



February 1, 2010



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IAB, 4As Release Version 3.0 of Standard Terms and Conditions

In the first revision since 2002, the Interactive Advertising Bureau and the American Association of Advertising Agencies released a draft version of their standard terms and conditions, Version 3.0.

Not surprisingly, the latest edition focuses on interactive advertising campaigns, including user-generated content platforms and performance-based advertising.

Specifically, the revised terms and conditions address issues such as data usage and ownership, cancellation terms, indemnification, and third-party ad serving.

While Version 3.0 contains several updates, two sections received the most substantial changes.

Editorial adjacency guidelines and remedies for violations changed significantly from the prior version. In response to "the vast majority of advertiser concerns," the draft version lists specific types of content that are unacceptable – "content that promotes pornography,



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violence, or the use of firearms, or contains obscene language” – and also includes language that allows users to add additional items of concern. The draft version also changed the penalties for violations of editorial adjacency guidelines to refunds or makegoods.

The other significant changes occur in the section on data usage and privacy.

Version 3.0 defines several categories of confidential information that are each subject to various usage restrictions.

In the draft version, user-volunteered data or personally identifiable information collected from a user during delivery of an ad (such as a street address or e-mail address) may not be repurposed by the advertiser as a default rule. Other categories, such as insertion-order details and site data, are also considered confidential data.

Performance data, defined as information about the results of the advertising campaign separate from specific site data or insertion-order details, can be freely used as long as it is not related to a specific media company’s content or site.

Version 3.0 was released in December, and the public comment closed on January 29.

To read the draft version in its entirety, click [here](#).

To read the educational guide, which explains the changes made from Version 2.0 to Version 3.0, click [here](#).

Why it matters: Version 3.0 provides long-overdue guidance on interactive advertising and marketing. The new section on data usage will help guide media companies, agencies, and advertisers when working on media buys covering new technologies and business practices.

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FCC Proposes Tougher Restrictions on “Robocalls”

The Federal Communications Commission has proposed rule revisions to the Telephone Consumer Protection Act (TCPA) that would place tougher restrictions on “robocalls.”

Under the proposed rules, which were issued January 20, prerecorded telemarketing calls, or “robocalls,” would require prior written consent from recipients – even if the caller has an established business relationship with the call recipient. (Electronic methods of consent, such as an e-mail, would be acceptable.)

UPCOMING EVENTS

February 9, 2010

FDA Virtual News Conference

Topic: "Serious Adverse Event Reporting for OTCs and Dietary Supplements: Confusion Reigns and Labeling Enforcement Looms"

Speaker: [Ivan Wasserman](#)
[for more information](#)

February 12, 2010

New York City Bar

Topic: "Understanding and Complying with Sweepstakes, Promotions and Marketing Law"

Speaker: [Terri Seligman](#)
New York, NY
[for more information](#)

February 23-25, 2010

Digital Signage Expo 2010

Topic: "Opt-in or Opt-out? Navigate the Consumer Privacy Issue for Future Profit"

Speaker: [Linda Goldstein](#)
Las Vegas, NV
Las Vegas Convention Center
[for more information](#)

In addition, robocalls would also be required to have an automated, interactive mechanism that would allow a recipient to opt-out of receiving any future robocalls.

The proposed rule changes would not affect categories of prerecorded message calls that are not covered under the TCPA, such as calls by or on behalf of tax-exempt, nonprofit organizations, or calls that deliver purely “informational” messages.

The FCC proposed that if the rules were to take effect, it would defer the effective date of the opt-out requirement for three months, and the proposed written agreement requirement for 12 months to give callers time to comply.

The revisions are an attempt to bring the FCC’s rules in line with the Federal Trade Commission’s Telemarketing Sales Rule.

Although most companies that use robocalls are subject to regulation by both agencies, the FCC’s changes would bring those companies outside of FTC rule coverage (and currently subject to less restrictive standards) under similar rules.

To read the notice of proposed rulemaking in its entirety or for more information on how to comment on the proposed rules, click [here](#).

Why it matters: The changes proposed by the FCC could be costly to implement and significantly cut down on a telemarketer’s ability to utilize prerecorded message calls due to the combination of required prior written consent and an opt-out option for consumers. However, the majority of companies that the new rules would affect are already covered by similar FTC regulations.

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The Battle Over “Organic” Moves Beyond Food

The Organic Consumers Association filed a complaint with the Department of Agriculture’s National Organic Program seeking an investigation into the labeling of personal care products – such as soap, shampoo, and lotion – that it claims are not organic, despite their advertising.

The complaint cites 13 companies that manufacture and sell products that are advertised, labeled, and marketed as “organic” or “organics” that the OCA and three manufacturers of certified organic products say are not, in fact, organic, as understood by reasonable consumers.

It names companies such as Hain Celestial Group, which makes JASON “Pure, Natural & Organic,” as well as “Avalon Organics” products.

March 9-10, 2010

Social Media Marketing Summit

Speaker: [Anthony DiResta](#)
[for more information](#)

March 13, 2010

Supply Expo 2010

Topic: "Live from D.C.: It's Make Your Claims Right!"
Speaker: [Ivan Wasserman](#)
[for more information](#)

March 18-19, 2010

Minority Corporate Counsel Association

9th Annual CLE Expo 2010

Topic: "Green Litigation & Corporate Sustainability Programs: Beware the Trojan Horse"

Speaker: [Linda Goldstein](#)

Chicago, IL

Chicago Marriott Downtown

[for more information](#)

April 14-15, 2010

American Conference Institute

Advertising, eMarketing & Promotions for the Pharmaceutical Industry

Speaker: [Linda Goldstein](#)

Philadelphia, PA

Specifically, the complaint alleges that none of the products contain 95 percent organic ingredients and that the main cleansing and moisturizing ingredients are derived from nonorganic agricultural materials or are even made from petrochemical compounds.

The OCA argues that the USDA has the authority to seek civil penalties against the companies it accuses of “organic fraud” because its power extends to any product under the National Organic Program, not just agricultural products. In the alternative, the personal care products at issue do contain agricultural products, even though they are not edible or potable.

The OCA also filed the complaint in U.S. District Court against the companies, alleging violations of the Lanham Act for false advertising.

To read the complaint, click [here](#).

Why it matters: The battlefield over organic advertising in labeling, marketing, and advertising has moved beyond food to other products, including personal items such as soap and shampoo. Companies that use terms such as “pure,” “natural,” and “organic” should be aware of the USDA’s National Organic Program labeling guidelines.

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Skype Settles Class Action Lawsuit Over Credits

Online phone service Skype settled a class action lawsuit that challenged the company’s policy of expiring users’ credits after a certain time period, for roughly \$1.8 million.

Skype is a free service for users who make Internet calls, but the company charges fees for various additional features such as voicemail and text messaging.

Consumers purchase “credits” in order to use the features, but Skype had a policy of expiring the credits after 180 days.

Holly Barker and Brian Carness filed a class action lawsuit against Skype challenging the expiration policy. They claimed that the credit system constituted the sale of gift certificates that could not legally expire or be subject to inactivity fees under various state laws on gift cards, deceptive practices, and consumer protection statutes.

Pending final court approval, Skype agreed to settle the case.

Under the terms of the settlement, the company agreed to discontinue its expiration policy. Instead, after 180 days, credits will now be considered “inactive” and subject to reactivation.

The Union League
[for more information](#)

April 21-23, 2010

ABA Antitrust Law Spring Conference

Topic: "Mock Trial 2010: A Jury Review of Exclusionary Conduct"

Speaker: [Tom Morrison](#)

Washington, DC

[for more information](#)

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Skype will also establish a \$1,850,000 settlement fund, which will pay for the plaintiffs' attorneys' fees and costs, plaintiffs' incentive awards, and a \$4 voucher for a Skype credit for eligible claimants.

For more information on the lawsuit and the settlement terms, click [here](#).

Why it matters: Companies that use a credit system similar to the one at issue in the Skype lawsuit should consider gift card laws across the country. The statutes, which vary from state to state, could be interpreted broadly enough to apply to various payment systems and not just the traditional concept of a gift card.

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Manatt Attorney Jill Pietrini Wins Injunction Against "Twilight" Fanzine

[Jill Pietrini](#), co-chair of Manatt's firmwide Intellectual Property practice group, won a preliminary injunction on behalf of client Summit Entertainment, the independent film studio behind the blockbuster *Twilight* motion picture franchise, on January 15. The Manatt team brought the action against Beckett Media, publisher of a *Twilight* "fanzine," for copyright and trademark infringement.

Reporting on the legal victory, *The Hollywood Reporter* called the issue presented by Pietrini of whether a fanzine is a protected journalistic enterprise or an unprotected commercial one "interesting."

In a statement provided to the publication on behalf of her client, Pietrini says that "Summit Entertainment acted to protect its rights in a situation which found Beckett Media using copyrighted and trademarked images and materials relating to the *Twilight* films for Beckett's financial gain without an agreement in place with Summit to legally license the right to produce materials based on its film franchise. Beckett's sale of standalone magazines under the name *Twilight*, and wholesale use of Summit's copyrighted material in a commercial product, went well beyond the intended purpose of Summit's publicity site."

"We applaud the court for its judgment in this matter," Pietrini told *The Hollywood Reporter*.

Read the article [here](#).

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Important Calendar Update

WAIT! Word of Mouth Marketing Association is changing the date of WOMMA Wine Wednesday in Los Angeles.

NO! It is NOT going to be held on Wednesday, February 3rd.

YES! WOMMA will be posting a new date very soon.

WHEN? We will be sure to let you know, "Which Wednesday is WOMMA Wine?" or click [here](#) for more information.

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