

A Critical Analysis of Attempts to Regulate Native Advertising and Influencer Marketing

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This research critically examines how regulatory bodies in Canada, the United Kingdom, and the United States are responding to native advertising and influencer marketing, two practices that blur the line between digital media content and advertising. Through an examination of regulatory guidelines, documents, and cases from 2010 to 2020, we demonstrate how regulators adhere to a “narrow” regulatory paradigm that the advertising industry itself helped to establish in the early 1900s. Under this paradigm, the only potential problem caused by advertising is an individual consumer misled into purchasing something they would not otherwise. As such, for native advertising and influencer marketing, regulators recommend clear disclosure as the solution. Our synthesis of critical academic literature, however, reveals the wider social and cultural consequences of native advertising and influencer marketing, including the reputation of journalism and further erosion of the public sphere by commercialism, among other issues.

Keywords: Native advertising, influencer marketing, digital advertising, advertising regulation, media policy and regulation, social media influencers, journalism

For more than a century, advertisers have fretted about audiences avoiding their investments and, in response, have experimented with innovative ways to ensure that audiences engage with advertisements (Serazio, 2013). The 21st-century digital, social, and increasingly mobile media environment ushered in a new chapter in this ongoing battle to capture the attention of consumers. As audiences block ads or develop a more general “banner blindness” online and on mobile devices, advertisers have responded by shifting away from conventional “interruptive” advertising formats. Instead, brands are embedding themselves into the very digital and social media content that audiences seek by pursuing forms of natively inserted advertising messages. From advertisements that masquerade as legitimate news articles, to social media personalities surreptitiously promoting brands, native advertising strategies blur the line between what is media content and what is advertising, leading to a state of “content confusion” (Einstein, 2016, p. 3) and further contributing to our already commercially saturated society (Bartholomew, 2017).

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Native advertising can refer to an array of digital products advertisers can purchase, such as sponsored in-feed social media posts, video content, or sponsored listings on e-commerce sites. The defining feature of a native advertisement is the ability to seamlessly blend into the flows of digital content rather than interrupting user experience, like a pop-up ad, preroll ad, or television commercial break. Native advertisements aspire to match the look, feel, and behavior of the surrounding nonadvertising content. The category of native advertising that receives the most attention and controversy is sponsored journalistic content (Amazeen & Wojdyski, 2018; Bachmann, Hunziker, & Ruedy, 2019; Carlson, 2015; Cornia, Sehl, & Nielsen, 2020; Hardy, 2017; Li, 2019; Serazio 2019a, 2019b; Wojdyski & Evans, 2020; Wu et al., 2016). From legacy daily newspapers to various digital special-interest blogs, publishers have embraced native advertising since at least 2012. Serazio (2019a) observes that “the sponsored content genre, moreover, economically reflects a confluence of two media industry crises worth contextualizing: advertising inefficacy and sputtering news vehicles” (p. 681). In this article, we examine native advertising as sponsored publisher content that blurs the distinction between what is editorial and what is promotional. The Interactive Advertising Bureau (IAB; 2019) categorizes this format as “brand/native content”—formerly “custom content” in their terminology—defined as “paid content from a brand that is published in the same format as full editorial on a publisher’s site, generally in conjunction with the publisher’s content teams themselves” (p. 7). These publisher teams are often referred to as studios, such as *The New York Times’* T Brand Studio.

Influencer marketing is the second advertising format we investigate. Influencer marketing is like native advertising because it involves advertisers paying to be placed within media content rather than interrupting the content. With influencer marketing, the content is not that of a publisher, but instead the social media feed of an individual person. These individual people, termed “influencers,” are unique 21st-century celebrities (Banet-Weiser, 2012; Duffy, 2017; Duffy & Wissinger, 2017) that have risen to fame/influence within social media platforms, such as blogs (Archer, 2019; Stoldt, Wellman, Ekdale, & Tully, 2019; Wellman, Stoldt, Tully, & Ekdale, 2020), YouTube (Dekavalla, 2020), and Instagram (Marwick, 2015; O’Meara, 2019; van Driel & Dumitrica, 2020). A successful influencer can “leverage their social and cultural capital on social media to shape the opinions and purchasing decisions of others” (Wellman et al., 2020, p. 68). These influencers develop careers out of social media content production by securing brand sponsorships and partnerships, with compensation ranging from free products, to free trips/experiences, to commissions on sales via referral codes or links, to paid endorsement arrangements. Though these brand partnerships may have started as an ad-hoc branch of public relations, over the past decade, influencer marketing has become professionalized with various intermediary businesses, influencer marketing firms, and networks that pair social media celebrities with brands and manage campaigns.

Research Purpose and Approach

As advertisers continue their long-term battle to secure the attention of audiences, regulators renew their own long-term battle: Governing the ever-expanding institution of advertising. Campbell and Grimm (2019) write that “the ubiquity of the internet and the online media forms it has spawned has enabled online marketing to rapidly evolve, often in ways that test, probe, and possibly exploit existing regulation” (p. 111). We examine native advertising and influencer marketing together because, in addition to sharing the strategy of inserting advertising into digital media content, both practices have

attracted regulatory attention and appear to garner similar responses. This article presents a critical analysis of regulatory activity in Canada, the United Kingdom, and the United States and poses the following overarching research question:

RQ1: How, and with what ostensible social goals, are regulatory bodies approaching the practices of native advertising and influencer marketing?

The bodies on which we focus attention are the ones most active in confronting native advertising and influencer marketing in each country.

For Canada, we look at Advertising Standards, an example of industry self-regulation. This organization authors the Canadian Code of Advertising Standards and enforces the code through a consumer complaint mechanism. Canada's federal Competition Bureau also regulates marketing activities, but Ad Standards has taken the lead on native advertising and influencer marketing. Ad Standards announced new "testimonial, endorsement, and review" guidelines in 2016; these more generalized guidelines have since been operationalized into plain-language disclosure recommendations. Disclosure means notifying audiences that content is, in fact, promotional. Since 2010, Ad Standards has also adjudicated complaints on both native advertising and influencer marketing campaigns, ranging from a retailer who disguised a newspaper advertisement as an editorial health report to a blogger paid to promote Canadian tourism destinations. As a self-regulatory body, Ad Standards lacks legal power. Most complaints are resolved by amending or withdrawing the offending advertisement. If an advertiser fails to cooperate, Ad Standards can ask its media members to reject advertisements from the offender, publicly shame the advertiser, or depending on the nature of the infraction, report the advertiser to Canada's Competition Bureau.

In the United Kingdom, we focus on the self-regulatory Advertising Standards Authority (ASA), which monitors advertising, and its sister self-regulatory organization, the Committee of Advertising Practice (CAP), which authors various guidelines and codes, including the UK Code of Non-Broadcast Advertising and Direct and Promotional Marketing. These twin organizations offer guidance, as well as respond to consumer complaints; CAP publishes numerous guidelines and the ASA has upheld complaints against a Michelin Tire native ad on telegraph.co.uk, as well as a Flat Tummy Tea Instagram campaign. Similar to Canada's Ad Standards, as a self-regulatory body the ASA possesses limited enforcement tools. The ASA typically resolves cases by "educating" advertisers about the code(s) they violated, and warning them to not commit the infraction again. If an advertiser does not cooperate, the ASA can request that media embargo them, or name the advertiser on its "noncompliant online advertisers" website section.

In the United States, we examine government regulation from the Federal Trade Commission (FTC). The FTC has taken action on influencer marketing endorsements since 2009, has developed resources that are cited globally (such as the "FTC's Endorsement Guides: What People Are Asking" plain-language document; Federal Trade Commission, 2017c), has sent well-publicized warning letters to notable social media celebrities, and has launched and/or settled complaints against major advertisers. The FTC has also taken significant action related to native advertising, organizing a 2013 workshop called "Blurred Lines: Advertising or Content? An FTC Workshop on Native Advertising," which informed the 2015 policy statement on

deceptively formatted advertisements. Unlike the self-regulatory bodies in Canada and the United Kingdom, the FTC has greater legal authority under the FTC Act and can issue civil penalties in the form of fines. For cases of deceptive advertising, however, fines occur infrequently (Schmidt, 2019). Despite being a government regulator and not an industry organization, the FTC governs in a manner similar to the self-regulatory bodies. With limited resources, the FTC cannot monitor all digital advertising. Moreover, the FTC is subject to significant industry lobbying and has faced pressure from the White House to back off marketplace interventions (Bartholomew, 2017). As such, for advertising cases like the ones described in this research, the FTC selects higher profile advertisers, admonishes them with a settlement that requires pledges to change practices (but rarely a financial penalty), and then publicizes the cases in an attempt to deter others—FTC settlements tend to earn substantial media coverage.

For each regulatory body, we have collected various publicly accessible documents related to their governance of native advertising and influencer marketing, including hearing/workshop transcripts; formal and plain-language guidelines; blog posts and press releases; annual reports; and actual case files (such as complaints and settlements) where available, or shorter case summaries. This archive of documents totals almost 1,000 pages, with the oldest materials dating back to 2010 and most recent from spring 2020. We read these documents critically and extracted and coded key statements. For general guidelines documents, we sought statements that address the following questions: What is the problem this regulatory body is trying to solve? What is the solution to the identified problem? How does the regulatory body frame their intervention into the advertising marketplace? For actual cases and rulings, of which there are 38 total (see Appendix), we asked the question: What did the advertiser do—narrowly, but also in the bigger picture—to warrant the attention of regulators?

Although we have noted how each body exerts only weak regulatory force, their attempts at policing digital advertising practices reveal how regulators conceptualize the purpose and scope of advertising governance. All three regulatory bodies operate within what we term a “narrow” paradigm. This paradigm is further theorized and historicized in the following section. With this background in place, we present our findings from the analysis of the documents to demonstrate how all three regulators—despite a range of national contexts and even regulatory models—fall into this narrow framework. We then turn to critical academic literature on native advertising and influencer marketing to explore some of the larger social and cultural issues that cannot be easily addressed through a narrow lens. Finally, we conclude with a call for a broader regulatory paradigm.

Theoretical and Historical Context

This research builds on Leiss, Kline, Jhally, Botterill, and Asquith’s (2018) discussion of “narrow” versus “wide” advertising regulation. Policy makers and regulators in many nations—including Canada, the United Kingdom, and the United States—subscribe to the narrow paradigm that assumes advertising has “merely a marketplace and informational function” (Leiss et al., 2018, p. 374). Under this view, the only potential social problem arising from native advertising is a consumer deceived into making an unwise purchase. Leiss and colleagues elaborate:

The long-standing narrow policy view is that advertising, in society, has merely an economic function of communicating product information to rational consumers, who are the ultimate rulers of the consumer marketplace. Regulators obsess over banishing false, deceptive, or misleading advertising because advertising is conceived as existing simply to transmit information to sovereign would-be purchasers. If the information is fair and truthful, policymakers rationalize advertising as an acceptable and necessary institution in society. (p. 374)

Understanding advertising in this manner, and, as a consequence, focusing efforts on the abolishment of “deceptive” advertisements, this narrow regulatory view

fails to appreciate the structural relationship between advertisers and media, upon which democracy and culture have become overwritten, as well as the complex relationship between advertising and over consumption, cultural values, socialization, identity formation, environmental degradation, erosion of the public sphere, and distortion of social communication. (Leiss et al., 2018, p. 376)

Kline and Leiss (1996) stress that “it is necessary to appreciate the complexity of this cultural sub-system if we are to broach the question of policies and regulation” (p. 121).

The tendency to consider only marketplace problems extends beyond the arena of advertising; in fact, this is a concern raised by some media policy critics. Political economists, such as Baker (2002) and Pickard (2020), describe how media do not function like other commodities in the marketplace. Media, exemplified by journalism, are public goods with positive externalities in a democracy, such as informing public discourse, allowing audiences to understand the perspectives of a diversity of people, and deterring abuses of power. Taylor (2014) approaches cultural production as a public good. Napoli (1999) suggests that traditional policy contexts rarely address the full range of externalities produced by communications/media enterprises. Napoli distinguishes “social regulation,” which expresses concern “for physical, moral, or aesthetic well-being of the population” (p. 568), from economic regulation, which attends only to the smooth running of markets. The FTC has the potential to make both social and economic decisions, but tends to default into a marketplace orientation (Napoli, 1999).

Regulators, when developing policies, drafting guidelines, or ruling on cases, are limited by their own mandates and by law. Section 5(a)(1) of the Federal Trade Commission Act (2018), which proclaims “unfair or deceptive acts or practices in or affecting commerce are hereby declared unlawful,” is the legal basis for the commission’s interventions on advertising. That language leaves little room to consider larger social and cultural consequences. The FTC further developed their stance on misleading advertising in a 1983 policy statement on deception. This policy statement, as explained by Campbell and Grimm (2019), clarifies that deceptive advertising misleads consumers in a material manner in the sense it is “likely to cause consumers to choose or purchase differently” (p. 113). Similar legal parameters are present in Canada’s Competition Act, which also rests on a material deception that alters buying decisions. The United Kingdom introduced the Control of Misleading Advertising Regulations in 1988, defining misleading advertising as something that “deceives or is likely to deceive the persons . . . and if, by

reason of its deceptive nature, it is likely to affect their economic behaviour" (provision 2). The United Kingdom updated this legislation in 2008, under the Consumer Protection from Unfair Trading Regulations, which still emphasize "material deception" which "is likely to cause the average consumer to take a transactional decision [they] would not have taken otherwise" (provision 2).

This invites consideration of how we got to this point where the only possible social problem of advertising is an individual consumer deceived into purchasing something they would not otherwise. Through self-regulatory and lobbying efforts since the early 1900s, the advertising industry itself helped to construct the legal framework that persists today, whereby, as long as messages are not misleading in a material manner, advertising should not concern citizens and hence policy makers. Section 5 of the FTC Act—crucial to the FTC's interventions on advertising—comes from the Wheeler-Lea amendment of 1938. Stole's (2006) history of consumer activism and advertising industry lobbying during the 1930s reveals the role the industry played in ensuring this legislation largely preserved the status quo. The FTC's new powers to control deceptive advertising worked within, not against, the interests of advertising and commercial media.

This is because the advertising industry itself has long embraced the principle of "truth-in-advertising." Ewen's (1976) work documents how the advertising industry trade press championed truthful advertising between 1910 and 1920 and proposes that "the very notion of truth emanated not from any social values or ethics external to their business, but was a product of their business" (pp. 70–71). Johnston's (2001) history of the Canadian advertising industry emphasizes how the promotion of truthful advertising played a central role in helping to professionalize the field at the turn of the 20th century—and, in particular, distance the new "professional adworkers" from the outrageous claims of patent medicine makers and circus promoters like P. T. Barnum. Canadian agents even formed local vigilance committees to monitor misleading advertising in cities such as Toronto—a precursor to the self-regulatory Ad Standards. Truth-in-advertising became the mantra of a summer 1924 Associated Advertising Clubs of the World convention in London. Navon (2017) explores how "truth" was the "single trope" that dominated this important convention's "speeches, literature, and even decorations" (p. 151). Navon suggests the industry's efforts to eradicate blatantly deceptive advertising helped to "rehabilitate advertising's public standing" (p. 171). Hansen and Law (2008) concur that truth-in-advertising functioned primarily to improve "the credibility of advertising" (p. 252).

We can draw two conclusions from this early 20th-century movement. First, laws and self-regulatory codes prohibiting deceptive advertising do not threaten the advertising industry. On the contrary, the industry itself actively embraced the establishment of such consumer protections. Applied to native advertising and influencer marketing in the contemporary moment, we must consider whether guidelines for disclosure are a challenge to the industry, or instead something that legitimizes these practices. Our analysis will show how regulators expressly declare native advertising and influencer marketing to be acceptable formats, as long as they are disclosed. This parallels the early 20th-century agreement that advertising is acceptable, as long as it is honest. Hansen and Law (2008) present evidence that advertising expenditures increased after truth-in-advertising regulations began, proving the value of such regulatory consent.

Second, embedded in the industry-championed truth-in-advertising movement is a rationalization for the narrow regulatory paradigm. In the early 20th century, within the promotion of truthful advertising,

trade groups articulated a vision of advertising as being informational more so than cultural or even persuasive. The Canadian industry promoted advertisements as “news of merchandise” that “allowed customers to familiarize themselves with new goods, compare prices between stores, and plan shopping trips that made efficient use of their time” (Johnston, 2001, p. 90). Bartholomew (2017) argues that the American legal system believes in a hyper-rational consumer and so, from the perspective of policy makers, laws against false advertising are all that is required to ensure marketplace efficiency is not jeopardized. Under this conceptualization, advertising has only an economic function of conveying information to consumers; regulators, a century later, are left to consider only this economic function when governing advertising in digital and social media environments.

Analysis of Regulatory Documents

We now examine how various regulatory documents related to native advertising and influencer marketing demonstrate the narrow, consumer-centric paradigm. This analysis of primary texts is coded into four subheadings: truth-in-advertising foundations, consumer protection framing, material impact on purchase decisions, and disclosure breaches. Last, some exceptions to the narrow paradigm are noted.

Truth-in-Advertising Foundations

Guides from both the FTC and Ad Standards include the phrase “truth-in-advertising,” the slogan of the industry in the early 20th century. The FTC’s (2017c) frequently asked questions for influencers state “the Guides, at their core, reflect the basic truth-in-advertising principle that endorsements must be honest and not misleading” (para. 3). In a blog post warning influencers to always disclose their sponsorships, the FTC (2017a) likewise explains “what we saw raised concerns about whether some influencers are aware of truth-in-advertising standards about endorsements and disclosures” (para. 2). Truth-in-advertising also appears in statements on native advertising; for example, the FTC (2015b) foregrounds the phrase in their native advertising guidelines and, in a separate press release, defends their standards as applying “time-tested truth-in-advertising principles to modern media” (Federal Trade Commission, 2015c, para. 3). Turning to Canada, Ad Standards’ (2019) disclosure guidelines similarly declare “the misleading advertising and deceptive marketing provisions apply to influencer marketing just as they do to any other form of marketing” (p. 4).

The regulatory bodies lean on truth-in-advertising for precedent. Regulators appear to be defending their guidelines as an extension of ongoing, predigital media advertising norms rather than new and burdensome rulebooks. While truth, for the advertising industry will always be a strategically ambiguous—if not completely incongruous—word, it tends to be deployed as a substitute for “honesty,” and therefore the antithesis of dishonest advertising. Truth-in-advertising, historically, confronted product claims made in advertising, directing marketers to only make factual and honest claims about a product’s performance or features. In the current context, the honesty connoted by truth-in-advertising requires a different articulation. Regulators are not necessarily concerned with claims made in advertisements and many native advertisements are entirely devoid of product claims. Instead, regulators invoke truth and honesty in relation to being transparent with audiences about the sponsored nature of content.

Consumer Protection Framing

Collectively, the documents analyzed are all framed through the lens of protecting consumer rights; regulators craft guidelines, and rule on individual cases, to protect consumers from harm in the marketplace. Ad Standards' (2019) disclosure guidelines document confirms that influencer marketing is an acceptable practice, as long as consumers are not harmed, explaining, "While nothing is wrong with advertisers compensating influencers, or with influencers accepting compensation, both parties to these relationships need to remember that they are making marketing representations to consumers" (p. 4). CAP's (2015) vlogger guidelines echo this frame, clarifying "there is nothing wrong with vloggers (or others creating editorial content), marketers or agencies entering into commercial relationships: what's wrong is if consumers are misled" (para. 1). In a press release summarizing a judgement against YouTubers promoting Microsoft's Xbox One, an FTC official affirms "when people see a product touted online, they have a right to know whether they're looking at an authentic opinion or a paid marketing pitch" (Federal Trade Commission, 2015a, para. 3). In another press release publicizing a case against Lord & Taylor's Instagram campaign, the same official defends "consumers have the right to know when they're looking at paid advertising" (Federal Trade Commission, 2016a, para. 4). A similar line framing transparent disclosure as a "consumer right" appears in other FTC press releases (e.g., Federal Trade Commission, 2016b).

More revealing, the word "consumer" is used throughout all of the ASA's decisions. Related, the FTC's (2015b) policy statement on deceptively formatted advertisements—more commonly known as the FTC's native advertising guidelines—uses the word "consumer" 101 times while the word "citizen" is entirely absent from the 16-page document. This is not surprising, given that the FTC is mandated to protect consumers from deceptive practices.

Material Impact on Individual Purchase Decisions

Consumer protection, and consumer rights, can be conceptualized broadly (Stole, 2006); however, within the narrow regulatory paradigm it is the individual, sovereign consumer who must be protected from making misinformed buying decisions. Legally, this is considered material deception. The FTC's (2015b) native advertising guidelines subscribe to this:

The Commission has long held the view that advertising and promotional messages that are not identifiable as advertising to consumers are deceptive if they mislead consumers into believing they are independent, impartial, or not from the sponsoring advertiser itself. Knowing the source of an advertisement or promotional message typically affects the weight or credibility consumers give it. (p. 1)

These guidelines later clarify "deception occurs when an ad misleads consumers about a material fact" and that "material facts are those that are important to consumers' choices or conduct regarding a product" (Federal Trade Commission, 2015b, p. 14). In a press release announcing a settlement against gaming YouTubers, the FTC's chairman explains, "this action, the FTC's first against individual influencers, should send a message that such connections must be clearly disclosed so consumers can make informed purchasing decisions" (Federal Trade Commission, 2017b, para. 4). As such, it is not consumers—as a

collective—that regulators are protecting. Instead, it is the sovereign consumer at a moment in their individual purchase decision funnel that warrants regulatory protection from potentially “biased” digital content.

Disclosure Breaches

In all of the regulatory cases examined, the complaint and decision rest, at least in part, on improper disclosure. A disclosure indicates to viewers that content is in fact a paid advertisement, or that there is some kind of material benefit between a brand and the content creator. Disclosure on a native advertisement could be a prominent “paid advertisement” label; in a social media context, disclosure could come in the form of a hashtag such as “#advertisement.” The consensus among regulators is that disclosure should be unambiguous, avoiding unclear phrases such as “brand partner,” and be presented to viewers *before* they engage with the content. As seen with extensive guidelines and frequently asked questions documents (e.g., Ad Standards, 2019; Federal Trade Commission, 2017c), or even studies commissioned by regulators (e.g., Federal Trade Commission, 2017d, a 93-page experimental study), disclosure is the main regulatory issue for recent digital advertising strategies.

For each FTC case on influencers, the final settlement includes clauses related to monitoring and reporting on “clear and conspicuous” disclosure practices for periods up to five years. The FTC issued fines in only two cases, Learning Systems Inc. and Teami. For the most part, the FTC regulates by education, future monitoring, and deterrence. When the FTC announces complaints and/or settlements in press releases or blog posts, they foreground disclosure. For example, in the case against Warner Bros. Home Entertainment, the FTC accuses the advertiser of instructing YouTube gaming influencers to bury disclosures “below the fold” at the very bottom of a lengthy video description, where viewers are unlikely to ever see it. The FTC’s (2016c) decision declares “the failure to disclose or disclose adequately this fact, in light of the representations made, was, and is, a deceptive practice” (p. 4). The FTC also reprimands Lord & Taylor for not requiring paid Instagram influencers to disclose the partnership; in a press release on the settlement, the FTC’s director scolds the brand for “not being straight” with consumers (Federal Trade Commission, 2016a, para. 4). One of the FTC’s earliest cases related to influencer marketing, a 2011 ruling against Learning Systems Inc., is a matter of disclosure; in a blog post, the FTC (2011) alleges the company “disseminated deceptive advertisements by representing that online endorsements written by affiliates reflected the views of ordinary consumers or ‘independent’ reviewers, without clearly disclosing that the affiliates were paid for every sale they generated” (para. 4).

Complaints dealt with by the ASA frequently get into the specifics of disclosure, with almost all cases falling under Section 2.1 (“marketing communications must be obviously identifiable as such”) of CAP’s (2014) non-broadcast advertising code. In a case against a Michelin native advertisement, the ASA deems the disclosure of “in association with” inadequate because it fails to convey that Michelin paid for, and had veto power over, the article’s content. In an influencer case against soft drink brand J2O, the ASA ruled that the hashtag used in the Instagram campaign, “#sp” is inadequate. Other ASA decisions, such as a complaint against Flat Tummy Tea, assert that “tagging” the brand on social media is also an insufficient disclosure. In response to ASA complaints, advertisers frequently blame others—such as blaming an intermediary marketing firm, or influencer network—for failing to enforce disclosure standards, rather than

disputing the necessity of disclosure. Not unlike truth-in-advertising a century ago, advertisers do not appear to be resistant to disclosure requirements prescribed by regulators.

Across three different nations, and even different regulatory models, the response to native advertising and influencer marketing is remarkably consistent: The regulatory problem to be solved is consumers being misled about the sponsored nature of content, and so the solution is clear and conspicuous disclosure. The regulatory bodies even confirm that native advertising and influencer marketing themselves are acceptable, as long as they are disclosed properly. The documents and cases we examined establish that “clear and conspicuous disclosure” is the 21st century equivalent of “truth-in-advertising”—a refrain that appears to eliminate abuses while simultaneously maintaining a narrow paradigm. Moreover, the advancement of clear and conspicuous disclosure, as with truth-in-advertising a century ago, is a regulatory measure embraced by the industry. The IAB’s own documents on native advertising also stress clear disclosure, demonstrating that the FTC is simply reinforcing industry norms (Interactive Advertising Bureau, 2019).

Exceptions

Within our sample, we located isolated moments where regulators opened the door for other debates or acknowledged broader social and cultural externalities. Health is one example: The ASA upheld a complaint against weight-loss product maker Skinny Caffe, promoted by a pregnant celebrity on Instagram, in part because the post also encourages dieting during pregnancy. This was the only ASA complaint we located that fell under Section 1.3 (“marketing communications must be prepared with a sense of responsibility to consumers and society”) of CAP’s (2014) non-broadcast advertising code. Several native and influencer FTC cases also concern the regulator because of scientific or health claims (most often weight loss) that could not be substantiated, and as such, could harm health.

Another notable example is the transcript for the FTC’s 2013 workshop titled “Blurred Lines: Advertising or Content?” The scope of this workshop went beyond the narrow paradigm because the FTC invited participants to consider questions such as the impact of native advertising on publishers and how publishers can or should maintain a wall between advertising and editorial. Nicholas Lemann, from the Columbia School of Journalism, spoke about a range of nonconsumer issues. Lemann described advertising as a corrupting factor and outlined the history of “church and state” debates in journalism. Bob Garfield, a journalist/columnist also spoke, and moved the FTC’s attention beyond narrow consumer issues, arguing that 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. (as cited in Federal Trade Commission, 2013, p. 134)

In their consumer research, Ad Standards (2017) surveyed Canadians on whether native advertising results in making news sources less trustworthy. However, the resulting guidelines and rulings from Ad Standards and the FTC still fall into the narrow regulatory paradigm.

Discussion: What the Narrow Paradigm Misses

For advertisements cloaked as news, there are indeed reputational issues for journalism. Hardy (2017) suggests that “such branded content undermines, or threatens to undermine, the integrity of channels of communication” and, matching our argument, concludes “there is more at stake here than the protection of consumers from deception” (p. 83). Pickard (2020) similarly cautions “these increasingly common forms of advertising are deeply problematic,” not because they influence individual consumer decisions, but instead because native advertising has risen in parallel with “ethical concerns about misinformation, public trust, and social responsibility” in journalism (p. 81). Wojdyski and collaborators are leaders in native advertising media effects studies, producing both theoretical models (e.g., Wojdyski & Evans, 2020) and experimental studies (e.g., Amazeen & Wojdyski, 2018). This body of research shows how audiences frequently fail to detect native advertisements, but once they do recognize content as advertising, audiences assess the source to be less credible. A negative outlook on the publisher, and possibly institution of journalism in general, is a coping mechanism for audiences. Wu and associates (2016) likewise reveal how news organizations may be risking their own public standing. Bachmann and colleagues’ (2019) experimental study also concludes that the inclusion of native advertising does the greatest reputational damage to sources perceived by audiences as high-quality journalism.

Other important research on native advertising examines production-side power struggles and attitudes. Li (2019) unpacks the management defenses of native advertising, noting how business/management “discourses moved on to delegitimize the century-old editorial–business boundary as obsolete, irrelevant, and obstructive to the media business in the twenty-first century” (p. 534). Native advertising results in internal battles at media organizations over the fundamental role of journalists. This divide is opening at a time when news organizations are struggling with debt and competing for revenue against platforms—namely, the advertising duopoly of Facebook and Google (Pickard, 2020). Serazio’s research (2019a, 2019b) consists of interviews with journalists and those producing news-like branded content directly for advertisers. He argues that

the “survival rhetoric” within journalism explains how both institutions and professionals are willing to acquiesce . . . journalists and news organizations tell themselves that they have to transgress church–state boundaries that might have precluded participation in more stable previous eras. (Serazio, 2019b, p. 13)

These themes likewise surface in Cornia and associates’ (2020) interviews with editors, including ones trying to promote “business oriented newsrooms” (p. 183). At *The New York Times*, the business-side executive who helped launch their T Brand Studio native advertising unit eventually became chief operating officer for the company (Victor, 2017).

Regulators question whether native advertisements have clear disclosures, but this legitimizes an advertising format that negatively impacts the working conditions of journalists, whose labor provides an important social and political function. Serazio (2019b) describes native advertising as absorbing the ambitions of journalism “and the labor and laborers who are practiced at it” for “vested purposes” (p. 13). Carlson (2015) asserts that “all native advertising rests on a set of criteria based, in the end, on increasing

brand awareness rather than on the professional judgment of journalists" (p. 861). Though many publishers have in-house "studios" with separate nonnewsroom staff to produce native ads, Serazio (2019a) suggests "some—perhaps many—in-house native advertising studios also seem to be repurposing newsroom employees" (p. 690). Serazio even observes journalism schools adapting to this new work environment by offering training in writing for brands. Einstein (2016) points out that those trained as journalists are now more likely to find work in public relations, or writing branded content. Native advertising exploits a labor pool of increasingly vulnerable journalists.

Concerns over the labor conditions of content creators also accompany influencer marketing, but, once again, there is no space in the narrow regulatory paradigm for such issues to be raised. There is a consensus among critical academic works that being an influencer is a precarious and often exploited form of immaterial labor. Being a social media influencer demands visibility labor, emotional labor, self-branding labor, and glamor labor (Duffy & Wissinger, 2017). Yet for every influencer who has achieved financial success, there are many others producing content hoping to be noticed, a form of aspirational labor (Duffy, 2017). Stoldt and collaborators (2019) point out how "new entrants to the industry are more likely to work without financial compensation" (p. 7). Other influencers "practice self-exploitation by overdelivering" (p. 7) such as producing photos or videos beyond what the sponsor paid to earn a good reputation among advertisers (Stoldt et al., 2019). Stoldt and associates explain the reality that "aspiring influencers assume the entrepreneurial risks inherent in these efforts without any protections or workplace assurances" (p. 9). Van Driel and Dumitrica's (2020) research further explores the insecurity surrounding this kind of labor, such as having one's earnings tied to platforms over which they have no control. Duffy and Wissinger (2017) argue that celebrations of influencers living the good life "clouds perceptions of the deinstitutionalized, individualized, and demanding reality of the work" (p. 4664).

The invisibility of influencer labor—and accompanying precarity and exploitation—cannot be divorced from the gendered nature of this work. The field of "mom blogging," an early "influencer" category, reveals additional gender dynamics. Archer's (2019) research on mom bloggers explores how these women lack "separation between home and work and while conforming to some neoliberal demands of professionalism, individualism and consumerism, they have been propelled to negotiate a path that helps them manage an employment option within the constraints of a caregiver role" (p. 161). Banet-Weiser (2012) links self-branding in an economy of visibility to a neoliberal postfeminist subjectivity, arguing that for young women social media has shifted the adolescent identity question of "who am I?" to "how do I sell myself?" (p. 66). Moreover, for young people, influencer marketing may reinforce hegemonic notions of beauty (Marwick, 2015).

Our analysis revealed how regulatory bodies are concerned about the decisions of individual, sovereign consumers in the marketplace. Yet much of the critical academic literature on native advertising and influencer marketing highlights the experiences of content creators, the workers. This disconnect is a symptom of neoliberalism's supremacy. Elected leaders privilege individual consumers and the marketplace in policymaking, often at the neglect, or expense, of workers. This logic works its way down to the subjectivity of individual citizens, who are now more likely to identify as a consumer than worker (Bauman, 2007).

The very existence of native advertising and influencer marketing push us even further into an individualistic, consumer society. Influencer marketing and native advertising represent another step in the commercialization of communications media and the privatization of the public sphere, "further subsuming a potentially democratic form for commercial ends" (Serazio, 2019b, p. 15). The "ultimate progress of this trajectory," predicted by Einstein (2016), "is a world where there is no real content: Everything we experience is some form of sales pitch" (p. 8). We need media spaces—whether they be investigative journalism, which serves an important democratic function, or even lifestyle and fashion advice, which also serves an important function in identity formation and exploration—free from corporate pressures and control. Archer (2019) describes:

Blogging was initially viewed in its early days as a way of being heard, of community and connection. The rise of its commercial side, with PR practitioners thinking of mothers only as "consumers" and mom bloggers as potential consumer influencers and producers of commercially suitable content, has meant a change in both the practice and the virtual place—from a non-commodified public sphere to a marketplace. (p. 160)

Archer shows how mom bloggers who continue to write about serious topics, for example miscarriage, recognize their content is less likely to attract sponsorship compared with glowing product reviews.

Native advertising and influencer marketing may deprive digital media of important spheres while turning the remaining content into a sales pitch, the production of a "shoppable life" (Hund & McGuigan, 2019). This has consequences that range from consumer debt to environmental destruction. Here, we can see "deception" in these digital advertising formats, but it is a longer-term, collective consumer socialization, not the legally prescribed material deception. Advertising laws only address tangible claims made, and regulators only intervene when there is direct monetary or physical harm to individual consumers (Bartholomew, 2017).

A further "nonmaterial" deception may occur as a result of advertising's underlying technological architecture. Native advertising and influencer marketing campaigns, like most digital advertising, are planned and delivered based on algorithms. Native advertisements can be purchased and served programmatically (Interactive Advertising Bureau, 2019). Influencer marketing entirely depends on platforms, specifically their algorithms that determine trending content and accelerate exposure (O'Meara, 2019). The more data available, the more advanced these algorithms become. Because influencer marketing is both the result of, and further generates, vast amounts of data on platforms, various influencer marketing networks serve as intermediaries between the social media personalities and brands. These networks, with names such as "CreatorIQ" or "Upfluence," offer brands a wealth of data on influencers and boast about their use of artificial intelligence (AI) to ensure brands are matched with the most appropriate influencer.

Katyal (2019) surveys how algorithms and AI, what drives digital advertising, (re-)produce discrimination and oppression. Katyal calls for a re-thinking of consumer rights laws to account for these injustices, arguing,

We have through AI empowered the majority through machine learning to have decision making power over the rights of minorities, the outliers, the ones who need enfranchisement the most. *And we often cement these choices through the power of advertising.* (para. 66, emphasis added)

Yet the codes that Ad Standards and the ASA enforce only deal with the manifest content of advertising without consideration of how the advertisements are served, and to whom. While the FTC has broader power, the commission's native advertising and influencer marketing cases only concern advertising content; discussions of digital advertising's underlying architecture did not appear in any of the documents examined.

Beyond the Narrow Paradigm

Advertising regulators can be accused of being ineffectual, less threatening to the industry than they appear on the surface. Digital advertising is too great in quantity and evolves too quickly to fully control (Schmidt, 2019). Consider the few cases pursued between 2010 and 2020, relative to the proliferation of these practices (see Appendix). Native advertising and influencer marketing, in particular, remain difficult for regulators to confront (Campbell & Grimm, 2019). These are dispersed, nonlinear, and sometimes ephemeral advertising formats. By their nature, they epitomize advertising's self-effacement (Serazio, 2013)—from consumers, and maybe even regulators. Furthermore, regulators are often beholden to interests other than the public. Both Ad Standards and the ASA are industry self-regulatory organizations with advertisers, media, and ad agencies as their members. While the FTC is external to the industry, Bartholomew (2017) documents how the commission faces pressure to trust the marketplace, noting how the Reagan era largely put an end to the FTC attempting to constrain commercialism. In the contemporary context, we can also see how the IAB, with a policy office in Washington, lobbies. The IAB appeared at the 2013 FTC native advertising workshop, arguing the industry should be trusted to develop its own, context-appropriate, disclosures.

However, our critique is more specific than questioning the overall effectiveness of regulators. Applied to the practices of native advertising and influencer marketing, we considered how regulators conceptualize the purpose and scope of advertising governance. We found that regulators frame the problems and solutions of native advertising far too narrowly. These recent digital advertising practices reveal why regulators should take a broader, holistic approach to advertising, one that considers more than individual consumer protections and instead recognizes various externalities; advertising is a social issue that bridges areas of economics, politics, labor, culture, identity, media, technology, and environment.

One alternative would be to govern advertising at the "root." Leiss and colleagues (2018) make the case that taxation is an indirect policy lever with which advertising can be regulated. Raising additional public money and investing it in public media or independent content creators (through grants) is a way to cut advertising off at the root; advertising requires less oversight if it is not as prevalent in the first place. Taylor (2014) calls for a democratization of culture. A core part of this proposal is funding artists and other cultural creators—which could mean those who produce content on social media—with public tax dollars. This is, according to Taylor, "crowdfunding, but with far wider obligations" (p. 228). Pickard (2020) advances a concrete plan to fund journalism publicly, by placing an additional tax on ads sold through Facebook and

Google (p. 171). Throughout his book, Pickard compares the public good value of journalism with that of education, the highway system, and the post office.

Another approach to advertising governance is needed as advertising practices continue to evolve and expand with media and technology. Despite nearly a decade of activity on native advertising and influencer marketing, regulators in Canada, the United Kingdom, and the United States operate within a historically constructed narrow view of advertising's problems. Their emphasis on disclosure ultimately validates native advertising and influencer marketing, much in the same way the "truth-in-advertising" mantra helped legitimize advertising in the early 20th century: appearing to align with critics on the surface, avoiding more structural questions on the role of advertising in society, and effectively sanctioning the practices, so they can continue unimpeded. Given the deeper social and cultural consequences of advertising, we might be better to limit these practices in the first place by shifting away from advertising-funded digital media.

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Appendix

Table A1: Ad Standards Cases (Canada).

Advertiser/agency	Type of advertising	Year	Result
Origin BioMed	Native advertising	2010	Complaint upheld
<i>Unidentified</i>	Native advertising	2012	Complaint upheld
<i>Unidentified</i>	Native advertising	2014	Complaint upheld
Cherise Jacques	Native advertising	2014	Complaint upheld
<i>Unidentified</i>	Native advertising	2016	Complaint upheld
Listen!UP Canada (now HearingLife)	Native advertising	2016	Complaint upheld
<i>Unidentified</i>	Influencer marketing	2017	Complaint upheld
Kamloops This Week	Native advertising	2017	Complaint upheld
<i>Unidentified</i>	Influencer marketing	2017	Complaint upheld
Federal Pardon Waiver Services Canada Inc.	Native advertising	2017	Complaint upheld

Table A2. ASA Cases (United Kingdom).

Advertiser/agency	Type of advertising	Year	Result
Michelin Tyre/Telegraph Media Group	Native advertising	2015	Complaint upheld
Britic Soft Drinks	Influencer marketing	2015	Complaint upheld
Greencoat Ltd. (also known as Animal Feeds)	Native advertising	2015	Complaint upheld
Alpro in association with AJ Odudu	Influencer marketing	2016	Complaint upheld
No 1. Watson Street	Native advertising	2016	Complaint upheld
Nomad Choice, Flat Tummy Tea in association with Sheikh Beauty	Influencer marketing	2016	Complaint upheld
World Trade Consortium Etna	Native advertising	2016	Complaint upheld
Wahoo Fitness in association with Play Sports Network	Native advertising	2017	Complaint upheld
British Broadcasting Corporation	Native advertising	2017	Not upheld
Vanity Planet and in association with Louise Thompson	Influencer marketing	2018	Complaint upheld
Zoe de Pass	Influencer marketing	2018	Complaint upheld
Brooks Brothers	Influencer marketing	2019	Complaint upheld
Department for Work and Pensions in association with Associated Newspaper Marks and Spencer	Native advertising	2019	Partially upheld
Matalan Retail in association with TL Blog	Influencer marketing	2019	Complaint upheld
Pepper Deals	Influencer marketing	2019	Complaint upheld
PrettyLittleThing	Influencer marketing	2019	Complaint upheld
The White Star Key Group (Skinny Caffe) and Jemma Lucy	Influencer marketing	2019	Complaint upheld

Table A3. FTC Cases (United States).

Advertiser/agency	Type of advertising	Year	Result
Legacy Learning Systems	Native advertising	2011	Complaint upheld
Thou Lee	Native advertising	2011	Complaint upheld
NPB Advertising	Native advertising	2014	Complaint upheld
Machinima	Influencer marketing	2015	Complaint upheld
Lord & Taylor	Influencer marketing	2016	Complaint upheld
Warner Brothers	Influencer marketing	2016	Complaint upheld
CSGOLotto	Influencer marketing	2017	Complaint upheld
Creaxion Corporation	Influencer marketing native advertising	2018	Complaint upheld
Telomerase Activation Science	Native advertising	2018	Complaint upheld
Teami	Influencer marketing	2020	Ongoing