



Advertising Industry in the Digital Age

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Summary

The U.S. advertising industry is under growing scrutiny from Congress and federal regulators, who are considering tighter oversight in areas ranging from Internet privacy to environmental claims on packaging to marketing aimed at children.

Lawmakers have been active on advertising issues. In the 111th Congress, Members introduced legislation to limit the tax deductibility of advertising for pharmaceutical marketing and circulated proposals to give consumers more ability to block technology that tracks individuals' activities online so that marketers may tailor advertising accordingly. House and Senate committees held hearings on privacy issues; advertising and marketing directed at children; and the state of the newspaper industry, which is in financial distress as advertising moves to the Internet and away from the print product. The Senate Committee on Commerce, Science, and Transportation held a hearing on potentially deceptive advertising practices, including false testimonial advertising, blogging, and other areas. Congress passed and President Obama signed legislation to regulate the volume of commercials on television (P.L. 111-311).

On the regulatory front, the Federal Trade Commission (FTC) released guidelines calling on bloggers to disclose paid product reviews, and in December 2010 recommended a Do Not Track function to allow consumers to prevent advertising and other firms from collecting data about individuals' online activities. The U.S. Food and Drug Administration (FDA) is examining pharmaceutical marketing in social networks and could propose guidance for online marketing early in 2011. In December 2010, the Department of Commerce Internet Policy Task Force released a paper on commercial privacy issues.

Much of this activity is in response to the rapid growth of advertising on the Internet. Online ad spending has jumped more than 400% during the past decade, to more than \$20 billion. The online market is dominated by a small number of firms, with the top 10 digital ad firms garnering more than 70% of all online ad revenues, a level that has remained relatively constant in recent years. "Search" advertising—where companies sell ads as part of consumer-initiated information queries on web browsers—accounted for nearly half of digital ad revenues in 2009, with Google, Microsoft, and Yahoo getting most of the online search traffic.

The key issue for lawmakers and regulators is how to protect consumers without stifling innovation. Rapid technological change is leading to new forms of advertising and to issues that were unknown only a few years ago, from competition in search advertising to fraudulent marketing over social networks. It is likely that regulators, and Congress, will continue to struggle to keep pace as they consider how to craft a workable system to oversee advertising in the rapidly changing digital world.

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Introduction

Congress has a long history of regulating advertising to ensure fair competition, shield consumers from unfair or misleading messages, limit the exposure of children, and restrict promotion of products such as tobacco and liquor deemed morally or physically harmful. Policymakers face new challenges as the advertising industry enters a period of far-reaching change brought about by the economic downturn and structural shifts as consumers move to the Internet and other digital platforms for news, entertainment, and socializing.

Federal oversight of the advertising industry has intensified as regulators and lawmakers try to keep pace with shifting technology and consumer habits. Lawmakers during the 111th Congress introduced legislation to limit the tax deductibility of advertising for pharmaceutical marketing¹ and circulated proposals to give consumers more ability to block technology that now tracks individuals' activities online so that marketers may tailor advertising accordingly.² House and Senate committees held hearings on privacy issues; advertising and marketing directed at children; and the state of the newspaper industry, which is in financial distress as advertising moves to the Internet and away from the print product.³ The Senate Committee on Commerce, Science, and Transportation held a hearing focusing on potentially deceptive advertising practices, including false testimonial advertising, blogging, and other areas.⁴

Federal agencies are also active in the advertising field. During 2009, the Federal Trade Commission (FTC) updated guidelines for product endorsements to cover bloggers,⁵ and in 2010 issued a preliminary report that supported giving consumers a "Do Not Track" option to prevent firms from following individuals' online activities and compiling and selling data on their observed preferences.⁶ The Food and Drug Administration (FDA) in 2009 held hearings on promotion of FDA-regulated products using social media and the Internet,⁷ and in 2010 proposed rules that would require that tobacco product packaging and advertising include graphic illustrations showing adverse health effects of smoking.⁸ The Federal Communications

¹ Office of Sen. Al Franken, "Franken Introduces Bill to End Tax Breaks for Drug Company Advertising," press release, October 8, 2009, http://franken.senate.gov/press/?page=release&release_item=Franken_Introduces_Bill_to_End_Tax_Breaks_for_Drugs_Company_Advertising.

² Rep. Cliff Stearns, "Stearns, Boucher Release Discussion Draft of Privacy Legislation," May 4, 2010, <http://stearns.house.gov/News/DocumentSingle.aspx?DocumentID=183894>.

³ Joint Economic Committee, "The Future of Newspapers: The Impact on the Economy and Democracy," Hearing, September 24, 2009.

⁴ Senate Committee on Commerce, Science, and Transportation, Hearing on Advertising Trends and Consumer Protection, July 22, 2009, http://commerce.senate.gov/public/index.cfm?p=Hearings&ContentRecord_id=ad2f9a08-8934-4ca0-a682-81df8e3ecdec&Statement_id=b88c8113-b5a4-4dee-a482-dc333c755409&ContentType_id=14f995b9-dfa5-407a-9d35-56cc7152a7ed&Group_id=b06c39af-e033-4cba-9221-de668ca1978a&MonthDisplay=7&YearDisplay=2009.

⁵ Federal Trade Commission, "FTC Publishes Final Guides Governing Endorsements, Testimonials," Press Release, October 5, 2009, <http://www.ftc.gov/opa/2009/10/endortest.shtml>.

⁶ Federal Trade Commission, "FTC Testifies on Do Not Track Legislation," Press Release, December 2, 2010.

⁷ Food and Drug Administration, "Promotion of Food and Drug Administration-Regulated Medical Products Using the Internet and Social Media Tools; Notice of Public Hearing," *Federal Register*, September 21, 2009, <http://edocket.access.gpo.gov/2009/E9-22618.htm>.

⁸ Food and Drug Administration, "Proposed Cigarette Warning Labels," November, 2010, <http://www.fda.gov/TobaccoProducts/Labeling/CigaretteProductWarningLabels/ucm2024177.htm>.

Commission (FCC) is assessing the adequacy of protections for children in the digital sphere, including advertising.⁹

The evolving digital advertising market has significant advantages. Small businesses can now reach millions of potential customers at low cost. Cell phones and other mobile devices give advertisers more access to more consumers for more hours of the day.¹⁰ Companies have increased ability to fine-tune ad strategies, with many now buying and adjusting media on a weekly or daily basis, rather than at set intervals during the year.¹¹ Firms can directly tout their products online, aided by so-called below-the-line marketing such as corporate websites, blogs, and e-mail solicitations.¹² Advertisers have long used demographic and other data to target audiences, but the Internet, with its veritable wealth of information about consumer behavior, is moving this practice to a new level.¹³

But the digital shift is also causing disruptions. The proliferation of ad-supported websites, online videos, blogs, and other offerings has created more potential advertising space than can readily be sold, depressing advertising rates in both online and in conventional media markets. The transition to online advertising has hurt newspapers, magazines, and other media dependent on ad revenues.¹⁴ The changing marketplace, and sharp economic downturn, which contributed to a two-year decline in U.S. advertising spending, also hit advertising-based businesses.¹⁵

The advertising industry is concerned about the possibility that Congress and regulatory agencies will continue pressing for tighter controls over advertising issues. Behavioral advertising, content served up to individuals based on tracking of their Internet use, is expected to be a “hot button” issue during the 112th Congress, according to the Association of National Advertisers, which represents corporations that purchase advertising.¹⁶ The group also recently warned its members that the “unprecedented amount of regulatory activity at the agency level is likely to pose significant threats to advertising interests in the coming year.”¹⁷ It also cautioned that Congress and the states may try to limit the tax deductibility of advertising as they search for revenues to close budget deficits.¹⁸

⁹ Federal Communications Commission, “FCC Releases Notice of Inquiry on Serving and Protecting Children and Empowering Parents in an Evolving Media Landscape,” Press Release, October 23, 2009, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-294197A1.pdf.

¹⁰ eMarketer, “Monetizing Mobile Ads,” Aug. 4, 2009, <http://www.emarketer.com/Article.aspx?R=1007209>.

¹¹ Christopher Vollmer, *Digital Darwinism*, a joint report by Booz & Company, Association of National Advertisers, Interactive Advertising Bureau, and American Association of Advertising Agencies, July 9, 2009, p. 10. http://www.booz.com/global/home/what_we_think/reports_and_white_papers/ic-display/46079.

¹² IBISWorld, *Advertising Agencies in the US: 54181*, April 14, 2009, p. 32; Jon Fine, “Marketing’s Drift Away from the Media,” *Business Week*, Aug. 6, 2009, http://www.businessweek.com/magazine/content/09_33/b4143064876775.htm.

¹³ Bryan Wiener, *2009 Social Marketing Playbook*, 360i, June 9, 2009, <http://blog.360i.com/social-media/playbook>.

¹⁴ Brian Wieser, *MAGNA Media Advertising Forecast*, MAGNA, July 13, 2009, <http://www.mediabrandsw.com/Attachments/NewsPress/MAGNA%20Media%20Forecast%20July%202009.pdf>.

¹⁵ Bureau of Labor Statistics data for advertising and related services, NAICS Code 5418.

¹⁶ ANA, “How the 2010 Midterm Elections Did and Did Not Change the Advertising Agenda,” <http://www.ana.net/content/show/id/20703>.

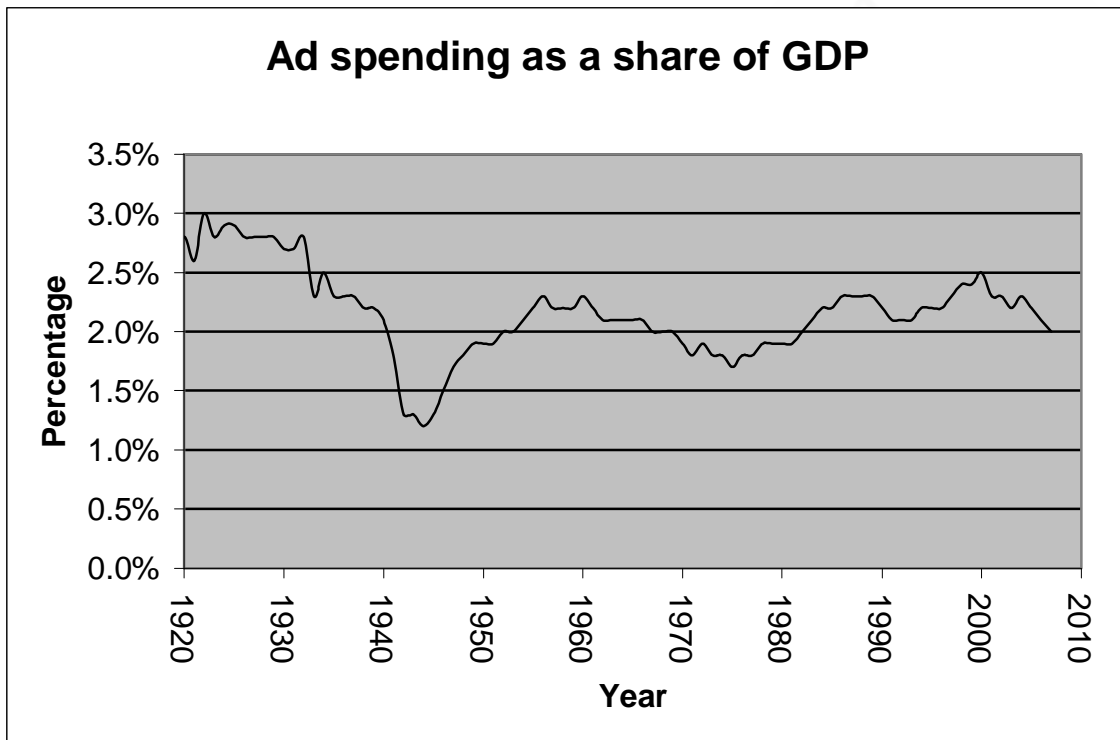
¹⁷ Ibid.

¹⁸ Ibid.

U.S. Advertising Industry

Advertising—the use of images, sounds, and slogans to communicate a message that will spark consumer interest in goods or services—is deeply ingrained in America’s market-based economy. Advertising allows businesses to promote products or burnish corporate reputations, politicians to connect with voters, the military to boost recruitment and advocacy groups to raise public awareness.

Figure I. U.S. Advertising and the Economy



Source: U.S. Advertising Industry Data, Purple Motes, McCann Erickson.

Advertising has been part of the U.S. economy since Colonial times.¹⁹ (See “U.S. Advertising History” box below.) Today, it is so intertwined in the nation’s daily business that consumers may not realize how constantly they are bombarded with product pitches. By one accounting, the average American is exposed to 500-1,000 advertisements daily.²⁰ Ads—ranging from a grainy line of text to sophisticated video—are everywhere from cell phones to gas pumps, billboards, television, newspapers, magazines, and movie screens.²¹

¹⁹ *Advertising Age*, “The Advertising Century, Advertising History Timeline,” 1999, <http://adage.com/century/timeline/index.html>.

²⁰ William F. Arens, David H. Schaefer, and Michael Weigold, *Essentials of Contemporary Advertising*, Second Edition. New York: McGraw-Hill Irwin, 2008, p. 34.

²¹ *Ibid.*

Advertising can improve market efficiency by providing consumers and businesses with information about products or services that increase competition and reduce prices.²² However, it may also limit competition by making it more expensive for new entrants to compete against established brands.²³ Misleading or untruthful advertising can reduce market efficiency by leading consumers to purchase products that are inferior, do not perform as promised, or are harmful.²⁴

Advertising has played another important role in the United States: providing a subsidy for “free” broadcast television and radio, low-cost newspapers, and magazines. U.S. newspapers have traditionally garnered about 80% of revenues from running advertisements, consumer magazines 55%, and some specialty publications such as business trade magazines up to 100%.²⁵ Broadcast radio and television depend on advertising for the vast bulk of their earnings.²⁶ The longstanding ad-based media model is now breaking down, with implications for specific businesses and, more broadly, for dissemination of news²⁷ and information.

Scale of the Advertising Industry

According to one longstanding measure, the advertising industry accounts for about 2% of annual Gross Domestic Product, the broadest measure of goods and services produced in the United States.²⁸ (See **Figure 1**.) Estimates of the size of the advertising industry vary; some measures also encompass marketing, which refers to the broader practice of researching, planning, and buying advertising.²⁹ Other industry definitions include public relations and other services.

Forecasting and consulting firm MagnaGlobal pegs total U.S. advertising spending at more than \$170 billion in 2010, predicting annual growth averaging nearly 4% from 2011 to 2016.³⁰ According to the Census Bureau, advertising and related service firms had \$84 billion in revenues in 2008. For the first nine months of 2010, such firms had revenues of \$56 billion, as compared to \$52.3 billion during the same period in 2009.³¹

²² CRS Report RL34101, *Does Price Transparency Improve Market Efficiency? Implications of Empirical Evidence in Other Markets for the Health Sector*, by D. Andrew Austin and Jane G. Gravelle.

²³ Maximilien Nayaradou, *Advertising and Economic Growth*, The University of Paris Dauphine (doctoral thesis partly funded by French Advertisers' Association), June 2006.

²⁴ Dianne See Morrison, “Consumer Groups Target Mobile Advertising; FTC Complaint Alleges Deceptive Practices,” *mocoNews.net*, Jan. 13, 2009.

²⁵ Standard & Poor's Industry Surveys, *Publishing & Advertising*, Aug. 21, 2008, p. 9.

²⁶ CRS Report R41458, *How Changes in the Economics of Broadcast Television Are Affecting News and Sports Programming and the Policy Goals of Localism, Diversity of Voices, and Competition*, by Charles B. Goldfarb.

²⁷ CRS Report R40700, *The U.S. Newspaper Industry in Transition*, by Suzanne M. Kirchhoff.

²⁸ <http://purplemotes.net/2008/09/14/us-advertising-expenditure-data/>; U.S. Census Bureau's *Historical Statistics of the United States, Colonial Times to 1970*, <http://www2.census.gov/prod2/statcomp/documents/CT1970p2-07.pdf>.

²⁹ William F. Arens et al, *Essentials of Contemporary Advertising*, p. 6.

³⁰ MagnaGlobal, “MagnaGlobal Advertising Forecast: Steady Growth with Soft Underpinnings in 2011,” Press Release, Jan. 18, 2011.

³¹ Census Bureau, *U.S. Government Estimates of Quarterly Revenue for Selected Services 3rd Quarter 2010*, Dec. 8, 2010, <http://www2.census.gov/services/qss/2010/qssq3-10pr.pdf>.

Table 1. Forecast U.S. Advertising Revenues

In Billions of Dollars

	2009	2010	2011	2012	2011-2016 #
Total Ad Spend Excluding Political and Olympics	163.2	168.2	173.3	179.0	2.5%
Annual Growth/Decline	-15.2%	3.1%	3.1%	3.4%	3.8%
Political*	.419	1.9	.483	2.1	NA
Olympics	0.0	.487	0.0	.621	NA
TOTAL AD REVENUES	163.6	170.7	173.8	181.9	NA
Annual Growth/Decline	-16.0%	4.3%	1.9%	4.7%	4.0%

Source: MagnaGlobal.

Notes: # Forecast Compound Annual Growth Rates. *Total political advertising on local broadcast and local cable TV.

Though various forecasters differ on bottom-line numbers, their trend lines are generally similar. Total advertising spending is forecast to improve during the next several years, after lagging during the recession (**Table 1**). Ad spending declined in 2008, compared to the previous year, and fell again in 2009. Putting the decline in context, advertising has not fallen for three consecutive years since the Great Depression. While the market is expected to continue to gradually rebound, some traditional media outlets—newspapers, magazines, and radio—may not see revenues regain pre-recession levels even over a five-year horizon.³²

Advertising firms across the country imposed layoffs and, in some cases, shut down as ad spending weakened. The number of people employed in advertising and related industries fell to 412,900 in November 2010 from a recent high of 478,600 in October 2007.³³

Digital Advertising

Even as the advertising industry grapples with the immediate impacts of the recession, it must adapt to structural changes as consumers migrate from traditional media to online platforms. Internet advertising has been the fastest-growing segment of the market, rising to \$22.6 billion in 2009, from \$4.6 billion in 1999.³⁴ The digital arena, loosely defined, includes video, text, and “display” advertisements placed on business and media websites, within social media like Facebook, on iPhones and digital readers. eMarketer, a forecasting and analysis firm, expects

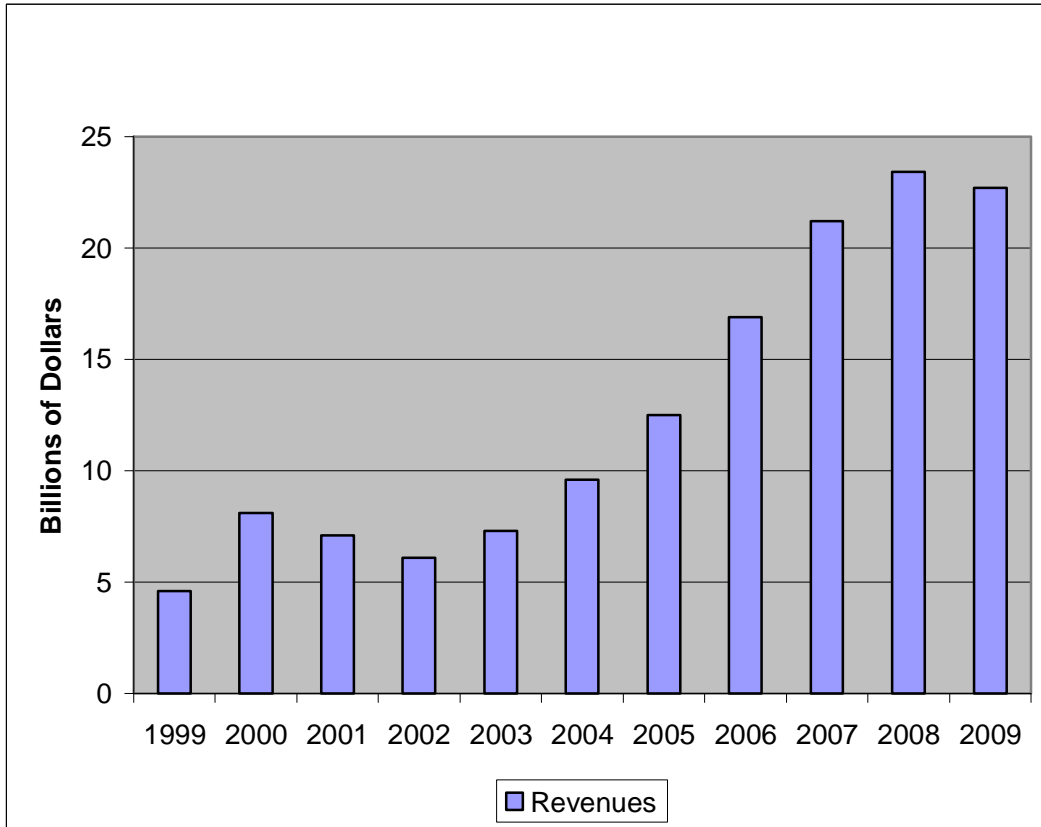
³² Brian Wieser, *Magna Media Advertising Forecast*, MAGNA, July 13, 2009. <http://www.mediabrandsww.com/Attachments/NewsPress/MAGNA%20Media%20Forecast%20July%202009.pdf>.

³³ Bureau of Labor Statistics data for advertising and related services, NAICS Code 5418. Data is not seasonally adjusted.

³⁴ Pricewaterhouse Coopers and Interactive Advertising Bureau, “\$6.4 Billion in Q3 2010 Sets New Record for Internet Advertising Revenues,” Press Release, Nov. 17, 2010, http://www.iab.net/about_the_iab/recent_press_releases/press_release_archive/press_release/pr-111710. The data show that 2009 was actually a decline from 2008 when revenues reached \$23.5 billion. However, the market is rebounding with third quarter 2010 Internet ad revenues up 17% from the previous year.

U.S. digital advertising to rise from more than \$22 billion in 2009 to \$40.5 billion by 2014.³⁵ The Internet has grown nearly twice as fast as cable television did in its infancy, for instance, measured in terms of ad revenues,³⁶ and with the advent of new technologies allowing long-form video on the web, has the capacity to emerge as a substitute for television as it presently exists.

Figure 2. Internet Advertising Revenues 1999-2009



Source: Interactive Advertising Bureau and Price Waterhouse Coopers.

Notes: Internet advertising revenues were rising in 2010, reaching a record \$6.7 billion in the third quarter of the year.

In some ways, the emerging digital world is very similar to the traditional advertising market. Newspaper and magazine websites run display ads along the sides or across the top of screen, in much the same way ads are posted in a physical magazine or newspaper. Radio and television websites impose audio and video ads in the midst of online programming, as in conventional broadcasts. Many ad prices are quoted in cost per thousand viewers, as in traditional media.

But in a number of vital ways, the markets are far different. One example is competition. A print newspaper may be the dominant source of information in its local market, but on the Internet that same newspaper is up against hundreds or thousands of websites, bloggers and Twitterers offering

³⁵ David Hallerman, *US Ad Spending: Online Outshines Other Media*, eMarketer, December 2010.

³⁶ Christopher Vollmer, *Digital Darwinism*, p. 4, http://www.booz.com/global/home/what_we_think/reports_and_white_papers/ic-display/46079566.

general news, information and opinion. The huge supply has made it tougher for media outlets, and other ad-dependent businesses, to charge premium prices online unless they have reached major scale, can sell unique content or have a desirable market niche/demographic.

Advertisers are discovering that it can be challenging to connect with online consumers, who have the power to screen content via pop-up blockers, digital recording devices, and other technologies. “With digital consumers increasingly in control of their media experience and advertisers shifting their spend to more interactive, measurable formats, companies must move beyond traditional advertising,” IBM Global Services analysts wrote in a report.

Another difference is the fact that despite the multitude of websites and social media, the online advertising market is compressed. The top 10 firms that sell advertising space on websites, such as Google and Yahoo, accounted for more than 70% of online ad spending in 2009 and the top 50 for 89%, according to the Interactive Advertising Bureau (IAB).³⁷ Search advertising alone accounts for about 47% of digital ad spending.³⁸ Under search, an advertiser bids, via an ongoing auction process, to have an ad displayed when a consumer types a query into a search engine using a given keyword. The search market is dominated by Google and Yahoo, the latter in partnership with Microsoft, which owns the Bing search engine.

Benjamin Edelman, an assistant professor at Harvard University, has proposed a Bill of Rights for Advertisers, saying the concentrated market places them at a clear disadvantage. Edelman says large ad companies should be more transparent about ad placement and pricing, advertisers should have easy access to data about where ads are placed, more detailed billing information and more control over the use of data generated by search advertising.³⁹ “It’s a very high burden for the advertiser to figure it all out,” Edelman says.

Measurability

One major difference between established and emerging markets is the availability of advanced tools to quantify consumer response. Advertisers have long used data to determine where to place ads and to glean insight into consumer response. Nielsen measures television viewership through consumer panels and electronic devices. Arbitron Inc. is a leader in radio audience measurement. The Audit Bureau of Circulations measures sales of newspapers. Companies may supplement these audience measurements with other qualitative research on consumer demographics and behavior, as well as separate surveys designed to measure return on investment.

In the digital world, advertisers have access to faster, more granular measurements. Digital advertisers can count the number of people who click on an ad, forward an email, or view a video. “One of the primary benefits of digital advertising is that it lends itself to quantitative analysis. Companies can easily track ad impressions, click-throughs, unique visits and time spent on each page,” according to a case study published by Dartmouth’s Tuck School of Business.⁴⁰

³⁷ Interactive Advertising Bureau, “Internet Ad Revenues at \$10.9 Billion for First Half of 2009,” Press Release, Oct. 5, 2009.

³⁸ Ibid.

³⁹ Benjamin Edelman, *Towards a Bill of Rights for Online Advertisers*, Sept. 21, 2009, <http://www.benedelman.org/advertisersrights/>.

⁴⁰ Ashley Martin, *Nolej Studios: Growing a Creativity-Based Business*, Tuck School of Business at Dartmouth University, Case #6-0028, May 5, 2008.

U.S. Advertising History

The modern ad industry traces its roots to the 1800s, when advances in photography, magazines, the telegraph and other technology brought about national communications, mass production and mass marketing.⁴¹ Volney Palmer, a Philadelphia businessman, formed the first U.S. advertising agency in the 1840s, when he began buying large chunks of ad space from newspapers and reselling them to clients at a higher price.⁴² At the close of the 19th century, advertising agencies had moved from merely brokering sales to creating advertising content. The industry became more professional and more persuasive.

In the 1920s, the J. Walter Thompson advertising agency hired noted psychologist John Watson, a leader in behaviorism, which explains human action in terms of stimulus and response.⁴³ George Gallup, later famed for his polling firm, joined ad agency Young and Rubicam in 1932.⁴⁴ Advertising expanded with the growth of radio. Advertising firms backed radio programs such as the Fleischman's Yeast Hour, with crooner Rudy Vallee, and the Lucky Strike Dance Hour; two of the top-rated evening radio programs of 1930-31 season.⁴⁵

With the advent of television in the 1940s, advertising was again transformed. As with radio, advertisers initially supported programs—Milton Berle's Texaco Star Theater and Kraft Television Theater are examples—but costs became prohibitive. Advertisers moved from backing entire programs, to buying one- or two-minute blocks of time. They still had influence over which programs would be broadcast, but the networks controlled program content.⁴⁶

The advertising industry hit creative highs during the 1950s and 1960s. Chicago ad firm Leo Burnett created product icons like the Jolly Green Giant, Pillsbury Dough Boy, and Marlboro Man.⁴⁷ Ad firm Doyle Dane Bernbach's "Think Small" promotion campaign for the Volkswagen Beetle—which created wide consumer acceptance for a runty foreign car that looked like nothing on American roads—is rated by many as the most influential ad campaign in U.S. history.⁴⁸

In the 1970s and 1980s prominent ad firms—some with competing clients—were merged or taken over. The ad sector is now dominated by large holding companies such as Publicis Groupe and Omnicom. The recession of the early 1980s changed advertising patterns as advertisers began relying more on promotions via coupons and direct marketing. By 1990 the advertising industry had lost 25% of its share of business marketing budgets to other forms of marketing communications. Additional changes meant the loss of 13,500 advertising jobs in three years.⁴⁹

By the mid-1990s, advertising budgets were again growing at double-digit rates. The industry took another hit when the dot.com bubble burst in the late 1990s.⁵⁰ In recent years smaller, edgier firms have gained prominence. New companies focus on digital advertising and marketing. New ad networks are springing up on the web.⁵¹

⁴¹ William F. Arens, et al, *Essentials of Contemporary Advertising*, p. 13.

⁴² Donald R. Holland, "Volney B. Palmer: The Nation's First Advertising Agency Man," *The Pennsylvania Magazine of History and Biography*, Vol. 98, No. 3 (July 1974), pp. 353-381, <http://www.jstor.org/stable/20090872>.

⁴³ Joanne Cavanaugh Simpson, "It's All in the Upbringing," *Johns Hopkins Magazine*, April 2000, <http://www.jhu.edu/~jhumag/0400web/35.html>.

⁴⁴ *Advertising Age*, "The Advertising Century," Advertising History Timeline, 1999, <http://adage.com/century/timeline/index.html>.

⁴⁵ Michael Mashon, *Sponsor*, The Museum of Broadcast Communications, <http://www.museum.tv/archives/etv/S/htmlS/sponsor/sponsor.htm>; The Original Old Time Radio (OTR) WWW Pages "The Highest Rated Programs During Radio's Golden Age, 1930-31 Season," <http://www.old-time.com/ratings/by%20season/1930s/19301931eve.html>.

⁴⁶ William F. Arens, et al, *Essentials of Contemporary Advertising*, p. 16.

⁴⁷ *Time*, "Builders & Titans, Leo Burnett," December 7, 1998, <http://www.time.com/time/time100/builder/profile/burnett.html>.

⁴⁸ *Advertising Age*, "The Advertising Century, Top 100 Advertising Campaigns," 1999, <http://adage.com/century/campaigns.html>.

⁴⁹ William F. Arens, David H. Schaefer, and Michael Weigold, *Essentials of Contemporary Advertising*, p. 13.

⁵⁰ *Ibid*, p. 16.

⁵¹ Borrell Associates/Clickable, *Economics of Search Marketing*, June 2009, <http://www.borrellassociates.com/component/content/article/76-economics-of-search-marketing-addressing-the-challenges-of-a-scalable-local-advertising-model>.

Most online ads are sold on the basis of consumer response. According to the IAB, 37% of online ads sold in 2009 were priced on cost per impression (the number of times viewers saw an ad), with 59% sold on a performance basis such as cost per click.⁵² The rest were sold on a hybrid basis.

There are questions as to the accuracy of such metrics. comScore, a leading U.S. firm measuring consumer digital behavior by tracking behavior of a million U.S. consumer volunteers, says only about 16% of Internet users clicked on an ad in March 2009, and just 8% of Internet users accounted for nearly 85% of all clicks; it contends that advertisers that ignore Internet users who do not click on ads are making a mistake.⁵³ Measurement of clicks can also be manipulated through click fraud, the practice of generating spurious clicks to make ads look more popular and thereby increase website owners' revenues.⁵⁴

Whatever the imperfections, the new gauges have pushed other media toward more finely tuned measurement tools. For example, technology company TRAnalytics has developed a measurement system combining information from monitoring devices placed atop televisions, household purchase data gleaned from scanners in stores and from advertisers, and demographic data.⁵⁵ Other firms are trying to go beyond clicks to things such as "dwell time"—the amount of time a consumer spends with a promotion including watching video, expanding the size of an ad or forwarding it to friends.⁵⁶ Nielsen in 2010 announced it had developed a new system for measuring online audience.⁵⁷ A coalition of advertising and media companies has formed a consortium to develop a new system for measuring audience across multiple media platforms.⁵⁸

Search Advertising

A vexing challenge for advertisers is how to best find potential customers in the large, but atomized, digital world. Search advertising has emerged as the main answer. Search, which did not exist a decade ago, now has about 4% of the overall ad market and accounted for 47% of the digital ad market in the first half of 2010.⁵⁹ In the search model, advertisers bid for certain key words such as "Aruba vacation." If they win, their ad is displayed on a web page when search results are listed. Advertisers generally pay only if a consumer clicks on their ad.

⁵² Interactive Advertising Bureau, *IAB Internet Advertising Revenue Report, 2009 Full-Year Results*, April 2010, p. 12, <http://www.iab.net/media/file/IAB-Ad-Revenue-Full-Year-2009.pdf>.

⁵³ comScore, "comScore and Starcom USA Release Updated 'Natural Born Clickers' Study Showing 50 Percent Drop in Number of U.S. Internet Users Who Click on Display Ads," Press Release, Oct. 1, 2009, comScore also has 1 million consumer panelists abroad.

⁵⁴ Laurie Sullivan, "Study: Half of Ad Impressions, 95% Of Clicks Fraudulent," *MediaPost News*, Sept. 17, 2009, http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=113734.

⁵⁵ TRA Analytics, "A&E Television Networks Signs with TRA To Provide Advertisers With Increased Accountability," Press Release, Dec. 20, 2010, <http://www.traglobal.com/pdf/AETN-TRA%20Press%20Release.pdf>.

⁵⁶ eMarketer, "How Much Time People Really Spend with Ads," Aug. 24, 2009, <http://www.emarketer.com/Article.aspx?R=1007241>.

⁵⁷ Nielsen, "Nielsen Unveils New Online Advertising Measurement," Sept. 27, 2010, http://www.nielsen.com/us/en/insights/press-room/2010/nielsen_unveils_newonlineadvertisingmeasurement.html.

⁵⁸ Coalition for Innovative Media Measurement, <http://www.cimm-us.org/>.

⁵⁹ PriceWaterhouse Coopers and Interactive Advertising Bureau, "Internet Ad Revenues Break Records, Climb to More Than \$12 Billion for First Half of '10," Oct. 12, 2010, http://www.iab.net/about_the_iab/recent_press_releases/press_release_archive/press_release/pr-101210.

The attraction of search is that it allows advertisers to target individual consumers who are actively looking for a certain product or service. Using data generated by searches, advertisers can further refine ad campaigns to deliver additional, relevant ads to individuals based on their previous searches. Google has about 70% of the search market, followed by Yahoo with 15% and Bing with 11.2%, according to market analysis firm Hitwise Intelligence.⁶⁰ In July 2009 Microsoft and Yahoo announced that they had formed a partnership on Internet search, under which Yahoo will use Microsoft's Bing search engine.⁶¹

As search has become more prominent, it has spawned a cottage industry of analysts and media buyers who help businesses navigate online auction systems.⁶² One strategy, search optimization, describes the practice of companies configuring their websites to have the attributes search engines are programmed to seek, giving them a better chance of appearing in an organic list of search results. To accomplish this, consulting firms try to figure out the algorithms search firms use in their auctions.⁶³ There have also been questions about the use of trademarks in search.⁶⁴

The importance of search as an advertising medium has generated a new type of antitrust concern. In November 2010, the European Commission announced it was opening an investigation into charges that Google "has abused a dominant position in online search, in violation of European Union rules (Article 102 TFEU)."⁶⁵ The European Commission responded to complaints by publishers and competitors, such as online map companies, about unfavorable treatment of their services in Google's unpaid and sponsored search results, as well as alleged preferential treatment of Google's own services. It added that the proceedings do not imply that the European Commission has any proof of infringements, only that it will conduct a priority, in-depth investigation.⁶⁶ The investigation may well raise novel issues, such as whether a search provider's secret algorithms can be anticompetitive when used for certain purposes.

⁶⁰ Hitwise, Main Data Center, <http://www.hitwise.com/us/datacenter/main/dashboard-10133.html>.

⁶¹ *Associated Press*, "Microsoft, Yahoo Announce Search Deal," July 29, 2009, http://www.msnbc.msn.com/id/32193887/ns/business-us_business/.

⁶² Steven Levy, "Secret of Googlenomics: Data-Filled Recipe Brews Profitability," *Wired*, May 22, 2009, http://www.wired.com/culture/culturereviews/magazine/17-06/nep_googlenomics?currentPage=all.

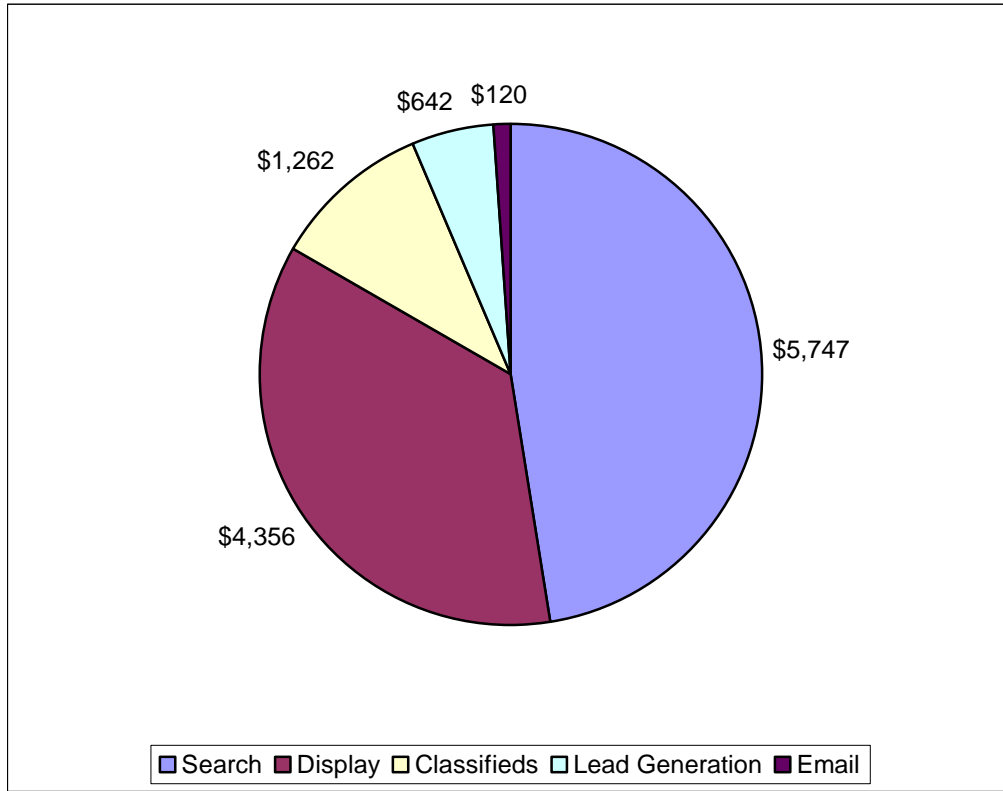
⁶³ Interview with Keystroke Marketing, a Pennsylvania Internet marketing firm, September, 2009.

⁶⁴ See CRS Report R40799, *Use of Trademarks as Keywords to Trigger Internet Search Engine Advertisements*, by Brian T. Yeh.

⁶⁵ Europa, "Antitrust: Commission probes allegations of antitrust violations by Google," Press Release, Nov. 30, 2010, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1624>.

⁶⁶ *Ibid.*

Figure 3. Internet Advertising Spending By Type of Ad
 First Half, 2010 In Millions of Dollars



Source: Interactive Advertising Bureau.

Note: Search advertising refers to advertising that comes up next to the results of a search through an operator such as Google or Bing. Display advertisements are images or text that are placed on a website. Classified ads include for sale, real estate sale and rental, and employment advertising. Referrals/Lead generation refers to advertising to generate “word of mouth” such as e-newsletters or links that allow a person to refer a product to a friend

Ad Networks

Companies also are using smaller ad networks or ad brokers to place their advertisements across the web and digital platforms. Some established companies say such tactics affect prices for all ad-dependent companies because ad networks buy up blocks of residual or less attractive ads and release them on the market at fire-sale prices. The Online Publishers Association, a coalition of media and entertainment companies with a digital presence such as the *Wall Street Journal*, *New York Times* and *ESPN.com*, in August 2009 released a study arguing that ads sold via brokers were less effective than ads sold directly on their websites—for which they can charge higher prices.⁶⁷ But many prominent media companies that use ad networks to sell at least part of their own inventory that they cannot sell directly. Ad networks are also an important tool for small, mom and pop-type web ventures to sell ads.

⁶⁷ Online Publishers Association, “OPA Members’ High-Quality Content Environments Raise Awareness, Message Association, Brand Favorability and Purchase Intent More than Portals and Ad Networks,” Press Release, Aug. 13, 2009, <http://www.online-publishers.org/newsletter.php?newsType=pr&newsId=545>.

Behavioral Advertising

As they browse the web, blog, join social networks and play online games, consumers are providing advertisers with reams of personal data.⁶⁸ Advertisers and marketing firms can generate still more information when consumers sign up for email promotions or buy products online.

Most online activity is monitored via cookies, small text files that can store data, which are placed on that user's computer when he or she visits a website, but companies also use more advanced technologies to track consumers. The information is often used for behavioral advertising—targeted ads based on individual information that can command prices more than twice those of other online advertising.

A 2009 study found third-party companies tracking personal information were active on 70% of selected popular websites in September 2008, up from 40% in 2005.⁶⁹ The *Wall Street Journal*, in one of a series of articles on consumer privacy, noted that the nation's 50 top websites, on average, installed 64 pieces of tracking technology onto the computers of visitors, with tracking technology becoming more sophisticated and information more readily sold via specialized business exchanges.⁷⁰

The FTC in a December 2010 preliminary report on consumer privacy issues, supported creating a Do Not Track registry to allow consumers to opt out of online tracking.⁷¹ The FTC report noted that while many companies treat consumer information carefully, “some appear to treat it in an irresponsible or even reckless manner.”⁷² The nonprofit Mozilla Foundation is now working on a feature for its Mozilla Firefox web browser that will allow users to notify third parties if they want to opt-out of third-party tracking.⁷³ The IAB, the Better Business Bureau, the Direct Marketing Association and the American Association of Advertising Agencies, among other groups, in July 2009 issued self-regulatory principles for online advertising⁷⁴ that include voluntary standards for handling sensitive information, data security and consumer controls to allow individuals to opt out of tracking. The coalition has followed up with a more comprehensive initiative, the Self-Regulatory Program for Online Behavioral Advertising.⁷⁵

A coalition of consumer groups has called for mandatory limits on the behavioral advertising.⁷⁶ The Progress and Freedom Foundation says tough Internet privacy standards could impede the growth of behavioral advertising and hurt media companies, for example.⁷⁷

⁶⁸ See CRS Report RL34693, *Privacy Law and Online Advertising*, by Kathleen Ann Ruane.

⁶⁹ Balachander Krishnamurthy, AT&T Labs and Craig E. Wills, Worcester Polytechnic Institute, *On the Leakage of Personally Identifiable Information Via Online Social Networks*, WOSN'09, Aug. 17, 2009, Barcelona, Spain.

⁷⁰ Julia Angwin, “The Web's New Gold Mine: Your Secrets,” *Wall Street Journal*, July 30, 2010.

⁷¹ Federal Trade Commission, *Protecting Consumer Privacy in an Era of Rapid Change*, December 2010, <http://www.ftc.gov/os/2010/12/101201privacyreport.pdf>.

⁷² *Ibid*, Executive Summary.

⁷³ Mozilla, “Privacy/Jan2011 DoNotTrack FAQ,” https://wiki.mozilla.org/Privacy/Jan2011_DoNotTrack_FAQ.

⁷⁴ IAB and others, “Self Regulatory Principles for Online Advertising,” July 2009, <http://www.iab.net/media/file/ven-principles-07-01-09.pdf>.

⁷⁵ American Advertising Federation, Interactive Advertising Bureau, American Association of Advertising Agencies, “Self-Regulatory Program for Online Behavioral Advertising,” <http://www.aboutads.info/home/>.

⁷⁶ John Eggerton, “Consumer Groups Want Constraints on Online Behavioral Advertising,” *Broadcasting & Cable*, Sept. 1, 2009, [http://www.broadcastingcable.com/article/339171-\(continued...\)](http://www.broadcastingcable.com/article/339171-(continued...))

Ad Platforms

Another difference between the digital world and traditional media, is that consumers are creating much of the content, through social networks, blogs, or homemade videos posted on sites like YouTube. Some experts say consumers are exercising more control over what they see, watch, or hear. They can time television programs with digital recording devices, and fast forward through ads. Some ads are repressed by pop-up blockers or spam filters.

There is debate about whether advertisers are at disadvantage in the emerging digital world. In a widely discussed 2009 essay, Eric Clemons, professor of operations and information management at the University of Pennsylvania's Wharton School of Business, argued that consumers are in control in the digital sphere and will not accept unwanted or unneeded advertising. "The internet is not replacing advertising but shattering it, and all the king's horses, all the king's men, and all the creative talent of Madison Avenue cannot put it together again," Clemons wrote.⁷⁸

Others say the concerns are overstated. While the change initially may be jarring, the web opens myriad possibilities, including the ability to carry on a dialogue with consumers. "Old structure and ways of working persist, but are fundamentally challenged by newer, more dynamic more innovative alternatives ... Consumers have more control and choice. Their media usage has fragmented. Many more advertising platforms exist. And marketers are insisting on greater precision," according to a report by the IAB.⁷⁹

Advertisers are going after digital consumers where they live: online. Among the emerging platforms:

- **Mobile**—Use of touchscreen phones, such as the iPhone, as well as other advanced mobile phones and mobile devices, is expanding rapidly. Text messages are the main form of advertising on mobile phones, but that is expected to change as technology advances. One emerging example is "quick response" codes—a type of bar code placed on advertisements, department store displays, restaurant menus and other material that can be scanned with a cell phone or other mobile device. Consumers can use the codes to download coupons, offers, ads or other information related to a specific product.⁸⁰ Such codes are already being used with airline tickets, for example. iPhone-type applications are growing, including those produced by companies as marketing and sales tools. Billions of iPhone applications have been downloaded, according to Apple.⁸¹ Google is developing

(...continued)

Consumer_Groups_Want_Constraints_on_Online_Behavioral_Advertising.php.

⁷⁷ Berin Szoka and Mark Adams, *The Benefits of Online Advertising & Costs of Privacy Regulation*, Progress and Freedom Foundation Working Paper, July 10, 2009.

⁷⁸ Eric Clemons, "Why Advertising is Failing on the Internet," *TechCrunch*, March 22, 2009, <http://www.techcrunch.com/2009/03/22/why-advertising-is-failing-on-the-internet/>.

⁷⁹ Christopher Vollmer, *Digital Darwinism*, p. 4, http://www.booz.com/global/home/what_we_think/reports_and_white_papers/ic-display/46079566.

⁸⁰ Federal Trade Commission Staff Report, *Beyond Voice, Mapping the Mobile Marketplace*, April 2009, p. 24, http://www.adlawbyrequest.com/uploads/file/2009_04%20FTC%20Report%20-%20Mobile%20Marketplace.pdf.

⁸¹ Apple Inc., "Apple's App Store Downloads Top Two Billion," Press Release, Sept. 28, 2009, <http://www.apple.com/pr/library/2009/09/28appstore.html>.

a larger foothold in the mobile world with smartphones using its Android software

- **Social networks**—Social arenas include sites or networks such as Facebook and MySpace. Two-thirds of Internet consumers worldwide visit a social network or blogging site, and the segment accounts for nearly 10% of all time spent on the Internet—making it the fourth most popular Internet activity.⁸² Some big companies have developed successful Facebook pages with more than a million followers. But advertisers have yet to really crack the market. Ad spending at such sites, \$1.1 billion in 2009, is forecast to rise to \$1.4 billion in 2011.⁸³ Other forecasts peg spending on social networks somewhat higher. On social networks “members have a greater sense of ‘ownership’ around the personal content they provide and are less inclined to accept advertising around it. A well-used analogy is that advertising on a social network is like gate-crashing a party,” according to Nielsen.⁸⁴
- **Gaming**—About two-thirds of American households have at least one family member who plays video or online games, according to the Entertainment Software Association, 40% of them women.⁸⁵ Advertisers are trying to reach these consumers by running ads before games on online sites or embedding their ads into the games—such as on billboards that line the roads in car racing games. The Lifetime Channel, a cable television channel with programming aimed at women, has a website with applications including games. Called “Games Women Play,” the selections include “Create a Mall” and “Fashion Solitaire.”⁸⁶
- **Website Marketing**—Businesses are building in-house promotion and marketing capabilities. Typical of the emphasis on consumer interaction, Kraft Foods provides weekly recipes via email, runs a website that offers promotions to win free prizes or donate to needy families, online videos from guest bloggers and links to YouTube, and chat boards where consumers can swap recipes and talk about issues like kids and cooking or entertaining.⁸⁷ Kraft has Internet games for children based on products such as its Nabisco brand Corn Nuts cereal.
- **Video**—About 70% of adult Internet users have downloaded a video on the Internet, a figure that represents more than half of U.S. adults.⁸⁸ The percentage of adult Internet users watching movies or television programs online has jumped from 16% in 2007 to 32% in 2010, according to the data. Advertisers initially struggled to figure out how to sell ads against consumer-generated content, but have recently made inroads. YouTube is running ads on popular videos, with the creators’ consent. Another advertising strategy associated with video is viral

⁸² Nielsen Company, *Global Faces and Networked Places*, March 2009, p 1, http://blog.nielsen.com/nielsenwire/wp-content/uploads/2009/03/nielsen_globalfaces_mar09.pdf.

⁸³ eMarketer, “Social Network Ad Spending: A Brighter Outlook Next Year,” July 2009.

⁸⁴ Nielsen Company, *Global Faces and Networked Places*, March 2009, p 5, http://blog.nielsen.com/nielsenwire/wp-content/uploads/2009/03/nielsen_globalfaces_mar09.pdf.

⁸⁵ Entertainment Software Association, “Industry Facts,” <http://www.theesa.com/facts/index.asp>.

⁸⁶ <http://www.mylifetime.com/games/download/fashion-solitaire.aspx>.

⁸⁷ <http://www.Kraftfoods.com>.

⁸⁸ Kristen Purcell, “The State of Online Media,” Pew Internet and American Life Project,” June 3, 2010, <http://www.pewinternet.org/Reports/2010/State-of-Online-Video.aspx>.

ads—videos and other promotions that gain an audience through online word of mouth. *Advertising Age* magazine runs a monthly list of the top 10 viral ads.⁸⁹

Table 2. U.S. Advertising Spending by Media Type

In Millions of Dollars

Media Type	Jan-June 2009	Jan-June 2010	Year-over-Year Change
Business to Business	\$1,305	\$1,054	-19.22%
Cable TV	\$8,063	\$9,108	12.96%
FSI Coupon	\$246	\$253	2.88%
Local Magazine	\$215	\$198	-7.72%
Local Newspaper	\$5,175	\$5,187	0.23%
Local Sunday Supplement	\$26	\$23	12.05%
National Magazine	\$7,261	\$7,425	2.26%
National Newspaper	\$603	\$668	10.83%
National Sunday Supplement	\$460	\$559	21.55%
Network Radio	\$491	\$494	0.61%
Network TV	\$10,587	\$11,489	8.52%
Outdoor	\$1,506	\$1,530	1.55%
Spanish Language Cable TV	\$205	\$202	-1.28%
Spanish Language Network TV	\$1,326	\$1,646	24.16%
Spot Radio	\$2,572	\$2,514	-2.23%
Spot TV	\$10,637	\$10,292	-3.25%
Syndicated TV	\$1,096	\$1,107	1.01%
TOTAL	\$51,782	\$53,758	3.82%

Source: The Nielsen Company.

Notes: Excludes Internet Spending. FSI Coupon refers to Free Standing Insert Coupons. Spot advertising refers to advertising purchased in specific geographic markets, as opposed to national advertising. Syndicated refers to shows sold to individual stations without going through a network.

⁸⁹ http://adage.com/rss-feed?section_id=674.

Advertising and Media

The shifting ad market, in conjunction with reduced ad spending due to the recession, has had a dramatic impact on traditional media. Newspapers, magazines, radio, and television outlets that depend heavily on advertising revenue have fired workers and scaled back operations in response to the advertising declines. Total advertising revenue at daily newspapers plunged from \$49.4 billion in 2005 to \$27.6 billion in 2009—a 44% decrease.⁹⁰ Newspapers shed more than 30,000 jobs from 2008 through 2010.⁹¹ Publishers pulled the plug on venerable magazines like *Gourmet*, which had been in operation since 1941.⁹² Magazine revenue declined by 18% to \$19.5 billion in 2009, for example, from the previous year, according to the Publishers Information Bureau.⁹³ Revenues appear to have improved in 2010.

Media companies are struggling to craft new business strategies, developing extensive online operations as their readers, viewers and listeners move to the web. Some now have online properties that pull in millions of consumers each month. But revenues have not grown in proportion to the digital audience, for several reasons. Most news organizations chose to offer content for free online, hoping they would generate higher advertising revenues by increasing their consumer base.⁹⁴ Another factor is proliferation of websites, which has pushed down the price for some types of ads, especially as demand has waned during the recession.⁹⁵ Newspapers, for example, may be able to sell an ad in their physical ink-and-paper product for \$20 per thousand readers, but for less than \$1 on their website.⁹⁶ Media companies are taking on some of the functions of marketing and advertising firms as they reposition themselves, providing marketing services to potential advertisers based on internal data about subscribers, their web reach, and other information. Newspapers are banding together to combine their content or are working in concert with Internet ad giants.⁹⁷ A number, including *Newsday*, now charge for online content.⁹⁸

Even if online advertising does expand as forecast, traditional media is expected to have the lion's share of the market for some time. Television is expected to remain the dominant advertising choice, given the ease of reaching huge audiences on broadcast and cable stations. Still, there is

⁹⁰ Newspaper Association of America, "Trends and Numbers, Advertising Expenditures," <http://www.naa.org/TrendsandNumbers/Advertising-Expenditures.aspx>.

⁹¹ Paper Cuts, <http://graphicdesignr.net/papercuts/>.

⁹² Stephanie Clifford, "Conde Nast Closes *Gourmet* and 3 Other Magazines," *New York Times*, Oct. 5, 2009, <http://www.nytimes.com/2009/10/06/business/media/06gourmet.html>.

⁹³ Publishers Information Bureau, "PIB: Full-Year 2009 Magazine Advertising Show the Effects of the Recession," Jan. 12, 2010, http://www.magazine.org/advertising/revenue/by_ad_category/pib-4q-2009.aspx.

⁹⁴ Alan Mutter, "How to sell news on the web: A checklist," *Reflections of a Newsosaur*, Oct. 5, 2009, <http://newsosaur.blogspot.com/2009/10/how-to-sell-news-on-web-checklist.html>.

⁹⁵ *MediaPost News*, "CPM Prices Falling Precipitously," Jan. 26, 2009, http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=99087.

⁹⁶ Paul Farhi, "Build that Pay Wall High," *American Journalism Review*, August/September 2009, <http://www.ajr.org/Article.asp?id=4800>.

⁹⁷ David Kaplan, "Yahoo Newspaper Consortium Adds Five Members," *PaidContent*, June 16, 2009, <http://paidcontent.org/article/419-yahoo-newspaper-consortium-adds-five-members/>.

⁹⁸ Perez-Pena, Richard, "Newsday Plans to Charge for Online News," *New York Times*, Oct. 22, 2009, <http://www.nytimes.com/2009/10/23/business/media/23newsday.html>.

no question that some areas of the media, particularly print media, face financial stress due to long-term changes in the advertising market.

Advertising Employment

The advertising industry is now dominated by large, multinational holding companies. Four of the biggest are the Omnicom Group, the WPP Group, the Interpublic Group of Companies, and Publicis Groupe.⁹⁹ The Big Four companies in 2009 collectively reduced their staffs by 8.6% or 23,229 jobs worldwide.¹⁰⁰

Holding companies are organized into subgroups or networks that operate independent of one another and even compete with each other for client accounts. In a paper examining data from the late 1970s through most of the current decade to test whether the market was overly concentrated¹⁰¹ the researchers found that, using the Herfindahl-Hirschman Index (HHI), a benchmark measure of industry competition, the advertising and market services industry was not overly concentrated at the general level. The four largest holding companies had between a fifth and a quarter of total industry revenue, a share that was stable from 2002-2006. Holding companies offer such services as account management and ad production and placement. Boutique firms, which can be independent or part of a larger company, generally focus on one aspect of marketing or advertising.¹⁰²

Advertising firms are found across the country. However, about 20% of advertising businesses, and more than a quarter of the industry's workers, were located in California and New York in 2006.¹⁰³

The composition of ad agencies is changing as digital advertising assumes a more important role. Online advertising, as compared to traditional ad campaigns, is more data-driven, based on information about consumer preferences, website popularity, clicks per ad and mathematical formulas used by Google and other ad sellers to determine price and placement of ads. "Advertising strategies, campaigns and distribution are increasingly based on predictive algorithms, spreadsheets and math. Marketing and math have intersected," according to a Booz & Co. report for major U.S. advertising groups.¹⁰⁴

⁹⁹ *Advertising Age*, "Agency Report 2008," May 5, 2008.

¹⁰⁰ Bradley Johnson, "Agency Report: Revenue Slumps 7.5%, Jobs at 16-Year Low," *Advertising Age*, Mar. 26, 2010.

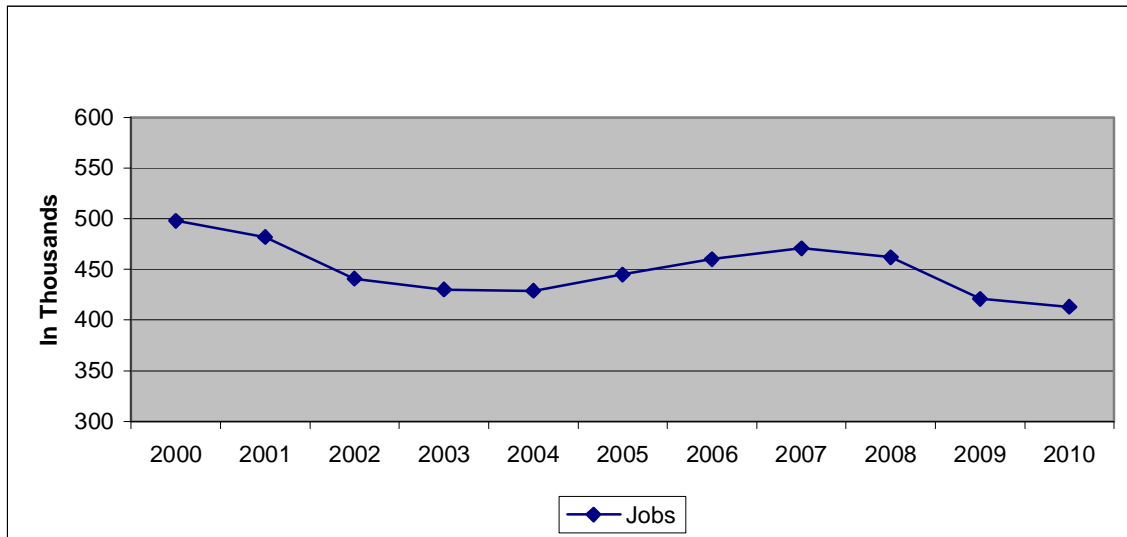
¹⁰¹ Alvin J. Silk and Charles King, III, *Concentration Levels in the U.S. Advertising and Marketing Services Industry: Myth vs. Reality*, Harvard Business School Working Paper 09-044, Sept. 24, 2008, p. 6, <http://www.hbs.edu/research/pdf/09-044.pdf>.

¹⁰² James Peters and William H. Donald, *Industry Surveys, Advertising*, Standard & Poor's, Aug. 9, 2007.

¹⁰³ Bureau of Labor Statistics, U.S. Department of Labor, *Advertising and Public Relations Services*, <http://www.bls.gov/oco/cg/cgs030.htm>.

¹⁰⁴ Edward Landry, Carolyn Ude and Christopher Vollmer, *HD Marketing 2010: Sharpening the Conversation*, Booz & Co. with the Association of National Advertisers, Interactive Advertising Bureau and American Association of Advertising Agencies, 2009, p. 6, http://www.boozallen.com/media/file/HD_Marketing_2010.pdf.

Figure 4. Annual U.S. Employment in Advertising and Related Fields
2000-2010



Source: Department of Labor, Bureau of Labor Statistics

Notes: Data are not seasonally adjusted. 2010 figure is preliminary.

Advertising agencies have been focusing on higher-growth non-advertising business, including market research, media planning, interactive media and customer relationship management. Companies are deriving a larger share of revenues from non-advertising sources.¹⁰⁵

U.S. advertising agencies traditionally charged clients a 15% commission for their work. Such pricing continued to be the industry standard for years, even after courts in the 1950s ruled against advertisers in a series of antitrust cases. In those cases, magazine and newspaper publishers charged that the commission system limited their ability to directly bargain with advertisers.¹⁰⁶ Industry compensation has changed significantly in recent decades. In 2003, just 10% of large national advertisers relied on commissions, while 74% used fee-based models according to one study.¹⁰⁷

Advertising Regulation

Given the persuasive power of the ad industry, Congress and the courts have regulated advertising to protect consumers and ensure fair competition. U.S. laws govern, among other things, alcohol advertising, tobacco advertising, advertising by mail, advertising by telephone and commercial email or spam.¹⁰⁸

¹⁰⁵ Standard & Poor's Industry Survey, *Publishing & Advertising*, Aug. 21, 2008, p. 16.

¹⁰⁶ Mohammad Arzaghi, Ernst R. Berndt, James C. Davis, and Alvin J. Silk, *Economic Factors Underlying the Unbundling of Advertising Agency Services*, National Bureau of Economic Research, September 2008, p. 3, <http://ideas.repec.org/p/nbr/nberwo/14345.html>.

¹⁰⁷ *Ibid.*

¹⁰⁸ CRS Report RL32177, *Federal Advertising Law: An Overview*, by Henry Cohen. For more information on Supreme Court regulation of commercial speech, see CRS Report 95-815, *Freedom of Speech and Press: Exceptions to the First* (continued...)

In addition to Congress, the advertising industry is monitored by a variety of federal agencies.

- The FDA is charged with ensuring that certain product claims are truthful and detail the possible side effects of major drugs. The agency enforces the Federal Food, Drug and Cosmetic Act, looks at food package labeling and health claims.
- The FTC is the main regulator of products sold in interstate commerce, and is charged with protecting consumers from claims that are misleading or unfair. The FTC is currently looking at issues including Internet privacy, as businesses and marketers develop sophisticated tools for tracking consumer information.
- The FCC is an independent agency that regulates radio, television, telephone, satellite and cable television and the Internet. The FCC is looking at the growing use of product placement, or embedded advertising, in programming and is taking a new look at children and the digital media landscape.¹⁰⁹

Self Regulation

The advertising industry has its own self-policing structure. The National Advertising Review Council (Council) was formed in 1971 as alliance by the Association of National Advertisers, the American Association of Advertising Agencies, the American Advertising Federation and the Council of Better Business Bureaus. The Council seeks to ensure that advertising is factual and accurate through a compliance system that includes recommendations for corrective actions and an internal appeals process.¹¹⁰

The Council also sets policies for the National Advertising Division (NAD) of the Council of Better Business Bureaus and the Children's Advertising Review Union (CARU). The bodies look into specific complaints regarding possibly inaccurate product claims, and more general questions about whether certain advertising is appropriate, particularly for children.¹¹¹ The Council is overseeing an initiative, for example, to promote healthier food and beverage choices in advertising aimed at children, an initiative on electronic advertising, and a set of principles for online behavioral advertising.

The Interactive Advertising Bureau (IAB), founded in 1996, has been developing voluntary industry standards for emerging online businesses and advertisers. The organization is a coalition of more than 375 media and technology companies that sell nearly 90% of all U.S. online advertising. The IAB includes such firms as Google, Disney, The New York Times, Yahoo, and Microsoft.

One of the IAB's self-described goals is to fend off intrusive legislation. In that vein, it worked with other advertising organizations to craft voluntary guidelines for behavioral advertising,

(...continued)

Amendment, by Kathleen Ann Ruane.

¹⁰⁹ Federal Communications Commission, "FCC Releases Notice of Inquiry on Serving and Protecting Children and Empowering Parents In and Evolving Media Landscape," Press Release, Oct. 23, 2009, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-294197A1.pdf.

¹¹⁰ National Advertising Review Council. The Direct Marketing Association, Electronic Retailing Association and Interactive Advertising Bureau also joined in 2008. <http://www.narcpartners.org/about/partners.aspx>.

¹¹¹ *Ibid.*

which were released in the summer of 2009.¹¹² The IAB has also set guidelines for advertising in social media like Facebook and on mobile platforms, such as cell phones, mobile digital devices and hand-held readers. It has tried to standardize online advertising, issuing definitions for terms like “click” and “impression” as well as ad sizes and use of techniques such as pop-up ads.¹¹³

Prospects for Additional Regulation and Oversight

Regulators and lawmakers are trying to keep up with an emerging world in which “mommy bloggers” move merchandise, children are exposed to “gamevertising” designed to sell breakfast cereal, and corporations are nesting in social networks. At the same time, the rise of embedded advertising in traditional media—Coca Cola paying to have American Idol judges drink its products on stage¹¹⁴ and companies striking deals to have their products written into scripts for television sitcoms, for example—is making it more difficult for consumers to distinguish advertising from other content.

The changing market structure and tactics are prompting additional scrutiny from lawmakers and regulators.¹¹⁵ The 111th Congress passed and President Obama signed legislation to regulate the volume of commercials on television (P.L. 111-311). During same session, Representatives Boucher and Stearns circulated draft legislation to set tighter standards for online privacy,¹¹⁶ and Senator Franken introduced S. 1763 to repeal tax exemptions for pharmaceutical advertising to consumers and marketing to health care providers.¹¹⁷

Advertising-related issues will likely also continue to percolate outside the legislative context. In December 2010, the Department of Commerce Internet Policy Task Force released a paper on commercial privacy issues recommending that the department appoint a privacy policy coordinator.¹¹⁸ The FTC is in the process of writing final regulations governing environmental or “green” product claims in advertising, and is reviewing its existing rules governing online protection for children. That review was originally set for 2015, but was moved up due to rapid developments in the marketplace, including advertising on cell phones and other handheld

¹¹² Interactive Advertising Bureau, “Key Trade Groups Release Comprehensive Privacy Principles for Use and Collection of Behavioral Data in Online Advertising,” Press Release, July 2, 2009, http://www.iab.net/about_the_iab/recent_press_releases/press_release_archive/press_release/pr-070209.

¹¹³ Interactive Advertising Bureau, http://www.iab.net/about_the_iab.

¹¹⁴ Andrew Barker, “Advertisers Starting to Embrace DVR,” *Variety*, March 27, 2009, <http://www.variety.com/article/VR1118001776.html?categoryid=3579&cs=1>.

¹¹⁵ Jeff Chester, Executive Director, Center for Digital Democracy, “Testimony on Behavioral Advertising: Industry Practices and Consumers’ Expectations,” House Committee on Energy and Commerce, Subcommittee on Commerce, Trade and Consumer Protection and the Subcommittee on Communications, Technology, and the Internet, June 18, 2009, <http://www.democraticmedia.org/doc/cdd-testimony-20090618>.

¹¹⁶ Stephanie Clifford, “Two-Thirds of Americans Object to Online Tracking,” *New York Times*, September 29, 2009, <http://www.nytimes.com/2009/09/30/business/media/30adco.html?ref=business>.

¹¹⁷ Sen. Al Franken, “Franken Introduces Bill to End Tax Breaks for Drug Company Advertising,” Press Release, October 8, 2009, http://franken.senate.gov/press/?page=release&release_item=Franken_Introduces_Bill_to_End_Tax_Breaks_for_Drugs_Company_Advertising.

¹¹⁸ Department of Commerce Internet Policy Task Force, Commercial Data Privacy and Innovation in the Internet Economy: A Dynamic Policy Framework, http://www.ntia.doc.gov/reports/2010/IPTF_Privacy_GreenPaper_12162010.pdf.

devices. The FDA is preparing to issue guidance, possibly in the first quarter of 2011 regarding the use of the Internet and social media to promote FDA-regulated medical products.

The new Bureau of Consumer Financial Protection, created by the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203), could also take on a significant role in regulating advertising. The bureau, which will function as an independent office within the Federal Reserve system, is charged with ensuring that markets for consumer financial products are fair, transparent, and competitive. It has authority to prohibit financial institutions, including mortgage lenders, from engaging in unfair or deceptive business practices, potentially bringing misleading advertising under the bureau's scrutiny. Additionally, the Bureau of Consumer Financial Protection has authority to ensure that information relevant to consumer purchase of financial products is disclosed in plain language.¹¹⁹

Media and cultural critic Marshall McLuhan argued in the 1960s that each new medium has its own intrinsic effect, changing the nature of society and commerce. Four decades later, technological advances are forcing media companies and advertisers to refine and reshape their messages to reach consumers in new venues, from mobile phones to handheld readers to online gaming networks. The developing forms of communication are, in turn, influencing the content of advertising as companies attempt to become part of the conversation on social networks or part of the landscape by embedding products in news and entertainment programming. It is likely that regulators, and Congress, will continue to play catch-up as they consider how to craft a workable system to oversee advertising in the rapidly changing digital world.

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¹¹⁹ CRS Report R41338, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Title X, The Consumer Financial Protection Bureau*, by David H. Carpenter.