



CLASS ACTION LITIGATION



REPORT

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The media is undergoing “unprecedented change, write authors Jeanne Finegan and Maggie Ivey. “Newspapers and other print media, long the cornerstone of Legal Notice programs, seem to be losing some ground to online and other new forms of media.” That change “brings with it a need for class action Legal Noticing efforts to adapt and utilize innovative communications to effectively reach potential class members,” they say.

“Reaching certain target audiences of a class action will require careful analysis of changes in media preference,” the authors advise.

Legal Notice: R U ready 2 adapt?

By JEANNE FINEGAN, APR
AND MAGGIE IVEY

The media landscape is undergoing unprecedented change. By a number of accounts, consumer media patterns have shifted more in the past three to five years than they have in the last 30. The effects of a depressed economy and the introduction of new communication channels are leaving a huge mark on the industry. Newspapers and other print media, long the cornerstone of Legal Notice programs, seem to be losing some

ground to online and other new forms of media. Those include mobile media, short messaging service (SMS, or text messaging), and really simple syndication (RSS). This change in the media landscape brings with it a need for class action Legal Noticing efforts to adapt and utilize innovative communications to effectively reach potential class members.

Shifts in Print Media

What consumer preference media shifts should class action practitioners think about when crafting effective Legal Notice programs? Let’s start with local newspapers. Some markets that previously supported two newspapers are now downsizing to one. In recent months, the smaller of two main daily newspapers in a number of markets has either gone out of business or moved to publish entirely online. Many others are in danger of doing so soon. Some can’t sell enough advertising space to stay in business. For example, *The Se-*

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attle *Post-Intelligencer*, once distributed to a circulation of over 125,000,¹ is now published only online.² The *Cincinnati Post* and *Kentucky Post* also have stopped publishing print editions. In Kentucky, the paper will continue to publish some content on KYPPost.com.³ To compound the situation, newspaper subscribers are also making cutbacks. Some readers who once enjoyed reading two newspapers, such as their local paper and a larger metropolitan or national paper, are finding they can't afford the subscriptions and dropping one or both.

Practitioners need to be aware that some publications are halting the print presence and moving to an online presence. This shift, at least in the short term, can have an impact on a publication's measurability. *The Christian Science Monitor* published as a daily newspaper for 100 years, now publishes exclusively online, with the exception of one weekly edition for subscribers.⁴ Also, watch for a reduction in publication days. This could impact the ability to publish a message in a timely manner. For example, the Los Angeles-based Spanish language newspaper, *Hoy*, recently announced it will publish only once a week.⁵ Several others are reducing the size of their publications. *The New York Times* is no longer publishing its *City* section as a stand alone section of the paper.⁶ *The Detroit News & Free Press* cut its home delivery back to three days a week: Thursday, Friday, and Sunday. The paper still can be purchased on newsstands everyday.⁷

Unfortunately, a number of newspapers have filed for bankruptcy. The Tribune Company, owner of *Newsday*, *Los Angeles Times*, *Chicago Tribune* and the *Orlando Sentinel*, among others, has been forced to file for Chapter 11 protection.⁸ Others filing for bankruptcy include the owners of *The Minneapolis Star Tribune*,⁹ the *Philadelphia Inquirer*, and the *Philadelphia Daily News*.¹⁰ While this does not necessarily mean these pa-

pers will disappear, it is further indication that even larger titles are struggling. As Legal Notice experts, we must watch and monitor the circulation and effectiveness of newspapers.

The decline in some local newspaper circulation could also have an impact on a local Notice program. According to a preliminary report by the Audit Bureau of Circulations (ABC), many newspapers experienced unprecedented drops in circulation between March 31, 2009 and the prior year. For example, the average daily circulation (measured Monday through Friday) for *The Atlanta Journal-Constitution* was down 24 percent. For the same time period, *The Miami Herald* and *San Francisco Chronicle* were both down 18 percent; and *The Philadelphia Inquirer* and *The Boston Globe* were down 15 percent.¹¹ On average, for the six months ending March 31, 2009, daily newspaper circulation is down seven percent compared with the same period in March 2008. For Sunday newspapers, circulation is down five percent. And *USA Today* fell more than seven percent during the week, in part due to a decline in copies ordered from hotels.¹²

Magazines are experiencing similar drops in circulation. According to ABC publishers' statements for the six months ending December 31, 2008, compared to the same period in 2007, *In Touch Weekly* experienced a one-year decline in circulation of 29 percent. Other magazines that experienced declines over the same time period include *Newsweek*, down 13 percent, *Martha Stewart Weddings*, down 17.5 percent, *National Enquirer*, down 11 percent, and *Reader's Digest*, down 12 percent.¹³

Magazines, too, are joining newspapers in the online migration due to similar downturns in circulation and readership. *PC Magazine* is one publication that ceased its print edition and moved to publish content entirely online. One of the major reasons for the shift is that magazines, like newspapers, have cut back editorial and advertising pages. *Time Magazine* has eliminated its Canadian edition. The U.S. edition still will be distributed in Canada; however, it will no longer include specialized content and advertising targeted specifically to Canadians.¹⁴ Therefore, it should be used with caution in Canadian Legal Notice programs. *Selecciones*, a Spanish-language publication published by Reader's Digest, will publish its last issue in the U.S. in June.¹⁵

Impacts on Reach and Frequency

What does this mean for Legal Notice and the calculation of reach and frequency? Print media, like magazines and newspapers, will continue to be a strong medium for Legal Notice. However, having a recognized Legal Notice expert provide guidance regarding media

¹ *Seattle Times/Post-Intelligencer* Audit Report, Audit Bureau of Circulation, period ending March 31, 2008.

² William Yardley and Richard Perez-Pena, *Seattle Paper Shifts Entirely to Web*, March 16, 2009, http://www.nytimes.com/2009/03/17/business/media/17paper.html?_r=3.

³ The Associated Press, *Cincinnati Post stops the press after 126 years*, December 31, 2007, <http://www.msnbc.msn.com/id/22452666/>.

⁴ Agence France-Presse, *Last edition of Christian Science Monitor*, March 26, 2009, <http://news.id.msn.com/sci-tech/article.aspx?cp-documentid=2940449>.

⁵ Editor and Publisher staff, L.A. 'Hoy' to Cease as Daily, March 30, 2009, http://www.editorandpublisher.com/eandp/news/article_display.jsp?vnu_content_id=1003956715.

⁶ Henry Blodget, *New York Times Folding the "City" Section (NYT)*, March 30, 2009, <http://www.businessinsider.com/henry-blodget-new-york-times-folding-the-city-section-2009-3>.

⁷ Brad Lendon, *Detroit newspapers to end daily home delivery*, December 16, 2008, <http://www.cnn.com/2008/US/12/16/detroit.newspapers/>.

⁸ Phil Rosenthal and Michael Oneal, *Tribune Co. files for bankruptcy protection*, December 09, 2008, <http://archives.chicagotribune.com/2008/dec/09/business/chi-081208tribune-bankruptcy>.

⁹ Robert MacMillan, *Minneapolis Star Tribune in bankruptcy filing*, January 16, 2009, <http://www.reuters.com/article/businessNews/idUSTRE50F1BW20090116?feedType=RSS&feedName=businessNews&rpc=23&sp=true>.

¹⁰ Dawn McCarty and Tiffany Kary, *Philadelphia Inquirer Publisher Files for Bankruptcy*, February 22, 2009, <http://www.bloomberg.com/apps/news?pid=20601110&sid=ao22AeYHR5LA>.

¹¹ eFAS-FAX: US Daily Newspapers, Audit Bureau of Circulation, period ending March 31, 2009.

¹² Jack Loechner, *Newspaper Circulation Skids*, Media Post, May 8, 2009, http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=105276&passFuseAction=PublicationsSearch.showSearchResults&art_searched=newspaper%20circulation%20skids&page_number=0.

¹³ eFAS-FAX, U.S. Magazines, Audit Bureau of Circulation, period ending December 31, 2008.

¹⁴ *Time Canada to close*, December 10, 2008, <http://mastheadonline.com/news/2008/20081210942.shtml>.

¹⁵ Media Daily News, *Readers Digest Shuttles 'Selecciones'*, May 5, 2009, http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=105436

planning is more important now than ever before. It is critical to stay on top of the rapid-fire changes in the media marketplace, to follow media preferences of consumers, and to incorporate those preferences into effective Legal Notice programs.

“It is important to note that you might have to take a more innovative approach to effectively reach certain consumer targets.”

It is important to note that you might have to take a more innovative approach to effectively reach certain consumer targets. Reach, in the advertising world, refers to the total number of different people or households exposed to an ad. In a Legal Notice program, reach is all about trying to expose a message to as many different target class members as possible. Dwindling circulation numbers can impact Legal Notice programs by requiring additional print insertions. Or, it might be important to incorporate a combination of mediums to effectively reach the target audience. Practitioners must remember that flexibility is critical in order to stay on top of consumer media shifts.

Keeping up With Technological Advances for Legal Noticing

Banner advertising, a form of online advertising that entails embedding an advertisement into a Web page, is a relatively low cost option to help boost the reach of a Legal Notice program. According to Mediamark Research and Intelligence, LLC, (MRI) almost 70 percent of U.S. adults aged 18 and over have looked at or used the Internet in the past 30 days. It is becoming common practice to include banner advertising in Legal Notice programs. Additionally, the expanding presence of Internet-enabled mobile phones will only increase the importance of using online communications.

RSS is another new medium for advertising. It functions as the new e-mail newsletter. People are now customizing web pages to request certain “feeds” of data, or articles, to be sent directly to their own customized web page. So instead of checking sites repeatedly for updates, RSS feeds deliver consumers’ favorite web pages to them. Google Reader is an example of one such RSS account. Advertising is available for purchase within some of these article feeds, and is the best way to reach some people who are quickly shifting to this new technology. This type of advertising is not measurable in terms of reach and frequency yet, but will undoubtedly add to the overall success of a Legal Notice campaign.

SMS, or text, advertising is another option to consider. Used as an opt-in form of communication, it is an easy way for on-the-go consumers to get information about a class action lawsuit. In-store advertising or

magazine ads, for example, can direct potential class members to send a text to a designated number for more information about the suit. It is not measured yet in the traditional reach and frequency sense, but is rapidly gaining in popularity. A.C. Nielsen reported in Q-3 of 2008 that nearly 77 percent of wireless users include texting as part of their data package or pay a fee per text transaction.¹⁶ The report indicates that 57 percent of the wireless population texts regularly.¹⁷

“It is critical to stay on top of changes in the media marketplace, to follow media preferences of consumers, and to incorporate those preferences into effective Legal Notice programs.”

The Garden City Group, Inc., (GCG) is one of the first Legal Noticing companies to incorporate texting into a recent Legal Notice program for *Stefanyshyn, et al. v. Consolidated Industries Corp.*, a nationwide consumer case regarding product liability issues for more than 40 brands of furnaces. Here’s how texting can be incorporated into a Legal Notice program. A print advertisement instructs potential class members to text a word, such as “CLASS,” to a phone number for more information. Standard texting rates will apply to the user and should be noted on all class member communications. Information about the class action will then be sent to the user to review at their leisure. This type of advertising also works for point of sale notice when a person wants more information but doesn’t have a computer or pen and paper available at the time.

What the Future Holds

The media landscape is changing at a rapid-fire pace. This will have a potentially large impact on Legal Notice programs. Reaching certain target audiences of a class action will require careful analysis of changes in media preferences. It will also take a clear understanding of the viability of a specific title to actually deliver notice to a projected audience. It is critical to stay on top of changes in the media marketplace, to follow media preferences of consumers, and to incorporate those preferences into effective Legal Notice programs. Working with a Legal Notice expert will help ensure you are selecting the most appropriate media to reach potentially affected class members.

¹⁶ Nielsen To Mobile Marketers: “Good Luck 2 U,” December 9, 2008, <http://www.mobilemarketingwatch.com/nielsen-to-mobile-marketers-good-luck-2-u/>.

¹⁷ Tom Pirovano, 2009 Industry Outlook. *When times get tough, the tough go back-to-basics*, http://en-us.nielsen.com/main/insights/consumer_insight/issue_13/2009_industry_outlook.