

“I Am My Brother's Keeper: A Distributed Model of Consumer Protection and Self-Regulation”

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The explosive growth of commercial activity on the internet has been an economic driver for large companies like AOL, Yahoo, Microsoft and Google, but it has also enabled millions of small and medium sized businesses to enter the global marketplace. In turn these businesses, large and small, provide revenue to millions of Web publishers or Web site operators who host ad banners, text links, paid search results, and commission links. The blogger posting his daily thoughts on the state of democracy in his small town is in business with a Fortune 500 advertiser. The owner of Hampsterdance.com is paid commissions for generating sales for Wal-Mart and American Express. A local business in Hawaii, Hawaiiankinestuff.com has its ads appearing on Google, the WashingtonPost.com and NewYorkTimes.com.

Along with this incredible democratization of commerce comes a level of risk. The same network of relationships which enables the distribution of paid search results to hundreds of thousands of advertisers means that an advertiser doesn't know the partners who publish his ads. The Web publisher does not know the credentials of an advertiser or the merits of an offer that he displays on his Web site. A retailer may have thousands of Web sites working to generate sales for him, but will be unaware of the sales practices or incentives provided by his partners.

Select Advertising, Publishing and Ecommerce Intermediaries:

Google -- 400,000 plus advertisers and more than 200,000 Web sites

Yahoo -- 200,000 plus advertisers

Verizon SuperPages – 200,000 advertisers

Advertising.com (AOL) – 110,000,000 unique visitors, 500 advertisers and 3,000 plus publishers

Commission Junction – 1,600 merchants, 350,000 web sites

It is quite clear that the vast majority of publishers and advertisers are legitimate operators, providing value to consumers, competitive prices, and convenient commerce opportunities. But it is also obvious that scam artists, spyware operators, and shady dealers can take advantage of the open and democratic platforms provided by ecommerce intermediaries to insert themselves into the flow of economic activity.

Responsible actors who help enable this flow of commerce routinely use both technical and human review processes to provide compliance and quality control functions. They apply these processes to their own activities, but increasingly, they also seek to review and audit their partners. Search engines refuse to return paid results for high risk terms and seek to bar illegal advertisers. Web portals bar ads or review offers for quality. Ad networks restrict categories of advertisers or publishers from joining their networks.

Affiliate marketers seek to keep scam artists or spyware downloads from generating fraudulent commissions.

However, the sheer scale and breadth of these new ecommerce platforms, and the ingenuity and technical sophistication of the scam artists, make compliance efforts in these areas a significant challenge for even the largest and best resourced companies. New distributed models of consumer protection that are developing may provide a particularly effective and economical way to scale consumer protection practices and to ensure a baseline of responsible behavior.

The third party pharmacy review program used by Google, Yahoo, AOL and others is an example of this distributed model. Advertising by online pharmacies creates a particular risk for publishers, since some might claim that enabling an offshore and unregulated pharmacy to sell a controlled substance without a prescription creates a risk of criminal liability. And regardless of the legal issues, no responsible actor is pleased when a consumer ordering a life-saving medicine is sent a tainted product that could endanger their well-being. However, the challenge for the intermediaries is that there are hundreds of online pharmacies and pharmacy affiliates and the due diligence required to ensure the legitimacy of any pharmacy is cumbersome. A pharmacy and pharmacist license must be reviewed, DEA registration must be confirmed, the location of the pharmacy must be established, assurance that a valid prescription is always required by the seller must be obtained and more.

To respond to this dilemma, the above companies reached out to a third party and had the third party create an online pharmacy seal. The third party, for a fee from each pharmacy, reviews a pharmacy's practices against a set of required standards and issues a uniquely identified license and identification number. Yahoo, Google and AOL (Google provides paid search results for AOL) are now able to require that only companies who hold the required pharmacy seal can bid to appear as paid sponsor links on their sites or in their publisher networks.

Another example of a similar business to business compliance program which is emerging is Truste's Trusted Download program which is intended to assist businesses that wish to restrict their relationships with unwanted adware programs. Typical businesses face a number of compliance challenges on the adware front. An ad network may want to ensure that adware providers do not join its publisher network and to do so it will not only need to police the sites that join the network, but it will need to be concerned about whether any of those sites or networks of sites acquire inventory from another network. A merchant relying on an affiliate manager must worry about deceptive downloads generating commissions by displaying his offer as an unwanted pop-up triggered by software downloaded without consent on a user's computer. A search portal must be concerned both about adware downloads that seek to act as partner search results publishers, as well as adware that will bid to have sponsor links to its software appear in response to searches for free music or free screensavers.

Companies today respond to these concerns by establishing policies, including guidelines in contractual language with partners, and implementing compliance procedures. However, the varying levels of insight into the practices of adware companies, and the range of interpretations of acceptable behavior across business models has made reliance on a partner's review program less than optimal. Here, the Truste Trusted Download program should be particularly effective because it will provide intermediaries the ability to reference a neutral third parties list of companies that have passed its review and compliance program. Although the Truste program has yet to fully launch, already companies such as Yahoo, AOL, CNET and others have committed to restricting any business with software downloads that do not receive the approval of the program.

Programs such as the Trusted Download program and the pharmacy review program enable businesses to help protect consumers and broadly scale their compliance efforts. By requiring that tens of thousands of the companies in their extended networks meet the standards of a B2B seal or a third part reviewer, these ecommerce intermediaries are able to ensure the quality of their own practices, as well as to help shape the behavior of a wide range of the advertisers and publishers that consumers encounter. Such programs also help avoid the rush to the bottom that can occur when sub par advertisers provide the economic incentives that encourage competition for their business. They provide an economy of cost and an efficiency that allows a third party to review each advertiser once by an expert, instead of requiring each intermediary to conduct its own review and to develop the expertise in house to carry out such a review. And finally, these distributed programs also ensure the flexibility to adjust to restrict or to accommodate new business practices that develop as technology evolves in a manner that legislation is often unable to do.