MAX MEN

How Top Networks Like MaxBounty Evolve & Thrive In A Changing Environment
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#5 CPA NETWORK, 2013

REVENUE PERFORMANCE

The BLUE BOOK Awards for Best Performance Marketing Networks
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MaxBounty Has Been Top-5 In The BLUE BOOK Rankings For Three Years Straight
How do some performance marketing networks keep succeeding against all odds? Why is it that while some CPA networks vanish almost overnight, others survive and grow?

Over the last few years the CPA sector of the performance marketing industry has experienced a series of massive changes. From Acai berries and flogs, payment processing shutdowns and changes in FTC enforcement protocols, the sector has borne the brunt of storm after storm of negativity. The sector itself has been transformed by the development of commoditized network platform software that has lowered the barrier to entry for new networks to near-zero. And, of course, just to make things more interesting, the recession has meant that more advertisers than ever have been going belly-up, unable to pay their bills. As a result, the industry has seen a series of major network flameouts, with names such as Epic, Hydra and MediaTrust effectively disappearing.

Throughout it all, some networks have continued to thrive, and we have seen the rise of a group of networks that somehow consistently overcome the odds. These are companies such as MaxBounty, Neverblue and Clickbooth, each of which have featured in every one of the BLUE BOOK Top 20 CPA rankings over the last four years.

What is their secret? How do the MAD-MEN of CPA keep winning?
150 years ago Charles Darwin coined the term “survival of the fittest” to describe the ability of organisms to evolve and compete in a world of ever-changing environments. Contrary to popular belief, he didn’t mean that the biggest and strongest would always win out. Instead, he meant that it is adaptability that is most important.

Tyrannosaurus Rex is the most powerful predator to have ever roamed the planet, but it was the descendants of the scurrying, mouse-like early mammals around Rex’s feet that ended up dominating the world. When the meteorite hit and the Earth’s ecosystem changed, the dinosaurs couldn’t adapt and so died out. Mammals evolved, adapted and then grew up to run performance marketing networks.

As the publisher of Revenue Performance magazine we see this same process of adaptation vividly illustrated each year when we research and compile our annual BLUE BOOK Top 20 performance marketing network rankings. Time and again we have seen networks that appear to be doing everything right but suddenly find themselves in trouble, with affiliates and publishers going unpaid, and reputations in tatters.

What is most interesting is that some networks consistently buck the trend. MaxBounty for example, is certainly not the biggest CPA network in the industry, yet over the last three years it has ranked 6th, 5th and 3rd - a consistently high performance. Similarly, networks such as Neverblue (1st, 2nd and 2nd over the last three years) and Clickbooth (3rd, 4th and 1st) seem to always find a way to beat their competitors.

So what’s going on? What are these networks doing right? Perhaps the place to start is to consider the effect of low-priced, on-demand network platform software. It brought an influx of new network owners into the industry, many with little or no experience in managing the kinds of risk that running a network entails. Many successful network owners see the network failures of the last few years as evolution at work, with weaker companies falling away.

JP Sauve founded MaxBounty with his brother Steve in 2004. He says, “I think it is too easy to blame an economic downturn when you look at the number of networks that have gone out of business. I think it was more of a network bubble that finally popped. There’s such a low barrier of entry to becoming a CPA network - indirectly it plays a big part in the problems we have seen with some networks.”

Solid networks like MaxBounty who value and protect their clients, both affiliates and advertisers, are still running strong. Risk assessment is one of the most important parts of running our business. It’s important to consider whether we know an affiliate well enough before we recommend an advertiser to them, and it’s equally important to consider whether an advertiser’s campaign is simply too risky to list. The balance of looking out for both our affiliates and advertisers is critical. Protect your clients and you protect your business.”

That emphasis on relationships and the implied criticism of the short-term viewpoint of many newcomers into the business is echoed by John Lemp of Clickbooth, “we have been able to thrive and grow over the past ten years by focusing on building long-term value for everyone involved. Survival is about building quality relationships. Being successful in performance-based marketing is not a question of simply reacting to changes but of also building something of value for the future, not short term. Look ahead and create long term value for you and your partners.”

What is interesting in talking to successful network owners is that there is a consistency about what they prioritize. Reducing risk while providing a high level of service is a constant theme. JP Sauve told us, “Look, the biggest threats to the performance marketing industry aren’t things like the end of continuity offers or evolving compliance terms. Those things make the business environment more challenging but good networks can cope with that and still thrive. What does not bode well for the industry is when anyone can create a CPA network overnight by simply signing a check, no questions asked.”

“The biggest threats to the performance marketing industry aren’t things like the end of continuity offers or evolving compliance terms. Those things make the business environment more challenging but good networks can cope with that and still thrive. What does not bode well for the industry is when anyone can create a CPA network overnight by simply signing a check, no questions asked.”

W
Fluent is a digital performance marketing company bridging the gap between advertisers and publishers to provide integrated solutions for online customer acquisition and monetization. Our proprietary web and mobile ad-serving technology helps advertisers better engage, qualify and communicate with their target audience. We promote interaction between brands and consumers with the end goal of providing tangible results through a pay-for-performance model.

Find out more about our suite of digital marketing solutions at www.fluentco.com
The point being made is that with no barriers to entry in place, a new CPA network can be set up in minutes by an affiliate embedded in the world of black-hat marketing. With so many offers being rebrokere through multiple layers of networks, poor quality or fraudulent traffic can be laundered and much harder to spot. JP Sauve brings it back to relationships, “Who needs yet another network without any direct relationship to an advertiser? Rogue affiliates look for networks that simply re-broker offers because they understand the network has much less invested in giving value to the advertiser. Reduce the number of networks and you’ll see less fraud. Less fraud will lead to more business for everybody.”

The longer-term viewpoint of these networks is also apparent when talking about opportunities, rather than threats. Identifying an opportunity and then executing efficiently is deemed to be critical. Eric Gerritsen of Neverblue told us, “You need to start with an effective and long-term core strategy. In our case it has been international markets and mobile. We focus on long-term clients within multiple hundred-billion dollar global industries where we can embed deeply into the core marketing flow and conversion pathway.”

That scale of vision still needs to be built upon a foundation of the personnel within the company. John Lemp again, “We take advantage of opportunities by maintaining our values and focus. We don’t try to dominate every area of the vast performance marketing industry; instead we focus on our core strengths and values, and those of our partners.”

Eric Gerritsen also expanded on this theme, “We stay focused on our core strategies of international market development and mobile. We stay in learning mode, keep an entrepreneurial culture and connect to passion to do great work. We are focused on embedding deeper into the digital marketing processes and flows of the world’s great companies. That will allow us to take advantage of the giant inflows of money from non-digital to digital marketing.”

Ultimately, in talking to these network owners and executives, what comes out is that the personality of the company so often reflects the personality of its leadership. That makes sense if you consider the repeated emphasis on business relationships: competence, trustworthiness and quality of execution are all characteristics of successful individuals as well as of great CPA networks.

JP Sauve captured this is describing his relationship with his brother and co-founder, Steve, “The personality of the network founder definitely affects the potential success of a network. It may be my insistence on risk assessment speaking, but I find that conservative people make the best network owners. If you need an accountant, do you hire one who acts like a rock star or one who quietly works hard to ensure your money is safe? The same logic should apply to being a network owner. I was fortunate to be able to found MaxBounty with my brother Steve and we counter-balance each other. I’ve always been driven and focused on growth, while he is detail-oriented and emphasizes rooting out difficulties before they become a problem.”

The bottom line is that each of these networks is succeeding in the face of an international recession, challenging compliance conditions and advertisers that are often overly-worried about levels of fraud. It’s not how big these networks are that is letting them beat their competitors. It’s their unrelenting focus on what is important in today’s business environment. They move when they need to, they look to where the long-term opportunities are and they evolve.

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Successful Global Expansion Through The Affiliate Channel

Certainly we've all heard about the e-commerce companies that expanded into new markets and successfully increased sales, elevated brand awareness and continued to thrive. On the flip side, however, we also know a good many businesses that invested heavily in expanding their operations overseas or in new territories only to be forced to pull up stakes a short time later.

Along with navigating trade barriers and possessing a deep understanding of the competitive landscape, one of the most critical factors impacting the success of international expansion is local knowledge. More specifically, the kind of information that only a person in the country would know about the marketplace, the competition, the culture, and the nuances of doing business in certain regions. For these reasons, the affiliate marketing channel can be the most cost effective way to expand into new areas.

If you’re considering expanding your reach or reigniting your presence beyond your home country, here are five reasons why you should enlist the help of affiliate marketing to enter a new region.

1. Local knowledge: Affiliates that are in the specific regions where you’re looking to expand offer a wealth of insider knowledge with regard to the culture, customer and prospect base, and competitive landscape.

2. Hyper local online traction: While we embrace the global economy, there has been an increased focus on engaging customers on a more local level. For example, technology now enables advertisers to present a compelling offer on a mobile device to a customer when they’re within a three-block radius of a store. And with the integration of online and offline becoming more common more affiliates will be engaged in campaigns that drive local in-store traffic. These capabilities allow us to reach customers with more compelling and targeted offers while also fostering stronger brand awareness and allegiance that comes from presenting the right offer at the right time through an affiliate.

3. SEO expertise: SEO can be a daunting task within one’s home country so adding the nuances of a foreign language can make it seem impossible. Many affiliates live and breathe SEO and are able to boost awareness of brands through their marketing efforts based on key terms. In some instances, their content shows up higher in search engine results than the brands themselves. Additionally, an affiliate’s understanding of local dialects and interests can further augment your SEO efforts. This expertise may not be immediately apparent to someone outside the region, or even the neighborhood for that matter.

4. Low overhead: With an Internet connection, affiliate marketers are ready to go to work for your brand. Many online brands are expanding overseas without any feet on the ground. In addition many are starting with their website in English. Some simple FAQs about shipping and return policies in the local language can go a long way.
5. **Low risk:** The pay-for-performance model enables advertisers to control their return on investment. Affiliates enable you to dip your toe in the water in new areas with very little risk since you are not paying for impressions or clicks. This is especially appealing to companies that are still uncertain about the feasibility of succeeding in a specific market. Just make sure to get your commission structure right by looking at competitor incentives and getting feedback from publishers.

While there are proven benefits to working with affiliates to enter new markets, there are also critical factors to consider before jumping on board with this business model.

More specifically, you could manage the program yourself or you could align with a performance marketing network.

When considering the best approach to affiliate marketing for your business, keep in mind that it’s not a one-size-fits-all strategy.

For example, when you join an established network, you have a trusted partner that can manage the entire process from vetting publishers, providing strategic search marketing counsel, tracking performance, and paying commissions.

However, depending on the size of your company, your products, and volume of online sales, you may want to consider managing the publishers directly but don’t underestimate the time it will take to optimize your program. Even for small programs a network is usually the best option when reporting and the payment of publishers is taken into consideration.

When you join a network in a new market you should still have the option to manage your own program to save money. Look for a network that lets you retain 100 percent control and transparency over your program and you’ll have the added assurance that comes from having a reputable network partner and sophisticated tools behind you.

If you’re considering expanding into new markets, performance marketing can be one of the most cost-effective and efficient paths to success. Understanding of local tastes, sensibilities and marketing campaigns can be within your reach when you start build long-term profitable partnerships with your international affiliates.

**About Scott Allan**

Scott Allan is senior vice president of marketing at Rakuten LinkShare. He has more than 15 years experience in corporate and product marketing with an expertise in the performance marketing channel.
Geno Prussakov Interviews Kristin Hall

Mobile, and the Value of Data

Geno Prussakov is well-known to the readers of Revenue Performance as the organizer of Affiliate Management Days, perhaps the pre-eminent event dedicated to affiliate managers. AM Days 2013 will be held on April 16-17 in San Francisco.

Geno recently interviewed Kristin Hall, a seasoned online marketer who now heads up Google Affiliate Network’s Publisher Development team.

Geno Prussakov: If you were to emphasize one important area/issue that every affiliate manager should be paying more attention to, what would it be? And why?

Kristin Hall: Mobile is driving a fundamental shift in consumer behavior and it’s having a material impact on all aspects of affiliate marketing. More consumers are using their mobile devices to research and shop online and offline. Researching on smartphones has proven to influence buyer decisions and purchases across channels. The share of mobile sales for all retail e-commerce is predicted to grow by 4% this year (eMarketer, 2013) and 85% of marketers report that they plan to increase their mobile advertising budgets in the near future (ANA/MediaVest, 2013).

Advertisers and publishers must redefine their marketing strategies to engage this constantly connected consumer across all of their devices. Affiliate managers today have a great opportunity to optimize their affiliate programs to reach consumers on their mobile devices to maximize conversions and influence across the purchase funnel.

Optimization strategies may include understanding and optimizing your website for mobile traffic, partnering with mobile-optimized publishers, and implementing mobile creatives sizes. And, of course, making sure any mobile-only conversion pages are tagged for affiliate tracking. The first step is understanding the data to determine the impact.

GP: What do you see as the main areas of opportunity for online (and especially affiliate) marketers in 2013-2014?

KH: Affiliate marketers have big opportunities in front of them to better understand and capitalize on mobile, data, and analytics. There’s a real opportunity to apply insights from data along with using new ad formats to make the most out of the affiliate channel. There are also opportunities for advertisers and affiliates to partner more closely to bring the influence of affiliate higher up the purchase funnel. Through attribution modeling and data insights, advertisers and publishers can use data to make more informed decisions to optimize and improve their programs.

GP: What do you view as the main areas where affiliates can truly help online merchants, adding value to the pre-sale process?

KH: Smart marketers understand and evaluate the affiliate channel within the digital mix. For too long this channel has been isolated from other paid traffic channels. I think it’s important to look at the full impact of affiliate traffic - to understand and value upper funnel contributions. We need to be willing to measure impressions and value clicks, while understanding that the most productive publishers are trying to drive more conversions on fewer clicks. Affiliate publishers are experts at sending customers to advertisers, and can help advertisers close deals by reaching the right audience with a higher likelihood to convert.

GP: It isn’t unusual to hear that since affiliates operate in the mix with other marketing channels that merchants use (paid search, re-targeting, social, etc), with this multi-touchpoint ecommerce, the last-click attribution model is not longer an optimal one. What do you think/recommend?

KH: Google believes that affiliate partners are incredibly valuable to the conversion process. In order for affiliates to continue to play a key role in assisting with conversion, affiliates will need to optimize their offerings to match the advertisers’ interest in reaching other areas of the conversion path. This should be done in close partnership with advertisers, who not only have access to their own data, but also have the best insight into their own approach to attribution.

Remember, there’s no correct answer to attribution - only better insights and better decisions. It’s a process supported by understanding and experimentation and closer alignment and partnership between affiliate publishers and advertisers.

GP: Finally, if you were to leave online advertisers/merchants and affiliate managers with one piece of advice, what would it be?

KH: Affiliate managers need to invest in mobile traffic and be willing, perhaps to over-invest in traffic now so that you have a targeted audience as more conversions shift across multiple screens. Advertisers and merchants should use data to understand attribution at the publisher level.

GP: Thank you, Kristin.

About Kristin Hall

Kristin Hall is a seasoned online marketer who now heads up Google Affiliate Network’s Publisher Development team.
More and more global brands and agencies are moving large budget spends to performance-based marketing. They are, like most marketers, attracted not only to the cost effectiveness of the pay-for-results model, but also to the higher quality that today’s most successful performance companies can deliver. It naturally follows that as more top tier advertisers enter the performance arena, their demand for transparency, reliability and quality are influencing a new breed of performance company: ones that can deliver measurable results in both branding and direct response.

As a company with 7 years’ experience in driving leads and sales for global direct response campaigns, we are witnessing this shift first-hand as increasing numbers of brand-focused clients want to know how we can help them get more high-value users and paying subscribers, increased sales and lead-to-sale rates.

For agencies it is important to understand that not every performance company will be a good fit for your particular brand or client. As a result, there is a shortlist of important questions every agency should be asking a potential partner.

**How technology-capable are you?**

Many performance companies today focus on providing great service but few can offer actual robust use of big data, automated campaign optimization and programmatic buying across multiple media sources.

**How much in-depth industry knowledge do you have?**

Online advertising is an industry full of buzzwords that can be used to impress and confuse potential advertisers. You should try to dig below the buzzwords to identify a partner that can actually separate the meaningful capabilities from the buzzwords and use all available market tools to your advantage.

**How long have you been in business?**

This is a young industry with a constant flow of newcomers, that is reflected in the number of companies that can’t make it work and close their doors. A partner you can trust will have been around long enough to cope with industry regulation changes, fluctuations in markets and emerging technologies that might have rendered them obsolete.

**Can you make sure my ads are shown to the right audience in the right environment?**

Some advertisers know their audience well, but others need help identifying the ideal target user. Some performance partners will help you find your audience as they plan your campaign.

You want a partner that can work with your data and combine it with all available data segments in the market to help reach your audience or even find new customers. When buying media, it is important to have reach but still maintain a safe environment. Determining whether they are able to access niche content as well as premium sites, for example, can make a big difference to the success or failure of a campaign.

**Can you protect my brand?**

In order to protect their clients, agencies should ensure that partners use all the available tools, both automated and manual, to make sure the client’s brand is safe. Partners should be able to provide transparency into where ads are shown, in real time. Look for clear procedures and strict guidelines that meet the industry’s highest standards. Look for the IAB’s QAG certified networks logo to be sure.

**What insights can you bring to my overall activity?**

Partners need to bring results. As a marketer, the bottom line matters each and every day, so agencies should seek partner companies that can create sales, leads and subscriptions, and then keep going forward. A partner that will tell you how to get from point A to B and then keep up with daily progress reports is worth working with.

**Do you work with multiple platforms?**

When it comes to driving leads and sales, every screen counts, and your partner should be able to run your campaign seamlessly on both mobile and web.

Online marketing is complex, with a lot of moving parts. It is not a surprise that many advertisers and agencies find it difficult to translate the performance metrics they are accustomed to in their traditional media channels into successful online campaigns. The answer lies in finding the performance companies that can rise to the opportunity and deliver scalable results.

**About Gal Topaz**

Gal Topaz is the Director of Network Relations at Matomy Media Group. He has over 5 years experience in online advertising and manages activities and relationships with leading platforms and online vendors, specializing in branding and performance-oriented environments.
The Best Performance Marketing Networks In The World

Chris Trayhorn, mThink.com

Each year we conduct the largest research survey in the performance marketing industry in order to identify the best affiliate and CPA networks that brands, merchants and agencies should be working with. Within these pages you will find 40 of them, as chosen by the advertisers and publishers of the world-wide performance marketing community.

These are the networks that, in a highly competitive environment, have been able to maintain professionalism and achieve the guaranteed ROI that is the mark of a top network. These are also networks that have learned to survive and thrive in a difficult commercial environment, so they are without exception run by smart, effective leaders.

2013 is before us with bigger opportunities than ever. Social commerce, the worldwide adoption of mobile, digital TV and new payment systems mean that performance marketing is positioned perfectly. Brands should and must bring performance marketing into their mix if they are to succeed in the years ahead. The networks in these pages are the ones to help them, do just that.

This year’s BLUE BOOK survey was bigger than ever, with more information on how different networks appeal primarily to publishers, or to advertisers, or both. Look for our ad:tech edition in April for more detail on these results, together with our new look Blue Ribbon Panel of performance marketing industry experts.

**Methodology**

The BLUE BOOK Top 20 is not a simple list of the biggest networks. Instead, it takes into account reputation, influence, clientele, popularity and scale. Publishers and advertisers are self-identified and are provided with different questionnaires depending on whether they primarily run CPS campaigns or CPA/CPL. In addition to the main survey, we also accept input from the Blue Ribbon Panel of industry experts as well as our own research and aggregation of traffic data, measures of industry influence and as many other pieces of information as we can gather.
## TOP 20 Affiliate (CPS) Networks

<table>
<thead>
<tr>
<th>Network</th>
<th>URL</th>
<th>Survey comments or notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rakuten LinkShare</td>
<td>linkshare.com</td>
<td>A focus on big e-tail, smaller merchants and advertiser service has kept Rakuten LinkShare on top for another year.</td>
</tr>
<tr>
<td>Commission Junction</td>
<td>cj.com</td>
<td>CJ is professional, consistent and trusted. A very close competition between CJ and Linkshare this year.</td>
</tr>
<tr>
<td>Amazon</td>
<td>affiliate-program.amazon.com</td>
<td>Amazon offers a lowish percentage per sale but their ease of use and massively broad product offering makes them very popular.</td>
</tr>
<tr>
<td>ClickBank</td>
<td>clickbank.com</td>
<td>Everybody’s favorite way to get into selling their own digital product, ClickBank continues to attract a lot of small merchant support.</td>
</tr>
<tr>
<td>ShareASale</td>
<td>shareasale.com</td>
<td>ShareASale generates a lot of loyalty and trust from publishers and advertisers alike. A network that is perceived as doing things the way they should be done.</td>
</tr>
<tr>
<td>AvantLink</td>
<td>avantlink.com</td>
<td>A very professional network that gained ground in this year’s survey. AvantLink is doing a lot right.</td>
</tr>
<tr>
<td>Google Affiliate Network</td>
<td>google.com/ads/affilatenetwork</td>
<td>The Google Affiliate Network inevitably benefits from the vast scale of Google’s portfolio. A huge network.</td>
</tr>
<tr>
<td>RevenueWire</td>
<td>revenuewire.com</td>
<td>A network specializing in digital products, built on elevated principles of sustainable and ethical commerce.</td>
</tr>
<tr>
<td>oneNetworkDirect</td>
<td>onenetworkdirect.com</td>
<td>Digital River’s oneNetworkDirect is the leader in software sales with the industry’s best network technology and offices worldwide.</td>
</tr>
<tr>
<td>Pepperjam</td>
<td>pepperjamnetwork.com</td>
<td>Renowned as a network helpful to newbies, Pepperjam also has a loyal following of super-affiliates and merchants.</td>
</tr>
<tr>
<td>LinkConnector</td>
<td>linkconnector.com</td>
<td>An established network offering many trusted merchant brands ranging from Internet Top 500 Retailers to smaller niches.</td>
</tr>
<tr>
<td>Affiliate Window</td>
<td>us.affiliatewindow.com</td>
<td>Winners of Best CPS Network at the 2012 Affiliate Marketing Awards, they are the biggest affiliate network in Britain, and now making a splash in the U.S.</td>
</tr>
<tr>
<td>eBay Partner Network</td>
<td>ebaypartnernetwork.com</td>
<td>eBay’s affiliate network with the Quality Click Pricing (QCP) payout system.</td>
</tr>
<tr>
<td>Avangate</td>
<td>avangate.com</td>
<td>Another award winning network out of Europe with an emphasis on software and SaaS.</td>
</tr>
<tr>
<td>TradeDoubler</td>
<td>tradedoubler.com</td>
<td>Founded in Sweden, strong in Europe.</td>
</tr>
<tr>
<td>zanox</td>
<td>zanox.com</td>
<td>Europe’s biggest affiliate network.</td>
</tr>
<tr>
<td>Millionaire Network</td>
<td>millionairenetwork.com</td>
<td>Millionaire Network is an invitation-only affiliate network completely dedicated to advertiser success.</td>
</tr>
<tr>
<td>PeerFly</td>
<td>peerfly.com</td>
<td>Came from nowhere two years ago and zoomed in popularity this year. Great staff and an excellent platform.</td>
</tr>
<tr>
<td>WebGains</td>
<td>webgains.com</td>
<td>Strong contender out of the UK, with some excellent core values that should keep them around for a long time.</td>
</tr>
<tr>
<td>AdCommunal</td>
<td>adcommunal.net</td>
<td>The best affiliate network in the AdCanadian internet marketing industry today.</td>
</tr>
</tbody>
</table>
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<tbody>
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<td>clickbooth.com</td>
<td>John Lemp’s behemoth just keep growing. A very strong showing this year.</td>
</tr>
<tr>
<td>2. Neverblue</td>
<td>neverblue.com</td>
<td>Fresh from acquisition from GlobalWide Media, Neverblue is still going strong.</td>
</tr>
<tr>
<td>3. MaxBounty</td>
<td>maxbounty.com</td>
<td>MaxBounty has built upon a good year to gain a lot of popularity this time around.</td>
</tr>
<tr>
<td>4. PeerFly</td>
<td>peerfly.com</td>
<td>Chad French has built a network that publishers love. Superb affiliate management.</td>
</tr>
<tr>
<td>5. MediaWhiz Monetizelt</td>
<td>mediawhiz.com</td>
<td>Not the biggest network but especially well-liked by advertisers and agencies.</td>
</tr>
<tr>
<td>6. CPAway</td>
<td>cpaway.com</td>
<td>Tom Dietzel’s young network is extremely popular with affiliates, and has an excellent technology platform.</td>
</tr>
<tr>
<td>7. Adscend Media</td>
<td>adscendmedia.com</td>
<td>Very strong in content monetization with good reach and a nice offer portfolio.</td>
</tr>
<tr>
<td>8. Convert2Media</td>
<td>convert2media.com</td>
<td>C2M continues its run up the rankings. An especially strong turnout among publishers.</td>
</tr>
<tr>
<td>9. W4</td>
<td>w4.com</td>
<td>W4 has a very experienced team who know how to make campaigns successful. Good technology too.</td>
</tr>
<tr>
<td>10. Adknowledge</td>
<td>adknowledge.com</td>
<td>Strong in predictive/behavioral technology, good reputation.</td>
</tr>
<tr>
<td>11. CPA Lead</td>
<td>cpalead.com</td>
<td>A leader in content-locking and a favorite for many.</td>
</tr>
<tr>
<td>12. Matomy Media Group</td>
<td>matomy.com</td>
<td>With international locations and multiple platforms, Matomy is a welcomed addition this year.</td>
</tr>
<tr>
<td>13. Adperio</td>
<td>adperio.com</td>
<td>A fast-growing network with a variety of online solutions.</td>
</tr>
<tr>
<td>15. RevenueStreet</td>
<td>revenuesstreet.com</td>
<td>Part of TheMediaCrew, a solid network that knows its business.</td>
</tr>
<tr>
<td>17. Fluent</td>
<td>fluent.com</td>
<td>A strong new comer in boutique performance network arena, with a penchant for smartphone app developers.</td>
</tr>
<tr>
<td>18. xRevMedia</td>
<td>xrevmedia.com</td>
<td>Breaking in to the Top 20 this year utilizing Smart Technology to deliver data in real time.</td>
</tr>
<tr>
<td>19. Motive Interactive</td>
<td>motiveinteractive.com</td>
<td>Premium, invitation-only, and an excellent proprietary tracking platform.</td>
</tr>
<tr>
<td>20. ValuLeads</td>
<td>valuleads.com</td>
<td>Another new comer, ValuLead’s customized campaigns have fostered a dramatic rise in popularity.</td>
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</tbody>
</table>
Native Advertising – Tony Zito, Rakuten MediaForge

Why Native Ads And Programmatic Platforms Will Boost Content Advertising

Two of the more recent innovations to come along in online advertising, native ads and programmatic platforms, are changing the content advertising landscape. Industry experts believe that both are likely to drive a surge in the ROI on content ad campaigns while boosting the affiliate channel.

First, let’s step back and clarify what we mean by native advertising and programmatic platforms and how they work together in an engagement centric campaign.

Native Ads and Programmatic Platforms: It’s Not An Either/Or Option

Essentially, native ads blend with the content on the site. In fact, many consumers aren’t aware that they’re viewing a native ad at first because it complements the tone and copy on the site. For example, websites that are humorous in nature will have funny, native ads such as comedy videos.

Moving on to programmatic buying, this refers to an automated alternative to the traditional approaches to buying media such as negotiations and insertion orders. Using a programmatic platform, a marketer defines the audience, budget, attribution, and other goals and from there, the data and algorithms take over in terms of placement.

Today, many conversations are swirling about the future of online advertising and speculation that it’s going to come down to “native versus programmatic.” The industry currently doesn’t have a platform that brings these two elements together, but this doesn’t mean that we won’t. So instead of viewing this as an either/or scenario, online advertisers should consider that the two approaches co-exist and can complement each other.

You can well imagine the benefits of bringing together highly targeted native ads that are automatically delivered at the right time to the right customer on the right device and speak specifically to the content that currently appears on the site.

Engaging Native Ads on Programmatic Platforms

We can all pretty much agree that these capabilities – having contextually relevant ads automatically and seamlessly woven into a website – has been the goal of online advertising for quite some time. Yet the difference between what came before and what we’re seeing now with native advertising is that the ads are more closely woven into the content that appears on the site. Meanwhile, programmatic platforms are reducing a lot of the administration and educated guesswork associated with media buying.

In theory, this sounds great. Picture a native ad for a ski resort that automatically appears alongside a Facebook user’s photo album of their latest trip to Park City. However, on the flip side of this scenario is the risk associated with any technology aiming to hone in too closely on the specific interests of a target audience. While highly specific ads may deliver phenomenal ROI, the campaigns don’t necessarily scale. Then there’s always the chance that the native ad is wildly off target.

This is where engagement will play a critical role in accelerating the adoption of these nascent technologies. When it comes to engagement, we’re referring to a user’s interaction with an ad, video or image.

Giving consumers the option to interact with the ad in ways besides click through creates a venue for engaging consumers who don’t click on ads – and we all know that not all clickers are buyers and not all buyers are clickers. This empowers advertisers to influence a bigger audience, and gives them a way to know their ads were seen.

The Impact on Affiliate Marketing

Yet how will engagement in native ads delivered through programmatic platforms affect an advertiser’s affiliate marketing program?

For one, affiliates can help an advertiser scale campaigns and reach more targeted audiences, which we know is one of the oft-cited drawbacks of native advertising.

Another likely benefit to advertisers with affiliate programs is that they’ll be able to boost the CTR on content campaigns. This, in turn, addresses the issues of affiliate credit, because in-ad actions prove the extent to which the ads were seen and the level of interest among a specific demographic. Taking this a step further, online advertisers can consider increasing the incentives given to those affiliates that drive traffic, engagement, and conversions.

As native advertising and programmatic platforms evolve, let’s not keep all of these highly complementary approaches in silos. We can anticipate that these innovations in online advertising will increase the demand for engaging ad content that will benefit consumers, advertisers and affiliates.

About Tony Zito

Tony Zito is CEO of Rakuten MediaForge. Prior to his involvement with MediaForge, Tony co-founded and served as CEO of ezADit.com, and served as president and was a co-founder of Precision Data Link.
Executive Interview – Jennifer White, BiteSize

An Interview With Jennifer White Of BiteSize

The Future Of TV and Video Advertising

by Chris Trayhorn

BiteSize is a vertically integrated entertainment network that produces proprietary, premium video entertainment and then delivers it ubiquitously: anywhere, anytime, and on any device. We recently caught up with BiteSize’s Jennifer White to find out what advertisers need to know about the future of video and TV advertising.

Revenue Performance: For the advertisers and agencies reading this, tell us what the future of television and video entertainment looks like?

Jennifer White: In the future, television and video entertainment will go beyond just the viewing of a show. We are already seeing that people are willing to sit for hours at a time to watch a series of episodes of their favorite show in one sitting - witness the success of Netflix’s recent series. That will develop into a greater level of engagement as the viewing screens diversify to include mobile devices. The TV as we know it will simply be one more screen, there will be no difference between the screen we use to check our Facebook profile and the one on which we watch the latest episode of Nashville.

RP: So where does BiteSize fit within that vision?

JW: Through the creation of our brand new studio, located at the epicenter of entertainment, Hollywood, we have figured out how to bridge the gap between entertainment and technology. By combining the technical talent of the San Francisco Bay Area with the creative talent of Los Angeles we will be able produce proprietary, premium, Hollywood studio-quality entertainment and deliver it to millions of fans every day—anywhere, anytime, and on any device. At its core, BiteSize is the fusion of top, Academy and Emmy Award-winning veteran producers, directors, writers and actors, the hottest new up-and-coming TV and new media talent, and the latest cutting edge Silicon Valley know-how.

With the definition of “screens” being defined by only their size, BiteSize will sit comfortably anywhere and everywhere – from the palm of someone’s hand to their living room wall.

RP: How will BiteSize and its approach change the way consumers watch content and how advertisers reach their target audience?

JW: It is 2013 and we all get that consumers have multiple options when it comes to the content they consume, but they only have so many hours in a day. Consumers are finding it harder than ever to dedicate time to long-form content - our belief is that they are far more willing to watch multiple short-form pieces of content instead. You’re commuting from work, you’re checking your Facebook page, you’ve got just 5 minutes before the kids come back in from playing. Get the latest celebrity, sports, gaming and tech news from BiteSizeTV.com on any screen of your choice.

Our advertisers understand this approach, especially because they know that the content we create targets the treasured 18-35 age group. Advertisers keep their ads short and succinct, and we provide compelling short-form content with the result that our viewers watch more content within their available viewing period.

RP: From a marketing perspective, how does BiteSize’s content drive traffic for advertisers, when there are so many options available?

JW: There are so many options we can offer. The most direct approach we have is through partnering with our advertisers in order to integrate their brands into our content, display ads and website. An example might be the creation of a special video series based on a brand and hosted by one, or many, of our talented personalities. We could then leverage that by offering a discount code to our viewers that draws them to the client’s website. Add to that, a combination of supporting content and display ads on our website which all reinforces the brand and you have a complete and compelling advertising package.

RP: How is advertising around video content going to change over the next few years?
JW: Consumers are smart. They record video on their DVRs not just so that they can watch content later, but so they can also skip past commercials. For advertisers, this presents a challenge that only the “Internet of things” can solve. If your content is compelling enough, and there is transparency for the consumer regarding the ads you present to them, they will respect you as a content producer and provider, watch your ad and enjoy your content. But you can only do this when the content is presented within the framework of the Internet. It is now a methodology that consumers accept and understand as a part of watching content made available online.

Over the next few years, I believe you will see more advertisers working closer with content producers to create unique and engaging content that is related to their brand. Ultimately, the blurring of lines will be such that a consumer won’t feel as if they are watching a commercial, but instead will simply enjoy content from one of their favorite brands.

RP: Online video allows advertisers accustomed to TV to now have proper tracking and insightful metrics. What effect is that going to have?

JW: It’s going to have a huge effect on many levels. From the type of content that gets produced to the technologies and methodologies that will be developed to provide advertiser insight into the data generated. We are now in the era of “Big Data” and APIs (Application Programming Interfaces) that will allow partners in the marketing chain to share gigabytes of information. Advertisers and content producers alike will be able to go beyond just looking at one set of numbers to determine the success of their campaigns. In the near future, they will be able to “peel the onion” to understand the interactions within every marketing channel, and to develop a complete understanding of buyer behavior.

RP: Advertisers are always looking for best practices for their campaigns. What does BiteSize emphasize in this regard?

JW: It’s simple: create ads that speak to your target audience. That hasn’t changed in years and it still holds true, even though the way that the messages are delivered has changed dramatically. Take risks, be bold, be short, be “BiteSize”. The attention span of consumers is getting shorter. It just is. If you want someone to notice you, then let him or her know who you are and how your brand can fill their needs by relating immediately to what their needs are.

RP: Many agencies and big brands still gravitate to TV because of how scalable it is. How will BiteSize address that issue?

JW: Recently Twitter, the social media micro-blogging platform, acquired TV analytics company Bluefin Labs. The reason is that people are no longer only using one screen to “watch” their favorite TV shows. TV is already fragmenting. So yes, TV as scale, but the reality is that the conversation around the shows that people are watching are all happening online. At BiteSize, we want to be in the middle of that conversation, not around it. By creating compelling content that is presented online, viewers will not have to engage with an additional screen. We will effectively enable the “water cooler effect” on BiteSizeTV.com by facilitating viewer conversations and social sharing of content.

RP: Thank you, Jennifer.

About Jennifer White
Jennifer White is the SVP of Sales and Business Development for BiteSize, a vertically integrated entertainment network which produces proprietary, premium, Hollywood studio-quality entertainment, all delivered to millions of fans every day — anywhere, anytime, and on any device. As a veteran of the ever-growing online advertising and publishing industry, Jennifer is frequently requested to share her thoughts and insights with topics ranging from online video advertising strategies to ad operations. Find out more at www.bitesizetv.com

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Cookieless Tracking

The Fairer Way To Track

Everyone in the affiliate marketing industry knows about cookie tracking: a mechanism for websites to remember the state of the website or activity the user had taken in the past (source: Wikipedia). We use cookies to track important activities; they help track the source of referrals and sales, allowing for appropriate attribution of each sale—and appropriate commission payout to affiliates.

But what happens when people click on affiliate links that don’t take them directly to the merchant’s shopping cart? Or, when one person searches for a product and another one makes the actual purchase? This is a common scenario with B2B acquisitions for example, or when parents make online purchases for their kids. And what about people who browse on one device and make the actual purchase on another?

Is cookie-based tracking 100% accurate in these cases? Not even close.

To be fair to affiliates, merchants and networks need to make sure that all links contain the appropriate affiliate ID, for better tracking regardless of who pays or what device is used for the purchase. In order to do this, what you need is cookie-less tracking.

To illustrate this, take the example of a recent implementation. PadiAct (www.padiact.com) is a B2B online service for increasing email subscription rates that uses the Avangate Affiliate Network. PadiAct’s business model is based on a freemium/premium model: when users reach the free plan limit, they need to switch to a paid package. On average, a free account switches to a paid one after about 25-30 days.

Being a B2B product, a typical scenario is one in which the user who created the account then sends the purchase link to the financial department who then make the payment. PadiAct wanted to make sure that those links would contain the affiliate ID. Here is how they implemented cookie-less tracking with the help of Avangate:

Step 1: Use the Affiliate ID for links to the website

By default, when an affiliate generates a link that takes visitors to a website, the visitor is sent to the Avangate platform, a cookie is placed in their browser, and then the user is redirected to the website. With this default setup, only the Avangate system is aware of the fact that the visitor is coming via an affiliate link.

Recently, Avangate implemented a neat little feature that sends the affiliate ID to any redirected link on a website. In other words, when an affiliate creates a link for a site such as http://padiact.com, all visitors that click on that link will be taken to http://padiact.com/AVGAFFILIATE=XXXXX. This enables PadiAct to credit the visit and any sales deriving from that to the right affiliate.

The cookieless tracking approach ensures that all links generated by affiliates to your website contain the correct affiliate ID, helping with accurate sales attribution.

Step 2: Place a cookie for “cookieless” tracking

It may be ironic to use cookies for “cookieless” tracking, but we only save this particular cookie when a visitor creates an account with the vendor. The cookie associates the account with the appropriate affiliate.

You can use session cookies or opt for longer-lasting cookies. The duration is up to the merchant and their affiliates. Offering a freemium model helps this “cookieless” approach take hold,
because people are more likely to create an account on their first visit if no financial transaction is required upfront.

Once the cookie is saved in the account database, it won’t be needed anymore. From this moment on, tracking is purely cookie-less, yet still able to attribute sales appropriately, and affiliates will receive more accurate commissions as a result.

**Step 3: Reward affiliates**

Any payment links inside accounts created from an affiliate link will contain an affiliate ID (saved through one-time cookie use as described in step 2). This way, when the time comes to make a payment, the affiliate can be credited appropriately, regardless of who makes the payment or what device is used. Even if the cookies have been deleted since the initial visit, the affiliate will still be rewarded with the correct commission.

It is possible to go one step further and provide each affiliate with an administration area. Here, affiliates can see how the accounts that they generated are performing. In some cases they are even given latitude to contact the accounts in order to influence possible follow-up sales.

**Cookieless tracking complements cookie-based tracking**

For fool-proof coverage of purchase scenarios, the best way to go is combining cookie-based tracking (classic model) with cookieless tracking mechanisms. There are many ways to execute the latter one. Using links with affiliate IDs and storing affiliate information in accounts helps credit affiliates for each sale, regardless of when, where, or how that sale happens. This makes affiliates happy and keeps them motivated.

**About Cristian Miculi**

Cristian Miculi is senior affiliate marketing manager for Avangate, an eCommerce solutions provider that enables Software and Software-as-a-Service companies to sell their products via any channel and any model with a view to optimizing both online and offline revenue.
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Executive Interview – Mike Allen, Shopping-Bargains.com

Geno Prussakov Interviews Mike Allen
Coupons, Opportunities And The Future

Geno Prussakov is well-known to the readers of Revenue Performance as the organizer of Affiliate Management Days, perhaps the pre-eminent event dedicated to affiliate managers. AM Days 2013 will be held on April 16-17 at the San Francisco Marriott Marquis.

Geno recently interviewed Mike Allen, founder of Shopping-Bargains.com and holder of Affiliate Summit’s “Affiliate of the Year” 2009 Pinnacle Award. Mike will be participating at AM Days on the “Inside the Mind of the Super Affiliate” panel.

Geno Prussakov: If you were to emphasize one important area/issue that every affiliate manager should be paying more attention to, what would it be? And why?

Mike Allen: One size does not fit all. In many cases, affiliate managers would benefit by being more creative and flexible in how they evaluate and interact with affiliates. For instance, the 80:20 or 90:10 (or perhaps even 98:2) rule suggests that the vast majority of affiliate channel sales will be attributed to a small minority of the total affiliate pool. On the surface it looks like only a few affiliates are success stories while most are either absent or weak performers. However, a clever affiliate manager can drill down into the numbers for all affiliates and find some jewels. It could be, for example, that a majority of new customers are coming from small affiliates while the top performing affiliates, due to great search engine rankings, are mostly intercepting previous customers. Other variables to consider when evaluating the individual impact of affiliates are average order size, click/sale conversion rate, and commission rate paid to each affiliate. Once these values are known and evaluated in light of the program’s internal numbers, an affiliate manager is better able to reach out with incentives and customized offers to maximize the effectiveness and growth potential for each affiliate within their program.

GP: What do you see as the main areas of opportunity for online (and especially affiliate) marketers in 2013-2014?

MA: This is a difficult question to answer without first noting a major challenge certain affiliate channels (especially coupon and deal affiliates) are facing today. In many ways I feel the Google Panda update of 2 years ago made things much more difficult for most small- and medium-sized affiliate marketers. As I understand things, this update was different from a routine algorithm change because it is a filter that excludes specific websites that the algorithm would have otherwise allowed within the results. Put in economic terms, the “middle class” of affiliate marketing was severely impacted as many medium affiliates saw their search engine rankings evaporate. The resulting shakeout left only a relatively few larger affiliates within the field who were then rewarded with even greater search rankings and therefore traffic. Because Google only has room for 10 “free” spots on their first page, the rich get richer as premium placements translate into enhanced exposure and sales. Regarding any keyword, if an affiliate doesn’t rank on this first page then for all practical purposes they don’t exist.

What does this mean for affiliate marketers? I believe it means everyone else not found on this coveted real estate must work differently than they did a few years ago. As one who lives in a small town, this post-Panda environment reminds me of the typical small town grocery store’s response to Walmart’s arrival within their market. How the small grocer responds determines whether or not they survive. They can either fold or nimbly innovate by offering quality and services that are outside the scope of what Walmart can offer.

In light of these changing circumstances, what’s an affiliate to do? I think there are even more options now as search engines are not the only gatekeepers in 2013. Social media and mobile channels provide amazing potential for niche and smaller affiliate marketers, and the reason is that they have the ability to touch and interact with their customers on multiple levels. These affiliates are often the face of their company and trusted as an expert. As such, they provide credible information in the form of opinions, comparisons, commentary, photos, product reviews, how-to articles, and more via videos, blogs, curated data, and more. They fill in the blanks and answer questions that customers often have. They serve the more difficult and picky customers. They provide information that is often missing from “big box” retailers and even the manufacturer. In short, they provide solutions — which is always welcomed by buyers and, I feel, remains affiliate marketing’s strongest opportunity.
GP: If you could go back 3 years, what would you (or your company) do differently in your approach to online marketing?

MA: It’s too bad that experience is something we get after we need it. If I had the ability to go back and redo, I would make sure we diversified our traffic streams instead of relying primarily on organic keywords in Google. What Google (or Bing) gives they can take away. If we build a good email list or forum or a loyal Facebook or Pinterest following then we have largely Google-proofed our endeavors. Therefore, if I could redo, I would make sure we were well invested in social media and other eyeball-rich environments. I would also blog more. It’s a very effective and interactive way to share our expertise and provide solutions to customer needs.

GP: Running an affiliate website which targets frugal consumers, what are some of your recent observations on online buying behavior?

MA: In December 2012 I said that based on the unusual volume of 40% off coupon codes that remained beyond the Black Friday/Cyber Monday period, I suspected that many retailers were not hitting the internal numbers they needed. I also noticed that average order sizes for many retailers were not as strong as seen in a typical Q4. This made me fear that our economy was not nearly as strong as the government wanted us to believe.

Sadly, about a week ago the government’s own numbers showed my suspicions were accurate as the economy actually shrank. Over the years I’ve found it surprising how closely trends I’m seeing in affiliate marketing correlate with macro trends in the economy. It makes me wonder if real time affiliate marketing data could be used to accurately predict macro-economic activity months before government reports are published.

GP: We sometimes hear the view that coupon affiliates seldom add value. What do you say in response to such statements? How can affiliate managers help increase the value added?

MA: Just as we can eat well or badly, a retailer can coupon well or poorly. Certain foods, like eggs and butter, often get a bad rap while the real problem is likely an out-of-balance lifestyle. The same can be true for coupons. Coupons can encourage higher order sizes or shrink them. Coupons can erode profits or expand them. So what’s a retailer to do? There are many options but here are three things that can make a significant difference.

First, instead of banning coupon affiliates, I suggest retailers embrace them when possible. As long as coupons exist, coupon sites are not going away. If a retailer does not affiliate with a coupon site that doesn’t mean their coupons won’t end up being posted there. Instead, it means that the coupon site is
not governed by any affiliate agreement - as a result they can post anything, including unauthorized coupons and even bogus ones. So, my suggestion is to embrace as many reputable coupon sites as possible to control or manage the space. A merchant’s affiliate agreement should clearly lay out the terms for coupon posting and so, if they want to work with you and earn commission, the coupon site will have to follow your rules. It’s win-win that way.

Second, carefully plan your coupon strategy just as customers carefully plan their shopping cart size to maximize coupon discounts and free shipping thresholds. You know your average order size so don’t coupon any minimum below that. For example, if your average order size is $80 you might consider a $10 off $100 coupon. That means you and your customer both give up $10, but bottom line, you grow your average order size by $10, which, now $90, represents a 12.5% improvement! Instead, if you had discounted just $5 off $75 then you would likely end up with a lower order size than before. That would cannibalize your sales numbers and would be a poor coupon strategy. That would be a lose-lose strategy for you and your affiliates.

Third, make sure you can control the coupon box in your shopping cart. If possible, auto-populate the coupon code there and automate the discount displayed in the shopping cart when an affiliate link is clicked from a coupon site. If a coupon link wasn’t clicked, consider suppressing the coupon box altogether. If you cannot do that, then create a generic “placeholder” coupon and message it as your everyday low price or similar. The goal is to discourage your customer from leaving the shopping cart to search for a coupon — you don’t even want them to think of that option. You also don’t want them to have any doubt in the back of their mind that they are getting a good buy or your best price.

**About Evgenii Prussakov**

Evgenii “Geno” Prussakov is an author, blogger, speaker and affiliate marketing consultant. He is also founder and chair of Affiliate Management Days conference, and owner of AM Navigator, an affiliate program management and consulting company.

**About Mike Allen**

Mike Allen founded Shopping-Bargains.com in February 1999 and currently serves as President and “Chief Executive Shopper.” Designed to be everything you need to save money online, Shopping-Bargains.com was a finalist for the LinkShare Golden Link Merchant’s Choice Award in 2005 and the LinkShare Golden Link Advertiser’s Choice Award in 2006. Mike received the Affiliate of the Year award at the 3rd Annual Affiliate Summit Pinnacle Awards in 2009. In addition, Shopping-Bargains was inducted into the Mississippi BBB’s Business Integrity Circle of Honor in 2007.
You Received A Subpoena. Now What?

Subpoenas are legal orders to produce records/testimony concerning an investigation or legal proceeding. They are issued by judges, court clerks or attorneys. Subpoenas potentially subject you and your company to liability and costly, invasive and time-consuming investigation and document production.

If you receive a subpoena, the good news is that you have not been served with a summons and complaint. The bad news is that you are now involved with an investigation or someone else’s lawsuit.

The rules of the court named in the subpoena govern issuance and compliance. Federal and state court rules vary and the failure to comply in a timely fashion may have severe consequences. If you are going to challenge the subpoena, act quickly with sufficient grounds.

Legal counsel will often begin by analyzing whether the subpoena is procedurally valid. For example, if a subpoena is issued from the incorrect court it may be procedurally void.

Appropriate objections should also be taken into account. Depending upon the circumstances, objections can include, without limitation, improper service, inconvenient date, not legally relevant, harassing intent, overly broad scope and/or unduly burdensome request(s) for materials. Take care not to wait until the return date to notify opposing counsel and/or the court of your objections. Note that just serving written objections may not always suffice.

You must also consider whether the subpoena demands production of confidential and secret documentation, and/or seeks sworn testimony regarding such matters. Subpoenas inherently tend to be drafted broadly and, whether intentional or not, often demand confidential information pertaining to the recipient’s business, or the business of one of the existing litigants. Legally qualified confidential materials and communications may be considered privileged in nature. Disclosure may be prohibited or a protective order justified.

Critically analyze whether you are a litigation target at the very outset. Although typically utilized to obtain evidence from a non-party during the pendency of a lawsuit, a subpoena may be issued by an Attorney General prior to the initiation of formal legal action. Such regulatory subpoenas are often part of an independent fact-finding investigation and/or when a particular recipient is perceived as a potential defendant.

For example, the Office of the New York State Attorney General continues to issue subpoenas as part of a wide ranging investigation into the practice of “astroturfing.” “Astroturfing” can include, without limitation, asking or suggesting that a third party post a positive online review of a business and that third party does so without disclosing a material relationship; the provision of fake consumer reviews; and/or creating illusory communities for “customers” that are actually tightly controlled by a business.

The practice is considered to be a false and deceptive form of advertising under New York and federal consumer protection law. These regulatory subpoenas have been geared towards related correspondence, contracts, reviews or other evidence.

Confer with legal counsel and discuss whether it makes sense to contest the subpoena, seek a stipulated modification and/or move for a protective order. If the subpoena concerns a pending litigation matter, familiarize yourself with the pleadings and look into why the subpoena was served in the first place.

Quickly evaluate whether the litigant that did not issue the subpoena intends to oppose it and pick a fight against the serving party, for you. Investigate whether a protective order is in place that covers non-parties.

If you suspect that you may be a potential litigation target, deliberately consider how to limit liability going forward. Regardless of the true intent of the issuing party, always discuss specific compliance, resistance and expense issues with your attorney.

You may be requested to provide sensitive documentation or testimony regarding the business interests of valued clients. Therefore, you will want to carefully consider how to protect those interests, as well as your own.

Before complying, determine if the request is a vanilla one that you are comfortable handling on your own. Think about consulting with a litigation attorney who will be able to help you gauge whether you are the focus of an investigation and seek to limit potential liability exposure. Always refrain from the destruction of any relevant records.

Information conveyed in this article is provided for preliminary informational purposes only and does not constitute, nor should it be relied upon as legal advice. No person should act or rely on any information in this article without seeking the advice of an attorney.

About Richard Newman

Richard Newman is an Internet Law Attorney at Hinch Newman LLP specializing in marketing and advertising law, regulatory compliance and defense, employment law, intellectual property law, complex commercial litigation and new media-related legal matters.
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