we were listening to some of those introduction talks around, why do people advertise certain brands and not other brands. And there is an implicit agreement that when you are advertising in a certain environment, that some of that equity rubs off, right? I mean, we've been in the business for 150 or 170-odd years and that's the process or the model that we use.

And that's why the Journal carries the advertisement that it does and people come because we've got a very credible brand and people want to be seen in that environment. And it's the same with branding, right? If you want to buy a BMW, you expect a BMW showroom to look in a certain way and the salespeople to act in a certain way, and the showrooms to be located in certain places because it's a premium brand, and therefore you would expect a premium brand like BMW to be appearing in the pages of the Journal or Bloomberg or Business Week or The Economist or any one of those kind of business publications.

MS. ENGLE: A number of the other questions that we've received are not exactly on, I 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
4 So an example was given about, and when we
5 talk about TV, how this is an issue for TV and other
6 context as well, not just online or digital, but
7 what about when shows like "Modern Family" make the
8 whole episode around getting an iPad when
9 Disney/ABC, which "Modern Family" is on, has
10 connections to Apple? Let's not a -- I would say
11 that is kind of a product placement type of issue.
12 And I don't know whether others have considered --
13 have any of you ever addressed that kind of issue?
14
15 MS. BRETT: Not specifically, although I
16 will say that the "Modern Family" product tie-in,
17 what it did, maybe a few weeks ago, was something
18 that we were talking about in our office. It was
19 just an interesting use of advertising.
20
21 But I would say that, in that context, it
22 was pretty clear that that was an advertisement.
23 When they went and they moved between the episodes.
24 I mean, just to give a little bit of background,
25 "Modern Family," one of the television shows that I
26 don't watch, did a tie-in of a product where they
27 actually -- actually, it wasn't. It was a Target
28 commercial on "Modern Family" where they were tying
in the specific commercial between the episodes of these different television shows.

And we were talking about that was an interesting use of essentially what is sort of native advertising in the television context. And I think, in that context, it was clear they were moving to an advertisement and it wasn't part of the episode, so there was no consumer confusion.

But I think when you're specifically talking about "Modern Family" and the children playing on iPads, then I think you're looking at more like product placement, that the FTC has already addressed. And you're not specifically making any claims about the product's attributes, so it's not confusing or deceptive to consumers.

MS. ENGLE: Another question, which we'll try to answer, which I'll answer with a non-answer, is where does the FTC go from here? How dependent will enforcement actions be on the industry setting standards?

You know, I think -- I'm not sure, we're going to have closing remarks from Jessica Rich, who is the director of our Bureau of Consumer Protection, and I think -- so I don't want to preempt anything she might be saying, but I think,
from my perspective, we certainly have an open mind. And this day has been terrific, in terms of getting input. And it actually has raised more questions than it's answered in my mind, to a surprising degree.

And I knew, as we were getting into this, that there were complexities. I was talking to somebody about what was native advertising and, you know, we are holding a workshop on it. And they said, well that's just like an advertorial, so what's the big deal? Everybody knows that's a way of advertising. But as we've heard, there are way more different varieties and different possible presentations on it.

So I think I'll let Jessica answer the question of where we go from here, but on the issue of enforcement actions, I just feel like, I feel like, yeah. We have hopefully -- I think, when we do take enforcement actions, it's where there are pretty clear-cut cases.

You know, some of these harder scenarios, I think, you know, definitely more thought and some more research would be very valuable on.

Does anybody have -- I'm sorry, I never saw the people sitting down there. Does anybody
I have any more questions from that part of the audience?

Well, if there no more questions, then I want to thank the panelists here for a very helpful discussion.

I'd like to introduce Jessica Rich, the director of the Bureau of Consumer Protection.
CLOSING REMARKS

MS. RICH: Hi. I make this joke every time about this darn high podium that I can't see over, but they've taken the seats, so I can't sit over there, so I've got to look over this podium.

Thank you so much for coming. This was an incredibly interesting day. I wasn't able to be here all day, but I was watching from my computer back at the office. And I really want to thank everybody, our panelists and our audience, for coming, there are still a lot of people here.

Usually, by this time of day, people have streamed out.

So one of the great things about the Internet and digital media is that they are always evolving and there are always new buzzwords. And for now, it's native advertising. As we heard today, the concept of native advertising isn't really new, it's about the blurring of lines between content and advertising and the corresponding need for some form of disclosures. And these are concepts, not at this level of complication, as Mary noted, but these are concepts that -- the basic concept that the Commission has addressed again and again over the years. But today, the interest in
native advertising is stronger than ever and revenues, we expect revenues to very quickly be measured in the billions of dollars.

The drivers for native advertising are obvious. We've learned that advertisers and publishers want to achieve more than traditional internet models alone offer. They are interested in native advertising because it promises more revenues for publishers, it's a way to reach more targeted audiences and offer opportunities to track audience response, I can offer opportunities for real-time interactions and to build relationships with the audience. It can be shared and seen in many channels, it can allow advertisements to be placed in better real estate, boosting visibility and brand awareness.

And for consumers, it could mean the delivery of interesting, useful, and entertaining content and more relevant ads.

As we heard, native advertising takes many forms and it may not be possible, or even necessary or even desirable, to come up with a single definition or common terminology.

Some, but not all, of the forms of native advertising are likely to require disclosures to
prevent the ad from being deceptive. When that happens, it's necessary to clearly distinguish native advertising as advertising to prevent the ad from being deceptive.

Even apart from the FTC and deception, there appears to be a strong consensus about the need for transparency in order to preserve trust and protect or preserve the value associated with the brand, whether it's the publisher's brand or the advertiser's brand. But there are various approaches and opinions with regard to the how. How do we make it transparent? Are disclosures enough? Should different visual elements like font, spacing, icons, layouts, et cetera, be used? How closely should native advertising or brand content be integrated into editorial content? How does context influence our answers to these questions as well as how we determine what consumers understand?

As we've heard, the research on consumer understanding is sparse in this area and much of what exists is in very preliminary stages. The good news, however, is that is changing as more stakeholders are undertaking research in this area. We really look forward to learning more about 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.
In terms of our own personal next steps, we're going to think about that. We will consider what we've learned here, and all the additional questions it generated, and determine whether additional guidance in this area would be useful from us or not. And we are obviously going to continue to study this issue and examine this issue and there obviously could be opportunities for enforcement, based on existing law and existing standards we have.

In doing all of that, I'm going to -- I know I'll be relying on the wonderful and brilliant team that put this workshop together. It's Laura Sullivan, Laura Sullivan, Michael Ostheimer, Will Ducklow, TJ Peeler, Jessica Skretch, Lesley Fair, Rich Cleland, and Mary Engle.

So thank you again for coming.

(Whereupon, the proceedings ended at 5:40 p.m.)
State of Maryland, County of Harford, to wit:

I STEPHANIE M. GILLEY, a Notary Public of the State of Maryland, County of Harford, do hereby certify that the within-named witness did appear at the time and place herein set out.

I further certify that the proceedings were recorded verbatim by me and this transcript is a true and accurate record of the proceedings.

I further certify that I am not of counsel to any of the parties, nor in any way interested in the outcome of this action.

As witness my hand and notarial seal this _____ day of _________________, 2013.

______________________________

STEPHANIE M. GILLEY

NOTARY PUBLIC