



# BEHAVIOURAL STUDY ON ADVERTISING AND MARKETING PRACTICES IN ONLINE SOCIAL MEDIA

## Final Report

*Specific contract No. 2015 85 01  
under Framework contract No. Chafea 2015 CP 01  
Prepared by the GfK Consortium  
Final Version: June, 2018*



**EUROPEAN COMMISSION**

Produced by Consumers, Health, Agriculture and Food Executive Agency (Chafea) on behalf of

Directorate-General for Justice and Consumers

Unit 03 Economic analysis and evaluation

*Contact: Unit 03*

*E-mail: JUST-03@ec.europa.eu*

*European Commission*

*B-1049 Brussels*

# **Behavioural Study on Advertising and Marketing Practices in Online Social Media**

**Final Report**

**LEGAL NOTICE**

*This report was produced under the EU Consumer Programme (2014-2020) in the frame of a specific contract with the Consumers, Health, Agriculture and Food Executive Agency (Chafea) acting on behalf of the European Commission.*

*The content of this report represents the views of GfK Belgium and is its sole responsibility; it can in no way be taken to reflect the views of the European Commission and/or Chafea or any other body of the European Union.*

*The European Commission and/or Chafea do not guarantee the accuracy of the data included in this report, nor do they accept responsibility for any use made by third parties thereof.*

Project number: 2018.3823				
Title: Behavioural study on Advertising and marketing Practices in Online Social Media – Final Report				
Language version	Format/Volume	Catalogue number	ISBN	DOI
EN PDF	PDF/Volume_01	EB-01-18-679-EN-N	978-92-9200-945-8	10.2818/290217

© European Union, 2018

Reproduction is authorised provided the source is acknowledged.

# Table of contents

<b>1</b>	<b>Introduction .....</b>	<b>7</b>
1.1	Study objectives and report structure	7
1.2	Methodological approach	8
1.3	Definition of Online Social Media	10
<b>2</b>	<b>Online Social Media in the EU.....</b>	<b>13</b>
2.1	Introduction	13
2.2	Top Online Social Media providers in the EU	14
2.3	Differences across EU Member States	17
2.4	Key Online Social Media providers in focus	19
2.4.1	Facebook Inc.	20
2.4.2	YouTube	22
2.4.3	Twitter	23
2.4.4	Reddit	23
2.4.5	LinkedIn	24
2.4.6	Snapchat	24
2.5	Revenue streams of Online Social Media providers	25
2.6	Delivering marketing content to Online Social Media users	27
2.7	Commercial practices on Online Social Media	29
<b>3.</b>	<b>Disguised Advertising Practices .....</b>	<b>30</b>
3.1	Introduction	30
3.1.1	Native advertising	30
3.1.2	Influencer marketing	32
3.1.3	Advertorials	33
3.2	Consumer issues	34
3.2.1	Evidence from the qualitative research	34
3.2.2	Evidence from the behavioural experiments	37
3.2.3	Conclusions	44
3.3	Legal assessment and remedies	45
3.3.1	Options for regulatory action	46
3.3.2	Options for enforcement action	49
3.3.3	Options for self-regulatory action	50
3.3.4	Other remedy options	52
<b>4.</b>	<b>Social Proof Practices .....</b>	<b>54</b>
4.1	Introduction	54
4.1.1	Artificial boosting of social proof indicators.	55
4.1.2	Extrapolation of social endorsements	56
4.1.3	Other practices linked to social proof	58
4.2	Consumer issues	59
4.2.1	Evidence from the qualitative research	59
4.2.2	Evidence from the behavioural experiments	62
4.2.2.1	Artificial boosting of social proof indicators	62
4.2.2.2	Extrapolation of social endorsements	66
4.3	Conclusions	68

4.4	Legal assessment and remedies	69
4.4.1	Options for regulatory action	71
4.4.2	Options for enforcement action	73
4.4.3	Options for self-regulatory action	74
<b>5.</b>	<b>Data Gathering and Targeting Practices .....</b>	<b>76</b>
5.1	Introduction	76
5.1.1	User tracking	76
5.1.2	Audience targeting	77
5.1.3	Social media logins	78
5.2	Consumer issues	79
5.3	Conclusions	82
5.4	Legal assessment and remedies	83
5.4.1	Options for regulatory action	84
5.4.2	Practice-specific options for enforcement	85
5.4.3	Other remedy options	86
<b>6</b>	<b>Other Problematic Practices .....</b>	<b>88</b>
6.1	Description of specific practices identified	88
6.2	Consumer issues, legal assessment and conclusions	89
6.3	Legal assessment and remedies	89
6.3.1	Options for enforcement action	90
<b>7</b>	<b>Conclusions .....</b>	<b>91</b>
7.1	The OSM Landscape in the EU	91
7.2	Disguised advertising practices	92
7.2.1	Introduction and evidence of consumer issues	92
7.2.2	Options for regulatory action.	92
7.2.3	Options for enforcement action.	93
7.3	Social proof practices	94
7.3.1	Introduction and evidence of consumer issues	94
7.3.2	Options for regulatory action.	94
7.3.3	Options for enforcement action	95
7.4	Data gathering practices	95
7.4.1	Introduction and evidence of consumer issues	95
7.4.2	Options for regulatory action	96
7.4.3	Options for enforcement action	96
7.5	General discussion of the current legal context	96
<b>8</b>	<b>Appendix – Limitations and Future Research.....</b>	<b>99</b>
<b>9</b>	<b>Lists of Annexes.....</b>	<b>101</b>

# 1 Introduction

## 1.1 Study objectives and report structure

The key objective of this multi-method, exploratory study was to investigate advertising and marketing practices in online social media (OSM) from the perspective of consumer behaviour and consumer protection. It aimed to identify and assess commercial practices in the context of OSM that could be potentially unfair or misleading for consumers. Furthermore, the study aimed to investigate the factors that contribute to their prevalence, and to identify and assess potential remedies to these problematic commercial practices.

The purpose of the study was operationalised via five key objectives. As a first step, it aimed to **depict a comprehensive landscape of OSM providers in Europe** and to describe their business models. The second objective was to **investigate the commercial practices** carried out in OSM in Europe and to assess them systematically from the perspective of consumer behaviour and consumer protection. The third objective was to study the **drivers behind the effectiveness and propagation** of these commercial practices from the perspective of both traders and consumers. The fourth objective was to **assess the level of involvement and responsibility of OSM providers and other players** in the design, implementation and follow up of the relevant commercial practices identified. Lastly, the study aimed to **draw conclusions and suggest specific remedies** for the problematic practices identified, based on the evidence collected, which would translate into **options for policy and enforcement intervention**.

The Final Report consists of seven chapters, which summarise the key insights from several pieces of research conducted over the course of the project. The current **Chapter 1** introduces the study's main objectives and outlines the different methodological approaches taken in order to systematically address these objectives. The chapter also provides a definition of online social media and highlights the topic's relevance for consumer protection online. **Chapter 2** introduces the OSM provider landscape, focusing on the top OSM providers in the EU and differences in OSM usage across the EU.

**Chapters 3 to 6** present an overview of specific commercial practices in OSM identified during the study with each chapter dedicated to a group of practices, which can be tackled together in the context of consumer protection. Each chapter first defines and describes the practice studied in its most common forms using visual examples. Next, the practice is assessed from the perspective of consumer protection and its potential to be problematic for consumers. These assessments are based on key findings from four qualitative studies<sup>1</sup> and four behavioural experiments conducted over the course of the project. Furthermore, each chapter proposes remedies to the risks identified for consumers, after assessing gaps in the current legislation and analysing the potential liability of OSM providers.

---

<sup>1</sup> In-depth desk research; online communities conducted in four EU Member States; a B2B stakeholder survey with relevant stakeholders; and a mystery shopping exercise.

More specifically, **Chapter 3** focuses on Disguised advertising practices, **Chapter 4** explores practices related to Social proof, **Chapter 5** focuses on Data gathering and targeting practices, and **Chapter 6** discusses the remaining practices identified. The overall conclusions of the study are presented in **Chapter 7**. Limitations and suggestions for future research on the topic are discussed in the Appendix.

Due to the comprehensive nature of the research conducted during this project, the Final Report serves as a summary of the key insights. Detailed reports for all research activities conducted are available as Annexes and are clearly referred to where relevant throughout this report.

## 1.2 Methodological approach

The project's broad scope and exploratory perspective required a multi-method approach. The study was divided into three main Tasks or phases<sup>2</sup>. Task 1 was defined as an extensive preparatory phase, including several data gathering exercises and laying the groundwork for Task 2 and Task 3. It consisted of several parts or subtasks, each utilising different qualitative research methodologies described shortly below:

- **Literature review** – a broad literature review was conducted to identify relevant existing literature used as background across various subtasks within the preparatory phase;
- **Provider mapping** – An in-depth provider mapping exercise was conducted, which identified (based on available data and pre-defined selection criteria) 1) the top OSM providers by Member State (20 websites and 10 apps), described in detail in dedicated country fiches and 2) the top 30 OSM providers in Europe, described in detail in dedicated provider fiches. All country and provider fiches as well as the corresponding data collection and selection methods are available in Annex 1.1;
- **Desk research** – an in-depth, systematic review of the content on the most relevant OSM providers identified was conducted to build a typology of commercial practices in OSM, and to identify practices that could be misleading or unfair from a consumer perspective. The research was conducted from three perspectives: advertising and marketing options offered by the OSM to traders (which provided the necessary context), marketing content OSM users are actually exposed to, and problematic marketing practices promoted in online forums. The core of the desk research took place in January and February 2017. For the full desk research report, please refer to Annex 1.3.1;
- **Online communities** – a qualitative study via online communities (similar to online focus groups but engaging consumers in both individual and interactive tasks) was conducted to investigate consumer experiences with OSM providers, including participants' awareness of and susceptibility to commercial content. The study involved individual tasks as well as online discussions between consumers

---

<sup>2</sup> Detailed descriptions of the methods applied during different data collection exercises conducted within the scope of the project are available in their respective reports which are cited as separate annexes where relevant throughout this report as well as in the current section.



on these issues. One online community was held in each of these four countries: Belgium, Italy, Hungary and Latvia. Fieldwork took place in late November and December 2016. Each community ran for a minimum of 7 days with a sample of 25 participants per community and task in every country. For the complete online communities report, please refer to Annex 1.3.2;

- **Stakeholder survey** - aside from consumers' perceptions, the role of OSM providers in commercial practices was investigated from an industry perspective. As part of this approach, we conducted in-depth interviews in six Member States with six types of relevant stakeholders: B2B clients/traders, local intermediaries, global intermediaries, consumer organizations, advertisers' organizations, and academics, representing a total of 53 organisations and companies. An interview guide was used to structure the 30- to 40-minute conversations, containing open-ended questions on the key topics. Fieldwork took place in between December 2016 and February 2017. For the full stakeholder survey report, please refer to Annex 1.4.1;
- **B2B Mystery shopping exercise** – as a second part of the industry approach, a mystery shopping exercise was conducted through a sample of fictitious and real companies. Top OSM providers and intermediaries were contacted with the intention to conduct a specific marketing campaign based on pre-defined scenarios. A total of 50 mystery shopping exercises were conducted with 13 of the EU Top 30 OSM providers identified in Task 1.1<sup>3</sup>. Five Intermediaries<sup>4</sup> were also included in the Mystery Shopping in order to understand the role of these business partners of OSM providers<sup>5</sup>, which have in-depth knowledge of them. Using this approach, a diverse sample of providers was covered with multiple observations per provider possible within the scope of the 50 exercises foreseen. Fieldwork took place in March and April 2017. For the full mystery shopping report, please refer to Annex 1.4.2;
- **Legal assessment** – the commercial practices identified during the preparatory phase were further assessed from a legal perspective in order to be able to make recommendations for specific remedies. An early legal assessment took place between April and June 2017 and was updated several times as additional evidence became available, but before the GDPR became applicable. For the full legal assessment, please refer to Annex 1.5.

Synthesised insights from Task 1 were used to develop the methodology for Task 2 – a testing phase which included the design, running and analysis of results of four behavioural experiments. The experiments were conducted in August 2017 in six EU Member States: Finland, Germany, Italy, the Netherlands, Hungary and Bulgaria.

---

<sup>3</sup> OSM platforms: Facebook, YouTube, Instagram, Twitter, Pinterest, LinkedIn, Reddit, Tumblr, SoundCloud, WhatsApp, Viber, Snapchat, Facebook Messenger

<sup>4</sup> Intermediaries: Komfo.com, Adespresso.com, Smartly.io, Adglow.com, Esome.com

<sup>5</sup> Intermediaries are companies that specialise in social media marketing and provide expert services or consultancy in this topic.

The experiments aimed to assess from a consumer perspective a number of potentially problematic marketing practices carried out in OSM, and to test specific remedies for consumers.

Two of the experiments conducted focused on **native advertising** (described in detail in Section 3.1) while the other two focused on **social proof practices** (described in detail in Section 4.1).

The experiments on the effects of social proof practices focused on:

- effects of the number of **anonymous likes** (Experiment 1); and
- effects of **extrapolated friends' likes** (Experiment 2).

The experiments on native advertising examined:

- consumers' **ability to identify native advertising** as such (Experiment 3); and,
- the effectiveness of **interventions to promote the identification of native advertising** as such (Experiment 4).

For a full report of the behavioural experiments, please refer to Annex 2.1.

Task 3 represented the final phase of the study. It was an integrated analysis phase, critically evaluating and synthesising the evidence gathered during Tasks 1 and 2, drawing informed and clear policy implications. The present report represents the main output of this final phase of the project.

To complement the expertise within the core project team, a number of external experts were consulted during the design, implementation and evaluation of different parts of the study. The expert group comprised of academics and practitioners with relevant backgrounds in marketing, communication science, computer science, and consumer law.

### 1.3 Definition of Online Social Media

A number of definitions of what constitutes Online Social Media (OSM) have been put forth in the academic literature. A key distinction that emerges is between profile-centric platforms, where social interaction is the defining factor, and media-centric platforms, where publishing, sharing, and accessing media and user-generated content are key activities on the platform. Ellison and boyd (2013) argue that early OSM providers were profile-centric in nature and that, over time, media-centric features gained in popularity<sup>6</sup>. Distinct user profiles and user interaction with user-generated or other media content are two of the main prerequisites for both profile-centric and media-centric platforms in many academic definitions of OSM (Kaplan and Haenlein, 2010; Jue, Marr and Kassotakis, 2009; Go and You, 2016).<sup>7,8,9</sup> Specific typologies of Online Social Media have also been identified and proposed in the literature, providing further insight into this phenomenon. Some of the most recent typologies are based on criteria such as the degree of self-presentation, the level of social presence, the main functionality, and the degree of

---

<sup>6</sup> Ellison, N.B. & boyd, d. (2013). *Sociality through Social Network Sites*. In Dutton, W. H. (Ed.), *The Oxford Handbook of Internet Studies*. Oxford: Oxford University Press, pp. 151-172.

<sup>7</sup> Kaplan, A.M. & Haenlein, M. (2010). *Users of the World, Unite! The Challenges and Opportunities of Social Media*. *Business Horizons*, 53 (6), pp. 563-572.

<sup>8</sup> Jue, A.L., Marr, J.A. & Kassotakis, M.E. (2009). *Social Media at Work: How Networking Tools Propel Organizational Performance*. John Wiley & Sons.

<sup>9</sup> Go, E. & You, K.H. (2016). *But not All Social Media are the Same: Analyzing Organizations' Social Media Usage Patterns*. *Telematics and Informatics*, 33 (1), pp.176-186.

communication symmetry, covering a wide variety of platforms that fit within these dimensions.<sup>10,11,12,13,14</sup> Grunig (2009) proposed a typology that fits within the notion of “profile-centric” versus “media-centric” OSM providers. In this typology, the term **social networking site** covers a group of OSM providers with characteristics similar to those defined as profile-centric (e.g. Facebook); on the other hand, **content-sharing sites** could be compared to media-centric ones (e.g. YouTube).

The two distinguishing factors we can identify that characterise existing definitions and typologies of online social media are: 1) the level of social interaction, and 2) the sharing and access to user-generated, platform generated or commercial media content. During the inception phase of the current study, Online Social Media platforms were defined in line with these factors; a third factor was added to ensure the relevance of the OSM providers studied to consumer policy. This working definition, which served to outline the scope of the OSM providers to be studied during the project, was delineated as follows:

Online social media providers are online platforms (websites or applications) on which:

- 1) *content (regardless of format) can be accessed, published and shared and/or enables social networking between individuals (user generated content )*
- 2) *the “social” aspect plays a key, predominant role in the setup and overall working of the platform*
- 3) *commercial content: at least one type of a clearly identifiable commercial practice is present*

Based on this working definition and following the research conducted, we can now define OSM providers more concretely as follows:

---

<sup>10</sup> Grunig, J.E. (2009). *Paradigms of Global Public Relations in an Age of Digitalization*. PRISM Journal, 6 (2), pp. 1-19.

<sup>11</sup> Kaplan, A.M. & Haenlein, M. (2009). *The fairyland of Second Life: Virtual social worlds and how to use them*. Business Horizons, 52, pp. 563-572.

<sup>12</sup> Kaplan, A.M. & Haenlein, M. (2010). *Users of the World, Unite! The Challenges and Opportunities of Social Media*. Business Horizons, 53 (6), pp. 563-572.

<sup>13</sup> Kietzmnn, J.H., Hermkens, K., McCarthy, I.P., Silvestre, B.S. (2011). *Social Media? Get Serious! Understanding the Functional Blocks of Social Media*. Business Horizons, 54 (3), 241–251.

<sup>14</sup> Mills, A.J. & Plangger, K. (2015). *Social media strategy for online service brands*. The Service Industries Journal, DOI: 10.1080/02642069.2015.1043277.

*OSM providers are online platforms that host, enable and encourage the exchange of user-generated and other content between individuals through social interaction. In exchange for these mostly free services they gain access to, collect and process information about users' socio-demographic profiles, interests and preferences. OSM providers use this data to create and offer paying advertising and other services that rely on highly granular and customizable user targeting options.*

What sets social media apart from other online media channels is the key role social interaction (directly or through content sharing) plays in consumer behaviour. Social interaction in general and close social ties, in particular, can add a layer of complexity when we consider how consumers perceive, assess and react to advertising and commercial content they are exposed to. The factors that set social media contexts apart from other online media channels may have an impact on consumer decision making, making consumers inherently more (or less) vulnerable to specific marketing practices and persuasion techniques. The present study aims to provide a groundwork analysis of commercial practices on OSM that could be problematic for consumers.

## 2 Online Social Media in the EU

The first step to study commercial practices that consumers encounter on OSM and their effects is to better understand the scope, size and nature of the OSM landscape in the EU28. In order to accomplish this, we identified and described the top OSM providers in the EU28 overall. A similar analysis was done across the EU Member States, Norway and Iceland. In addition to identifying the most used platforms, we collected relevant country-specific metrics based on available data (e.g. visits, active users). Lastly, we identified the key revenue streams of these social media. This chapter summarises the main insights from these tasks, serving as an introduction to the OSM market in the EU.

The full output of the analysis as well as the extensive data-collection and classification methodology are available separately in Annex 1.1, which includes:

- 1) Country-specific analyses describing the OSM landscape in each of the 30 countries surveyed, based on a common template (See example in Section 2.3);
- 2) A list of the EU top 30 OSM platforms, including international players, regional/national players and mobile-only platforms;
- 3) Individual analyses of these top 30 providers, based on a common template (see example in Section 2.4).

### 2.1 Introduction

OSM have become an integral part of consumers' lives, a trend which is clearly reflected in their observed and self-reported behaviour online. Recent research suggests that, in 2017, the average consumer (worldwide) spent over two hours per day on OSM providers.<sup>1</sup>

OSM have changed the way we live and connect as a society, and they have also become important from an economic perspective. The use of OSM by businesses is on the rise. While in 2013 under a third of businesses in the EU used OSM, 47% of EU businesses used at least one OSM provider in 2017.<sup>2</sup> The level of usage varies across the EU Member States, ranging from 27 % of businesses in Poland to 74 % in Malta.

Driven partly by the exponential growth in the reach and user engagement of OSM, the value of the total online advertising market in Europe was estimated at EUR 49 billion in 2017 and is expected to continue to grow steadily.<sup>3</sup> The total OSM advertising revenue in Europe is forecasted to reach \$8.7 billion in 2018, with an average growth rate forecast of 8.2% between 2018 and 2022. This number represents roughly 16% of digital advertising in Europe.<sup>4</sup> The split between revenue generated through desktop vs. mobile channels is currently in favour of mobile advertising, which is forecasted to continue its stable growth.<sup>5</sup>

---

<sup>1</sup> <https://www.statista.com/statistics/433871/daily-social-media-usage-worldwide/>

<sup>2</sup> [http://ec.europa.eu/eurostat/statistics-explained/index.php/Internet\\_advertising\\_of\\_businesses\\_-\\_statistics\\_on\\_usage\\_of\\_ads](http://ec.europa.eu/eurostat/statistics-explained/index.php/Internet_advertising_of_businesses_-_statistics_on_usage_of_ads)

<sup>3</sup> [ec.europa.eu/newsroom/document.cfm?doc\\_id=43866](http://ec.europa.eu/newsroom/document.cfm?doc_id=43866)

<sup>4</sup> <https://www.statista.com/outlook/216/102/digital-advertising/europe>

<sup>5</sup> <https://www.statista.com/outlook/220/102/social-media-advertising/europe>

When it comes to self-reported individual (private) usage of OSM providers in the EU, almost two thirds (63%) of 16 to 74 year olds participated in some type of social network in 2016, according to a recent study by Eurostat<sup>6</sup>. The highest OSM participation rates are observed in Hungary (83%), Malta (82%) and Belgium (80%).<sup>7</sup> As can be expected, younger people (16 to 24 years old) are most likely to have participated in OSM (88%) with this rate reaching 97% in the top three Member States (Belgium, Denmark and Hungary). The opposite is true for the oldest age group (65 to 74 years old) for whom the participation rate is roughly one third (32%).

The same study also explores to what extent businesses are likely to use OSM channels to market their products or services to consumers.<sup>8</sup> In general, social networks (e.g. Facebook, LinkedIn, etc.) are more commonly used by businesses than content sharing sites (e.g. YouTube and Flickr). Concretely, 43% of EU companies that have internet access use at least one social network, while 15% of them use at least one content sharing website). Both social networks and content sharing websites as defined in the quoted study are part of the OSM definition adopted by the present study.

According to the same study, the three most important reasons for businesses to use OSM are:

- 1) To market specific products or boost their image (reported by 79% of businesses);
- 2) Communicating to consumers about issues they may face or have faced (52%);
- 3) Employee recruitment (38%)

## 2.2 Top Online Social Media providers in the EU

The top OSM providers in the EU were identified based on monthly EU online traffic<sup>9</sup> (that is, visits, for browser-based OSM) or based on available information on the number of monthly active users (for app-based OSM). The table below provides an overview of this selection in addition to some key metrics: for browser-based OSM that includes monthly EU traffic<sup>10</sup>, share of monthly EU traffic<sup>11</sup>, and monthly active users (MAU, worldwide)<sup>12</sup>. For app-based OSM it includes MAU worldwide and the number of app downloads (worldwide)<sup>13</sup>. The selection is divided into three sections, aiming to cover a broad scope of platforms relevant to the EU market: 15 international platforms, 10 regional/national platforms and 5 mobile applications. Note that OSM which are used significantly both

---

<sup>6</sup> <http://ec.europa.eu/eurostat/cache/infographs/ict/index.html>

<sup>7</sup> The online communities research conducted as part of this study included two of these Member States (HU and BE).

<sup>8</sup> <http://ec.europa.eu/eurostat/cache/infographs/ict/bloc-1b.html>

<sup>9</sup> As a proportion of all international traffic, based on average monthly traffic data over a period of six months (May 2016 – October 2016)

<sup>10</sup> As a proportion of all international traffic, based on average monthly traffic data over a period of six months (May 2016 – October 2016)

<sup>11</sup> Based on average monthly traffic data over a period of six months (May 2016 – October 2016)

<sup>12</sup> Based on the latest information on monthly active users per platform

<sup>13</sup> Based on average monthly worldwide downloads over a period of six months (July 2016 – December 2016)

through the browser and via mobile apps have been included in one section only, in order to avoid duplication and increase diversity.<sup>14</sup>

The metrics show that Facebook and YouTube stand out as the two leading international platforms. Together, they account for an estimated 72.2% of the monthly traffic to OSM<sup>15</sup> across the 28 EU Member States plus Norway and Iceland (43.6% Facebook and 28.6% YouTube), followed by Twitter (4.3%) and Instagram (2.5%). These figures demonstrate that an overwhelmingly large proportion of OSM usage is focused within two large players. In fact, the top ten OSM providers in terms of desktop and mobile browser traffic presented in the visual below account for 87.4% of all EU traffic. Given their relative importance in the market and per country (with respect to usage), these top OSM providers were further analysed in subsequent tasks to arrive at a typology of commercial practices consumers are likely to encounter when spending time on them. These are discussed further in the following chapters.

---

<sup>14</sup> For more information on the selection methodology and how the reported metrics were derived, please consult Annex 1.1.

<sup>15</sup> These figures are based on desktop traffic and mobile browser traffic only and do not take into account traffic inside mobile applications.

Table 1: The selection of top 30 OSM providers in the EU

Selection		Top OSM platforms		
Geo.	Desktop/Website	MAU	EU Traffic*	% Traffic share
Int.	Facebook.com	1860M	7212.88M	43.60%
Int.	Youtube.com	1000M	4729.02M	28.59%
Int.	Twitter.com	319M	715.73M	4.33%
Int.	Instagram.com	600M	406.31M	2.46%
Int.	Reddit.com	234M	329.74M	1.99%
Int.	Tumblr.com	555M	254.45M	1.54%
Int.	Linkedin.com	106M	243.92M	1.47%
Int.	Pinterest.com	150M	207.09M	1.25%
Int.	Twitch.tv	100M	179.60M	1.09%
Int.	Imgur.com	150M	172.33M	1.04%
Int.	Whatsapp.com	1200M	170.43M	1.03%
Int.	Ok.ru	44.2M	150.78M	0.91%
Int.	Vk.com	80M	141.39M	0.85%
Int.	Wikia.com	190M	138.31M	0.84%
Int.	9gag.com	70M	133.46M	0.81%
Geo.	Desktop/Website	MAU	EU Traffic	% EU
Nat.	Cda.pl	4.63M	83.34M	0.50%
Nat.	Gutefrage.net	13.52M	66.25M	0.44%
Nat.	Hotukdeals.com	1.5M	30.88M	0.43%
Reg.	Xing.com	6.91M	23.07M	0.40%
Nat.	Vbox7.com	1.83M	13.55M	0.36%
Nat.	Gyakorikerdesek.hu	16M	13.35M	0.31%
Reg.	Draugiem.lv	N/A	11.22M	0.30%
Nat.	Flashback.org	N/A	10.42M	0.26%
Reg.	Skyrock.com	3.5M	8.81M	0.23%
Nat.	Suomi24.fi	N/A	8.10M	0.23%
Geo.	Mobile/App	MAU	App Down.	Play Down.
Int.	Facebook Messenger	1000M	2,61M	13,2M
Int.	SoundCloud	175M	1,13M	3,12M
Int.	Snapchat	200M	2,25M	6,22M
Int.	Viber	236M	1,34M	4,40M
Int.	Skype	300M	1,47M	4,63M

\*Due to different reference periods and the applied calculation method, traffic data reported in the country files may slightly deviate from EU data reported in the Top OSM platforms selection.

Remark	All metrics cover worldwide traffic within the time period reported below, unless explicitly specified	
Metric:	Date:	Source:
% Traffic share	1/05/2016 - 31/10/2016	Similarweb
EU traffic	1/05/2016 - 31/10/2016	Similarweb
App Down	01/07/2016 - 31/12/2016	Apptopia
Play Down.	01/07/2016 - 31/12/2016	Apptopia
MAU	Based on the last known number of monthly active users provided by the specific platform	

**Data sources:**

<https://www.thesocialmediahat.com/active-users>  
<https://www.apptopia.com>  
<https://www.similarweb.com/>  
<https://www.alexa.com>  
<https://www.applyzer.com>  
<https://conversationprism.com/>  
<https://investor.fb.com/investor-news/press-release-details/2016/Facebook-Reports-Second-Quarter-2016-Results/default.aspx>  
<https://www.youtube.com/yt/press/statistics.html>  
<http://projects.doteyeveryone.org.uk/digitalmps/resources/campaigns.html>  
<https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/>  
<https://techcrunch.com/2016/10/13/pinterest-hits-150m-monthly-users-missing-earlier-leaked-projections-in-2015/>  
<http://twitchadvertising.tv/audience/>  
<http://imgur.com/about>  
<http://www.liveinternet.ru/stat/odnoklassniki.ru/index.html?period=month>  
<http://www.liveinternet.ru/stat/vkontakte.ru/index.html?period=month>  
<http://fandom.wikia.com/about>  
<https://twitter.com/9gag>  
<http://www.wirtualnemedia.pl/artykul/serwisy-wideo-dominuje-youtube-mocno-w-gore-cda-i-vimeo-traci-wrzuca#>  
[https://www.agof.de/download/Downloads\\_digital\\_facts/Downloads\\_Digital\\_Facts\\_2016/Downloads\\_Digital\\_Facts\\_2016-07/07-2016\\_df\\_Ranking\\_Gesamtangebote\\_Internet\\_10+.pdf?x12921](https://www.agof.de/download/Downloads_digital_facts/Downloads_Digital_Facts_2016/Downloads_Digital_Facts_2016-07/07-2016_df_Ranking_Gesamtangebote_Internet_10+.pdf?x12921)  
<http://www.hotukdeals.com/>  
[https://marketingsolutions.xing.com/werben/pdf/XING%20Advertising\\_Mediadaten\\_EN.pdf?sc\\_p=da-128\\_1\\_3\\_5](https://marketingsolutions.xing.com/werben/pdf/XING%20Advertising_Mediadaten_EN.pdf?sc_p=da-128_1_3_5)  
<http://archive.audience.bg/>  
<http://www.webminute.hu/gyakorikerdesek.hu>  
<http://www.audience.gemius.lv/>  
<http://opex.skyrock.com/>  
<http://www.recode.net/2016/7/20/12232130/facebook-messenger-one-billion-users>  
<https://blog.soundcloud.com/2016/03/29/introducing-soundcloud-go/>  
<https://www.techinasia.com/viber-mau-looking-monetization>  
<https://www.statista.com/statistics/277958/number-of-mobile-active-facebook-users-worldwide/>



## 2.3 Differences across EU Member States

This section briefly summarises the results of the country mapping. To consult specific country fiches in more detail, please refer to Annex 1.1.1. For illustrative purposes, the final country fiche prepared for Austria is provided below:

Austria		Country Fiche						
Geo.	Desktop/Website	Cluster	Type	MAU	Country rank	Cat. rank	Traffic	Traffic share
Int.	Youtube.com	1	Video	1000M	2	1	50,69M	39,65%
Int.	Facebook.com	2	Social networks	1710M	3	1	48,29M	37,78%
Int.	Twitter.com	10	Social streams	313M	11	3	5,11M	3,99%
Int.	Instagram.com	2	Picture	500M	16	2	2,57M	2,01%
Int.	Reddit.com	No	Crowd wisdom	234M	21	4	3,82M	2,99%
Int.	Linkedin.com	No	Business	106M	22	10	1,35M	1,06%
Int.	Whatsapp.com	2	Messaging	1000M	39	8	2,67M	2,09%
Int.	Stackoverflow.com	No	Q&A	101M	40	1	1,10M	0,82%
Int.	Imgur.com	No	Picture	150M	43	1	2,06M	1,61%
Int.	Pinterest.com	8	Social curation	150M	46	7	1,42M	1,11%
Int.	Tumblr.com	3	Blog/Microblogs	555M	49	5	2,13M	1,67%
Nat.	Gutefrage.net	No	Q&A	13,52M	61	3	1,90M	1,49%
Int.	Twitch.tv	4	Livecasting	100M	64	1	2,70M	2,11%
Int.	9gag.com	No	Picture	70M	67	1	2,14M	1,67%
Reg.	Xing.com	No	Business	6,91M	73	11	0,88M	0,69%
Int.	Soundcloud.com	9	Music	175M	88	1	1,08M	0,85%
Int.	Vk.com	4	Social networks	80M	90	6	0,86M	0,67%
Int.	Wikia.com	No	Wiki	190M	93	9	1,51M	1,18%
Nat.	Spin.de	No	Social networks	N/A	N/A	22	0,05M	0,04%
Int.	Plus.google.com	1	Social networks	300M	N/A*	N/A*	1,61M	1,26%

\*Rankings for subdomains are not available from Alexa or SimilarWeb.

Geo.	Mobile/App	Cluster	Type	MAU	App Down.	Play Down.	App rank	Play rank
Int.	Facebook Messenger	2	Messaging	1000M	2,61M	13,20M	28	3
Int.	Instagram	2	Picture	500M	2,78M	7,15M	24	9
Int.	WhatsApp	2	Messaging	1000M	2,58M	11,70M	18	1
Int.	Facebook Mobile	2	Social networks	1570M	2,46M	8,77M	35	5
Int.	Snapchat	No	Picture/Video	200M	2,25M	6,22M	18	7
Int.	Musical.ly	6	Video	40M	1,36M	3,28M	30	13
Int.	Skype	5	Messaging	300M	1,47M	4,63M	49	38
Int.	Pinterest	8	Picture	150M	1,47M	3,75M	37	36
Int.	Viber	No	Calling	236M	1,34M	4,40M	111	26
Int.	Live.ly	6	Livecasting	N/A	0,80M	1,54M	83	93

**Data sources:**  
<https://www.thesocialmediahat.com/active-users>  
<https://www.apptopia.com>  
<https://www.similarweb.com>  
<https://www.alexa.com>  
<https://www.applyzer.com>  
<https://conversationprism.com/>  
<https://www.youtube.com/yt/press/statistics.html>  
<https://investor.fb.com/investor-news/press-release-details/2016/Facebook-Reports-Second-Quarter-2016-Results/default.aspx>  
<http://projects.doteyoung.org.uk/digitalmp/resources/campaigns.html>  
<https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/>  
<http://stackexchange.com/about>  
<http://imgur.com/about>  
<https://techcrunch.com/2016/10/13/pinterest-hits-150m-monthly-users-missing-earlier-leaked-projections-in-2015/>  
[https://www.agof.de/download/Downloads\\_digital\\_facts/Downloads\\_Digital\\_Facts\\_2016/Downloads\\_Digital\\_Facts\\_2016-07/07-2016\\_df\\_Ranking\\_Gesamtangebote\\_Internet\\_10+.pdf](https://www.agof.de/download/Downloads_digital_facts/Downloads_Digital_Facts_2016/Downloads_Digital_Facts_2016-07/07-2016_df_Ranking_Gesamtangebote_Internet_10+.pdf)  
<http://twitchadvertising.tv/audience/>  
<https://twitter.com/9qaq>  
[https://marketingsolutions.xing.com/werben/pdf/XING%20Advertising\\_Mediadaten\\_EN.pdf?sc\\_p=da-128\\_1\\_3\\_5](https://marketingsolutions.xing.com/werben/pdf/XING%20Advertising_Mediadaten_EN.pdf?sc_p=da-128_1_3_5)  
<https://blog.soundcloud.com/2016/03/29/introducing-soundcloud-go/>  
<http://www.liveinternet.ru/stat/vkontakte.ru/index.html?period=month>  
<http://fandom.wikia.com/about>  
<http://www.recode.net/2016/7/20/12232130/facebook-messenger-one-billion-users>  
<https://www.statista.com/statistics/277958/number-of-mobile-active-facebook-users-worldwide/>  
<https://www.techinasia.com/viber-mau-looking-monetization>  
<https://techcrunch.com/2016/12/06/musically-techcrunch-disrupt-london/>

Based on the data gathered for this study, some interesting differences in traffic across EU Member States are observed when considering the top OSM providers. For Facebook, the share of total monthly EU traffic is lowest in Finland (34.2%), Sweden (34.5%) and Ireland (35.8%), while it is highest in Romania (51.7%), Portugal (50.2%) and Italy (48.8%), suggesting that Facebook is less popular in the Northern region compared to the Southern region. A similar pattern is observed for YouTube, with the exception of Bulgaria, where it has a relatively low traffic share, possibly due to the popularity of its direct competitor at national level (Vbox7.com). Interestingly, Twitter records its highest share of EU traffic in Spain (7.6%), followed by the UK (6.7%) and Ireland (6.4%), where English being an official language may play a role in fostering the platform's popularity.

For more recent platforms offering less conventional services, such as Reddit, Tumblr, and Twitch.tv, the pattern observed for the two main platforms seems to be reversed. Reddit, which is the most frequently used of the three platforms, has the highest traffic share in Norway (4.9%), Sweden (4.6%) and Finland (4.5%), while it has the lowest share in Poland (0.8%), Hungary and Romania (both 0.9%). Similarly, Tumblr is most frequently used in the UK (1.9%), Finland and Sweden (each 1.7%) and least frequently used in Poland, Romania (each 0.9%) and Slovakia (1%). Lastly, Twitch, which is a niche livestreaming platform tailored to the video gaming sector, has the highest traffic share in Sweden (3.4%), Finland and Denmark (each 3%) and the lowest traffic share in Hungary, Romania and Greece (each 0.8%).

Overall, these results suggest that OSM usage in Northern Europe appears to be more diverse, with smaller platforms representing a higher proportion of the traffic share compared to Member States in the other three regions and particularly compared to the Southern Member States. As such, OSM usage is less focused on the two largest platforms (Facebook and YouTube) and more balanced across the other top providers. It is still possible that more niche platforms grow in popularity in regions where OSM reach is the lowest, still relying on early adopters to drive traffic. Still, this pattern is also observed for established platforms, such as Instagram, which represents the highest proportion of traffic in Finland (2.9%) and the lowest in Romania (1.3%), Bulgaria (1.6%) and Hungary (1.7%).

Specific national platforms were also identified as representing a significant proportion of OSM usage in certain Member States. The top 3 national platforms based on the proportion of traffic within their respective country are Vbox7.com in Bulgaria (7.6%), Cda.pl in Poland (4.2%) and Suomi24.fi in Finland (3.1%). When it comes to absolute traffic, Cda.pl (49.5 million) and Wykop.pl (25.3) in Poland and Gutefrage.net in Germany (29.2 million) are the top three national providers identified.

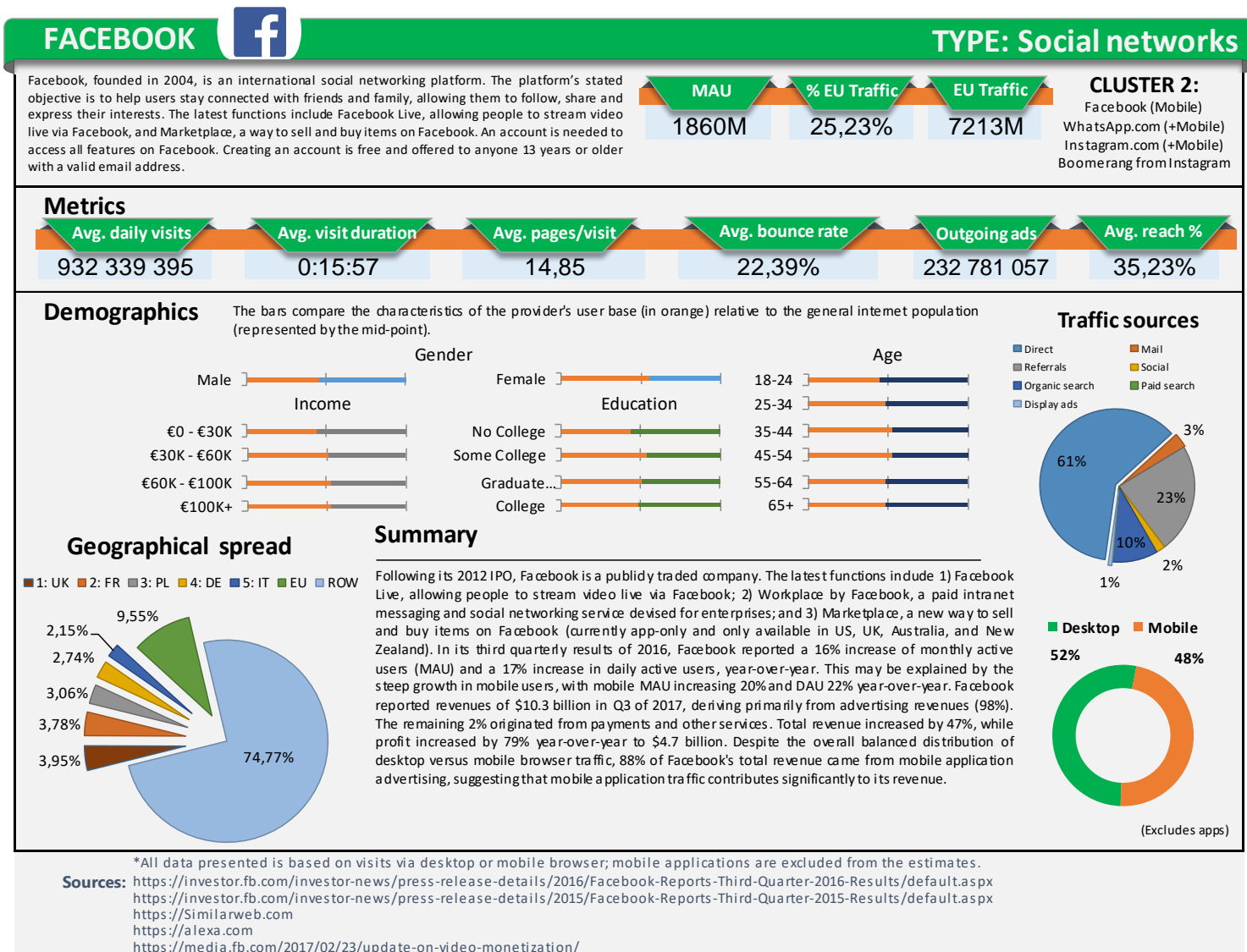
For mobile, classic messaging apps rank consistently the highest in terms of the number of downloads within a reference period of six months. Facebook Messenger, WhatsApp and Viber are the three most popular mobile apps, followed by Instagram and Snapchat. Interestingly, Viber appears to be popular in Eastern and Central Europe (e.g. Bulgaria, the Baltics, Croatia) but is absent from the top mobile providers in most Northern Member States (e.g. Norway, Finland, Iceland, Denmark). Snapchat, on the other hand, is consistently among the top three mobile applications in all Northern Member States. Facebook's mobile application is also consistently among the top mobile providers as measured by the number of downloads over the six-month reference period, while the

YouTube app is only present among the top mobile providers in eight Member States and is consistently ranked towards the bottom in number of downloads.

## **2.4 Key Online Social Media providers in focus**

As discussed above, Facebook and YouTube can be considered the two most important OSM providers in the EU in terms of user reach and frequency of usage. However, some platforms with lower reach are also interesting to consider when describing the broad landscape of OSM providers in the EU, as they are characterised by different value propositions to consumers and may have focused impact on different consumer segments or economic sectors. In this section, we described six OSM providers more in-depth following a standard template, focusing on user access and primary activities, platform features, active users and financial performance based on desk research conducted in March 2017. To consult specific provider fiches in more detail, please refer to Annexes 1.1.3 and 1.1.4. For illustrative purposes, the final provider fiche prepared for Facebook is shown at the beginning of the following section.

## 2.4.1 Facebook Inc.



Facebook, founded in 2004, is an international social networking platform. The platform's stated objective is to help users stay connected with friends and family, allowing them to follow, share and express their interests. The latest functions include Facebook Live, allowing people to stream video live via Facebook, and Marketplace, a way to sell and buy items on Facebook. An account is needed to access all features on Facebook. Creating an account is free and offered to anyone 13 years or older with a valid email address. Facebook reported revenues of \$10.3 billion in Q3 of 2017, deriving primarily from advertising revenues (98%). The remaining 2% originated from payments and other services. Total revenue increased by 47%, while profit increased by 79% year-over-year to \$4.7 billion. Despite the overall balanced distribution of desktop versus mobile browser traffic, 88% of Facebook's total revenue came from mobile application advertising, suggesting that mobile application traffic contributes significantly to its revenue.<sup>30</sup> **Facebook Messenger, Instagram and WhatsApp** also belong to Facebook.

**Facebook Messenger**, released in 2011 and often referred to as "Messenger", is an international instant messaging mobile application. In 2014 the integrated Messenger functionality was removed from the main Facebook mobile application and became a stand-alone application. Facebook Messenger allows text, image, video and file sharing. In July 2017, Facebook started to roll out display ads on Messenger's home screen, below users' favourite contacts. In December 2017, Facebook reported that Messenger had reached 1.3 billion monthly active users, up from 1 billion in 2016.<sup>31</sup> While Facebook does not report separate revenues from the different applications it owns, it plans to further monetise Messenger by allowing consumers and businesses to communicate organically through chatbots, which allow Messenger users not only to communicate with businesses but also to make purchases within the app.

**WhatsApp** was launched in 2009 and acquired in 2014 by Facebook for approximately \$19.3 billion. By 2016 WhatsApp was used by more than one billion users.<sup>32</sup> The key distinguishing feature of WhatsApp is that it uses end-to-end encryption, which ensures a secure messaging service. WhatsApp does not display any advertisements, but in August 2016 WhatsApp announced that they would start sharing user data (i.e. phone number and aggregated analytical data) with Facebook.<sup>33</sup> However, Facebook has been fined for giving false information at the acquisition, having said they would not share any user data<sup>34</sup>, and in March 2018 the UK's Information Commissioner's Office (ICO)<sup>35</sup> ruled that sharing WhatsApp user data with Facebook would be illegal.<sup>36</sup> Facebook used WhatsApp's data information for suggesting friend requests and to show more relevant advertisements on its own platform based on the data retrieved from WhatsApp.

---

<sup>30</sup> <https://investor.fb.com/investor-news/press-release-details/2017/Facebook-Reports-Third-Quarter-2017-Results/default.aspx>

<sup>31</sup> <https://newsroom.fb.com/news/2017/12/messengers-2017-year-in-review/>

<sup>32</sup> <https://www.theverge.com/2016/2/1/10889534/whatsapp-1-billion-users-facebook-mark-zuckerberg>

<sup>33</sup> <https://www.telegraph.co.uk/technology/2016/08/25/whatsapps-new-privacy-policy-lets-it-share-your-phone-number-wit/>

<sup>34</sup> [europa.eu/rapid/press-release\\_IP-17-1369\\_en.pdf](https://europa.eu/rapid/press-release_IP-17-1369_en.pdf)

<sup>35</sup> <https://ico.org.uk/>

<sup>36</sup> <https://www.theguardian.com/technology/2018/mar/14/whatsapp-sharing-user-data-facebook-illegal-ico-gdpr>

WhatsApp however states that user data of WhatsApp is not directly shared with advertisers. In August 2016, existing users could opt-out of having their WhatsApp data used for Facebook advertisements in the new terms and agreements or were able to cancel it up to 30 days after the new terms and agreements had been accepted. The ability to use the application was not affected by opting out of having WhatsApp data shared with Facebook. New WhatsApp users were able to opt-out of sharing their account information with Facebook, by unchecking the option during installation. Some information was, however, still being shared for “product improvement” purposes.<sup>37</sup>

**Instagram**, founded in 2010 and acquired by Facebook in September 2012 for approximately \$1 billion, is an international social photo-sharing service. Registered users can share, like and comment on pictures and videos privately or publicly on Instagram’s own platform as well as on other social media platforms, add filters to pictures and send private messages to friends and other users. Advertisements, in the form of sponsored posts, only started appearing on Instagram after November 2013 and are shown exclusively on mobile devices. As of November 2016, Instagram also allows brands to tag their products in their own pictures, making it a so-called “shoppable post”<sup>38</sup>, in order to redirect users to specific product pages. Advertisements on Instagram must be ordered via Facebook's in-house advertising platform. As of September 2017, Instagram reached 800 million monthly active users and 500 million daily active users.<sup>39</sup> Facebook has not yet made public any financial data for Instagram only.

Similar to Snapchat’s main functionality, Facebook Messenger, Instagram and WhatsApp have all introduced a feature which allows users to upload photos and videos to a 24-hour live feed.<sup>40</sup>

#### 2.4.2 YouTube

YouTube, founded in 2005 and acquired by Google (Alphabet) in 2006 for \$1.65 billion, is an international social video sharing platform and search engine. The platform allows its users (recreational and professional) to upload, view, rate, report, share, like and comment on video content, save content as favourite, add it to playlists, subscribe to (i.e. follow) other users and channels and message other users. Some recent new features include 360 degree videos, mobile live streams and virtual reality. YouTube advertising is based on TrueView ads, which work via a customized pricing model based on user engagement: traders only pay for viewers who watch the advertisement for at least 30 seconds. YouTube plans to increasingly focus on engagement-linked ads like TrueView and it has even decided to remove unskippable pre-roll ads (video ads that must be watched in full before viewing a video)<sup>41</sup>. Since 2013, YouTube has reported over 1 billion users (4 billion views per day). YouTube generated 6% (roughly \$4 billion) of Alphabet's ad sales revenue in 2014.<sup>42</sup> This represents a steep growth compared to

---

<sup>37</sup> <https://wccftech.com/opt-out-of-whatsapp-sharing-data-facebook/>

<sup>38</sup> <https://help.instagram.com/191462054687226?helpref=search&sr=1&query=shopping>

<sup>39</sup> <https://business.instagram.com/blog/safety-and-kindness-for-800-million/>

<sup>40</sup> <http://nymag.com/selectall/2017/04/is-facebook-a-monopoly-just-ask-snapchat.html>

<sup>41</sup> <http://www.bbc.com/news/technology-39027650>

<sup>42</sup> <https://www.wsj.com/articles/viewers-dont-add-up-to-profit-for-youtube-1424897967>

2008 (total revenue of \$200 million). However, it is unclear if the video platform itself makes any profit<sup>43</sup>, as Alphabet does not consistently disclose revenue or profit figures on YouTube. Arguably, YouTube does not yet make any profit yet due to 1) the expensive infrastructure necessary to run the platform combined with and 2) the majority of users watching videos via external websites (via an embedded video link) rather than on YouTube's platform itself, where YouTube could charge a premium for ads.<sup>44</sup>

### 2.4.3 Twitter

Twitter, founded in 2006, is an international real-time microblogging platform. Registered users can communicate via "Tweets", i.e. microblog messages containing a maximum of 280 characters (only 140 characters were allowed until November 2017), images, videos, GIFs (animated pictures), polls or other attachments. The distinguishing characteristics of Twitter today include followers, @replies, #hashtags, direct private messaging, trending topics, verified accounts and polls. A recently introduced feature is called "Twitter Moments": it enables topic-related stories to be created by bundling Tweets around that topic.<sup>45</sup> Twitter went public with an IPO in 2013, raising \$1.8 billion.<sup>46</sup> Despite the rapid growth (from 400.000 tweets per quarter in 2007 to 5 million tweets per day in 2017), Twitter has not yet been able to record a full-year profit. It reported a net loss of \$21 million in Q3 of 2017.<sup>47</sup> In 2017, Twitter reached \$2.4 billion revenues, which amounts to a decrease of 3% year-over-year.<sup>48</sup> 82% of Twitter users are active on the platform's mobile version and as much as 89% of its advertising revenues in Q4 of 2016 came from mobile advertising.<sup>49</sup>

### 2.4.4 Reddit

Reddit, founded in 2005 and acquired by Condé Nast Publications in October 2006, is an international platform for web content rating and discussion. Since 2014, Reddit operates as an independent entity, with Advance Publications being its largest shareholder.<sup>50</sup> Reddit presents itself as "The front page of the internet" and consists of a collection of communities called "subreddits", revolving around specific topics.<sup>51</sup> Registered users of a community can submit content on these subreddits and vote other users' posts up or down. Posts with the highest number of positive votes and interactions appear on the front page of Reddit or at the top of a specific community. Reddit offers advertising in the form of text-based posts and display advertisements. Display advertisements on

---

<sup>43</sup> <http://fortune.com/2016/10/18/youtube-profits-ceo-susan-wojcicki/>

<sup>44</sup> <https://www.investopedia.com/articles/personal-finance/053015/how-youtube-makes-money-videos.asp>

<sup>45</sup> <https://business.twitter.com/en/blog/Everything-you-need-to-know-about-Twitter-Moments.html>

<sup>46</sup> <http://money.cnn.com/2013/11/06/technology/social/twitter-ipo-price/index.html>

<sup>47</sup> [http://files.shareholder.com/downloads/AMDA-2F526X/5907604536x0x961125/EB20419D-CCD5-4A07-9F2A-236605AE1C3C/2017\\_Q3\\_Earnings\\_Slides.pdf](http://files.shareholder.com/downloads/AMDA-2F526X/5907604536x0x961125/EB20419D-CCD5-4A07-9F2A-236605AE1C3C/2017_Q3_Earnings_Slides.pdf)

<sup>48</sup> [http://files.shareholder.com/downloads/AMDA-2F526X/6120561853x0x970882/AF653BFB-8C4D-4D91-8F12-8867CDA665DB/Q4\\_2017\\_Shareholder\\_Letter.pdf](http://files.shareholder.com/downloads/AMDA-2F526X/6120561853x0x970882/AF653BFB-8C4D-4D91-8F12-8867CDA665DB/Q4_2017_Shareholder_Letter.pdf)

<sup>49</sup> [http://files.shareholder.com/downloads/AMDA-2F526X/5907604536x0x927284/1A6D9055-6176-4A45-A707-9A90417914F7/TWTR\\_Q4\\_16\\_Earnings\\_Press\\_Release.pdf](http://files.shareholder.com/downloads/AMDA-2F526X/5907604536x0x927284/1A6D9055-6176-4A45-A707-9A90417914F7/TWTR_Q4_16_Earnings_Press_Release.pdf)

<sup>50</sup> <https://www.notion.so/Reddit-91ee6179cb024465b9a98bdeecbf7849>

<sup>51</sup> <https://www.reddit.com/>

Reddit are managed both by Reddit themselves and through Google's display network. Reddit also offers premium memberships in the form of "Reddit Gold"; these unlock several additional functions, including access to a community exclusively for gold members.<sup>52</sup> In 2016, Reddit also introduced automatically generated affiliate links that refer to any products mentioned within a post on Reddit.<sup>53</sup> What differentiates Reddit from most other OSM providers is that it gathers little data from its users, allowing users to set up an account very quickly and even without email verification. Reddit shares very few financial details. In 2015 they reported ad revenues of \$8.3 million.<sup>54</sup>

#### 2.4.5 LinkedIn

LinkedIn, founded in 2003 and acquired in 2016 by Microsoft for \$26 billion, is an international online social network. Members (freelancers, employers, employees, job seekers, etc.) can create a professional profile and connect with other, i.e. create "professional relationships". Employers are able to post job offers and job seekers can react on those directly by sending their CV via the platform. LinkedIn also offers different kinds of premium memberships which allow, amongst other, to view profiles of and send messages to people that are outside of the premium user's contact list. In the third quarter of 2017, LinkedIn had more than 467 million members, which is an 18% growth year-over-year.<sup>55</sup> As for revenue sources, LinkedIn DirectAds allows advertisers to target specific audiences through a simple interface. In 2016, LinkedIn launched "Open Candidates", which allows users to privately signal recruiters that they are looking for a job.<sup>56</sup> Sponsored content was the primary source (two thirds) of the total Marketing Solutions revenue of \$175 million in Q3 of 2016.<sup>57</sup> Besides marketing, as of 2015 their most lucrative practice has been selling access to members' data to recruiters, via a subscription-based recruiter profile.<sup>58</sup> This created \$623 million in revenue in Q3 of 2016. Adding the Premium Subscription revenue of \$162 million, a total revenue of \$960 million was reached in Q3 of 2016, which is a 23% year-over-year increase.<sup>59</sup> In 2018, Microsoft reported that LinkedIn contributed with revenues of \$1.1 billion in Q4 of 2017.<sup>60</sup>

#### 2.4.6 Snapchat

Snapchat, founded in 2011 by Snap Inc., is a photo messaging application. The company went public in March 2017, valued at over \$20 billion.<sup>61</sup> The basic premise consists of privately sharing images that are only temporarily available and disappear after a short period or view. This idea initially differentiated Snapchat from its competitors. Pictures

---

<sup>52</sup> <https://www.reddit.com/gold/about/>

<sup>53</sup> [https://www.reddit.com/r/announcements/comments/4mv578/affiliate\\_links\\_on\\_reddit/](https://www.reddit.com/r/announcements/comments/4mv578/affiliate_links_on_reddit/)

<sup>54</sup> <https://redditblog.com/2015/02/18/reddit-donate-10-of-our-2014-advertising-revenue-will-be-donated-to-10-charities-you-choose-voting-begins-now/>

<sup>55</sup> <https://news.linkedin.com/2016/linkedin-announces-third-quarter-2016-results>

<sup>56</sup> <https://business.linkedin.com/marketing-solutions/ads>

<sup>57</sup> <http://uk.businessinsider.com/linkedin-q3-earnings-fails-to-surprise-2016-10?r=US&IR=T>

<sup>58</sup> [https://www.washingtonpost.com/news/the-switch/wp/2017/08/15/is-linkedin-trying-to-protect-your-data-or-hoard-it/?utm\\_term=.0e00689b113a](https://www.washingtonpost.com/news/the-switch/wp/2017/08/15/is-linkedin-trying-to-protect-your-data-or-hoard-it/?utm_term=.0e00689b113a)

<sup>59</sup> <https://news.linkedin.com/2016/linkedin-announces-third-quarter-2016-results>

<sup>60</sup> <https://www.microsoft.com/en-us/Investor/earnings/FY-2017-Q4/press-release-webcast>

<sup>61</sup> <https://www.theverge.com/2017/3/1/14778432/snapchat-ipo-stock-price-announced-snap-inc-valuation>



and videos can be edited by filters, drawings or text captions. In 2016 Snapchat introduced “Memories”, which allows Snapchat users to save their own Snapchats and to be able to review or send them again in the future. Since its launch, Snapchat has seen rapid growth with 187 million daily users worldwide, an increase of 18% year-over-year compared to Q4 of 2016. Metrics show 6 billion videos were sent and 10 billion videos are viewed per day in November 2016.<sup>62</sup> In Q4 of 2017, Snapchat reported revenues of \$286 million, improving from \$208 million in Q3 of 2017. Despite this rapid revenue growth, Snapchat reported net losses totalling \$350 million in Q4 of 2017, compared to \$443 million in Q3 of 2017 and \$170 million in Q3 of 2016.<sup>63</sup> Snapchat generates revenue through paid advertising, especially through the “Discover” feature that shows content from publishers, via video ads, and via sponsored lenses and geo-filters.

## 2.5 Revenue streams of Online Social Media providers

Another key aspect to consider when describing the OSM provider landscape in Europe is their revenue streams. Understanding these is important to understand the role of OSM providers in specific commercial practices, as well as their relationships with relevant players in the market. More concretely, we consider the offer of so-called free and paid services to consumers, and the offer to traders (and others) of targeting services for distribution of marketing content. These result in specific **revenue streams**, identified using the Business Model Canvas framework<sup>64</sup> and described in this section.<sup>65</sup> Several distinct revenue models have been identified in the literature, mainly rooted in advertising and subscription fees (Ha & Ganahl, 2009; Hayes & Graybeal, 2011).

The first revenue stream comes from the **display of advertising and marketing content**, targeted on the basis of users’ browser history and cookies, but not of any personal data collected from the user’s OSM account. This type of revenue stream is most relevant in the start-up phase of a platform, before it reaches critical mass or sustained user engagement, but some of top OSM providers still use it in combination with other revenue streams (e.g. YouTube, Reddit, or Imgur). This type of revenue can come from traders advertising through either third-party advertising networks, or the OSM providers’ own in-house advertising platform. The distinction between these two origins is further elaborated in Section 2.6.

The second revenue stream is based on personalised data, or user profiles<sup>66</sup>, made available for the **highly granular targeting of advertising and marketing content**. These profiles are based on the user’s account data (including user’s personal data,

---

<sup>62</sup> [https://investor.snap.com/~/\\_media/Files/S/Snap-IR/reports-and-presentations/q4-17-earnings-slides.pdf](https://investor.snap.com/~/_media/Files/S/Snap-IR/reports-and-presentations/q4-17-earnings-slides.pdf)

<sup>63</sup> <https://investor.snap.com/news-releases/2017/11-07-2017-211621749>

<sup>64</sup> <https://strategyzer.com/canvas/business-model-canvas>

<sup>65</sup> The output from the Business Model Canvas framework exercise conducted is described in more detail in Annex 1.2 Business model identification. It should be noted that, although identifying the key Business Models of OSM was an objective of the present study, this task proved to be very challenging due to various reasons, among which the dynamic and complex nature of OSM and their value propositions.

<sup>66</sup> The distinction between anonymous and personalised data will be further discussed in Chapter 5 based on insights from other parts of this study.

previous account history), the user's browser history and cookies, and behavioural data extracted by the platform (e.g. social endorsements such as likes, follows or shares). The OSM platform earns revenue by selling access to very detailed user profiles based on personal and other data (e.g. sociodemographic characteristics, civil status, interests etc.) for targeting purposes. The purchase of these targeting services can either take place directly through the OSM provider's own in-house advertising platform, or via specialized advertising and marketing agencies with direct access to the OSM platform (referred to as "intermediaries" in the context of this report). This is the main and unique sales proposition of mature platforms with a critical mass of users and sustained user engagement, such as Facebook, LinkedIn, YouTube, Twitter, Pinterest etc. It is important to note that the largest platforms also act as advertising intermediaries or analytics specialists, offering traders extra support and advice with respect to user profiling and targeting as well as data analytics and data integration, especially when higher budgets are involved.<sup>67</sup>

Some OSM platforms derive revenue from **subscription fees** charged to individual, private users **for premium/exclusive services** and content available through the platform (e.g. YouTube Red<sup>68</sup>, LinkedIn Premium<sup>69</sup>, Twitch Turbo<sup>70</sup>).<sup>71</sup> Third party traders may also pay specific fees to access **premium marketing services and data analytics** based on anonymised, pseudonymised or personal user data (including account, profile, or behavioural data; examples include LinkedIn InMail<sup>72</sup>, Facebook analytics<sup>73</sup>, YouTube analytics<sup>74</sup>, Pinterest Rich Pins<sup>75</sup>, Xing referral management<sup>76</sup>).

Lastly, some OSM platforms derive **revenues from transaction fees** on the sale of virtual and real-world goods and services that take place on the platform. These transaction fees constitute a share of the payments made by the users to the third party traders. Virtual goods, such as stickers, can enhance the user's social experiences on a given platform. The offer of real-world goods (e.g. on Facebook's marketplace) also

---

<sup>67</sup> This is further elaborated in Section 5.2 of Chapter 5, which is devoted to data gathering and targeting practices.

<sup>68</sup> YouTube. 2017. Join YouTube Red. Available at: <https://support.google.com/youtube/answer/6305537>

<sup>69</sup> LinkedIn. 2016. Annual report 2015. Available at: [https://s21.q4cdn.com/738564050/files/doc\\_financials/annual/2015/LinkedInAnnualReport\\_2016.pdf](https://s21.q4cdn.com/738564050/files/doc_financials/annual/2015/LinkedInAnnualReport_2016.pdf)

<sup>70</sup> Twitch. 2013. Announcing Twitch Turbo: Watch Games, Not Ads. Available at: <https://blog.twitch.tv/announcing-twitch-turbo-watch-games-not-ads-38aaec747579>

<sup>71</sup> On the other hand, some platforms (e.g. YouTube) need to pay content rightholders in order to be able to host specific content uploaded by individual users.

<sup>72</sup> LinkedIn. 2016. Annual report 2015. Available at: [https://s21.q4cdn.com/738564050/files/doc\\_financials/annual/2015/LinkedInAnnualReport\\_2016.pdf](https://s21.q4cdn.com/738564050/files/doc_financials/annual/2015/LinkedInAnnualReport_2016.pdf)

<sup>73</sup> Facebook. 2017. Product analytics for driving growth. Available at: <https://analytics.facebook.com/>

<sup>74</sup> YouTube. 2017. Get the most out of your data. Available at: <https://developers.google.com/youtube/analytics/>

<sup>75</sup> Pinterest. 2017. Rich Pins. Available at: <https://business.pinterest.com/en-gb/rich-pins>

<sup>76</sup> Xing. 2017. 2016 Annual report. Available at: [https://corporate.xing.com/fileadmin/user\\_upload/XING\\_AG\\_results\\_FY\\_2016.pdf](https://corporate.xing.com/fileadmin/user_upload/XING_AG_results_FY_2016.pdf)

provides users with additional value (both as sellers and buyers), especially on OSM providers with high reach among the general population.

## 2.6 Delivering marketing content to Online Social Media users

Marketing content can be displayed on OSM via one of two channels: an in-house advertising platform that is developed and hosted by the OSM provider, or a third-party advertising network that acts as an intermediary in the process. Not all OSM have their own in-house advertising platform: some use only third-party advertising networks, while others use a combination of both. Third-party networks serve as intermediaries, matching advertising supply from publishers to advertising demand online. That is, they match advertisers to specific OSM providers with high user traffic and available advertising space.<sup>77</sup> The most widely used third-party advertising network is Google's AdSense network. The table below presents an overview of the top OSM providers and their use of in-house and third part advertising networks.

OSM Platform	In-house Advertising	Third-party advertising
Facebook.com	✓	
Youtube.com	✓	
Twitter.com	✓	
Instagram.com	✓	
Reddit.com	✓	Google Adsense
Tumblr.com		
Linkedin.com	✓	
Pinterest.com	✓	
Twitch.tv	✓	
Imgur.com	✓	
Whatsapp.com		
Ok.ru	✓	Google Adsense, Criteo
Vk.com	✓	
Wikia.com	✓	
9gag.com	✓	Google Adsense
Cda.pl		Google Adsense
Gutefrage.net	✓	Google Adsense, Ligatus
Hotukdeals.com		
Xing.com	✓	
Vbox7.com	✓	Google Adsense
Gyakorikerdesek.hu	✓	Google Adsense, affiliate.hu
Draugiem.lv	✓	Google Adsense
Flashback.org	✓	
Skyrock.com		Google Adsense, Criteo, Appnexus
Suomi24.fi		Google Adsense
Facebook Messenger	✓	
SoundCloud	✓	
Snapchat	✓	
Viber	✓	
Skype	✓	

The key distinction between these two types of advertising options is that OSM providers define all advertising formats, functionalities and targeting options when traders advertise through OSM's in-house advertising platforms. In that case, traders also need to abide by the content and formatting rules and guidelines set by the OSM provider. On

<sup>77</sup> [https://en.wikipedia.org/wiki/Advertising\\_network](https://en.wikipedia.org/wiki/Advertising_network)

the other hand, when advertising through a third-party advertising network the rules and guidelines of that network apply.

In terms of content and format, advertisements displayed through third-party networks are more standardised<sup>78</sup> compared to in-house advertising platforms where more options for ad customisation are available to traders. In addition, marketing content displayed through in-house advertising platforms will usually be interactive (allows for user actions such as e.g. like, follow, share, etc.) and appear directly in users' feeds, which makes it more difficult to distinguish from other user-generated content. For example, a sponsored Tweet is a form of advertising that takes place through Twitter's in-house advertising platform.

When OSM use third-party advertising networks, those advertisements mostly include banner ads on top or on the side of the page, and users cannot interact with them. For example, third-party network ads can be seen on the fixed right-side column of Facebook's website.

When it comes to revenue streams, traders pay directly to OSM that have an in-house advertising platform if they wish to advertise through it. For OSM using third-party advertising networks, traders pay the network and the network pays a proportion to the OSM platform. The pricing of these types of ads depends on their prominence (e.g. how centrally they are positioned in users' field of view, how large they are with respect to other content etc.) and their reach (the number of users who are exposed to the ad) among other factors, and is usually set by real-time or programmatic bidding<sup>79</sup>, determined by complex algorithms developed by the ad network. This method allows advertisers to bid on ad space during the time it takes for a banner ad to load.

Targeting users is another key factor to consider. OSM establish a specific profile for each user based on the data the user has shared with the platform, activity on the platform (e.g. likes of corporate pages, engagement metrics such as comments and shares of specific content etc.), and sometimes off-line data. Ads are then shown to users based on pre-defined relevant categories or specific keywords that are matched with user data available to the OSM. Using this system, through their in-house advertising platforms, OSM providers can offer traders advanced audience targeting. It provides access to very "customised" user groups (target audiences) based on a mix of sociodemographic, behavioural and interest-based metrics that the platform collects about its users on a regular basis. In contrast, display advertising networks have more limited data to target users, mostly based on user browsing (browser cookies). They track users' browsing activity, target them using relevant keywords, and collect data on impact metrics, such as ad impressions<sup>80</sup> and clicks.

---

<sup>78</sup> Standardised formats are necessary due to the large scale at which third-party advertising networks operate.

<sup>79</sup> <https://adexchanger.com/online-advertising/define-programmatic-buying/>

<sup>80</sup> Ad impression is equivalent to ad exposure. Ad impressions are the number of times an ad is displayed within a webpage consulted by a visitor. See <http://www.digitalmarketing-glossary.com/What-is-Ad-impression-definition>

## **2.7 Commercial practices on Online Social Media**

In the course of this study we designed and conducted the following research activities to identify specific commercial practices on OSM providers that can be potentially problematic for consumers:

- a) online communities (focus groups) conducted in four Member States;
- b) 53 in-depth qualitative interviews conducted with several types of stakeholders;
- c) 50 B2B mystery shopping exercises; and,
- d) An in-depth desk research conducted to identify concrete examples of potentially problematic practices and corroborate findings from the qualitative studies.

Their findings served to feed into the design and implementation of behavioural experiments, which provided a quantitative assessment. Lastly, a legal assessment was conducted and specific remedies were identified and assessed. The results of all these tasks are summarised in the following chapters.

## 3. Disguised Advertising Practices

### 3.1 Introduction

“Disguised advertising” is any form of commercial communication that presents itself as non-commercial, in a way that it ‘blends in’ with other content published by users on OSM. With regards to the format, disguised advertising aims to *look* like non-commercial content, and appear in the same places on the platform where non-commercial content appears.<sup>1</sup> With regards to the content, some traders also aim to make it appear as non-commercial as possible by ensuring that it shares the characteristics of content posted by non-commercial users.<sup>2</sup> Disguising advertisements as non-commercial content prevents OSM users from recognising it as commercial, filtering it out, ignoring it or even from evaluating it negatively.

During this study, we identified three key types of disguised advertising practices that can be considered as potentially problematic for consumers: **native advertising**, **influencer marketing** and **advertorials**. The sections below concretely describe and exemplify these practices.

#### 3.1.1 Native advertising

Native advertising is a type of marketing practice that aims to blend in with non-commercial content to the highest extent possible (Wojdyski, 2016). The key distinguishing characteristic of native advertising content is that it aims to mimic user-generated content in order to increase the likelihood of capturing consumers’ attention. This is only possible on the OSM providers that have their own advertising platforms, where native advertising is displayed following the same format, adopting the same characteristics and occupying the same space or position (e.g. in a user’s personal newsfeed on Facebook) as user-generated content. This practice differs from display advertising, which is often displayed in a different format and is spatially separated from non-commercial content, making it easier for consumers to identify it as commercial in nature.

Native advertising content is developed by the advertisers themselves. They can use the publishing options available within each proprietary OSM advertising platform to present their content creatively to users. The practice of “blending in” advertisements with non-commercial content has clear advantages for traders. First, a native advertising puts the ad into “a natural content flow”, making effective use of the way users scroll through user-generated content on many OSM. This significantly increases the probability of exposure to the native advertising content. Secondly, in mobile environments, native ads are more prominent because each piece of content typically takes up the full display of a

---

<sup>1</sup> For example, disguised advertising on Facebook would take the form of a post that appears on a user’s ‘timeline’ (the space where content and experiences are shared) between other posts from non-commercial users.

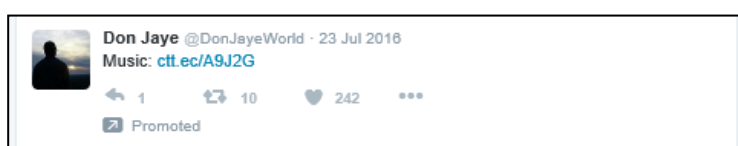
<sup>2</sup> For example, instead of explicitly promoting a specific product, the advertisement may contain a user experience, an evaluation, or an image that displays the product in a realistic usage context, avoiding cues that would help consumers to identify the content as commercial (e.g. price, product specifications).

smartphone, as opposed to desktops where several pieces of content are displayed simultaneously (Fulgoni and Lipsman, 2014).

Examples of native advertising from three different OSM are presented below. In these visuals, the native ads clearly mimic the format of user-generated content and occupy the same space on the OSM. Users can interact with native ads in the same way they interact with any other user-generated content: Native ads on Twitter can be retweeted, liked, or commented on; Facebook native ads can be liked, reacted to, commented on, shared; Pinterest native ads can be pinned, shared and commented on. If an ad contains pictures, advertisers will often encourage users to tag themselves or others in these pictures.

### Native advertising examples (Twitter, Facebook and Pinterest)

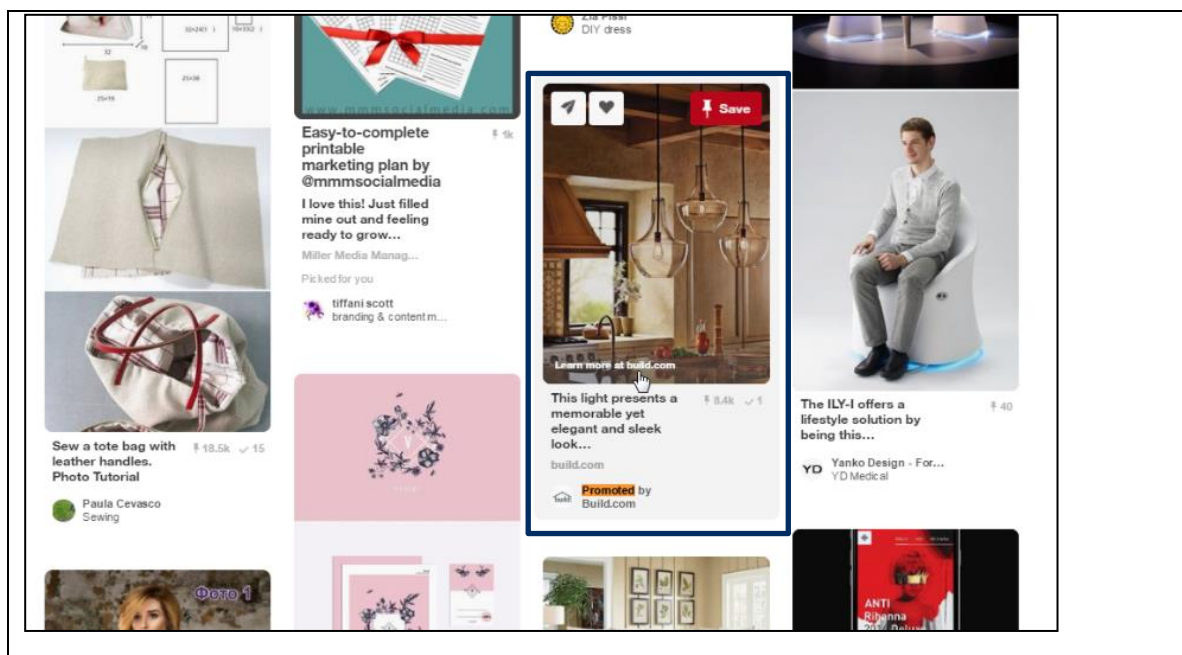
#### Twitter:



#### Facebook:



#### Pinterest:



### 3.1.2 Influencer marketing

An influencer is a person who has a greater than average reach and impact through word of mouth in a relevant marketplace, and influencer marketing relies on promoting and selling products or services through these individuals.<sup>3</sup> The practice involves the creation and promotion of content that features specific brands or products, with the aim of tapping into the positive impact influencers are likely to have on consumer perceptions of what is being promoted. As such, influencer marketing relies on the influencers themselves to create and publish specific content. A common practice in influencer marketing is to design the content to focus on the influencer's positive experience with the product, and to have them recommend the product to their connections or followers through the OSM.

In comparison to native advertising, the advantage of influencer marketing is that it bears even fewer of the characteristics that make it possible for consumers to identify an advertisement. First, the content is published by an individual person – not a business. Second, it is typically presented as a personal endorsement rather than the direct and clearly identifiable promotion of a product. As such, influencer marketing often appears to consumers as a spontaneous, non-commercial post. Furthermore, influencers usually have a high number of followers, which allows them to reach a large target audience. For instance, Cristiano Ronaldo can reach up to 60 million consumers who follow him on Twitter, as pictured in the example below.<sup>4</sup> By promoting the brand or product through the profile of the influencer, traders can also reach specific groups of consumers without using the complex targeting options offered by OSM providers. The key added value stems from the association between the influencer and the product, which can positively impact consumers' evaluation of the product. Consequently, the effectiveness of

<sup>3</sup> [https://www.huffingtonpost.com/global-yodel/what-is-influencer-marketing\\_b\\_10778128.html](https://www.huffingtonpost.com/global-yodel/what-is-influencer-marketing_b_10778128.html)

<sup>4</sup> Based on the follower count of the Twitter account @Cristiano on 18 January 2018.



influencer marketing depends on selecting and activating influencers who can engage the right target audience. Since they are perceived as more credible and engaged by consumers, “everyday” social media users with a healthy following (in the thousands rather than millions) are increasingly becoming the preferred channels for traders to use.<sup>5,6</sup>

### Influencer marketing example



#### 3.1.3 Advertorials

Under the Unfair Commercial Practices Directive (UCPD)<sup>7</sup>, advertorials represent a form of paid editorial content created to promote a product without making it clear to the consumer that the content is sponsored. They often appear to consumers like an objective, informative publication (e.g. a news article or report).

It is not common for advertorials to be created directly on OSM, and OSM providers are normally not involved in their publication as most OSM do not have the functionality to produce content in this format.<sup>8</sup> Instead, advertorials are often created and published externally (e.g. on a blog, a news website etc.) and hosted outside the OSM provider. These external producers can then promote the content on OSM through their business accounts. In sum, the commercial practice takes place outside of the platform but is

<sup>5</sup> <https://www.forbes.com/sites/andrewstephen/2017/09/01/turn-your-influencer-marketing-on-its-head-by-using-everyday-influencers/#143d4aa31b02>

<sup>6</sup> <https://izea.com/2017/07/18/credibility-king-influencer-marketing/>

<sup>7</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005L0029>

<sup>8</sup> Exceptions are LinkedIn, which offers the possibility to create ‘publications’, and Wikia, which arguably has the production of texts as one of its core functionalities.

promoted through the platform. The example below shows an advertorial posted to Facebook.

### Advertorial example



**BuzzFeed Partner** shared a link — with Samsung Mobile. December 29, 2017 at 1:30pm · Paid · €

**win**

Hai mai scattato una foto a 360 gradi?  
Perché tutti i ricordi delle vacanze con la tua famiglia e i tuoi amici non devono essere per forza in due dimensioni.

BUZZFEED.COM

Like Comment Share

5

## 3.2 Consumer issues

### 3.2.1 Evidence from the qualitative research

**Online communities.**<sup>9</sup> During the online communities, consumers reported a general lack of concern with disguised advertising as a potential issue. Indeed, the large majority of **participants think they are able to recognise commercial content on OSM providers**, in particular heavy users, even if it is designed to blend in with other content. However, **light users were less confident** in their ability to recognize commercial content compared to frequent users; and identification of commercial content was considered more difficult on the OSM that participants were less familiar with. Despite the confidence of heavy users in their own ability to identify ads on social media, however, in the online communities **all participants were hesitant when they were shown isolated examples of native ads, influencer marketing and advertorials**. A few concrete factors were identified by consumers as preventing them from effectively identifying commercial content:

<sup>9</sup> Results of the qualitative research involving over 100 online OSM users in 4 countries

- 1) The absence of a clearly visible brand or product in the content;
- 2) The absence of a link to the trader's website;
- 3) The use of text or visuals that are not immediately associated with commercial purposes;

When participants were briefed by the researchers on the ways in which commercial practices could be unfair or misleading,<sup>10</sup> most confirmed that it increased their awareness and sensitivity. Examples of marketing identified after the briefing included instances of native advertising more often than prior to the briefing, confirming that the briefing had indeed been effective.

Participants were also able to name several identifiers they use to distinguish between commercial and non-commercial content. Disclosure tags, brand names, product characteristics and sales-related information were the indicators most commonly reported. Nevertheless, some consumers were uncertain about the commercial nature of the content they were presented with, even when it was clearly commercial and carried the required disclosure tag. While disclosure tags are mostly explicit in their meaning (e.g., "sponsored" or "paid"), most community participants did not seem to be familiar with them. Disclosure tags on Twitter were considered particularly difficult to identify as they are short, text-based hashtags (e.g. #ad), which can be difficult to distinguish between multiple other hashtags in a post.<sup>11</sup>

**Stakeholder interviews.**<sup>12</sup> Consumer protection associations and academics expressed clear concern with the use of disguised advertising, stating that it is difficult to recognise and thus leaves consumers unaware of the commercial intent of the content. The traders and intermediaries identified a clear increasing trend in terms of the integration of content and advertising. In particular, stakeholders mentioned indirect ways of advertising, such as promoting brands through social influencers or having 'normal' users promote brands.

Consumer protection associations were particularly concerned with the lack of disclosure observed for influencer marketing, considering the increasing popularity of the practice. Interestingly, both consumer associations and advertising intermediaries argued the cause for such failures may be a matter of inexperience and lack of familiarity with existing rules, rather than a conscious intent not to adhere to them. Commercial stakeholders (e.g. traders, advertising agencies), on the other hand, seemed less concerned about these issues.<sup>13</sup> When asked about concrete issues and complaints made by consumers, none of them mentioned issues related to disguised advertising practices.

**Systematic desk research.** We investigated the responsibility of traders, advertising intermediaries and OSM providers concerning the failure to properly disclose the commercial nature of disguised advertising to OSM users. All the OSM providers that offer

<sup>10</sup> To consult the specific briefing, see Annex 1.3.2 Online Communities Report.

<sup>11</sup> Twitter requires publishers of influencer marketing to add an "#ad" hashtag to their posts, but does not require a specific placement for that hashtag.

<sup>12</sup> Six types of stakeholders were interviewed (n=53): traders, local and global intermediary agencies, consumer organisations, advertisers' organisations and academics.

<sup>13</sup> This lack of concern could be attributed to native advertising and influencer marketing being considered an increasingly important advertising strategy on OSM providers.

native advertising possibilities do so through their own advertising platforms, and these automatically add a disclosure tag to the commercial content published. Ownership of an in-house advertising platform automatically puts responsibility for how native advertising operates, whether it is properly disclosed, and whether it has the potential to be problematic or misleading, on the OSM providers. Native marketing content should be properly checked by the OSM providers against their own guidelines, which generally include an obligation not to mislead users. However, based on the research conducted, the approval mechanisms for commercial content published through the in-house advertising platforms of OSM are not effective.

For **influencer marketing**, the disclosure responsibility lies with the party that publishes the content: the influencers themselves or the traders they cooperate with. Still, disclosure is not always present in content that is clearly posted for marketing purposes, as illustrated in the example presented in Section 3.1.2: no ad disclosure tag can be identified in Cristiano Ronaldo's tweet, which clearly promotes a specific brand. The user policies of several OSM providers explicitly require the disclosure of influencer marketing content (e.g. YouTube, Facebook) and provide guidelines and support aimed at promoting that traders and their influencers present the disclosures appropriately. Some OSM providers have developed specific tools (e.g. the Branded Content Tool for Facebook<sup>14</sup> and Instagram<sup>15</sup>, and YouTube's "paid promotion" feature<sup>16</sup>) to encourage and facilitate the automated display of standard disclosure labels on such content. However, automatic disclosure can only be added when the publisher flags content to the OSM provider as commercial.<sup>17</sup> Finally, and in contrast with native advertising, OSM providers do not seem to have a mechanism to check and approve sponsored content that is generated by individual users.

With **advertorials**, even though the disclosure requirement exists it is even more difficult for OSM providers to control compliance: the content is often hosted outside the OSM and automated disclosure mechanisms are not available. For instance, on Facebook advertorials can be monitored, detected and automatically disclosed only if the content is created and hosted on the platform itself (i.e. as "instant articles" on Facebook)<sup>18</sup>. However, even when the content is hosted on the OSM itself the existing mechanisms for presenting commercial partnerships between OSM and other sites are inconsistent across different providers, and they may not be sufficient.

The advertorial example in Section 3.1.3 shows the disclosure mechanism of Facebook: BuzzFeed is required to disclose their partner (Samsung) and the post is tagged as 'paid'. Other providers, however, do not have such an automated disclosure tag for this kind of content. For example, on Tumblr, BuzzFeed often adds a "presented by [trader name]" tag to the content title, but also regularly uses only hashtags that make it difficult to identify that the content is sponsored. As a result, advertorials are likely to leave OSM

---

<sup>14</sup> <https://www.facebook.com/facebookmedia/get-started/branded-content>

<sup>15</sup> <https://help.instagram.com/116947042301556>

<sup>16</sup> <https://support.google.com/youtube/answer/154235#notify>

<sup>17</sup> YouTube, for instance, has such a tag, but it appears only after the publisher has indicated that the content is commercial.

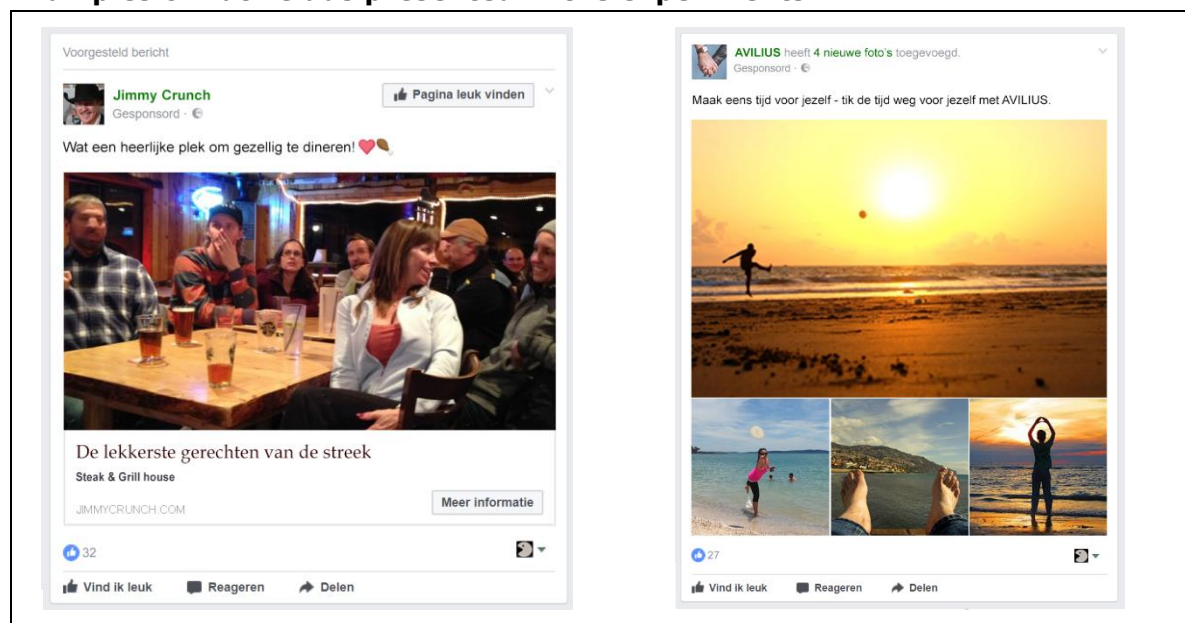
<sup>18</sup> <https://media.fb.com/2016/06/17/branded-content-in-instant-articles/>

users unaware with respect to their commercial nature. The Internet Advertising Bureau (IAB) has emphasised that online advertorials would need to follow the good practice established in print media.<sup>19</sup>

### 3.2.2 Evidence from the behavioural experiments

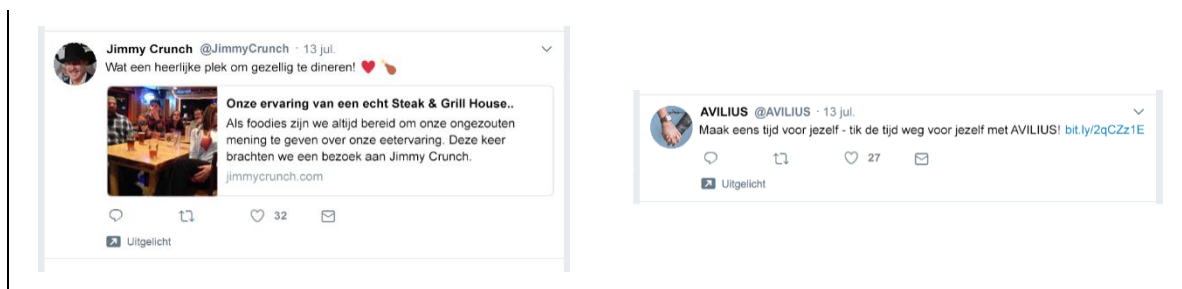
Two experiments were conducted among 9631 consumers in 6 countries (approximately 1600 per country) to examine consumers' ability to identify **native advertising** as such as well as the effectiveness of remedies to improve ad identification (see Annex 2.1 for the detailed methodology).<sup>20</sup> In the first experiment, respondents scrolled through a newsfeed on a social media website, either a Twitter or a Facebook mock-up, which contained native ads and non-paid, user-generated posts. The native ads represented different ad types observed in reality, namely article and photo album ads on Facebook and photo ads and text ads on Twitter (see examples below). All the native ads showed a standard disclosure tag, which should (have) made them clearly identifiable as advertisements. After examining the news feed, the individual posts were shown again, and respondents were asked to indicate whether the post was an ad or not (for more detail regarding this and other outcome measures used, please refer to Annex 2.1).

#### Examples of native ads presented in the experiments



<sup>19</sup> Joseph, Seb. 2015. *IAB says online advertorials should draw heavily on how print branded content looks*. Available at: <http://www.thedrum.com/news/2015/09/30/iab-says-online-advertorials-should-draw-heavily-how-print-branded-content-looks>

<sup>20</sup> All comparisons presented in this report refer to differences that are statistically significant ( $p < 0.05$ ).



### Consumers' ability to identify native advertising as such

When the standard disclosure label was present, native ads were accurately identified as ads in 64% of the cases. Ad identification percentages for individual ad types ranged between 59% for text ads on the Twitter mock-up and 70% for article ads on the Facebook mock-up, which suggests that consumers tend to associate ads with pictorial information (cf. Pieters & Wedel, 2012). The ad identification percentages observed here are considerably lower than those found in other research that examined identification of typical, non-native advertising, even at much shorter exposure durations than the several seconds that the ads were looked at in this experiment. For example, Pieters and Wedel (2012) demonstrate that typical magazine ads can be identified as being ads with over 80% accuracy after a single exposure of a mere 100 milliseconds. Thus, there seems to be **considerable room for improvement in the identification of native advertising as such**.

The ability to accurately identify native advertising as such depended on the educational level and age of the user, as well as on the intensity of platform usage. Lower educated and new users were less likely to identify the commercial intent of native advertising as compared to higher educated and more experienced users. Interestingly, older users (55+) outperformed younger user groups in the identification of native advertising, but did relatively poorly in distinguishing non-commercial user posts displaying products, which they often identified as commercial. Older users thus seem to be more inclined to think that content is commercial in nature in the first place, which seems to make them less vulnerable to disguised advertising.

Most of the non-paid, user-generated posts in the news feed were typical posts of users sharing news articles, experiences, etc. Two of the posts prominently displayed products (e.g. a picture of a hotel room with the text "Something tells me that we will have a good night sleep #LuxuryInn #5starhotel"). False identification of the typical user-generated posts was relatively low (about 20%). However, the user-generated posts prominently displaying products, in contrast, were falsely identified as being ads almost as often as native ads were accurately identified as being ads (in about 60% of the cases). This suggests that the **presence of a product picture in a post is an important signal for consumers that the post is likely to be an ad**.

If consumers were consciously aware of the presence and function of the disclosure label, then participants would have been able to accurately identify sponsored posts as ads and user-generated, non-paid posts as non-ads (i.e. perfect discrimination). The experimental results show that consumer ability to distinguish between paid and non-paid ads is far from perfect, and that this is partly due to the fact that consumers use other unreliable cues, such as the presence of a product picture, to identify a post as

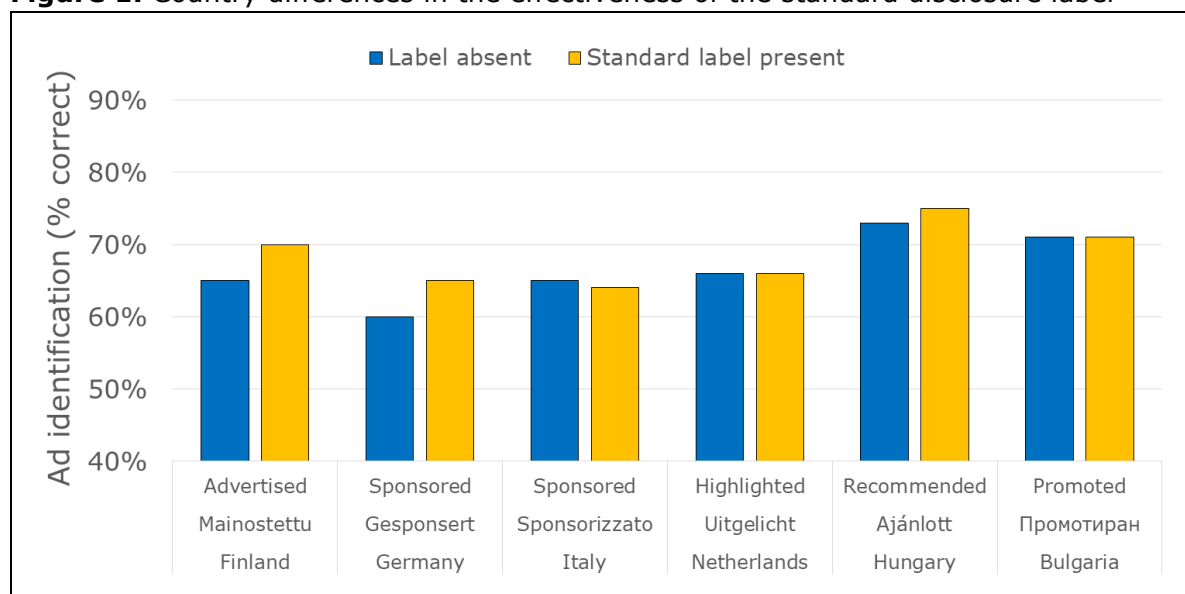
advertising. Only 6% of the users accurately recognised all ads as commercial and all non-ad posts as non-commercial. Furthermore, only a small percentage of respondents (29%) actively remembered seeing the standard disclosure label. Together, these findings suggest that **many social media users are unaware of the presence and function of disclosure labels that should help them distinguish paid from non-paid content.**

### Effectiveness of the current disclosure label

A second experiment related to native advertising focused on the effectiveness of the disclosure label. Currently, different social media use different labels to disclose the commercial nature of the post (e.g. “Sponsored” on Facebook and “Promoted” on Twitter). Moreover, while some platforms use a label with more or less the same connotation in all languages, other platforms use labels with very different connotations depending on the language setting. For example, the disclosure label that Facebook uses in most languages is a literal translation of the word “Sponsored”. In contrast, on Twitter, various labels with slightly different meanings are being used, such as the Finnish “Mainostettu” which literally means “Advertised” and the Dutch “Uitgelicht” which means “Highlighted” (see Figure 1). It could be argued that labels such as “Advertised” and “Sponsored” better communicate the intended meaning than “Highlighted”, “Promoted”, or “Recommended”, as the latter could also suggest that posts with these labels were put forward by the platform as being potentially more relevant for the specific user. Thus, the clarity of the labels varies between, but also within platforms.

The second experiment focused on the Twitter mock up: the disclosure labels used copied in content and in form the labels actually used on Twitter at the time of the study. The results indicated that such labels were **ineffective in promoting identification of native advertising as such** in all of the selected countries (see Figure 1). Participants were thus not better able to identify native advertising as commercial content when the disclosure label was present as compared to absent, regardless of the specific label used (“Advertised”, “Sponsored”, “Highlighted”, etc.).

**Figure 1.** Country differences in the effectiveness of the standard disclosure label



*Note* – The difference in ad identification when the standard disclosure label was present (dark bar) versus absent (light bar) was not statistically significant for any of the selected countries.

### **Impact of identification of commercial intent on ad responses**

Inability to identify advertising as such is problematic under EU consumer law if the ad post causes consumers to take transactional decisions that they wouldn't have taken if they had been aware of the commercial intent of the post. If this is the case, the omission of information on the commercial intent is a misleading commercial practice under the UCPD, and thus prohibited. The inability to identify advertising as such prevents the activation of persuasion knowledge, which normally stimulates critical processing of the ad's content (Boerman et al. 2014; Campbell & Kirmani, 2000). Consistent with this notion, **native ads were evaluated significantly more negatively when they were recognised as being ads, compared to when they were not being recognised as such**. This effect was stronger for consumers with a relatively negative attitude towards advertising in general (see Figure 2). These results are thus in line with previous research showing that consumers generally respond negatively to covert marketing when they realize it is occurring, particularly if they perceive the marketing tactic as inappropriate (Wei, Fisher & Main, 2008).

**The more negative evaluation of the ad post that resulted from consumers being aware of its commercial intent did not translate into reduced choice behaviour**, however. In other words, the inability to identify native ads as commercial did not increase the probability that the advertised product was chosen from an assortment of product alternatives, some time after the exposure to the news feed. Note, however, that the experiment only examined the *immediate* impact of ad exposure on choice behaviour. Whilst such immediate effects may be relevant, particularly in an online setting where direct response options such as call-to-action buttons are increasingly prevalent<sup>21</sup> (e.g. "Book now", "Shop now"; Moriarty et al., 2015; Tellis, Chandy & Thaivanich, 2000), such effects are likely to be the exception rather than the rule. Rather than promoting a purchase directly, the key functions of advertising are (1) to *inform* consumers about new and existing products (focus on creating or influencing consumer knowledge or beliefs) and (2) to *persuade* them (focus on forming or changing attitudes; Fennis & Stroebe, 2015; Moriarty et al., 2015). The idea is that more positive attitudes and improved brand awareness or knowledge as a result of (repeated) exposure to advertising affect consumer choice behaviour at a later point in time<sup>22</sup> (Lee & Labroo, 2004; Rottenstreich, Sood & Brenner, 2006; Yoo, 2008).

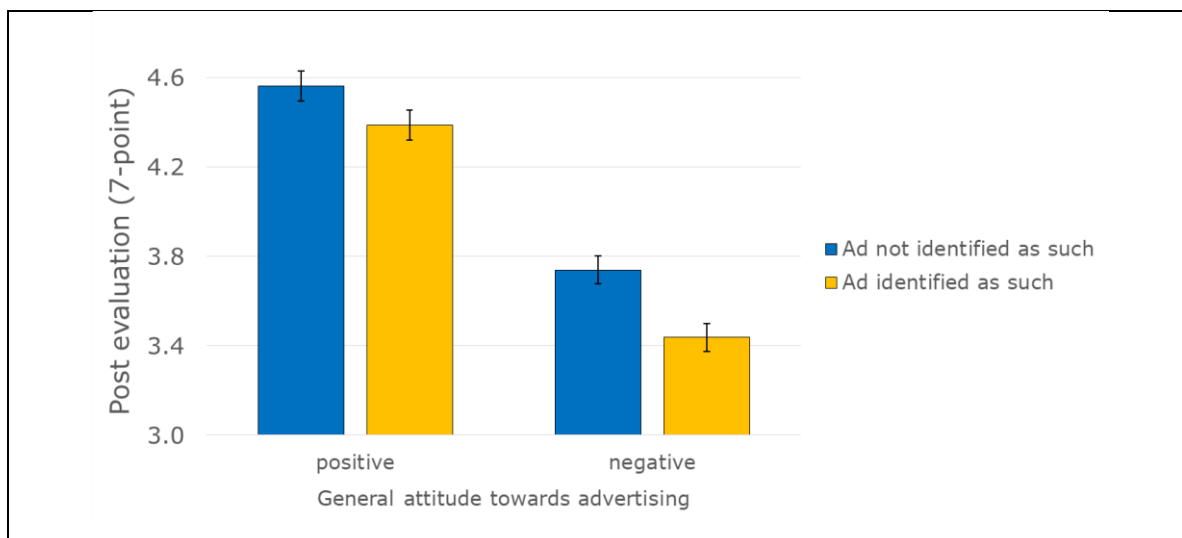
### **Figure 2. Effect of ad identification on post evaluation**

---

<sup>21</sup> <https://www.searchenginejournal.com/facebook-call-to-action-button-updates/176462/>

<sup>22</sup> This can occur in the absence of explicit memory for the ad at the time the purchase decision is being made. In fact, it has been argued that such implicit processes are the rule rather than the exception given the low-involvement nature of advertising (Fennis & Stroebe, 2015).





### Effectiveness of interventions aimed at improving identification of native ads as such

Two different interventions aimed at promoting identification of native advertising were tested in the second experiment: (1) **increasing the salience of the (platform-specific) standard disclosure label**, and (2) **highlighting the ad** to decrease its "nativeness" (see example below). These potential remedies reflect easy-to-process information cues, which can be implemented directly in the social media environment. A body of literature suggests that such "simple" informational cues provided at the time the behaviour takes place are generally more effective than information campaigns (Abrahamse et al., 2005; Lehman & Geller, 2004; Steg & Vlek, 2009). The experiment examined the individual and joint effects of the two interventions.

### Interventions tested

		Remedy 1: Increasing label salience	
		No	Yes
Remedy 2: Highlighting native advertising	No		
	Yes		

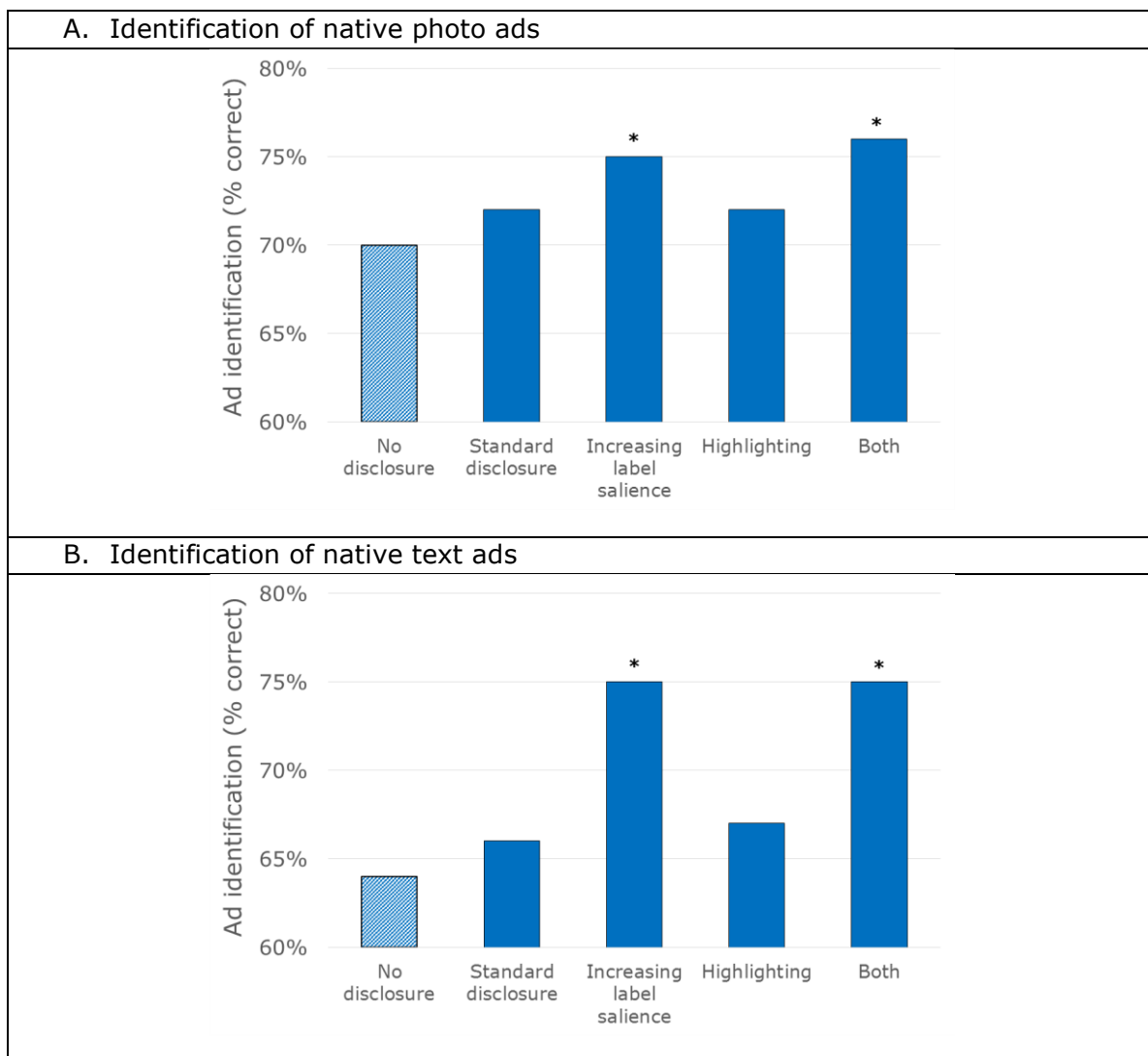
The findings revealed that **increasing the visual salience of the disclosure label improved identification of native advertising, whereas decreasing its nativeness via highlighting did not**. Figure 3 shows the ad identification results per ad type: photo

ads versus text ads. The effect of increasing the visual salience of the disclosure label was stronger for text ads – which were less well identified as being ads in the first place – as compared to photo ads. Ad identification improved to the same level for text and photo ads when the standard disclosure label was made more visually salient (75%). These results imply that the poor performance of the current standard label is at least partly driven by a lack of attention to the label, as a result of its low visual salience.

This pattern of results was largely consistent across socio-demographic groups (based on age, gender, education, and frequency of platform usage), but differed substantially across countries (see Table 1). While highlighting the ads was ineffective in promoting accurate identification of native advertising as such in all selected countries, the effectiveness of increasing the salience of the label significantly differed between countries. Interestingly, increasing the salience of the label improved ad identification in Finland (+18%pt), Germany (+15%pt) and Italy (+8%pt), where “Advertised” or “Sponsored” labels are being used, but to a less extent or not at all in the Netherlands (+4%pt), Hungary (+5%pt) and Bulgaria (+0%pt), where the more ambiguous labels “Highlighted”, “Recommended” or “Promoted” labels are being used.

These findings demonstrate that **increasing attention to the current label by increasing its visual salience alone may not be sufficient**. The pattern of findings can be explained by information processing theory (e.g. Hoyer, MacInnis & Pieters, 2013; McGuire, 1976, and see Argo & Main, 2004 for an application to labels), which emphasizes the role of attention and comprehension in the persuasion process. For the interventions to be effective, they should not only be noticed (attention), they should also communicate their “message” in a clear, unambiguous way (comprehension). Highlighting an ad attracts attention to it, but it does not communicate “this is an ad” in a clear and unambiguous way. This is likely to explain its ineffectiveness in promoting ad identification. The increased salience of the standard label likely drew more attention to the label, which led to improved ad identification for labels such as “Sponsored” or “Advertised”, but not for more ambiguous labels such as “Highlighted”, “Promoted” or “Recommended”. Together, these findings clearly demonstrate that both attention and comprehension are important criteria for intervention effectiveness: **Further improvements in the identification of native advertising can be achieved by the uniform use of visually salient and unambiguous disclosure labels.**

**Figure 3.** Effectiveness of interventions



Note – asterisks represent statistically significant differences in ad identification relative to the no disclosure condition ( $p < .05$ ).

**Table 1.** Country differences in the effectiveness of the interventions

Country	Disclosure label (translated)	Ad identification				
		Label absent	Standard label present	Increasing label salience	High-lighting	Both
<u>Twitter</u>						
Finland	Advertised	65%	70%	83%**	71%	80%**
Germany	Sponsored	60%	65%	75%**	61%	69%**
Italy	Sponsored	65%	64%	73%**	72%	79%**
Netherlands	Highlighted	66%	66%	70%	67%	75%**
Hungary	Recommended	73%	75%	79%*	75%	79%*
Bulgaria	Promoted	71%	71%	71%	70%	74%

Note – \*\* = significant difference with the label absent condition ( $p < .05$ ). \* marginally significant difference with the label absent condition ( $p < .10$ ).

### 3.2.3 Conclusions

Disguised advertising is the first of three types of commercial practices identified during the study as potentially problematic for consumers. Through disguised advertising, consumers are likely to be regularly confronted with commercial content on OSM providers that 1) intends to be *minimally* recognisable as such and 2) is often not or not sufficiently disclosed as commercial. Based on the research findings summarised in the two previous sections, we can draw the following conclusions:

#### **Conclusion 1: A key issue for consumers with respect to native advertising is their lack of awareness of its commercial nature (concern)**

Consumers' self-reported confidence in correctly identifying native advertising on OSM is not supported by findings from the behavioural experiments. The lack of awareness has specific consequences with respect to consumer perceptions and evaluations of the content. When participants in the online communities were not able to recognise specific advertisements as commercial content, they reported that they felt misled by the advertisements, suggesting that knowledge of the commercial intent of the material may influence their evaluation of the content. This finding was supported by the results of the behavioural experiment, which showed that native ads were evaluated more negatively when they were recognised as being ads.

#### **Conclusion 2: The effectiveness of existing disclosure labels can be improved by increasing their salience and ensuring that their meaning is clear and non-ambiguous (remedy)**

Many OSM users are unaware of the presence of disclosure labels that help them distinguish paid from non-paid content. Disclosure tags can get 'lost' among other cues

that are more salient and more likely to capture consumers' attention<sup>23</sup>. This suggests that such tags are not a guarantee that the user can identify specific content as commercial. Possible causes for the ineffectiveness of a disclosure tag may be that the tag itself is not visible enough because of its size or placement, that it is overshadowed by other cues that draw more attention, or that its meaning is not clear enough. The behavioural experiment on native advertising demonstrated that the poor performance of existing disclosure labels is linked to 1) their inability to capture consumers' attention and 2) the lack of clarity (ambiguity) with respect to consumers' interpretation of their meaning. The experiment showed that increasing the salience of a disclosure label has a positive effect on consumers' attention, but does only translate into higher disclosure effectiveness for labels whose meaning (text) is clear for consumers.

**Conclusion 3: The key issue for consumers with respect to disguised advertising practices is the failure by OSM or content publishers to properly disclose commercial content (responsibility)**

Increasing the salience of disclosure labels and communicating their meaning in a clear and unambiguous way are both key factors in ensuring their effectiveness. In the case of native advertising, OSM are directly and exclusively responsible for the availability, format, content and location of disclosure labels. Concretely, OSM providers create them and place them automatically on marketing content via their own advertising platforms. In comparison, with influencer marketing and advertorials the responsibility for placing the disclosure label lies primarily with the traders and publishers, who operate outside the direct control of OSM providers. These aspects increase the risk of consumers not being properly informed when they are exposed to marketing content. Influencer marketing, in particular, is not well suited for automatic disclosure tagging because it is made of user-generated content. Still, the disclosure options available to influencers and to businesses promoting advertorials are defined and provided by the OSM providers. They also set the conditions under which these disclosure options are implemented or not. As a result, OSM providers bear a high share of responsibility in the disclosure of the commercial intent of the content in their platforms.

### **3.3 Legal assessment and remedies**

The most important issue linked to the three conclusions above lies in **consumers' lack of awareness with respect to the commercial nature of the content they are exposed to**. Under the UCPD, a commercial practice is misleading if it fails to identify its commercial intent and this omission is likely to cause the average consumer to take a transactional decision they would not have taken otherwise (Art 7(2), UCPD). Therefore, traders are required to disclose to consumers when a given content is of commercial nature. It is also prohibited for traders to falsely present themselves as consumers (Annex I No 22). On the one hand, the disclosure of commercial content should be clear enough to comply with the existing legal requirements. On the other, the key added value of disguised advertising lies in blurring the line between commercial and non-commercial

---

<sup>23</sup> For example, such cues can be the name of the posting page or profile, the content of the post itself, large-font titles, images etc.

content. This can create a certain **tension between the goals of being compliant and maximising commercial effect**.

Based on the requirement to disclose commercial intent, the legal analysis concludes that **disguised advertising practices are often clear cases of deception**, practices in which the commercial intent is not always apparent to consumers. **Under the UCPD, some types of clear-cut failures to indicate commercial intent can be considered as covered by the prohibition for traders to falsely represent themselves as consumers (Annex I, point 22) or by the prohibition of non-disclosed advertorials (Annex I, point 11). Such commercial practices are prohibited in all circumstances (per se)**. They may also be misleading under Article 6 and 7, provided that the influence on consumer behaviour fulfils the criterion that the 'transactional decision' of an average consumer is likely to be influenced by the failure to disclose commercial intent.<sup>24</sup>

**Native advertising, influencer marketing and advertorials are therefore practices that can be tackled through the existing legal framework**, in theory. The main legal challenge, as apparent from the diversity of examples documented during the desk research, is that there is an abundance of disclosure practices fragmented across devices, jurisdictions and providers, while the legislative framework is open as to **how and how much disclosure** must be provided.

Disguised advertising is a pervasive marketing practice. Our analysis shows that clearer rules for disclosure would benefit the average consumer. Policy makers could use a variety of options or a combination of them to achieve this, notably options for regulatory action (section 3.3.1), options for enforcement (3.3.2) self-regulatory options (Section 3.3.3) and other remedy options (Section 3.3.4).

### **3.3.1 Options for regulatory action**

Although failures to disclose commercial intent are in principle covered by the EU legal framework, the applicable rules are general prohibitions that do not provide definite guidance on the legality of specific types of practices. Notably, the legal framework does not answer precisely how and how much disclosure is required, and who is responsible for it. In light of new commercial practices on OSM platforms, disclosure duties and legal responsibilities under the UCPD could be clarified.

**Updating the blacklist of the UCPD to include items covering problematic disguised advertisement practices.** The prohibition of traders to falsely represent themselves as consumers (Annex II, point 22) is a general prohibition without much detail to guide potential violators and enforcers in practice. To create more specific legal duties, the 'advertorial' prohibition (Annex II, point 11) could be modified and a new specific prohibition on native advertisement included:

---

<sup>24</sup> That is, for a practice to qualify as misleading, it must additionally be 'likely to cause the average consumer to take a transactional decision he would not have taken otherwise'. For more information, please refer to Annex 1.5.

- **Modifying the wording of the advertorial blacklist prohibition.** In a narrow interpretation, the wording of the current advertorial prohibition (Annex II, point 11) is limited to edited media content (*redactionele inhoud; contenu rédactionnel; redaktioneller Inhalt*), typically journals, blogs, or news publishing. On OSM platforms, users create content without editors, and user posts arguably do not qualify as editorial content. For clarification, the definition of 'editorial content' could be extended, for instance to 'editorial or user-generated'. In order to clarify that the prohibition targets OSM platforms, third-party traders, and individual users alike, 'using or publishing' without clear disclosure should be prohibited. A modification of the definition of advertorials could serve to make this prohibition more clearly applicable to problematic influencer marketing and advertorials practices on OSM platforms: *Using or publishing editorial or user-generated content in the media to promote a product for promotional purposes where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial).*
- **Creating a prohibition of native advertisement and specifically prohibit web-structures that do not allow traders to comply with the disclosure required by the EU.** To capture the technical responsibility of OSM providers for the display of content on their platforms, a corresponding legal responsibility could be created through an explicit prohibition on native advertisement. Options for the wording of such a blacklist point are:
  - *Displaying [or presenting] advertisement in a way that is indistinguishable from other media content without making or enabling third-parties to make the commercial intent clearly identifiable to consumers through text, images or sounds (native advertisement).*
  - *Designing web-structures in a way that does not allow third party traders to present information to users in a way that enables these third party traders to comply with EU marketing and consumer law, in particular to clearly indicate that they act, vis-à-vis the platform users, as traders*

The formats for the presentation of content and for the presentation of labels disclosing commercial intent are under the control of OSM providers. In addition, in some cases OSM platforms actively engage in the process of native advertising, given their rules and systems for checking and approving content. In short, in those cases OSM providers go beyond mere hosting. This proposal requires OSM platforms to utilize their possibilities for enabling disclosure. This is a missing legal corollary to the safe harbour clause that prohibits a monitoring requirement on OSM platforms for mere hosting (Article 14 e-commerce Directive). Where OSM platforms cannot be required to monitor compliance, they may have at the very least a duty to enable the legal compliance of commercial and other users of the OSM platform.

The advantage of devoting specific blacklist items to specific practices is that they contain precise prohibitions, thus providing guidance to prevent potential violations and promoting better enforcement possibilities. Blacklist items provide a greater level of legal certainty as they apply independently of whether and how consumers are influenced in their transactional decision. Further, blacklist items are determined and interpreted at

EU level, and will support a uniform EU-wide interpretation practice instead of the potentially fragmented interpretation and application of more general prohibitions.

**Clarifying the UCPD Guidance (2016).** In addition to the blacklist items, disguised advertisement practices may also be a misleading action or omission under Article 6 and 7 UCPD, provided that they fulfil the criterion that the ‘transactional decision’ of an average consumer may be influenced. There may also be a violation of the professional diligence required under Article 5 UCPD. This depends on a case by case analysis, in particular of the context in which the practice is placed, and the extent and types of disclosure used. The UCPD Guidance (2016) already explains this in broad lines (section 5.2.0 on Social Media). However, it does not provide guidance concerning the extent of disclosure that is required.

- By establishing **guiding criteria for judging the effectiveness of disclosures and providing clear real-life examples**, as a practical enabler of compliance and discouraging violations. The applicability of commercial content disclosure requirements under Article 6 and 7 in the OSM context can be clarified by providing elements to test the salience and clarity of the meaning of the disclosure, such as: *proximity to the claim; noticeability in terms of size, colour, graphic treatment; clarity of the wording*. Other consumer authorities have taken action in this direction: In the US, the Federal Trade Commission has issued useful guidelines on online disclosure<sup>25</sup>, highlighting different characteristics of disclosure that can be used to examine whether disclosure is sufficient and effective<sup>26</sup>. The Norwegian Authorities issued guidance that accompanied similar criteria with very specific guidance<sup>27</sup>, discussing the most prominent OSM platforms and giving good and bad practice examples. General criteria have the advantage of providing more detailed yet versatile guidance to the general prohibitions, and specific examples are useful in guiding users in the OSM platforms they most commonly encounter.
- **Clarify in how far the existing UCPD requirements impose a duty on OSM to technically enable adequate disclosure.** OSM platforms are technical enablers for compliance. Their duties in this respect are not clarified in the UCPD Guidance (2016). It will be useful to clarify in how far the existing UCPD requirements impose a duty on OSM to technically enable sufficient disclosure, and to inform users about the possibilities and duties to provide adequate disclosure. This can be done by providing guidance to the interpretation of the

---

<sup>25</sup> Federal Trade Commission, .com Disclosures. How to Make Effective Disclosures in Digital Advertising, March 2013, available at: <https://www.ftc.gov/system/files/documents/plain-language/bus41-dot-com-disclosures-information-about-online-advertising.pdf>

<sup>26</sup> Is the disclosure integrated or separate from the claim? Is the disclosure in close proximity to the claim to which it relates? Is it clear and conspicuous? Further, what is the prominence of it, and is it unavoidable; whether or not other parts distract the consumers’ attention from the disclosure; the possible necessity to repeat disclosure; and general noticeability to consumers, based on size, colour, and graphic treatment of the disclosure in relation to other parts of the platform.

<sup>27</sup> Norwegian Consumer Authority, The Consumer Authority’s guidance on labelling advertising in social media, available at <https://www.forbrukertilsynet.no/english/guidelines/the-consumer-ombudsmans-guidance-on-labelling-advertising-in-social-media>



required professional diligence of sponsored content as part of responsibilities of 'trader diligence' under Article 5(2) UCPD. The extent of required diligence can be examined by reference to relevant industry standards and codes of conduct (see further on self-regulatory issues section 3.3.4). In particular, the meaning of 'trader diligence' applied to OSM platforms as technical enablers should be clarified.

- The **publication of a self-standing dedicated guidance targeted at the OSM market** alone may cause potential infringers to engage with such a document. A further pre-requisite for the guidance would be to establish what kind of disclosure criteria work most effectively for in practice (see section 3.3.3 below).

### 3.3.2 Options for enforcement action

In order to send a signal to the market, enhanced enforcement of the existing UCPD provisions is an option (as discussed at general level in Chapter 7).

Specifically for disguised advertisement, effective enforcement policy may require to move beyond targeting regular traders to include, in the case of influencer marketing and advertorials, individual persons and, in the case of native advertising, OSM platforms.

- **Target influencers by imposing penalties.** These can be celebrities, but also private individuals operating at a smaller scale. Two specificities arise: first, private individuals may not be sufficiently aware of their legal obligations, second, enforcement actions are not usually taken against private individuals. Still, many of the identified practices associated with influencer marketing have been highlighted as problematic and as potentially unfair commercial practices by public authorities.<sup>28</sup> In the USA, the FTC has intensified actions on issues surrounding the disclosures social media influencers must make, by stepping up law enforcement generally, sending out educational letters to influencers, and updating its guidance for influencers and marketers.<sup>29</sup>

Taking enforcement action against influencers or traders that are associated with them would be particularly relevant. This could be done by imposing penalties on important influencers in order to create precedents and raise awareness of the prohibitions. Such specific action is not easily taken against private individuals.

- **Enforcement action against OSM providers by imposing penalties and ordering them to remove infringing content.** As disclosure enablers, OSM platforms hold key compliance responsibilities: traders are mostly required to use the in-house advertising platforms of OSM providers to create the advertising content and to blend it in with the non-commercial content and place it in users' content feeds. The options that are available to traders to provide accurate and

---

<sup>28</sup> See <https://www.ftc.gov/news-events/blogs/business-blog/2017/09/three-ftc-actions-interest-influencers>

<sup>29</sup> Federal Trade Commission's (FTC) Endorsement Guides, e.g. Federal Trade Commission, 16 CFR Part 255, *Guides Concerning the Use of Endorsements and Testimonials in Advertising* and the recently updated Guidance (September 2017), available at <https://www.ftc.gov/tips-advice/business-center/guidance/ftcs-endorsement-guides-what-people-are-asking>

clear disclosure for different types of commercial intent are in a large part framed by the technical possibilities offered by the OSM providers. As a result, they are responsible for the standardised disclosure tags used on the platforms. An option for enforcers could be to investigate whether OSM's in-house rules for disclosure and the guidance provided for using disclosure are sufficient in terms of complying with the required trader diligence of Article 5 UCPD. This could be undertaken in a coordinated action (see also Chapter 7) to enforce due diligence provisions of OSM providers with respect to the identification of commercial content at EU level.

On the one hand, the legal assessment demonstrated that there are pertinent legal prohibitions. On the other hand, problematic disguised advertisement practices were shown to persist in the study. Therefore, enhanced enforcement is a crucial element in tackling OSM practices that mislead consumers at EU level.

### 3.3.3 Options for self-regulatory action

Based on the key conclusions drawn, we can identify four specific factors that directly impact consumer awareness of commercial practices on OSM providers:

- 1) The format, properties and placing of the disclosure label used
- 2) The differences between disclosure rules across OSM providers
- 3) Lack of disclosure by content publishers
- 4) Deficiencies in OSM providers' control and monitoring mechanisms for existing disclosure rules (automated or not)

These factors were used as a basis for identifying specific remedies that could improve the different aspects of effective disclosure and contribute to increasing consumer awareness of commercial content: the development of better disclosure labels, an effective way to inform commercial users about their obligations and how to comply with them, and designing more effective procedures for OSM providers to detect infringements and sanction them.

- **Facilitating, automatising and standardising existing disclosure mechanisms.** Influencers either have to include their own disclosure manually or inform the OSM providers that the content they are publishing is sponsored, after which they can add a disclosure label. The adoption of specific tools that facilitate the addition of disclosure tags (such as the ones offered by the largest OSM providers – Facebook and YouTube) could be adopted by all OSM providers. Adding a disclosure tag would be presented to the user as a default option, like any other standard publication option in order to facilitate the process. Having a standard, built-in disclosure label that is tailored to influencer marketing and is simple to add will give users a uniform means to recognise this content. For example, that label could be integrated into the content itself, similar to how product placement is labelled in traditional media. Similar to the Code of Conduct for removing illegal content described below, OSM could be encouraged to be part of the formulation of specific guidelines for disclosure by emphasising that such actions represent increased transparency towards their users and could positively impact user trust in the platform.
- **Improving commercial users' awareness of disclosure rules.** In the UK

complaints from both commercial users and intermediaries that the guidelines of the Advertising Standards Authority are not always clear, have led this body to detail a range of different scenarios and how commercial users should approach them.<sup>30</sup> To inform influencers and other commercial users better and more frequently, actions to improve awareness could be brought closer to where the publishing happens, i.e. on the OSM. For example, OSM providers could send regular targeted information and policy reminders to users that fit the profile of an influencer, based on the information they have about their activity. Such targeted and regular guidance from the OSM providers themselves has the advantage that it may reach specific users who are unaware of these rules.

- **Setting up mechanisms that enable OSM users and authorities to report undisclosed commercial activity directly to the platform and improving the follow-up of compliance, reporting and sanctioning on OSM platforms.**

In September 2017, the EC issued a communication on tackling illegal content online, which emphasizes the importance of online platforms' enhanced responsibility in this context.<sup>31</sup> The size of OSM media in terms of users and content publication makes follow-up of compliance with disclosure rules difficult. This issue is most relevant when users themselves are responsible for adding disclosure tags or flagging the content as commercial to OSM providers. Two concrete actions could be taken. First, OSM providers could closely monitor specific users which they know are involved in influencer marketing.<sup>32</sup> OSM providers could also set up a sanctioning system for such infringements, including immediate removal or suspension of the content until the necessary disclosure changes are made. In case of repeated failure to disclose commercial content, larger sanctions such as account suspension can be introduced.

A second, less cost-intensive action for OSM providers could be to make it easy for users to signal commercial content which is not disclosed as such and/or to engage some users more directly in monitoring and reporting problematic content. This can be accomplished by giving these users moderating privileges, or giving priority to reports made by these users. A side-effect of higher sanctioning rates could be a higher awareness of social control, in turn forcing influencers and other commercial users to put more effort in compliance with existing rules. A third action could involve setting-up specific communication channels between enforcers and OSM platforms so that authorities can notify to the platform content that is not respecting consumer law. To maximise the effectiveness of this

---

<sup>30</sup> See, for instance, the ASA's guidelines for 8 different scenarios that vloggers might encounter, and what kind of disclose is required in each of them (last updated in 2015 but still referred to by the ASA): <https://www.asa.org.uk/advice-online/video-blogs-scenarios.html#.WGZ9DTNF270>

<sup>31</sup> <https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-555-F1-EN-MAIN-PART-1.PDF>

<sup>32</sup> Regulating authorities already take up this task to some extent. For instance, the FTC sent out letters to almost 100 celebrities in 2017 to remind them of disclosure obligations. However, OSM providers themselves have much more detailed information about who is involved in influencer marketing on their platform, and is thus better fit for targeted communication. However, this did not include systematic monitoring or sanctioning. <https://www.ftc.gov/news-events/press-releases/2017/04/ftc-staff-reminds-influencers-brands-clearly-disclose>

channel, OSM platforms should also commit to managing such requests within specific timeframes. One example of this is codified by the Code of Conduct on countering illegal online content, which recommends that companies commit to removing the majority of illegal content within 24 hours.<sup>33</sup>

### 3.3.4 Other remedy options

- **Developing effective and common disclosure labels.** The behavioural experiment provides support for the idea that further improvements in the identification of native advertising may be achieved by the use of more salient, uniform and unambiguous disclosure labels. Given the wide variety of disclosure labels and wording currently used across providers, languages and countries, the meaning of such labels is not always clearly understood by OSM users/consumers. The findings demonstrate that increasing the salience of the label is effective in promoting identification of native ads for labels such as "Sponsored" or "Advertised", but not for more ambiguous labels, such as "Highlighted", "Promoted" or "Recommended". Future research could focus on the position, format and wording that are most likely to attract a user's attention and clearly convey the meaning of the label. In addition, different graphic interfaces and usage patterns could be considered to account for the specifics of each platform, as well as different context (e.g. desktop vs. mobile). Research in this area has increased but has not yet focused specifically on OSM contexts.<sup>34</sup>

Further research to test the effectiveness of various improved disclosure options could be commissioned by local or European authorities; key OSM providers could be consulted to enhance the usability of the resulting labels. A uniform disclosure label that is as close as possible across platforms in terms of format, placement and wording would have a very high reach and is likely to be a highly effective way to increase consumers' ability to identify commercial content. Enforcing the use of a standardized label could be challenging, however, so the engagement of OSM providers is key. As mentioned before, one way in which OSM providers have worked with enforcers relates to countering illegal hate speech online.<sup>35</sup> Facebook, Twitter, YouTube, and Microsoft committed to the Code of Conduct and have removed 70% of all the illegal hate speech notified to them by the NGOs and public bodies participating. This rate has increased from 28% in 2016 and 59% in 2017. More recently, Google+, Instagram, and Snapchat have also joined this initiative. A similar measure could also be undertaken to regulate and enforce standardised disclosure labels.

---

<sup>33</sup> [http://ec.europa.eu/newsroom/just/item-detail.cfm?item\\_id=614254](http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=614254)

<sup>34</sup> For instance, in December 2017, the FTC published a study about effective ways to disclose native advertising, based on experimental research, but this study focused only on native ads on search engines and websites. See Federal Trade Commission (2017), *Blurred Lines: An Exploration of Consumers' Advertising Recognition in the Contexts of Search Engines and Native Advertising: A Federal Trade Commission Staff Report*, <https://www.ftc.gov/reports/blurred-lines-exploration-consumers-advertising-recognition-contexts-search-engines-native>

<sup>35</sup> [http://europa.eu/rapid/press-release\\_IP-18-261\\_en.htm](http://europa.eu/rapid/press-release_IP-18-261_en.htm); [http://europa.eu/rapid/press-release\\_MEX-18-3723\\_en.htm](http://europa.eu/rapid/press-release_MEX-18-3723_en.htm)

While all proposed remedies can in principle be executed separately, combining them would maximise their impact. Identifying and implementing effective disclosure labels is arguably the most critical remedy: **even if disclosure is correctly applied, it is of little importance if disclosure labels are not effective**. Likewise, targeted guidelines will have a decreased impact if adding disclosure tags remains a high burden for users. Lastly, more systematic monitoring and sanctioning can increase the likelihood that users pay closer attention to and comply with the existing guidelines.

## 4. Social Proof Practices

This chapter discusses potentially problematic practices that are related to the concept of social proof. Social proof refers to the positive influence created when someone finds out that others like, support or somehow endorse something.<sup>1</sup> The use of social proof for commercial purposes has been a popular marketing technique long before the emergence of OSM, but the practice is especially suited to social media, since their core purpose is to allow people to connect, create and/or share content, interact with this content and show these interactions to their connections.

### 4.1 Introduction

On OSM, there are numerous ways in which users can assess the social value of a certain product, brand or behaviour – for instance how many of their friends like or share certain content, how often this content is discussed, how many users follow the content of a certain trader, etc. Social proof in OSM contexts usually takes the form of indicators such as likes, views, followers, fans, shares, retweets, reviews, up-votes, etc. through which the platform users learn about other users in the platform (including their preferences about places, people, and trends). Although social proof indicators differ across OSM providers, they rely on a common social foundation. Key examples include:

- Facebook: likes (including emotions), shares, comments, fans, followers, friends and views
- YouTube: views, likes and subscribers
- Twitter: likes, retweets, replies and followers
- Instagram: likes, followers and comments
- Reddit: up-votes and karma
- Tumblr: shares, reblogs, likes and comments, combined as “notes”
- LinkedIn: connections, likes, comments and shares
- Pinterest: likes, shares and repins
- Twitch: (live) views, comments, likes and followers
- Imgur: up-votes (points), views and comments
- Odnoklassniki: likes, shares, comments, friends, fans and views
- Vkontakte: likes, shares, comments, friends, fans and views
- Xing: connections, likes, comments and shares
- Draugiem: likes, shares, comments, friends, fans and views

User-generated content (e.g. user comments, status updates, tweets, etc.) and social proof indicators are both forms of online social information. Compared to user-generated content, however, social proof indicators typically constitute much less specific information which is more open to interpretation, and hence represent more subtle cues of social proof (Peter et al., 2014; Winter et al., 2015). While the literature on effects of social proof indicators is relatively scarce (Peter, Rossman & Keyling, 2014), there is some evidence that social proof indicators are perceived as indicators of the credibility of specific user-generated content (Jin et al., 2015). Furthermore, users may also rely on

---

<sup>1</sup> Lee, Aileen. 2011. *Social Proof Is The New Marketing*. Available at: <https://techcrunch.com/2011/11/27/social-proof-why-people-like-to-follow-the-crowd/>

perceived social activity or social proof indicators for decision-making.<sup>2</sup> Thus, social proof indicators can be advantageous to enhance impact of content and sales for traders promoting a brand, product or services.<sup>3</sup>

Social proof information can be classified into **individual information** (e.g. one person's like or share) and **aggregate information** or summary statistics (e.g. the number of likes a post received), which is anonymous. We identified two key practices, linked to this distinction, that are used to boost the perceived popularity or social value of commercial content on OSM providers:

- 1) artificial boosting of anonymous, aggregated social proof indicators;
- 2) extrapolation of individual social endorsements, leveraging social ties between OSM users.

The following two subsections define these practices, exemplify them and describe in more detail how they can be used as information cues to create a false perception of popularity or value for certain OSM content, which can in turn impact user evaluations and engagement with that content.

#### **4.1.1 Artificial boosting of social proof indicators.**

The digital and often anonymous nature of the social proof indicators makes them vulnerable to exploitation. In particular, traders can artificially boost social proof indicators for specific content on a large scale to create the perception that the content is more popular than it actually is. Different types of social proof indicators can be boosted artificially: likes, views, followers, fans, shares, retweets, reviews, up-votes and more. This practice does not aim to get actual users to interact with content, but merely aims to give them the *wrong impression* that there has been strong engagement with a particular profile or piece of content. It is usually paid for or otherwise compensated, depending on the channel used to boost the indicator.

Artificial boosting is often achieved by using automated programs (so-called "bots") or by hiring firms (also known as "clickfarms") to manually like, share or follow certain content.<sup>4</sup> These companies facilitate the direct acquisition of fake social proof indicators. The main activities of "clickfarms" include creating numerous fake user accounts and using them to execute actions that simulate real users' behaviour through automated scripts. Several online micro job sites contain vacancies for farming social proof

---

<sup>2</sup> Grahl, Jörn, Franz Rothlauf, and Oliver Hinz. 2013. *How do social recommendations influence shopping behaviour? A field experiment*. Available at: [https://www.emarkets.tu-darmstadt.de/fileadmin/user\\_upload/download/Working\\_Papers/Value-of-Social-Recommendation-2013-04-30-Working-Paper.pdf](https://www.emarkets.tu-darmstadt.de/fileadmin/user_upload/download/Working_Papers/Value-of-Social-Recommendation-2013-04-30-Working-Paper.pdf)

<sup>3</sup> Allen, Ed. 2014. *How To Use the Psychology Of Social Proof To Your Advantage*. Available at: <https://www.fastcompany.com/3030044/how-to-use-the-psychology-of-social-proof-to-your-advantage>

<sup>4</sup> <http://digitaltohuman.com/viral-content/click-farms-help-fake-online-popularity/>

indicators.<sup>5</sup> Another way of boosting social proof indicators includes the use of automated programs, often referred to as bots.<sup>6,7</sup> The method is similar to that adopted by “clickfarms” but the process is fully automated and interested parties pay for the software to help them boost social proof indicators rather than for specific services. A different technique used by marketers as well as individual users are share for share (S4S) and like for like (L4L) networks.<sup>8</sup> These services allow individuals to connect to a network of users who wish to boost their social presence through social proof indicators for free. Users offer likes or shares to other users that are connected to the network, in order to receive them in return.

The practices listed above can distort social proof indicators, creating artificially high numbers of likes, shares, followers, etc.<sup>9</sup> To the extent that users and OSM algorithms cannot distinguish between sincere user interactions with content, and artificial or paid-for interactions, they may mistakenly perceive the latter as added proof of the value of that content.

#### 4.1.2 Extrapolation of social endorsements

OSM providers have developed different ways to maximise the value and impact of social proof indicators. Facebook, in particular, applies a technique that links user interactions with content to create a social proof effect for other related content. Whenever an advertisement is shown to an OSM user who has at least one Facebook friend who has engaged in a certain way with the advertiser, social information is added to the advertisement. Four types of interactions are used to show in socially wrapped advertisements, namely page likes, post likes, comments on a post and post shares. The addition of social information in advertisements does not require additional payment and is automatically added to all advertisements, there is no option available to not use social information on advertisements.<sup>10</sup> Thus, when someone likes a commercial page, Facebook will not only add this like to the total number of likes for that page, but it will also refer to it in advertisements published by the trader who manages the page. For example, if someone like a specific brand’s page, an ad sponsored by the page owner would contain “[Friend’s name] likes [brand name]” when presented to a user whose friend liked the brand’s page. Facebook refers to this option as “adding a social story” and it can be seen as a way of wrapping commercial content with social behaviour.

The second potentially problematic practice related to social proof is based on the use of individual rather than aggregated social proof. It relies on the strength of existing social

---

<sup>5</sup>[https://www.fiverr.com/categories/online-marketing/social-marketing?source=category\\_tree&page=1&filter=rating](https://www.fiverr.com/categories/online-marketing/social-marketing?source=category_tree&page=1&filter=rating)

<sup>6</sup> <http://moobots.com/>

<sup>7</sup>[https://documents.trendmicro.com/assets/white\\_papers/wp-fake-news-machine-how-propagandists-abuse-the-internet.pdf](https://documents.trendmicro.com/assets/white_papers/wp-fake-news-machine-how-propagandists-abuse-the-internet.pdf), p.24

<sup>8</sup> <https://www.like4like.org/>

<sup>9</sup> <https://www.nytimes.com/interactive/2018/01/27/technology/social-media-bots.html>

<sup>10</sup> However, users can edit their account permissions in order to not have their profile shown in socially wrapped ads. This option can be seen on Facebook, but the user needs to be logged in to FB to see it. Here is how it works: <https://roseninstitute.com/stop-appearing-facebook-ads/>.



ties between OSM users. Within the context of this study, we have labelled this practice as the “extrapolation of social endorsements”. This happens when a user’s positive interaction with specific OSM content is linked or transferred to different but related content, creating the appearance that the user also takes a positive stance towards the related content. For instance, people can be asked or individually choose to connect to the profile of a specific company via a social endorsement (e.g. a like). The extrapolation of such endorsements happens, for example, when they are linked to specific products of that company, even though the user who endorsed the company has never specifically endorsed or interacted with these products<sup>11,12</sup>.

Thus, even though the original like does not apply specifically to the content shown (the advertisement), the “social story” is presented in close visual proximity to that content, which may create the impression that the user endorses the advertisement. These types of social endorsements focus on close network connections rather than strangers because they are likely to have a stronger impact on users’ perception and evaluation of the commercial content (Aral & Walker, 2014; Bakshy et al. 2012; Bapna & Umyarov, 2005).

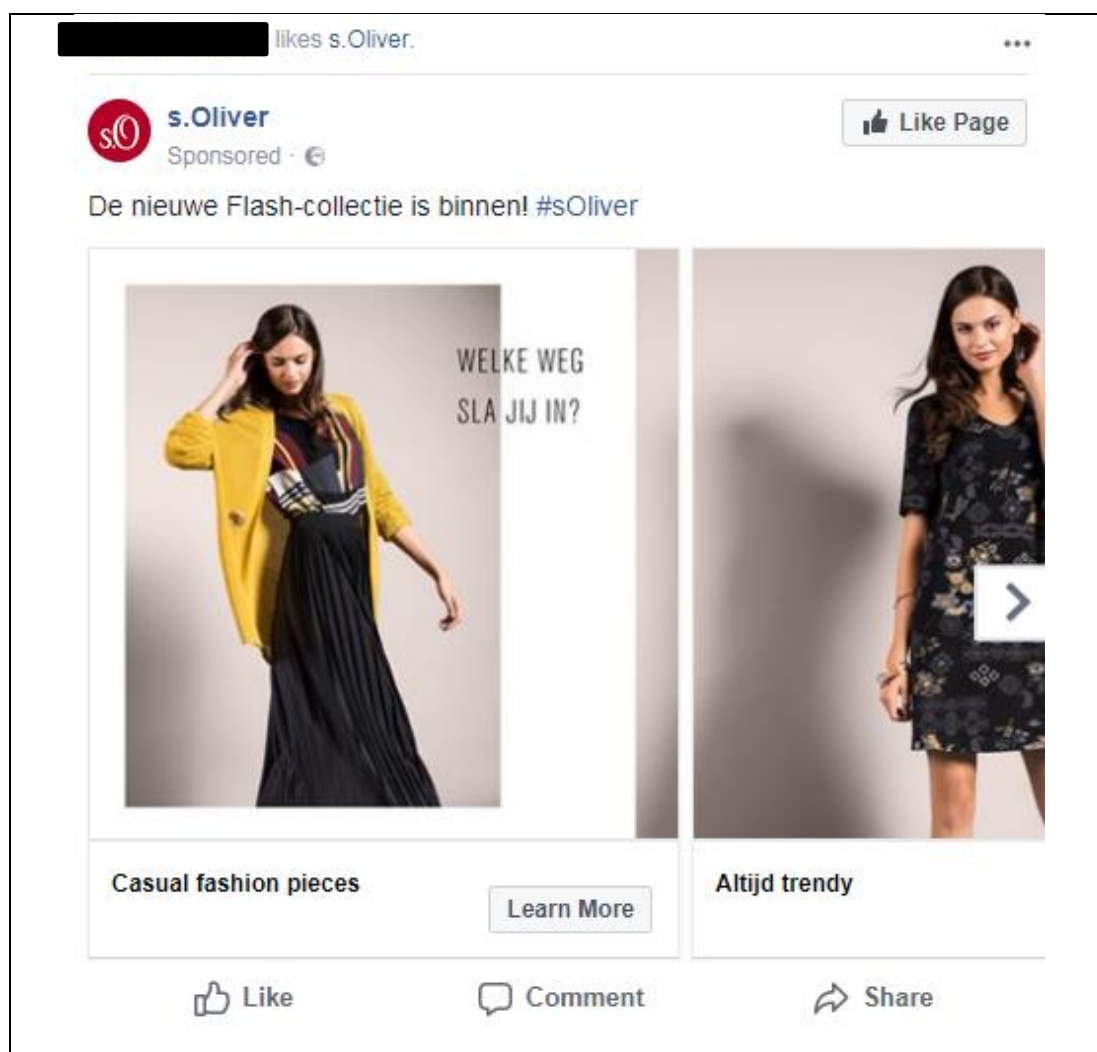
The example below shows how an authentic endorsement of a close network connection (a friend on Facebook) can be presented to the user in such a way that it creates the impression that the friend endorsed something else than (s)he did. In addition, the timing of this endorsement is not specified so users may assume the endorsement is recent. In other words, real endorsements are extrapolated to related content as well as in time.

---

<sup>11</sup> Daily Mail Online (2013). *Is Facebook ‘impersonating’ users to promote stories they’ve never seen to all their friends?* From: <http://www.dailymail.co.uk/sciencetech/article-2267575/Is-Facebook-impersonating-users-promote-stories-theyve-seen-friends.html>

<sup>12</sup> Forbes (2013). *Facebook is recycling your likes to promote stories you’ve never seen to all your friends.* From: <https://www.forbes.com/sites/anthonykosner/2013/01/21/facebook-is-recycling-your-likes-to-promote-stories-youve-never-seen-to-all-your-friends/#79652aaa17aa>

### Example of an extrapolated like from a friend



#### 4.1.3 Other practices linked to social proof

The benefits of social proof indicators strongly depend on consumers' actual interactions with a trader's published content. The key goal of publishing commercial content is to generate consumer interactions (e.g. likes, shares) but paying the OSM provider to advertise that content is not the only way in which traders can do this. In fact, traders and advertising intermediaries have developed concrete strategies to increase interactions with their commercial content that is being advertised. One such tactic is stimulating direct communication between the trader (or those acting on behalf of the trader) and platform users. **Inviting comments on content** not only creates a more personal way of engaging between traders and their followers on OSM providers, but also causes content to be disseminated among these users' own followers. Thus, traders sometimes actively encourage their followers to comment on their content, for instance by **asking them questions**. Such invitations for comments can be made more attractive by offering benefits. One specific example of this practice is when traders ask users to interact with content in a certain way in order to gain access to other content or specific

benefits. Most often, these benefits refer to being allowed entry into a **prize winning competition**.

## 4.2 Consumer issues

This subsection will discuss each of the practices presented in 4.1 to determine potential risks for consumers based on the evidence collected via qualitative research and behavioural experiments.

### 4.2.1 Evidence from the qualitative research

**Systematic desk research.** With respect to boosting social proof indicators, our desk research shows that it is not difficult to find agencies that offer such services, so some traders may still be inclined to pay for them. Our desk research did not provide any conclusive evidence as to how widespread these practices are. This is due to the covert nature of these practices, which makes it difficult to estimate their prevalence as they are not easily observable and/or quantifiable. There is some indirect evidence, however, that the use of and interest in these practices seems to have decreased in recent times. This is based on our systematic investigation of online spaces (e.g. dedicated pages or forums) where the topic is regularly discussed by traders and other stakeholders. The key question remains whether OSM users are misled when exposed to content that portrays social proof indicators that have been artificially boosted.

For most OSM providers, the psychological appeal of social proof is central to the functionality of their platforms. The more people interact with certain content, the more the platform's algorithm will present this content to other users, which will in turn often lead to an even bigger boost in the content's popularity and visibility. Facebook, for example, utilizes an algorithm called "Edgerank" to display content in a certain order on users' newsfeed. The algorithm functions as follows: if users never interact with a certain page or friend, posts from this page or friend will be marked as less interesting and shown less frequently and less prominently in their newsfeed.<sup>13</sup> Conversely, if users often interact with a specific page or friend's posts, these will be shown more frequently and higher up in their newsfeed. As such, by artificially boosting social proof indicators, commercial content may be able to 'fool' the "Edgerank" algorithm and ensure that the content achieves far wider reach and engagement than it otherwise would. These algorithms are not available to the public and are subject to continuous adaptations in terms of which type of content is prioritised on users' newsfeeds.<sup>14</sup> As OSM users appear to rely on perceived social activity or social proof indicators for decision-making,<sup>15</sup> social proof that is artificially boosted and that is not identified as such by the OSM providers'

---

<sup>13</sup> Here is a historical overview of specific changes made to Facebook's algorithm in terms of content prioritisation: <https://wallaroomedia.com/facebook-newsfeed-algorithm-change-history/>

<sup>14</sup> Here is Facebook's latest communication with this respect, dating from 11 January, 2018: <https://newsroom.fb.com/news/2018/01/news-feed-fyi-bringing-people-closer-together/>

<sup>15</sup> Grahl, Jörn, Franz Rothlauf, and Oliver Hinz. 2013. *How do social recommendations influence shopping behaviour? A field experiment*. Available at: [https://www.emarkets.tu-darmstadt.de/fileadmin/user\\_upload/download/Working\\_Papers/Value-of-Social-Recommendation-2013-04-30-Working-Paper.pdf](https://www.emarkets.tu-darmstadt.de/fileadmin/user_upload/download/Working_Papers/Value-of-Social-Recommendation-2013-04-30-Working-Paper.pdf)

algorithms could, in principle, start a bandwagon effect and ensure a more prominent position for specific content in users' feeds.

In an effort to appear more trustworthy to consumers and avoid identification from OSM providers, profiles stemming from "clickfarms" often like or follow unrelated pages for which they do not receive monetary compensation. This practice is also problematic, as traders with no intention of associating their brand with unethical practices could also receive fake endorsements without having taken any action to acquire them. In a well documented case<sup>16</sup>, although the traders concerned did not operate via "clickfarm" companies to acquire likes, they still appeared to receive likes from profiles that are not associated with regular users. These profiles are characterised by a low number of connections or interactions with other users and a high number of liked pages, usually feature poorly written content or incomplete information and originate from regions where "clickfarms" tend to be located.

Encouraging interaction with or endorsement of content by promising specific rewards appears to be a common practice among smaller traders who aim to gain a higher following on social media, although some OSM providers seem to have pushed back against this practice in the last few years. For instance, Facebook's user policies now forbid asking users to like a certain page before they can enter a competition.<sup>17</sup> This policy relates specifically to profile pages, however, and not to individual posts, for which traders can still use this strategy to request endorsements (e.g. likes or comments). During our desk research we did find specific instances of this practice, indicating that it still occurs and that OSM providers' self-regulation practices are not completely effective.

From a technical perspective, marketing practices involving social proof indicators are dependent on OSM providers' in-house advertising platforms. Without an in-house advertising platform, there is no possibility for social interaction with displayed advertisements through likes, shares, comments, retweets or other actions. The only possible interaction is to click on the advertisement, which will redirect the user to an external website, or to report the content as problematic. As such, the responsibility with respect to potential issues for consumers stemming from practices that involve social proof indicators lies with OSM providers.

**Online communities.** To assess participants' ability to identify marketing material in a more challenging and objective way, they were shown screenshots from OSM containing a variety of marketing materials, and asked to identify as many as possible. This exercise showed that the obvious examples of marketing (e.g. ads placed separately, tagged as sponsored etc.) were the easiest to identify. With respect to the practice of extrapolating social endorsements, the online community tasks revealed that such social proof cues leave some OSM users uncertain about whether they are in fact exposed to commercial content – even if the content carried a disclosure tag. The social factor did hamper correct identification as "socially wrapped" ads (posts or shares by friends or organisations,

---

<sup>16</sup> <http://www.businessinsider.com/facebook-advertising-fake-likes-2014-2?IR=T>

<sup>17</sup> <https://developers.facebook.com/blog/post/2014/08/07/Graph-API-v2.1/> "To ensure quality connections and help businesses reach the people who matter to them, we want people to like Pages because they want to connect and hear from the business, not because of artificial incentives. We believe this update will benefit people and advertisers alike."

celebrities, or persons followed) were more difficult to identify and consumers expressed less certainty in their decision. Heavier users of OSM seemed more proficient at identifying correctly commercial content that included social proof. The examples provided were particularly difficult to identify as being commercial in nature when there was no direct sales proposition involved, which relates to the previous chapter on disguised advertising. If the presence of social proof indicators hampers the effectiveness of a disclosure tag, this increases the risk to the user of remaining unaware of the commercial nature of the content. A possible explanation is based on consumers' limited processing resources: when consumers are presented with several cues attached to the same piece of content, it is likely that all of them will not receive equal attention.<sup>18</sup>

The online community discussions suggested that OSM users do not seem to be aware of or concerned with prize winning competitions and polls as commercial content they are exposed to regularly on social media. It seems, however, that the use of competitions to amass extra social proof indicators may have a side-effect that is not intended: when presented with examples of competitions, some online community participants reported that they were unsure whether these examples constitute commercial messages. While this risk is not related to the social proof indicators themselves, it does suggest that OSM users may be unaware of the commercial intent of the content they are exposed to, when it contains social proof indicators. If that lack of awareness increases the likelihood that they may participate in such competitions, in turn binding them to the trader's profile through a like or other type of social proof, this can be potentially problematic.

**B2B mystery shopping.** When raised by mystery shoppers during the mystery shopping exercise, the idea of acquiring fake likes with the purpose of kick-starting a social media campaign was always contested. All OSM contact persons and advertising intermediaries stated that this strategy would be detrimental to future social media campaigns as it would prevent the use of advanced OSM advertising tools. More specifically, target audiences are based on the users who interact with a trader's business page. While a high page like count is one cue consumers can use to estimate whether a page is popular, the interaction or engagement with that page is minimal if most of its followers do not really exist. Consequently, real user engagement with the content will also be very low - they will not share any content with other users and will not recommend the brand or product advertised. Thus, if a page has a lot of endorsements (e.g. a high number of likes) from non-existing users who do not belong to its target audience, traders run the risk of reaching the wrong target audience. In addition, traders risk incurring higher advertising costs in the long run: the less engagement a specific advertisement receives (which is likely, if it has not reached the right audience), the more expensive it will become, and vice versa.<sup>19</sup> In sum, when the social proof gathered is not authentic, it can skew specific metrics, prevent traders from correctly defining a target audience and bring extra costs for future campaigns.

---

<sup>18</sup> Lang, A. (2000). The limited capacity model of mediated message processing. *Journal of communication*, 50(1), 46-70. Available at: <http://onlinelibrary.wiley.com/doi/10.1111/j.1460-2466.2000.tb02833.x/abstract>

<sup>19</sup> These estimations are based on a bidding system that computed a score based on the estimated action rates and the quality and relevance of the advertisement. For more information, see: <https://www.facebook.com/business/help/430291176997542>

## 4.2.2 Evidence from the behavioural experiments

### 4.2.2.1 Artificial boosting of social proof indicators

An experiment was conducted to examine the effects of the number of anonymous likes in social media marketing. Participants in the experiment were presented with a product ad, embedded in a social media site. We systematically varied the presence of the number of likes (no, few, many, very many; see Figure 4) and the type of product advertised (two types, for generalisability). After ad exposure, immediate responses to the ad and the advertised product (i.e. ad evaluation, product evaluation, product interest, and purchase intention) were measured. In a seemingly unrelated, delayed task, participants indicated their preferred choice among a set of product alternatives, which included the advertised product (Annex 2.1 provides more detail regarding the experimental design and outcome measures).

To enhance experimental control, the ads used for each product were generic (that is, not personalized; every participant saw the same ad). Even though sophisticated targeting methods are currently the standard – in fact, non-targeted advertising is an outdated strategy in the online environment – the findings show that even our generic ads were effective. That is, on average, during the seemingly unrelated choice task, participants who were exposed to the ad were significantly more likely to select the advertised product from the assortment than participants who were not. This suggests that the ads were successful in generating positive feelings towards the product. The purpose of the study is not to draw conclusions regarding the effectiveness of advertising per se, however, but rather to gain insight into whether social proof information has an impact on ad effectiveness. In other words, are ads that show high amounts of likes *more effective* (e.g. in promoting choice behaviour) than ads with only few anonymous likes?

**Figure 4.** Variation of the number of likes



### Effects of the presence and number of anonymous likes

Averaged across situations and consumers, responses to the ad and the advertised product (ad evaluation, product evaluation, product interest, purchase intention and choice behaviour) were **unaffected by the presence and/or the number of anonymous likes**. The experimental findings did not show a robust pattern of results, but rather revealed some context-specific effects. When zooming in on specific product types, specific consumer groups and specific countries, we did observe a few effects of the presence and/or number of likes on specific outcome measures, which were not always in the expected direction (in specific situations, fewer likes yielded more positive responses). Yet, overall, we found hardly any evidence that immediate consumer responses to ads are affected by the social proof cue that accompanies the ad.

Several potential explanations for the absence of effects of anonymous likes were identified and tested. The data provided some support for the idea that social media users are getting used to seeing likes, which subsequently reduces their impact (**habituation**). Specifically, intentions to purchase the advertised product increased with higher numbers of likes for new, unexperienced social media users, but decreased with higher numbers of likes for heavy users. We did not find this pattern consistently across the two product types (see Table 2) and outcome measures, however.

**Table 2.** User type differences in the effects of the presence and number of likes on purchase intentions

User type	Product types			
	Chocolate bar		Sunglasses	
	Effect of presence of likes	Effect of number of likes	Effect of presence of likes	Effect of number of likes
Non-users (N = 806)	Positive	Positive	No	No
Light users (N = 776)	No	No	No	No
Heavy users (N = 4418)	No	Negative	No	No

*Note* – Effect of the presence of likes reflects a comparison between (1) the social media conditions with likes (i.e. average across the few, many, and very many likes conditions) and (2) the social media condition without likes (no likes). Effect of the number of likes reflects a (linear or nonlinear) trend in responses in the social media conditions, from few likes to very many likes.

Another potential explanation for the absence of effects of anonymous likes relates to the **way in which the likes are presented**. Large numbers of likes are typically not written out in full (e.g. not 130.214, but 1.3K or 1.3 thousand), which might reduce their impact because the number *appears* smaller (c.f. Coulter & Coulter, 2005; Coulter, Choi & Monroe, 2012). The country-specific results seem to provide some support for this idea. Germany – the only of the selected countries in which the number of likes is written out in full – is also the only country where we observed overall positive effects of the number of likes on (certain) consumer responses to the advertised product (see Table 3).<sup>20</sup>

---

<sup>20</sup> Despite of the positive effects of the number of likes, ad evaluations and purchase intentions in the condition with the highest number of likes did not improve over the condition in which social proof information was absent. This suggests that it's the small number of likes that depressed attitudinal responses, rather than the large number of likes enhancing them.



**Table 3.** Country differences in the effects of the presence and number of likes

Country	Presentation of 1,3K and 130K	Ad evaluation		Product evaluation		Purchase intention	
		Effect of presence of likes	Effect of number of likes	Effect of presence of likes	Effect of number of likes	Effect of presence of likes	Effect of number of likes
Finland	1,3 t., 130 t.	No	No	Positive	Negative	No	Negative
Germany	1.324, 130.214	No	Positive	No	No	No	Positive
Italy	1,3 mila, 130 mila	No	No	No	No	No	No
Netherlands	1.3 duizend, 130 duizend	No	Negative, then positive	No	No	No	No
Hungary	1,3 ezer, 130 ezer	No	No	No	No	No	No
Bulgaria	1,3. хил., 130 хил.	No	Negative	No	No	No	Positive, then negative

*Note* – Effect of the presence of likes reflects a comparison between (1) the social media conditions with likes (i.e. average across the few, many, and very many likes conditions) and (2) the social media condition without likes (no likes). Effect of the number of likes reflects a (linear or nonlinear) trend in responses in the social media conditions, from few likes to very many likes.

**Overall, the findings of the behavioural experiment do not provide conclusive evidence about the impact of anonymous social proof indicators on attitudinal and behavioural responses to the advertised product.** Responses to the ad and the product in the experiment were largely unaffected by the presence and number of likes. It is unclear, however, how the impact of anonymous likes depends on the **relevance** of the ad to the consumers. Even though we observed positive effects of exposure to the generic ad on choice behaviour, one could argue that many respondents were probably not very interested in the advertised product. It could be that the number of likes affects how consumers respond to an ad if the ad is more personally relevant. However, one could also argue that consumers are likely to pay even less attention to external cues (such as social information) if the ad content itself is already highly relevant to them.

In order to gain some first insight into whether and how the influence of the presence and number of anonymous likes depends on the extent to which the ad is relevant to the consumer, in a follow-up analysis we identified gender-age segments that expressed the highest intention to purchase the advertised product, to reflect the user group that would have most likely been exposed to the specific ad had it been targeted. We then compared the impact of anonymous likes between the more and less interested segments. The results revealed *no difference* in the impact of anonymous likes between the segments. Yet, we acknowledge that social media use much more sophisticated targeting methods

than the basic form of targeting simulated in this follow-up analysis. Further research could therefore provide more insight into the generality of our findings.

#### 4.2.2.2 Extrapolation of social endorsements

We conducted an experiment to examine the impact of “extrapolated” likes on social media users’ attitudinal and behavioural responses to the commercial content (see example below). Consistent with previous research (Aral & Walker, 2014; Bakshy et al. 2012; Bapna & Umyarov, 2015; Egebark & Ekström, 2011), we hypothesized that consumer responses to advertising are positively affected by endorsements from friends, as a form of informational social influence (Cialdini, 2001). Consequently, consumers should be more interested in the advertised product when their friend likes the specific ad post itself rather than when their friends’ general brand like is “translated” as an endorsement of the specific ad content shown, as they should understand that their friend did not explicitly express appreciation and hence does not necessarily like the related product. However, if consumers falsely assume that extrapolated likes are in fact “direct” product or post likes, both types of endorsements (“[Friend X] likes [Brand Y]<sup>21</sup>” versus “[Friend X] likes this”) are likely to affect attitudinal and behavioural responses to the advertised product in the same way. Then, clearly separating the brand like from the product ad (e.g. “[Friend X] likes [Brand Y]. This is one of [Brand Y]’s products”) may reduce the misinterpretation. Further details on the experimental methodology can be found in Annex 2.1.

The findings of the behavioural experiment **support the idea that consumers interpret brand likes as product or post likes**. After exposure to the ad post on the social media site, most consumers assumed that the friend liked the specific post rather than the brand, irrespective of the specific endorsement they were exposed to (brand like, product like, or separated product like).

When it was emphasized that the friend did not like the specific product but the general brand (e.g. “Chris Jensen likes Food Market. This is one of Food Market’s products.”), the ad and advertised product were evaluated slightly more negatively. This suggests that **when the ad is accompanied by a brand like, positive responses towards the advertised product are (partly) based on the false belief that the friend liked that specific post or product**. Further analysis revealed that this effect was only present among heavy (and not among non-heavy) users of the mimicked platform (see Table 4). Due to their extensive experience with the platform, the separated brand like might have led heavy users in particular to become aware of their original false belief and perhaps even feel duped. The effects did not directly extend to actual choice behaviour, however.

---

<sup>21</sup> Brand Y was a store brand (e.g. “Food Market”) which sold the advertised product (e.g. the “Choc-a-lot” bar).

Comparing relevant experimental conditions of the experiments with anonymous likes versus likes from friends<sup>22</sup>, we observe no difference in consumer responses to the ads (which were the same in both experiments). This seems inconsistent with prior research, which demonstrates that even minimal social cues (e.g. a single “like”) impact users’ responses to advertising when these cues come from close network connections (Bakshy et al. 2012). Consistent with the idea put forward earlier that heavy users might be getting used to seeing likes (anonymous and from friends) which in turn reduces their impact on user attitudes and behaviour, a follow-up analysis shows that the friend’s like yielded higher brand interest and purchase intentions than anonymous likes among non-users and light users, but not among heavy users.

A friend’s brand like shown above a product ad (Dutch material)

<sup>22</sup> On Facebook, anonymous likes are always presented below the post when a post is endorsed by a friend (this information is provided above the post). Therefore, in Experiment 2 (extrapolated likes), the ads were always presented with anonymous likes. To enable comparison with Experiment 1 (anonymous likes), we chose to use the number of likes as presented in the anonymous likes control condition, i.e. 13 likes. As such, the brand like condition (the standard way of presenting friends’ likes on Facebook) can be compared directly to the few anonymous likes condition. The only elements that differ between these conditions are (1) the friend induction, and (2) the friend like (“Chris Jensen likes [brand]”) is shown above the post.

**Table 4.** Effects of extrapolated likes

	Intention to "like" the post	Product evaluation	Product interest	Purchase intention	Product choice	N
<u>Heavy users</u>						
Brand like (extrapolated like)	3.6	4.3	3.7	3.9	32%	888
Product like	3.4	4.2	3.6	3.7	32%	881
Separated brand like	3.3*	4.2*	3.5*	3.6*	31%	893
<u>Non-heavy users</u>						
Brand like (extrapolated like)	3.2	4.1	3.3	3.5	31%	307
Product like	3.2	4.0	3.3	3.5	30%	353
Separated brand like	3.1	4.0	3.2	3.6	32%	309

*Note* – All outcome variables, except product choice, are measured on 7-point scales. Product choice is measured as the percentage of respondents who selected the advertised product among the four products in the choice set. Means indicated with an asterisk are significantly different (at  $p < .05$ ) from the brand like condition (which is the reference condition). Baseline differences between countries are accounted for in the analysis.

### 4.3 Conclusions

Evidence relating to the influence of social proof practices came primarily from the behavioural studies and was supported by the qualitative research. Although we did not find reliable effects of anonymous social proof, the influence of the number of likes seems to depend on the type of product advertised and users' level of experience with the OSM provider. As for the extrapolation of individual likes, the experiments show clear evidence that a majority of consumers misinterpret brand likes by a friend as product or post likes.

**Conclusion 1: The *direct* impact of artificially boosted anonymous social proof indicators on users' responses to commercial content appears to be low.**

No evidence was found that exposure to a larger (vs. smaller) number of anonymous likes increases the effectiveness of marketing content. The findings suggest that anonymous social proof may have an effect on light (inexperienced) OSM users' purchase intentions but this effect was not observed consistently across different products. If the effect of anonymous social proof is indeed limited to new users, this could suggest that experienced users are no longer susceptible to these tactics due to habituation and such social proof tactics may backfire amongst experienced users. This idea was corroborated by our qualitative research, which showed that while this practice is still possible, it is becoming less popular among traders and is not recommended by advertising intermediaries.

**Conclusion 2: The *indirect* impact of artificially boosted anonymous social proof indicators may depend on how different OSM algorithms use them to rank specific content in users' feeds.**

Even though the direct impact of artificially boosting social proof indicators appears to have little significance in terms of consumer behaviour, it is important to consider the potential indirect impact of such practices. In order to increase user engagement and time spent on the platform, OSM providers use complex algorithms to determine which specific content to display in users' feeds and how to rank this content. Most algorithms operate using a set of metrics based on different indicators, including social proof. As such, if artificially boosted social proof indicators can fool existing algorithms, the content's popularity and visibility can be positively affected, ensuring a more prominent position for specific content in users' feeds. This could, in turn, have an effect on consumer responses (e.g. purchase intention).<sup>23</sup>

**Conclusion 3: Extrapolated social endorsements are generally interpreted by consumers as genuine endorsements and can impact consumer attitudes.**

In the behavioural experiments, most consumers who were exposed to an ad post containing an extrapolated social endorsement assumed that the friend's endorsement referred to the specific post rather than the brand. More positive attitudes towards the advertised content were reported compared to when the difference between the original endorsement and the related content was made explicit. This was observed for all types of endorsements tested, suggesting that more positive attitudes towards the advertised product may be at least partly due to a false belief that a friend has endorsed a specific post or product rather than a brand. In addition, consistent with the habituation hypothesis, a friend's endorsement had a positive impact on brand interest and purchase intentions compared to anonymous endorsements only among light users but not among heavy users. These findings were confirmed by the online communities where consumers found it more difficult to identify ads containing social endorsements with heavy users being more proficient at identifying such content correctly as commercial in nature. Lastly, our desk research shows that social wrapping and the extrapolation of social endorsements are practices that are only available through OSM providers' in-house advertising platforms. As such, when it comes to tackling related consumer issues involving social proof indicators, the key responsibility lies with OSM providers that offer these services.

#### **4.4 Legal assessment and remedies**

The most pertinent legal instrument for assessing practices relating to the authenticity of social proof indicators is the UCPD, which requires that the commercial information consumers are exposed to is not misleading.

Some commercial practices related to social proof indicators may be captured by the blacklisted practice of disguised trading/falsely presenting oneself as a consumer (point 22 of Annex I to the UCPD), which prohibits "(f)alsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or

---

<sup>23</sup> <https://www.emeraldinsight.com/doi/full/10.1108/IntR-01-2014-0020>

profession, or falsely representing oneself as a consumer.” This is particularly relevant to artificial boosting of social proof indicators as defined in section 4.1.1.

The findings of this study show no clear direct effect of the number of anonymous social proof indicators that are generic (specifically, the number of “likes” on Facebook) on consumer responses to commercial content. Thus, the findings do not provide conclusive evidence that supports that distortions of generic social endorsements are (likely) to affect consumers’ transactional decisions. A limitation of the study, which needs to be taken into account when interpreting these results, is that advertising content presented in the experiments was not targeted to consumers based on their individual profiles, as it happens in real life on OSM providers. Therefore, the observed effects may not be fully representative of the actual effects present in realistic OSM environments.

In addition to the behavioural point of view, however, **the exposure effect of increased likes should be factored in.** This depends on the effect of artificially boosted social proof indicators on the likelihood of the commercial content they refer to being displayed to specific consumers. If an OSM algorithm factors in such metrics (e.g. a high number of unauthentic likes), the relevant effect on the consumers’ transactional decision may not be extracted from the behavioural study. Rather, **consumers’ decision-making processes may be impacted simply through increased exposure and the familiarity with the advertised product that such exposure can produce.** By analogy one may consider the CJEU case law that considered the decision to enter a shop as a ‘transactional decision’.<sup>24</sup> It remains unclear how generic social proof indicators impact the advanced algorithms of top OSM providers as OSM do not make information about this available.

The second practice we studied, the extrapolation of social endorsements (defined in section 4.1.2), is not covered by any of the blacklisted items under the UCPD, as pervasive digital social endorsements did not exist when the blacklist was drafted. In general, the function that social proof indicators serve for consumers is an open question, as is by consequence the extent to which they influence the transactional decisions of consumers, which is a requirement for the non-blacklisted practices in the UCPD to qualify as unfair.

Unlike the artificial boosting of social proof indicators, the extrapolation of social endorsements is a commercial practice that raises a very different consumer concern: while the commercial intent is usually clear, the endorsement provided can be misrepresented. When shown extrapolated likes, 65% of participants in the behavioural experiment wrongly believed that their friend had liked the specific product advertised rather than the brand. This may be considered a misleading omission of information, as it shows a majority of the consumers to be deceived (Article 7 UCPD). Certainly, given the demonstrated confusing effect on consumers, the information can be regarded as unclear or ambiguous (Article 7(2)UCPD).

---

<sup>24</sup> Case C-281/12 Trento Sviluppo srl, Centrale Adriatica Soc. Coop. Arl v Autorità Garante della Concorrenza e del Mercato, 19 December 2013, paragraphs 35, 36 and 38. See also the UCPD Guidance (2016), p. 37 albeit in slightly different context.

The study shows some support that light users are positively influenced by the friend's like in terms of purchase intention. Although the findings did not translate to choice behaviour, this can be expected based on the experimental design, since effects on consumer choice are usually observed in the long term and only after repeated exposure to advertising content. The studies also indicate that the consumer effect is strongly dependent on the specific consumer response examined (attitudes or behavioural intentions) and it differs for different types of products. For a practice to qualify as misleading under Article 7 UCPD, it must be 'likely to cause the average consumer to take a transactional decision he would not have taken otherwise'. The legal question is therefore how encompassing the concept of 'transactional decision' is. If we accept product evaluation and purchase intention results as an indicator of the likelihood of a transactional decision, then the evidence supports that social endorsements influence transactional decisions. This would render the use of extrapolated likes, without explaining how the like was obtained and extrapolated, a misleading omission under Article 7 UCPD, and possibly a misleading practice under Article 6 UCPD.

#### 4.4.1 Options for regulatory action

Although in principle problematic social proof practices are covered by the EU legal framework, the applicable prohibitions are general provisions. An explicit prohibition of specific problematic practices in the blacklist would deliver a stronger signal to the market and provide legal certainty to enforcers.

- Although Point 22 of Annex I UCPD may cover many practices concerning undisclosed commercial intent, **a specific and explicit prohibition targeting artificial boosting of social endorsements** could provide greater legal clarity. The current UCPD Guidance (2016) concludes that fake likes are prohibited under Article 6 (in section 5.2.9 Social Media). However, the study found ample evidence for the pervasive occurrence of such practices, and practically an entire industry built around it. An explicit prohibition could be worded as follows: *It is prohibited in advertisement to use artificially boosted/generated social endorsement indicators, in particular artificially aggregated endorsements through bots or click-farms.*
- **Inclusion of other problematic practices** linked to social endorsements that are currently not clearly covered by the blacklist could notably be considered for misrepresentation of social endorsements, **such as extrapolated likes**. The wording of such a provision could be as follows: *It is prohibited to link user interactions with content to create a social proof effect for other related content (misleading use of social endorsement through extrapolation)*

Many social proof practices are prohibited under Article 6 and 7 UCPD, as has been clarified in the UCPD Guidance (2016) in section 5.2.9 Social Media. However, these rely on an interpretation that the practice likely influences the consumer's behaviour, which may not always be easy to demonstrate. Although evidence is not always conclusive regarding the social proof indicators' influence on consumer behaviour, a prohibition of such practices may be useful and proportionate in particular taking into account the effect that artificial boosting may have on greater exposure to the consumer. An inclusion in the blacklist, therefore, strengthens the prohibition by removing this criterion and by tackling selected pervasive practices explicitly. Generally, the current blacklist items part of the UCPD are clear prohibitions that have shown their usefulness due to the precision

with which they target specific prohibited practices, a precision that also creates legal certainty.

The UCPD Guidance (2016) already provides guidelines for the interpretation of the UCPD in relation to Social Media (section 5.2.9). The section, to date, is relatively short and could be updated to include a more detailed discussion of specific practices, supplemented with good/bad practices, and examples, for instance:

- A **clarification in the UCPD Guidance (2016)** is another option to strengthen legal certainty about the scope of blacklist items, and also the scope of Articles 6 and 7 in relation to social endorsements.
  - The UCPD Guidance (2016) states that the posting of fake reviews is contrary to Annex II, point 22 (misrepresentation as a consumer). This statement could be less narrow, by **explaining the applicability of Annex II, point 22 (misrepresentation as a consumer) to other social practices, notably bot or click-farm generated social endorsements.**
  - Given the pervasiveness of artificial boosting of social proof, the UCPD Guidance (2016) could be clarified on this practice, **by amending the wording and updating it to clearly list business practices that generate 'fake likes' (bots and click-farms):** the Guidance currently states that Article 6 UCPD applies to the creation of fake likes, therefore addressing artificial boosting of social proof. To this, one may add the prohibition under Article 7 UCPD (misleading omission) and Article 5 UCPD (trader diligence) as legal basis. The wording could be changed from 'likes' to the more neutral 'social proof/endorsement indicators', aligning the language with marketing studies and clarifying that this prohibition is not only relevant for Facebook. In addition, examples of the practices of bot or click-farm generated could be included.
  - The examples of the **analysed practices should extend to cover more social proof examples and practices, such as extrapolated likes.**
- The potential of the general UCPD provisions (Articles 5(2), 6(1) and 7(2)UCPD) to work as a legal basis to tackle these **practices depends on the case-by-case interpretation of the likely influence on the consumer's 'transactional decision'**. Overall, the behavioural evidence only sometimes supports that social endorsements influence transactional decisions by consumers. This may vary for types of social proof on different platforms, specific groups of consumers, types of products, the proximity of the endorser to the user's personal network, the degree of personalisation of endorsements, or the scarcity thereof. Behavioural studies are only one way to provide useful evidence on whether specific social proof practices have an impact on consumers 'transactional decision'. Additionally, the transactional decision of a consumer may be influenced by exposure effects where an artificially high number of social endorsements results in a higher probability of a consumer being exposed to the content. **The UCPD Guidance (2016) should mention the relevance of exposure effects in assessing the 'transactional decision' of consumers.**
- **clarify the responsibilities of online marketing businesses under the due diligence requirements:** the UCPD Guidance (2016) could dedicate a section to



explain the professional diligence requirement under Article 5 UCPD for the different actors in the online marketing business

The UCPD Guidance (2016) provides a uniform interpretation of a legal instrument that otherwise risks to be applied diversely across the Member States. It can be expected to be an important signal towards courts and public authorities, although whether traders actively engage with detailed legal documentation such as the UCPD Guidance (2016) may be questioned.

Organisations such as the UK CMA<sup>25</sup> and US FTC<sup>26</sup> have also issued guidelines against the extrapolation of social proof indicators. A limitation is, however, that these are best practice guidelines to the industry rather than legally binding requirements and that the legislation itself is not heavily enforced. In addition, there are examples that indicate government agencies themselves are using services to boost social proof indicators, which indicates a regulatory grey area in terms of this practice.<sup>27,28</sup>

#### 4.4.2 Options for enforcement action

It may be argued that guidance is effective only in so far as it receives some credibility through enforcement actions, as demonstrated by the fact that several pervasive market practices have for a long time been prohibited according to the UCPD Guidance (2016).

- **Imposing penalties on online marketing businesses.** Some businesses are based on the systematic exploitation of social endorsement mechanisms. These businesses often escape responsibility and could be targeted by specific enforcement actions, notably the imposition of penalties.
- **Imposing penalties on OSM platforms and imposing the removal of infringing content.** The UCPD Guidance (2016) discusses the responsibility of OSM platforms extensively, in particular in light of the e-commerce Directive's limitations due to the safe harbour (Article 14) and prohibition to monitor (Article 15). It concludes that, in case of "fail[ure] to comply with such professional diligence requirements or otherwise promote, sell or supply a product to users in an unfair manner", these "cannot invoke the intermediary liability exemption

---

<sup>25</sup> Competition & Markets Authority (CMA). 2016. "Guidance: Online reviews: letting your customers see the true picture." CMA. As of 18 December 2017: <https://www.gov.uk/government/publications/online-reviews-and-endorsements-advice-for-businesses/online-reviews-giving-consumers-the-full-picture#what-do-you-need-to-do-if-you-are-a-business-whose-products-are-being-reviewed>

<sup>26</sup> Federal Trade Commission (FTC). 2017. "The FTC's Endorsement Guides: What People Are Asking." As of 18 December 2017: <https://www.ftc.gov/tips-advice/business-center/guidance/ftcs-endorsement-guides-what-people-are-asking#productplacements>

<sup>27</sup> AFP. 2013. "The US Government Spent \$630,000 To 'Buy' Facebook Fans." Business Insider. As of 18 December 2017: <http://www.businessinsider.com/the-us-government-spent-630000-to-buy-facebook-fans-2013-7>

<sup>28</sup> Political Scrapbook. 2015. "Tories Spent £114,000 on Facebook Likes and Ads in Just One Month." Political Scrapbook. As of 18 December 2017: <https://politicalscrapbook.net/2015/01/tories-spent-114000-on-facebook-likes-and-ads-in-just-one-month/>

under the e-Commerce Directive” (section 5.2.2.). Stepping up enforcement actions on the basis of Article 5 UCPD for OSM platforms with respect to possible abuses of social endorsement mechanisms could therefore be considered; in addition, OSM platforms could be systematically required to take down infringing.

Given the persistence of violations relating to social proof practices of clear existing obligations that have to a large extent been subject to additional interpretation and explanation in the UCPD Guidance (2016), it may be an option to step up enforcement of these practices. Enforcement actions can be expected to send a powerful signal to the market, resulting in greater compliance by the various actors in OSM.

#### 4.4.3 Options for self-regulatory action

Since these practices can have a significant effect on consumer loyalty and trust in the platform, the solutions could also be market-led.<sup>29</sup> OSM providers could have a key role in remedying practices related to social proof. Facebook, for instance, is attempting to curb the effect of buying fake social proof indicators through algorithmic measures.<sup>30</sup> Social proof indicators vary significantly for each OSM provider and, as a result, the remedies against the misuse of social proof indicators would need to be specific for each OSM provider.

- **Allow users to opt-in to or opt-out of the use of their individual social endorsements in sponsored content that their social connections see.** In particular, OSM providers that engage in social wrapping practices can ask all their users to actively opt-in to a) allow the OSM provider to use their social endorsements, such as brand or page likes for commercial purposes and send them to all their friends or b) receive such endorsement of commercial content by their friends. The opt-in options need to clearly explain, possibly using simple visual examples, what socially wrapped ads are and how their names/profiles and social endorsements are used to promote commercial content. Allowing consumers to decide how their specific actions on social media will be used commercially towards their connections would serve two purposes. First, it would increase consumer awareness of the practice of using existing social endorsements, such as brand likes, to increase the appeal of specific commercial content. Second, it would tackle potential issues related to consumers being unaware of how their data is used for commercial purposes. Higher transparency towards users on how their endorsements are used for social wrapping can be a highly valuable remedy when it comes to awareness of data protection issues (see next chapter).
- **Present extrapolated likes to consumers in an unambiguous way.** To prevent extrapolated endorsements from being misinterpreted, guidelines could be developed indicating how they should be formulated. For example,

---

<sup>29</sup> <https://www.americanexpress.com/us/small-business/openforum/articles/what-effect-can-fake-followers-have-on-your-social-media-marketing/>

<sup>30</sup> Facebook Business. 2017. “Facebook Pages: Keeping Activity authentic.” Facebook. As of 18 December 2017: <https://www.facebook.com/business/a/page/fake-likes>

extrapolated likes should clearly state what a consumer's friend has endorsed and when, be it a brand, an event or a product. Also, follow-up statements could be presented separately, such as "Friend X likes brand Y. These are products of brand Y". This action can be taken very efficiently by OSM providers and it does not require significant effort. As OSM and traders are obliged to present commercial content in an unambiguous way under current rules (Article 6 and 7, UCPD), this remedy can also be enforced, and specific actions can be taken to promote amendments to the internal guidelines of OSM.

- **Periodically ask consent and inform users with respect to updated preferences used in social wrapping practices.** Consumer preferences can change over time and so can the profiles of traders or brands that they have endorsed. It is key that any social proof indicators used for social wrapping practices on OSM are up to date to ensure that they truly reflect users' preferences. The potential issue lies in users' names or profiles being used to advertise brands, products or services to their social connections using endorsements that are no longer valid because 1) they are simply outdated or 2) they refer to a business page/profile which has changed and would no longer receive the same endorsement from the user.
- Concrete action can be taken by OSM providers, as the responsibility for social wrapping practices lies primarily with them. In particular, **an automated system can be put in place, which is set to periodically confirm whether a user still endorses a specific brand,** product or business page. This system could use, for example, a simple pop-up notification, which asks the users whether a specific endorsement is still valid (e.g. "Do you still like [brand X]?"). These notifications can be set to appear automatically every year or every two years for all specific endorsements a user has made that are used in social wrapping practices. The key objective should be that notifications remain simple, unobtrusive and not time-consuming for the user. A similar solution can be adopted for trader pages/profiles that have changed over time. Since such notifications are likely to be more complex (the user needs to be made aware of what the changes are), another option would be to create a custom tab which presents an overview of the recent changes and where users can re-endorse specific commercial content. If a user indicates that an endorsement is no longer valid, it should not necessarily be deleted (e.g. decreasing the number of likes on a business page). The remedy would rather aim to prevent that endorsements, which users have explicitly stated are no longer valid, are used in social wrapping practices. If applied in a simple way using push notifications (rather than leaving users to take initiative to change their preferences) this remedy could be effective in keeping social endorsements updated and valid when used for commercial purposes.

## 5. Data Gathering and Targeting Practices

### 5.1 Introduction

The End-User Licence Agreements of all OSM providers identify data collection from the users as a business practice and obtain users' consent for using the data. The large amounts of data gathered about users' interactions with the content that is created and shared allows OSM providers to obtain valuable information not only about a range of socio-demographic characteristics of their users, but also their interests and preferences. Specifically, commercially relevant information is gathered from users' logged activity on OSM providers, and often **combined with data from multiple other sources**, to reveal details about their taste and personality, purchase intentions, spending habits and more. A lot of this information is not provided by users directly, but can be inferred from the different actions and interactions with specific content. Furthermore, this type of data is gathered not only within the OSM provider's own platform, but also acquired from businesses advertising on the OSM, other third parties and external sources. Such data can then be combined with personal data of the OSM users, which ranges from specific identifiers, such as name, e-mail or location, to indirect socio-demographic, economic or other identifiers that can be combined and used to determine a natural person's specific identity.<sup>1</sup>

OSM providers use this data to create very specific and detailed user profiles for advertising purposes, to enable traders to target advertising and other commercial content to selected profiles depending on their business needs. The algorithms that enable this profiling and targeting are arguably the most complex, and also the least transparent aspect of social media marketing. We will not provide a full overview of user data gathering and data use practices on social media as this lies outside the scope of this study. Instead, we will focus mainly on the two most relevant practices when it comes to advertising: **tracking** and **audience targeting**, particularly **custom audiences** and **lookalike audiences**. In addition, we will briefly examine the practice of **social log-ins**.

#### 5.1.1 User tracking

We discuss the practice of tracking first as it provides a view of the extent of data gathering by OSM providers and will serve as an introduction to the more custom practices. As an advanced option for traders who advertise via OSM in-house advertising platforms, OSM providers offer, at no cost to traders, a piece of HTML code which displays a hidden image (sized 1x1 pixels) and contains an external link to the server on which the image is hosted<sup>2</sup>. This is commonly known as a "Tracking Pixel", "Web Bug" or "Web Beacon".<sup>3</sup> When this hidden image (tracking pixel) is loaded by the user's browser, the

---

<sup>1</sup> Article 4(1) of the new General Data Protection Regulation (GDPR) states that "**personal data** means any information relating to an identified or identifiable natural person ('**data** subject'): an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

<sup>2</sup> <https://skillcrush.com/2012/07/19/tracking-pixel/>

<sup>3</sup> Key providers who offer this include Facebook (including Instagram), Twitter, Pinterest, LinkedIn, YouTube and Reddit.

browser sends out a request to the web server. Via this request, the server is able to log the user's session. These tracking pixels are used to gather data about users' behaviour outside social media (e.g. after a consumer clicks on an advertisement within OSM and is redirected to the trader's website) and to provide traders with advanced analytics.<sup>4</sup> The tracking Pixel must be placed in the header section of the trader's website, allowing it to appear on all pages of that specific website and track a user's behaviour by leaving a "third-party cookie".<sup>5</sup> The term "third-party cookie" refers to a cookie that tracks users on a specific website and does not originate from the website itself (i.e. originates from the OSM provider). All data gathered by the tracking Pixel is sent to the OSM provider that created it. OSM providers use the information gathered to provide traders with access to more complex metrics, mainly referred to as "events". Events are actions that a specific user has taken on the trader's website. The most common use of a tracking pixel is for retargeting. Because tracking pixels gather information about the product pages a user has visited, OSM providers are able to send users targeted ads displaying products recently viewed by that user. Certain OSM providers also own advertising networks (e.g. Google and Facebook), through which users can also be retargeted when visiting third-party websites that are linked to that OSM provider's advertising network. In addition, a trader can choose which event to track, as the tracking pixel can record several pieces of information:

- Which pages on the website does the user visit?
- How much time do they spend on the website and on individual pages?
- Is the purchase process fully completed (i.e. is there a purchase, if this is possible on the website), or at what point is it broken off?
- Which path does the user take through the website?
- Which articles do they look at, and which do they eventually buy?
- How much money do they spend, and how do they pay?

Lastly, the tracking pixel allows OSM providers to infer which users are most likely to purchase something on a trader's website, allowing them to define a much more concrete target audience based on observed consumer behaviour.<sup>6</sup>

### **5.1.2 Audience targeting**

Enhanced user profile information obtained by tracking is not only used by the traders but also by the OSM providers. The information obtained from trackers is an essential input for further profiling and audience targeting of OSM users, which is the core value proposition of OSM providers who have their own in-house advertising system. Audience targeting aims to show commercial content only to those OSM users who appear to match the trader's target audience in order to decrease the costs and increase the effectiveness of the marketing campaign. The possibilities linked to audience targeting make OSM providers a preferred online advertising channel for traders, especially if they want to target a niche audience (or thinly segment a large one). Audience targeting provides a very high level of granularity in targeting OSM users by collecting data not only through their own social media platform (users' preferences, content interactions, connections

---

<sup>4</sup> For example, the Facebook Pixel: <https://www.facebook.com/business/help/952192354843755>

<sup>5</sup> <https://www.whatismybrowser.com/detect/are-third-party-cookies-enabled>

<sup>6</sup> For example, the Facebook Pixel: <https://www.facebook.com/business/a/pixel-best-practices>

etc.), but also by tracking user behaviour and spending patterns through external sources and linking these data sources. These sources can range from existing client databases to third-party data brokers that partner with OSM providers. Some key players include Acxiom, CCC Marketing, Epsilon, Experian, Oracle Data Cloud and Quantum.

With this wealth of profiling data at their disposal, OSM providers with in-house advertising systems can tailor options to traders who wish to target a specific audience on their platform. The most basic option is to manually select target preferences along a large set of variables. Traders can choose for their sponsored content to be targeted based on specific socio-demographic characteristics such as age, regions, income, education, marital status etc. There is a high level of granularity available within these targeting options as the majority of users provide themselves some type of information to the OSM provider. In addition to socio-demographic targeting options, traders can further refine their target audience by including or excluding users based on their preferences and interests, recorded by the OSM provider or inferred by its targeting algorithms based on available information.

A second, more advanced option, is to target OSM users based on **custom audiences**, which **directly targets specific OSM users by means of personal information, such as their email address, phone number, user ID or mobile advertiser ID**. For this purpose, traders can use their own client database (e.g. a CRM database containing e-mail addresses or phone numbers) to target specific OSM users by matching the clients included in their database with OSM users with the same personally identifying information.<sup>7</sup>

Finally, the most data-intensive and automated form of targeting is the practice of **"lookalike audiences"**.<sup>8</sup> This practice starts from the information that is available about existing consumers who have engaged with or purchased a trader's brand and/or products in the past. The first step is for the trader to choose a source audience. For example, a source audience can be based on an already created custom audience, on pixel data obtained from tracking, on mobile app data or on business page/profile fans/followers within the OSM provider. The OSM provider's algorithms will use the available information from these sources to create a lookalike audience by identifying OSM users that match most closely the profile of the trader's source audience. The reasoning is that the characteristics of the source group are predictive of what potential new profitable consumers would look like. Smaller audiences are usually more efficient as they match the source audience more closely, while larger audiences are characterised by higher potential reach.

### 5.1.3 Social media logins

---

<sup>7</sup> For example, here is an explanation on how custom audiences work on Facebook: <https://www.facebook.com/business/help/341425252616329>

<sup>8</sup> "Lookalike audiences" is the term used by Facebook. The practice is referred to as "tailored audiences" on Twitter, "matched audiences" on LinkedIn, "actalikes" on Pinterest and "similar audiences" on Google OSM platforms (YouTube and Google+).

Social logins are buttons that make it easier for users to create accounts on third-party websites based on the information available on their existing social media account.<sup>9</sup> These social logins are based on scripts made and provided at no cost by the OSM providers themselves. The use of social logins lets users skip registration and login forms, and results in traders receiving valuable additional information about the OSM user ranging from personal details (e.g. name, birthdate, email, profile picture) to sociodemographic characteristics (e.g. age, gender, race etc.).<sup>10</sup> It also enables OSM providers to track user behaviour across external websites that have social logins.<sup>11</sup>

Via social logins, the trader can view the user's personal and other data<sup>12</sup> gathered on the OSM providers connected to them. Traders can use this data to enhance their target audiences. In addition, users may be more pro-actively updating social media profiles compared to traders' website profiles, making the data gathered more reliable over time. The data that can be shared with traders via the use of social login buttons are very diverse.<sup>13</sup> In addition, the trader can request additional data points.

## 5.2 Consumer issues

**Stakeholder interviews.** In general, the majority of interviewed stakeholders raised a key concern with data gathering and targeting practices: **lack of consumer awareness as to how their personal information is collected and used.** Academics, in particular, mentioned audience targeting based on offline data as a particularly problematic practice, as consumers are unlikely to be aware that contact information collected offline (e.g. mobile phone numbers) is used for commercial profiling purposes on social media. In addition to lack of awareness, consumer protection organisations brought up a related concern that a majority of OSM users are likely to **unknowingly consent to their personal data being used in such a manner** due to complex terms and conditions that they do not understand or take the time to read.

Targeted advertising is not only problematic when OSM providers use (online or offline) contact data for profiling without consumer awareness or consent. Several traders and advertising intermediaries mentioned that they believe OSM users are mostly unaware of how online tracking works, how they are tracked when they are online and how the information collected, in turn, plays a key role in what type of commercial content they

---

<sup>9</sup> [http://info.gigya.com/rs/672-YBF-078/images/Gigya\\_WP\\_Social\\_Login\\_101\\_US\\_WEB.pdf](http://info.gigya.com/rs/672-YBF-078/images/Gigya_WP_Social_Login_101_US_WEB.pdf)

<sup>10</sup> Without any special permissions (using the standard code of the social login) this information is limited to the examples provided. However, using "special requests" the code of the social logins can be adapted to request permission for additional information, especially data point that represent users' social ties and endorsements (e.g. friends list, likes, comments, etc.).

<sup>11</sup> <https://fieldguide.gizmodo.com/all-the-ways-facebook-tracks-you-that-you-might-not-know-1795604150>

<sup>12</sup> For a list of concrete data points available per provider, visit: <https://www.loginradius.com/datapoints/>

<sup>13</sup> These can include (depending on the OSM platform): First name, Last name, Nickname, Email, Address, Birthday, Gender, City, State, Country, Location, Profile, Photo, Likes, Languages, Education, Work, History, Religion, Political view, Relationships, Friends, Friend info, Followers, Age, Contacts, Phone number, Interests, Honours, Publications, Certifications, Bio, Industry, Skills, Favourites, Connections, etc.

Source: [http://info.gigya.com/rs/672-YBF-078/images/Gigya\\_WP\\_Social\\_Login\\_101\\_US\\_WEB.pdf](http://info.gigya.com/rs/672-YBF-078/images/Gigya_WP_Social_Login_101_US_WEB.pdf)

are exposed to. This would imply that traders and OSM providers do not inform users sufficiently before asking them to consent to this type of tracking.

Evidence from the stakeholder survey indicates that there are also concerns about access to personal data, and when personal data is not processed transparently. In addition to user profile and preferences data, OSM providers collect information about users' real-time location, purchase off-line data from third party data brokers<sup>14</sup>, acquire data from traders, etc. Traders and consumer protection organisations expressed concern about **what data is stored, how safely it is stored and what parties it is shared with**. One consumer organization mentioned that OSM do not limit the storage of data in time, i.e., it is stored indefinitely.

A further problematic issue signalled by traders, consumer protection organisations and academics is the **lack of transparency as to how user data is processed** - i.e. which data is combined and what type of profiles are created and available for targeting based on such data integration. In addition, these stakeholders described sophisticated targeting as potentially problematic when different consumers are exposed to different offers and/or different prices (price discrimination) or when certain consumers are excluded from specific offers. With regard to the latter, a consumer protection organisation gave an example of insurance companies choosing to advertise only to low-risk individuals.

Aside from the potential issues, advertising intermediaries and academics mentioned a certain benefit for consumers related to advanced targeting and data usage. Targeted commercial content may be more interesting and relevant for the users and they may have a more positive overall experience on social media.

**B2B mystery shopping.** During the mystery shopping exercise there was only one intermediary that noted personal information could only be used for advertising if the user has given permission for this purpose. The mystery shopping exercise highlighted that the use of personal information to target users is recommended and encouraged by the advertising intermediaries. Most intermediaries did not mention any restrictions or permissions needed. In fact, creating a **custom audience appeared to be one of the most commonly proposed targeting practices** by these intermediaries during direct contact (via telephone).

Regardless potential user awareness and consent issues, when conducting the mystery shopping, most of the platforms and intermediaries insisted on implementing a tracking pixel on the advertiser's website to gain more information about the target audience. This confirms that this is a well-established practice.

Whilst one mystery shopping scenario involved the use of a specific client database in order to target users on a specific OSM provider, lookalike audiences were also proposed often in other scenarios. **Reaching the right target audience** was always perceived as

---

<sup>14</sup> As mentioned in Section 5.1.2, some key players include Acxiom, CCC Marketing, Epsilon, Experian, Oracle Data Cloud and Quantum.



a top-of-mind approach of the advertising intermediaries contacted during the mystery shopping.

Another interesting finding from the mystery shopping is that the role of OSM providers with in-house marketing systems is very different depending on the marketing budget of the client. During the mystery shopping exercise it became clear that, starting from a specific advertising budget<sup>15</sup>, dedicated employees would be made available to the trader to assist in the setup and management of the advertising campaigns. The limits mentioned by advertising intermediaries (e.g. € 100 000) do not appear too high in this context, which suggests that the share of business that takes place above this limit is likely to be significant. It is indeed not unusual for OSM to provide assistance advertising campaigns (it is a standard practice e.g. for IMGUR<sup>16</sup>). For example, the campaign manager of U.S. president Donald Trump mentioned in an interview that employees from different OSM platforms came directly to their office in order to provide assistance with the advertising campaigns.<sup>17</sup> Further information on the role of OSM providers with their own in-house advertising system with respect to high-budget marketing campaigns would be necessary to make a robust assessment of their level of involvement, responsibility and potential liability

**Systematic desk research.** All website owners are required by EU regulation to inform visitors that social media are tracking their behaviour on the website and inform visitors about the nature and function of the tracking codes. However, given that tracking code runs in the background and pixels on web pages are too small to be seen. As a result, these practices are not likely to be clearly visible and identifiable by social media users, although they can collect comprehensive data about users and their behaviour. Therefore, even if the OSM provider obtains explicit user consent to the general terms and conditions, it is difficult to determine whether user consent is well informed or not. This is a key concern from the point of view of consumer protection.

With respect to tracking, traders vary in terms of the degree to which they inform their website's visitors about the nature of the data collected by social media trackers and the purposes that gathered data are used for. Even when traders are clear about the fact that they are using social media cookies to track visitors' behaviour on their website, a disclaimer is often added that they have no control over, or even full knowledge of, what data is precisely gathered by social media trackers, how OSM providers are using them, or how and for how long the data is/will be stored. For example, the statement below is copied directly from the privacy policy of a German web shop:

*"We have neither influence on any of the collected data and the data processing procedures, nor on the full extent of data collection, nor are we aware of the purposes as well as the storage periods of this data."*

---

<sup>15</sup> LinkedIn and Reddit, for example, provide premium advertising services starting from €35.000 and €50.000.

<sup>16</sup> <http://www.imgurads.com/>

<sup>17</sup> <https://www.cbsnews.com/news/facebook-embeds-russia-and-the-trump-campaigns-secret-weapon/>

The key take-away is that OSM users may not be aware that OSM providers track and collect their behavioural data on trader websites and apps, and **no options allow them to opt-out**. Pop-up messages are the default way to inform people about the use of cookies<sup>18</sup>, and such messages normally give one of only two options: 1) confirming that the information given is understood or 2) that the privacy policy is agreed with<sup>19</sup>. Some traders do provide additional information about the possibility to block the use of trackers, for which several third party browser extensions exist. However, no examples were found where this information is given immediately in the same pop-up message that informs visitors about the presence of tracker cookies. In rare occasions (for instance in the case of the web shop quoted from above), websites only use trackers if users activate these themselves. Such active involvement required from users appears to be, however, the exception.

### 5.3 Conclusions

OSM providers make little to no effort to inform consumers about tracking and custom targeting. The key concerns relate to the extent to which OSM users are aware of these practices, the extent to which OSM providers and traders comply with regulations to inform users about them, and to how they obtain the users' informed consent in a transparent way, if and to the extent required by law. We have formulated two concrete conclusions based on the evidence collected.

**Conclusion 1: Consumers are mostly unaware of the complex techniques used by OSM providers to track their behaviour both within OSM and beyond, and of how the data collected is used.**

The risk assessment showed a clear lack of awareness from OSM users (as OSM users, but also as visitors of external websites) about what information is gathered about them. This suggests that consent given by consumers who agree with the terms and conditions of OSM providers may not be fully informed, as consumers are not used to reading them thoroughly. This is also driven by the technical complexity of the methods used to track users, as well as by the lack of transparency of OSM providers' privacy policies. Advanced tracking technologies allow OSM providers to track user behaviour and preferences not only within their own platforms but also externally on trader websites. No clear and consistent options exist to allow users to block or opt-out of being tracked, within OSM or on other websites. In addition to being unaware of being tracked, consumers are also likely unaware of how the information gathered from trackers (both within OSM and beyond) is used, especially with respect to advanced targeting techniques such as custom and lookalike audiences.

**Conclusion 2: There is a general lack of transparency regarding the data collection methods used by OSM providers.**

This lack of transparency is related to different aspects of data collection. First, it is difficult to understand what type of user data is collected precisely. Based on disclaimers in their terms and conditions, traders appear to have little control over (or even full

---

<sup>18</sup> <https://www.whatismybrowser.com/detect/are-third-party-cookies-enabled>

<sup>19</sup> These practices were in effect at the time of the research supporting this study; they may evolve after the GDPR becomes applicable on 25 May 2018.

knowledge of) the precise data gathered by OSM providers via social media trackers. Second, it is unclear how externally collected data or data received directly by OSM providers from traders is integrated with other available data. This is key with respect to data privacy, especially as regards linking data from different sources in OSM services like “custom audiences”, where data from individual existing customers is provided by traders to OSM providers and linked to OSM user data. In addition, it appears unclear to traders as well as advertising intermediaries how user data collected by OSM providers internally and externally is stored and preserved over time and for how long it is kept and used.

#### 5.4 Legal assessment and remedies

In practice, the UCPD has so far hardly been used to enforce the right to data protection<sup>20</sup>, which is mostly based on the sector specific legislation. In the past, this meant the Data Protection Directive, and as of May 2018 the General Data Protection Regulation. The GDPR grants natural persons (therefore also OSM users and consumers in general) extensive rights in the area of data privacy. The GDPR will regulate issues regarding the information to be provided where personal data is collected from a data subject.<sup>21</sup> Organisations processing users’ personal data will need to clearly address and improve certain aspects linked to collecting and storing users’ information, e.g. new information duties and new requirements for obtaining the user’s consent. Compliance with the GDPR of all actors involved in OSM will be subject to supervision and control by Data Protection Authorities, who can take enforcement actions, with powers to apply corrective measures and sizable administrative fines.

Article 7(2) and point No 22 of Annex I of the UCPD prevent traders from hiding the commercial intent of a commercial practice. The European Commission considers that data has “a ‘de facto’ economic value”, and that, consequently, “under Article 7(2) and No 22 of Annex I UCPD if the trader does not inform a consumer that the data he is required to provide to the trader in order to access the service will be used for commercial purposes, this could be considered a misleading omission of material information”<sup>22</sup>. Whether this is the case must be assessed on a case-by-case basis. Article 6 UCPD (prohibiting deception) and 8 UCPD (prohibiting aggressive practices) are less discussed in the UCPD Guidance (2016, section 1.4.10) on the interplay between data protection and the UCPD, although they could, according to the concrete circumstances of each case, possibly be used against some practices relating to data gathering and targeting.

A specific practice to consider is that OSM providers advertise their services as free while commercialising services in exchange for the opportunity to collect and monetize data. Whether the promotion of a service as “free” is contrary to No 20 of Annex I UCPD when data is provided in exchange is left open in the UCPD Guidance (2016), while some

---

<sup>20</sup> Eijk, N., Hoofnagle, C. J., & Kannekens, E. ‘Unfair Commercial Practices: A Complementary Approach to Privacy Protection’ (2017) *European Data Protection Law Review*, 3(3), 325-337.

<sup>21</sup> Eijk, N., Hoofnagle, C. J., & Kannekens, E. ‘Unfair Commercial Practices: A Complementary Approach to Privacy Protection’ (2017) *European Data Protection Law Review*, 3(3), 325-337.

<sup>22</sup> Commission Guidance (2016), *supra* note 1, p 27.

literature suggests that the blacklist may usefully apply in such cases.<sup>23</sup> The interpretation of the “free” nature of a service when data is provided in exchange is controversial, and has been rejected for instance by a German court that found that intangible consideration (i.e. data) cannot be regarded as a cost.<sup>24</sup> Different national courts may risk a different interpretation on this point.

#### 5.4.1 Options for regulatory action

Overall, the GDPR is expected to vastly improve data protection for consumers. The UCPD can take an important complementary role in critically evaluating commercial practices also falling under the General Data Protection Regulation.<sup>25</sup> However, from a policy perspective it will first **be important to assess the impact of the application of the GDPR before it is possible to evaluate to what extent the UCPD can be expected to provide added value.**

Possible issues to be addressed may be how OSM providers and traders engage with consumers and the extent of disclosure they have to provide about the use of profile data and behavioural data for their services. In that regard, the problem of tracking pixels – how their use and function is being communicated to website visitors – is in need of stricter rules for data collection (type of data collected, data integration, storage, timing etc.) and explicit user consent. Much better disclosure efforts, particularly by the traders themselves on their websites, are also needed.

One specific concern is the attribute of “free” when data is provided in exchange. There is a risk of a fragmented interpretation of whether this is misleading under UCPD across the EU. This point may call for inclusion in the blacklist or stronger guidance on the interpretation of the UCPD.

- **The inclusion of a blacklist point prohibiting the promotion of a services as ‘free’ when data is provided in exchange:** *"advertising a service or product as 'free' or 'gratis' where the consumer's data is subsequently monetized by the trader" and 'failure to inform a consumer that the data he provides when accessing the service will be used by the service provider for commercial purposes' and "failure to provide to the user sufficiently clear and accessible opt-out options concerning the commercial use by the service provider of the user data obtained in the course of the service provision"*

---

<sup>23</sup> Natali Helberger, Frederik Zuiderveen Borgesius And Agustin Reyna, ‘The Perfect Match? A Closer Look at the Relationship Between EU Consumer Law and Data Protection Law’ (2017) Common Market Law Review 54: 1427–1466.

<sup>24</sup> Judgment of the Berlin Regional Court dated 16 January 2018, Case no. 16 O 341/15, see [https://www.vzbv.de/sites/default/files/downloads/2018/02/14/18-02-12\\_vzbv\\_pm\\_facebook-urteil\\_en.pdf](https://www.vzbv.de/sites/default/files/downloads/2018/02/14/18-02-12_vzbv_pm_facebook-urteil_en.pdf), see also Commission Guidance UCPD (2016), ch 4.4. last part, including German and Italian cases and 1.4.10.

<sup>25</sup> The GDPR emphasises processing of personal data, while the consumer legislation in the UTD and the UCPD extends to a broader notion of unfairness M. Rhoen, ‘Beyond consent: improving data protection through consumer protection Law’ (2016) Internet Policy Review, 5(1), also Weatherill (2013). On the complementarity of Consumer and Data Protection Law, see 1) Natali Helberger, Frederik Zuiderveen Borgesius And Agustin Reyna, ‘The Perfect Match? A Closer Look at the Relationship Between EU Consumer Law and Data Protection Law’ (2017) Common Market Law Review 54: 1427–1466.

Under the UCPD, traders may not falsely describe a product as free (Annex I, point 20 UCPD). It can be argued that it is legally not clear whether the fact that the consumer provides data in exchange for access to the OSM platform satisfies the condition that the consumer “has to pay anything other than the unavoidable cost” under this provision. A blacklist prohibition will send the strongest signal to potential infringers, law enforcers and bodies applying the law.

In order to provide clarification, the UCPD Guidance (2016) could also be updated:

- **Including a more conclusive prohibition of advertising as ‘free’ where data is monetized by a trader.** Section 4.4 of the UCPD Guidance (2016) currently is not conclusive, only naming two contradicting different national examples. Given the fact that lawsuits are already pending on this issue in the Member States, stronger guidance could be provided. A preliminary reference by a national Court to the CJEU for interpretation would also deliver legal certainty. This would also be in line with the ‘New Deal for Consumers’ that extends the application of Directive 2011/83/EU to digital services for which consumers do not pay money but provide personal data.

#### 5.4.2 Practice-specific options for enforcement

**Ensure compliance with regulations governing data gathering and targeting practices.** There are two potential avenues to this remedy, which involve facilitating the detection and regulation of such practices. Firstly, detection can be improved by allowing individual consumers to easily access and have control over their personal data. This could be done via software or web-based programs that allow consumers to access their private data held by businesses and other organisations. An example of this is the UK government's Department for Business Innovation & Skills Midata programme, which encourages consumers to actively monitor and control the personal data that is accessible by businesses and organisations that have joined the programme, and provides them with software and tools to help them with this.<sup>26</sup> Another way for consumers to have more control over their data would be to allow them to license their personal information and choose who is authorized to use it.

Secondly, new compliance mechanisms that are more protective of the consumer, offering consumers the right to claim individual remedies for privacy breaches and stricter sanctions, have just become applicable on 25 May, 2018. The GDPR empowers the Data Protection Authorities to impose high administrative fines on non-compliant businesses<sup>27</sup> and allows the user, inter alia, to lodge a complaint with the supervisory authority and to receive compensation for damages suffered.<sup>28</sup> The EC's New Deal for Consumers is also designed to strengthen the protection of consumer rights.<sup>29</sup> A systematic evaluation of the effectiveness of the new enforcement regime in relation to data gathering and targeting practices is needed to evaluate further enforcement actions. In addition,

---

<sup>26</sup> The UK Department for Business, Innovation & Skills. 2011. The midata vision of consumer empowerment. Available at: <https://www.gov.uk/government/news/the-midata-vision-of-consumer-empowerment>

<sup>27</sup> See Article 58 (2) lit. i in connection with Article 83 GDPR.

<sup>28</sup> See Articles 77 and 82 GDPR.

<sup>29</sup> [http://europa.eu/rapid/press-release\\_IP-18-3041\\_en.htm](http://europa.eu/rapid/press-release_IP-18-3041_en.htm)

compliance with regulations could be improved by appointing an independent industry ombudsman that investigates the conduct of OSM platforms and assists individual consumers with complaints on privacy and data use.

**Monitor the impact of GDPR on data gathering and targeting practices.** To assess whether the GDPR effectively improves data gathering and targeting practices, the impact of the regulation should be assessed by comparing the behaviour of OSM providers and users before and after the GDPR became applicable on 25 May, 2018. In particular, it should be examined whether: a) OSM providers will be more likely notify their customers of data breaches within 72 hours, b) whether consumers will be more likely to request information about their personal data from OSM platforms, and whether this information will be provided to them, c) whether consumers will be more likely to request that their data gathered by OSM platforms is removed, and whether this request is complied with. Furthermore, the timeliness of the responses of OSM providers should also be monitored. To encourage compliance with the GDPR, Article 42 GDPR foresees the development of certification mechanisms to help demonstrate compliance with the GDPR of processing operations by controllers and processors.

#### 5.4.3 Other remedy options

**Increase user awareness about the personal data collected by OSM providers.**<sup>30,31</sup> This remedy is twofold. First, consumer awareness of how they are tracked and how the data is used can be increased by simplifying the terms and conditions outlined in End-User Licence Agreements shown to consumers when signing up to an OSM provider. This was one of the recommendations made as part of the UK House of Commons select committee on science and technology in 2014.<sup>32</sup> Simple terms and conditions would increase the likelihood that consumers will go through them and that they will be better informed when giving consent.

The second way to increase awareness is by educating users about the different ways in which OSM providers use their data and about their rights vis-à-vis their data. This implies informing consumers with regard to how they “pay” for the platform through their data when sign up for free OSM provider services.<sup>33,34</sup> Additionally, users can be informed about which actions they can take to limit the collection of personal data by OSM providers. For example, by disseminating information on how platform functionality, such

---

<sup>30</sup> Palis, Courteney. 2012. “Social Media Privacy: How Users Protect Their Data On Their Favourite Sites (INFOGRAPHIC).” Huffington Post. As of 18 December 2017: [http://www.huffingtonpost.co.uk/entry/social-media-privacy-infographic\\_n\\_1367223](http://www.huffingtonpost.co.uk/entry/social-media-privacy-infographic_n_1367223)

<sup>31</sup> <http://thoughts.arup.com/post/details/398/why-you-should-own-your-data>

<sup>32</sup> Cellan-Jones, Rory. 2014. “Social media told to simplify terms and conditions.” BBC. As of 18 December 2017: <http://www.bbc.co.uk/news/technology-30234789>

<sup>33</sup> PhD Comics. 2016. “Who owns your data?” Piled Higher and Deeper. As of 18 December 2017: <http://phdcomics.com/comics.php?f=1788>

<sup>34</sup> Klingebiel, Ronald. 2014. “Dispelling the myth of free websites would diversify business models.” The Conversation. As of 18 December 2017: <https://theconversation.com/dispelling-the-myth-of-free-websites-would-diversify-business-models-33420>

as the Google dashboard, can enable consumers to control their personal data. Moreover, it implies encouraging the use of independent app-based and platform-based mechanisms to monitor and control personal data. Software and web-based programs, including browser plugins, now allow consumers to monitor how their data is being collected and potentially used by OSM providers, and to restrict certain types of data collection.<sup>35</sup>

---

<sup>35</sup> For example, see <https://www.ghostery.com/>

## 6 Other Problematic Practices

### 6.1 Description of specific practices identified

Within this diverse group, some specific subcategories can be distinguished:

**Use of false limited offers.** This practice aims to convince a consumer to click through on an advertisement by claiming that a beneficial offer is outstanding, but with the warning that only few items are left for sale. The rationale is that consumers will be tempted to purchase the product because it is exclusive and scarce, and thus it might be sold out quickly.

**False expiring offers.** Similar to the first practice, these offers claim that an offer (for instance "buy one, get two", no shipment costs, etc.) will expire soon. Again, the goal is to convince the consumer to buy the product on offer quickly without taking the time to properly consider the offer.

**False free offers.** This practice aims to tempt users into interacting with an ad by claiming that they can get something for free – for instance the promoted product itself, shipment costs or other benefits. This is either meant to get consumers to visit a website that does not actually sell anything, or to convince them to commit to a transaction on the false promise that it does not involve any cost to the consumer.

**False prize winning.** This practice invites OSM users to click on an advertisement in order to enter a competition. Typically, consumers will be asked to enter their personal information in this case. This information is then stored and can be sold.

Misleading practices like the ones described above commonly occur through third party display advertising networks. Consequently, OSM providers that rely heavily on this type of advertising are bound to expose their users to these practices more often compared to platforms that also (or only) use their own in-house advertising platforms.

These practices are already covered under the UCPD Black List of misleading practices, Annex I.<sup>1</sup> In general, they aim to attract users to click on the advertisement and redirect them to an external website. It is possible that on this external website, a trader will try to set up a transaction with visitors. However, the purpose may be to earn revenue from advertising exposure in the landing website, to distribute malware, or "phishing"<sup>2</sup>.

Under "**phishing**", the user is confronted with a message (website or pop-up page) impersonating an authoritative source (like a bank, or an anti-virus service provider), and claiming that they have discovered a problem relating to the user (e.g., a virus that has allegedly been discovered on the user's system). The user is then asked to provide his personal information, sometimes also asked to pay the source an amount of money,

---

<sup>1</sup>[https://ec.europa.eu/info/law/law-topic/consumers/unfair-commercial-practices-law/unfair-commercial-practices-directive\\_en](https://ec.europa.eu/info/law/law-topic/consumers/unfair-commercial-practices-law/unfair-commercial-practices-directive_en)

<sup>2</sup> False prize winning competitions are sometimes used for phishing purposes. See examples at: <http://www.siucu.org/blog/financial-education/beware-social-media-scams/>, and a recent Dutch example via WhatsApp to win free tickets for Efteling: <http://www.lokalpolitie.be/5428/nieuws/1150-opgelet-phishing-valse-efdeling-promotie-via-whatsapp-in-omloop>



to solve the problem. The goal of this scam is either direct revenue (if the user pays) or data stealing, which can in turn be monetised (by using or selling these data).

## 6.2 Consumer issues, legal assessment and conclusions

As mentioned, the practices discussed in this chapter are already covered under the UCPD black list (Annex I to the directive)<sup>3</sup>, and are in all circumstances considered unfair. Nonetheless, they are still common online and appear on social media as well. Relevant evidence from our research is summarized below.

**Mystery shopping.** During our mystery shopping exercise, when using the in-house advertising platform of the OSM providers, we found that internal controls were not effective. These control mechanisms are usually based on guidelines set by the OSM to ensure advertising published through their platforms does not mislead consumers. They should consist of checks to determine whether the content meets the specific obligations set in these guidelines or in Terms and Condition of the OSM before it is approved for publication on the platform. However, clearly misleading advertisements, containing blacklisted practices (i.e. false free offers, non-existent low prices, etc.) submitted to different social media advertising platforms during the mystery shopping exercises were mostly approved by the OSM providers' reviewing systems. The incorrect statements and destination links in the ads were clearly not checked for accuracy. Only one of the OSM providers rejected two advertisements displaying prices or offers that were not actually available on the advertised website.

Therefore, while OSM providers or intermediaries may orally discourage clients from engaging in blacklisted practices when making direct contact, clearly misleading ads are not likely to be rejected when published through the in-house advertising platforms. In particular, two key issues we identified refer to: (1) the OSM provider's guidelines not specifically covering the accuracy of the information provided (i.e. content) - ads were approved as long as specific formatting guidelines, for which automatic checks exist, were complied with; and (2) adherence to the OSM provider's guidelines not being checked sufficiently. This suggests that self-regulatory efforts are not always effective and do not guarantee that misleading commercial practices are fully excluded.

**Stakeholder interviews.** Blacklisted practices also remain a source of concern in the eyes of stakeholders representing consumers, businesses and advertisers, although it was pointed out that this is a problem for online advertising in general, and not confined to social media.

## 6.3 Legal assessment and remedies<sup>4</sup>

The problematic but recurring practices discussed in this chapter are already covered under the UCPD black list of commercial practices which are in all circumstances

---

<sup>3</sup>[https://ec.europa.eu/info/law/law-topic/consumers/unfair-commercial-practices-law/unfair-commercial-practices-directive\\_en](https://ec.europa.eu/info/law/law-topic/consumers/unfair-commercial-practices-law/unfair-commercial-practices-directive_en)

<sup>4</sup> Self-regulatory and other remedial options are not included in this chapter because the scope of the practices discussed too broad and they are not exclusive or specific to OSM.

considered unfair, so there is no need for further regulatory action. Nonetheless, these practices are still common online and appear on social media. The fact that widespread violations persist despite a clear prohibition is an indicator that more enforcement action is needed in order to safeguard compliant market behaviour.

### **6.3.1 Options for enforcement action**

Remedies concerning these issues would first and foremost involve facilitating the enforcement of existing laws, and encouraging the relevant actors (individual consumers, governments, industry organisations, other companies) to initiate lawsuits based on observed breaches of the rules.

Some content is hosted on third-party advertising networks, or on external websites, OSM providers themselves may only have limited control. In addition, Article 14 of the E-Commerce Directive prohibits a general monitoring duty on OSM that are mere “hosting providers”. Nevertheless, OSM providers can be required to remove illegal content, even where they act as mere hosting services, as provided for in the new CPC Regulation.

Concretely, if OSM providers are notified of the presence of illegal content on their website (and that includes illegal commercial practices), they are required to take them down as foreseen under the eCommerce Directive. The most obvious points of contact in these cases would be the OSM provider, a non-governmental consumer organisation, or a government law enforcement body. It is the responsibility of OSM providers to be aware of the relevant legal requirements and their potential liability in case of infringements, and/or whether they are required to act in case of infringement reports.<sup>5</sup>

---

<sup>5</sup> <https://ec.europa.eu/digital-single-market/en/news/communication-tackling-illegal-content-online-towards-enhanced-responsibility-online-platforms>

## 7 Conclusions

The present study used a multi-method approach to explore advertising and marketing practices in OSM from a consumer perspective and identify specific commercial practices that could potentially mislead consumers. It also identified potential remedies and policy options to tackle these consumer issues. This final chapter summarises our key conclusions for all relevant practices, based on the evidence gathered.<sup>1</sup>

### 7.1 The OSM Landscape in the EU

The first step in this overarching objective was to gain a better understanding of the current OSM landscape by mapping the top OSM providers by country and in the EU28 plus Norway and Iceland, based on their relative popularity with users.

OSM usage across Europe is high, with almost two thirds (63%) of 16 to 74 year olds having participated in some type of social media in 2016.<sup>2</sup> The OSM landscape in Europe is led by two international platforms that account for an estimated 72% of the monthly traffic to OSM<sup>3</sup>. In particular, Facebook accounts for 43.6% of monthly traffic, while YouTube account for 28.6%. In fact, **the vast majority (87.4%) of EU consumers' monthly visits to OSM providers in Europe go to the top ten international OSM providers** identified: Facebook, YouTube, Twitter, Instagram, Reddit, Tumblr, LinkedIn, Pinterest, Twitch and Imgur. The most widely used platform<sup>4</sup> that targets the general population, Facebook, is most popular in Romania (51.7%), Portugal (50.2%) and Italy (48.8%) and least popular in Finland (34.2%), Sweden (34.5%) and Ireland (35.8%). Niche platforms, targeting specific audiences (e.g. Twitch) or early adopters (Reddit) are more popular in Finland, Sweden and Norway (ranging between 3 and 5%) and less used in Hungary and Romania (less than 1%).

The second step was to identify and systematically assess specific commercial practices that consumers are exposed to in OSM contexts. Using a range of qualitative methodologies (stakeholder interviews, B2B mystery shopping, online communities, desk research), we assessed the potential impact of these practices from the perspective of consumers. We also assessed the level of involvement and responsibility of OSM providers and other key players with respect to the prevalence and impact of these practices. Based on our initial findings, we designed behavioural experiments to test the practices with the highest potential to mislead consumers. The following sections synthesize the key evidence collected per practice as well as the policy option for regulatory enforcement actions.

---

<sup>1</sup> Self-regulatory and other remedial options are not included in this conclusion chapter as the focus is on conclusions with respect to the evidence gathered and policy options. "Other problematic practices" as described in Chapter 6 are also excluded because they are not exclusive or specific to OSM.

<sup>2</sup> [http://ec.europa.eu/eurostat/statistics-explained/index.php/Internet\\_advertising\\_of\\_businesses\\_-\\_statistics\\_on\\_usage\\_of\\_ads](http://ec.europa.eu/eurostat/statistics-explained/index.php/Internet_advertising_of_businesses_-_statistics_on_usage_of_ads)

<sup>3</sup> These figures are based on the desktop traffic and mobile browser traffic online and do not take into account traffic inside mobile applications.

<sup>4</sup> In terms of its proportion of overall OSM traffic within each specific country

## 7.2 Disguised advertising practices

### 7.2.1 Introduction and evidence of consumer issues

We identified three key types of disguised advertising practices that can be considered as potentially problematic for consumers: native advertising, influencer marketing and advertorials.<sup>5</sup> With respect to native advertising in OSM, **consumers experienced difficulties in identifying native ads, which indicates that they are often unaware of their commercial nature.** This is most likely due to the nature of native advertising, as the content closely resembles and blends in with user-generated content. This issue could have a significant impact on consumers as 1) knowledge of the commercial intent of specific content has an impact on consumer evaluations of the content and 2) native advertising is a highly prevalent commercial practice in OSM contexts.

A related issue with respect to consumer awareness is their inability to notice and understand the meaning of existing 'disclosure labels' OSM providers use to signal commercial content.<sup>6</sup> Disclosure labels are usually added by OSM providers who are in control of the advertising content published via their in-house advertising platforms. During the behaviour experiments, specific remedies related to the issue of disclosure were tested. The results confirmed that the poor performance of existing disclosure labels is linked to both their ineffectiveness in capturing consumers' attention and their lack of clarity (ambiguity) with respect to their meaning. Our findings show that an effective remedy for **the ineffectiveness of disclosure labels can be** to increase their salience and ensure that their meaning is clearly communicated and non-ambiguous to consumers.

Another key issue for consumers is the **lack of proper review mechanisms** by OSM providers who are responsible for the format of advertisements and their disclosures of commercial intent when published via their in-house advertising platforms. As OSM providers have a legal obligation to not display content that may mislead consumers, specific actions are needed to strengthen these monitoring and review processes. Furthermore, we found that social influencers<sup>7</sup> active in promoting products and services on social media **often fail to disclose that they are paid or sponsored by traders.** This leaves consumers uninformed of the commercial nature of this type of content. This second practice involves players who operate outside the direct control of OSM providers, which places the disclosure responsibility with social influencers instead. A potential reason for the failure to disclose payment or sponsorship among influencers who work directly with traders may be their lack of knowledge of their legal responsibilities.

### 7.2.2 Options for regulatory action.

---

<sup>5</sup> For detailed definitions and illustrations of these practices please refer to Section 3.1.

<sup>6</sup> Disclosure labels are visual cues that can help consumers distinguish between commercial and non-commercial content

<sup>7</sup> Defined in Section 3.1.2 as persons with a greater than average reach or impact through word of mouth in a relevant marketplace.

Consumers' lack of awareness of marketing practices on OSM and the failure of OSM providers, social influencers and traders' to correctly disclose commercial intent are the key risks identified across all types of disguised advertising practices.

In theory, **native advertising, influencer marketing, and advertorials are practices that can be tackled through the existing legal framework** on unfair commercial practices. While advertorials without disclosure of commercial intent is a practice that is explicitly blacklisted (prohibited), similar practices that have developed in social media i.e. native advertising and influencer marketing, are not always caught by the black-listed provisions<sup>8</sup>.

A challenge, as apparent from the diversity of examples documented during the desk research, is that there is inconsistency and fragmentation of disclosure practices across devices, jurisdictions, and providers. The legislative framework is open as to **how and how much** disclosure must be provided. More clarity on this would facilitate both compliance and enforcement.

Options to provide legal clarity would therefore be the inclusion in the blacklist or in guidelines of specific problematic commercial practices prevalent in social media. This could make compliance more likely and enforcement easier and includes:

**Updating the blacklist of the UCPD** to include items covering problematic disguised advertisement practices, by:

- modifying the wording of the advertorial blacklist prohibition;
- creating a prohibition of native advertisement;
- and specifically prohibit web-structures that do not allow traders to comply with the disclosure required by EU consumer law.

**Clarification in the UCPD Guidance (2016), by:**

- by establishing elements to assess the salience and clarity of the meaning of the disclosure, providing real-life examples;
- clarify in how far the existing UCPD requirements impose a duty on OSM to technically enable adequate disclosure and their potential liability;
- publication of a self-standing dedicated guidance document targeted at the OSM market.

### **7.2.3 Options for enforcement action.**

In terms of enforcement, problematic disguised advertisement practices would require stepped up, targeted enforcement. Specifically for disguised advertisement, effective enforcement policy may require to move beyond targeting regular traders, to include, in the case of influencer marketing and advertorials, individual persons, and in the case of native advertising, OSM platforms. To enhance consumer protection in relation to disguised advertising practices, **enforcement actions can be considered specifically against influencers, i.e. by imposing penalties on important influencers**, and

---

<sup>8</sup> For example, influencer marketing is contrary to No 22 of Annex I UCPD if the influencer fails to disclose that he isn't acting as a consumer.

**against OSM providers by imposing penalties and ordering them to remove infringing content.**

### **7.3 Social proof practices**

#### **7.3.1 Introduction and evidence of consumer issues**

The second type of practices we investigated through both qualitative studies and behavioural experiments are related to social proof indicators such as likes on Facebook or follows on Twitter. The first practice concerns such indicators being artificially boosted and faked, resulting in the misrepresentation of the popularity of specific content. The second practice is that of promoting a specific product or service as having been recommended or liked by a specific individual's friends, based on friends' interactions (e.g. likes or follows) with the brand or page and not with the specific product. We refer to this practice as extrapolating social endorsements to related content, or "social wrapping".<sup>9</sup> We found **no evidence that artificially boosted social proof indicators (e.g. likes) affect consumer responses** (attitudes or behaviour) to commercial content. If such an effect exists, it is likely only relevant for inexperienced OSM users as experienced users appear to be habituated and not as susceptible to these tactics.

Even if the artificial boosting or faking of social proof indicators may not have a direct impact on consumers' transactional decisions, **it is important to consider the potential indirect impact of such practices**. In particular, an important question is how artificially boosted social proof indicators impact the display and ranking of commercial content in users' feeds. This depends on the extent to which OSM providers are able 1) to detect fake likes or recommendations and 2) to program their algorithms that determine the relevance of specific content to not take such fake recommendations into account.

The behavioural experiments showed that **extrapolated social endorsements are generally interpreted by consumers as genuine product endorsements from friends** and have a positive impact on their attitudes towards the products or services endorsed. This practice, which we only found on Facebook during the time of the study, can be problematic for consumers as they may be misled regarding what a specific endorsement refers to (a brand, a product, a trader or the post itself). Social wrapping and, more concretely, the extrapolation of social endorsements is only possible through the OSM providers' in-house advertising platforms, and thus these practices fall under their direct responsibility.

#### **7.3.2 Options for regulatory action.**

The most pertinent legal instrument for assessing practices relating to the authenticity of social proof indicators is the UCPD, which requires that the commercial information consumers are exposed to is not misleading. At the same time, **social endorsements are a key distinguishing feature of OSM** which did not exist in their current pervasive form when the UCPD was drafted. Some commercial practices related to social proof

---

<sup>9</sup> For detailed definitions and illustrations of these practices please refer to Section 4.1

indicators will be captured by the blacklisted practice of disguised trading/falsely presenting oneself as a consumer (point 22 of Annex I to the UCPD). Other problematic practices relating to social proof that are not covered by the blacklist may be prohibited under the existing umbrella provisions, i.e. clearly under Article 7(2) UCPD, and possibly under Article 6(1)(b) UCPD and Article 5(2) UCPD.

As a policy option, **an update of the blacklist to reflect specific online practices** could be considered:

- a specific and explicit prohibition targeting artificial boosting of social endorsements;
- inclusion of other problematic practices, such as extrapolated likes.

Next to this, the UCPD Guidance (2016) could be clarified, in particular on the following points:

- explaining the applicability of Annex II, point 22 (misrepresentation as a consumer) to other social practices, notably bot or click-farm generated social endorsements
- amending the wording and updating it to clearly list business practices that generate 'fake likes' (bots and click-farms);
- extending analysed practices to cover more social proof examples and practices, such as extrapolated likes.
- mentioning the relevance of exposure effects in assessing the 'transactional decision' of consumers;
- clarifying the responsibilities of the different actors in the online marketing business under the due diligence requirements

### 7.3.3 Options for enforcement action

Problematic practices related to social proof can benefit from enhanced and targeted enforcement. Specifically in social proof practices, the role of some online marketing businesses is may require **enforcement action at systematic abusers of social proof mechanisms**, by imposing penalties on this type of infringers in order to send a market signal. To enhance consumer protection, in specific cases **penalties may be imposed on OSM platforms for violation of traders' duties and the removal of infringing content may be ordered**.

## 7.4 Data gathering practices

### 7.4.1 Introduction and evidence of consumer issues

While data gathering, profiling and targeting practices were not studied via the behavioural experiments, findings from the qualitative research suggest that **consumers are mostly unaware of the extent to which OSM providers track their behaviour and what type of data they gather**. This lack of awareness is likely driven by the technical complexity of the tracking methods used. In addition to the type of data collected, there is a general lack of awareness as to **how this type of data is combined and used** by OSM providers for custom targeting and profiling purposes. Our findings provide preliminary evidence that consumers' consent to specific terms and conditions may not be fully informed.

Consumers' lack of awareness is at least partly driven by a **lack of transparency regarding user tracking, data collection and data processing, and integration of OSM data with data from traders and other sources**. In addition, it is not clear how user data is stored and preserved over time.

#### 7.4.2 Options for regulatory action

Policy options with respect to data issues are determined by the interplay between data protection and consumer law. Under the UCPD, traders may not falsely describe a product as free (Annex I, point 20 UCPD). It can be argued that it is legally not clear whether the fact that the consumer provides data in exchange for access to the OSM platform satisfies the condition that the consumer "has to pay anything other than the unavoidable cost" under this provision. Personal data is also relevant under Articles 6 and 7 UCPD, which state that traders should in general not mislead consumers. In particular, under Article 7(2) and No 22 of Annex I, traders may not hide the commercial intent behind commercial practices. If the trader does not inform consumers that the data he or she is required to provide in order to access a service will be used for commercial purposes, this could be considered a misleading omission of material information (possibly in addition to a breach of the General Data Protection Regulation).

- Clarify whether "costs" in the sense of No 20 of Annex I UCPD may cover also the provision of personal data or including a specific provision to this respect.
- Including a more conclusive prohibition of advertising as 'free' where data is monetized by a trader

Given the applicability of the GDPR as of 25 May 2018, its impact on data related practices must first be studied in order to determine the complementary role that consumer law may play.

#### 7.4.3 Options for enforcement action

The GDPR enhances the possibility for enforcement in data related practices in several respects. It allows the Data Protection Authorities to impose high administrative fines on non-compliant businesses<sup>10</sup> and allows the user, inter alia, to lodge a complaint with the supervisory authority and to receive compensation for damages suffered.<sup>11</sup> The EC's New Deal for Consumers is also designed to strengthen the protection of consumer rights.<sup>12</sup> A **systematic evaluation of the effectiveness of the new enforcement regime in relation to data gathering and targeting practices** is needed to evaluate further enforcement actions at the interface of data and unfair commercial practices.

### 7.5 General discussion of the current legal context

Using new CPC Regulation mechanisms can help bring together national enforcement authorities concerning problematic practices in OSM –for widespread infringements with an EU dimension. The CPC Regulation ensures a strengthened and more efficient

---

<sup>10</sup> See Article 58 (2) lit. i in connection with Article 83 GDPR.

<sup>11</sup> See Articles 77 and 82 GDPR.

<sup>12</sup> [http://europa.eu/rapid/press-release\\_IP-18-3041\\_en.htm](http://europa.eu/rapid/press-release_IP-18-3041_en.htm)



enforcement cooperation framework, for instance by creating minimum powers of authorities, and by instituting a procedure to address widespread violations of consumer law. This is also in line with the 'New Deal for Consumers' adopted in April 2018.

The CPC Regulation allows for the following enforcement mechanisms, all of which could be leveraged as instruments targeting commercial practices in OSM. **The competent authorities at national level can impose penalties.** Further, the competent authorities can order the **removal of problematic content**, they may also order the removal of infringing content from OSM.

**Sweeps**, to be coordinated by the European Commission, can be undertaken to check compliance with, or to detect infringements of EU laws that protect consumers' interests. A sweep in the OSM sector is an enforcement action that will provide greater clarity about the extent of ongoing infringements, and to substantiate the extent of infringing practices in OSM.

Further, within the CPC, coordinated investigation and enforcement mechanisms for widespread infringements with an EU dimension, include the **launch of a coordinated action**. Given the global reach of OSM platforms, such practices must be qualified as infringements that harm the collective interests of consumers of more than one Member State; they may even be considered as wide-spread infringements –those harming at least two-thirds of the Member States.

Other activities that can be explored relate to **the coordination of other activities contributing to investigation and enforcement**. These include the training of their officials; the collection, classification and exchange of data on consumer complaints; the development of sector-specific networks of officials; the development of information and communication tools; and the development of standards, methodologies and guidelines concerning the application of this Regulation.

Overall, effective enforcement policy may require **moving beyond targeting regular traders**, to include, in the case of disguised advertising, OSM providers and individual persons, and in the case of distorted social proof indicators, shadow businesses making profit from artificially boosting them. Competent national authorities can impose targeted sanctions on specific types of infringers in order to send a signal to the market. Penalties, such as fines or periodic penalty payments, must be sufficiently dissuasive.

Individual consumers usually have little incentive to engage in costly litigation against powerful tech giants. The **role of consumer organisations and collective redress in consumer law could therefore be crucial for the enforcement of consumer law**.<sup>13</sup> On 11 April 2018, the European Commission adopted the "New Deal for Consumers" package, which included proposals to strengthen individual and collective consumer redress across Europe. On the one hand, the New Deal envisages giving consumers who have been harmed by unfair commercial practices EU-wide rights to individual remedies. These new rights would be added to the UCPD. On the other hand, the New Deal proposes a new Directive on Representative Actions, which aims at ensuring efficient mechanisms

---

<sup>13</sup> Peter Rott, 'Data protection law as consumer law – How consumer organisations can contribute to the enforcement of data protection law' EuCML Issue 3/2017.

## EUROPEAN COMMISSION

for collective redress for European consumers. This proposal will require Member States to appoint “qualified entities” that will be empowered to instigate collective redress actions. Member States will be free to decide to which extent consumer associations will be included among qualified entities in their national law. The proposal is now in the legislative process and it will be for the Member States and the European Parliament to finally adopt it to make the proposed rules binding European law.

## 8 Appendix – Limitations and Future Research

There are certain limitations related to the scope and type of research conducted, which are important to take into account when assessing the results and recommendations presented in this report and their implications for future research.

**Robustness.** An inherent limitation, due to the broad scope and exploratory nature of the study, is that the strength and robustness of the findings should be taken with caution when applied across different environments (e.g. desktop vs. mobile), OSM platforms and across EU Member States. Particularly, the samples obtained for the qualitative studies were limited, ranging between 50 and 100 participants. These were also convenience samples that may not be representative of the target populations (e.g. the online communities sample was skewed towards highly educated consumers). Lastly, advertising content presented in the experiments was not targeted to consumers based on their individual profiles as outlined in the practices described in Chapter 5. Therefore, the observed effects may not be fully representative of the actual effects present in realistic OSM environments.

**Approach.** In future research, some specific practices may benefit from adopting different quantitative approaches to estimate their impact on consumers. For example, influencer marketing would require a tailored, ad-hoc approach to study quantitatively, due to its heavy reliance on community ties. The same is true for practices related to targeting based on personalised data, which would require a more technical approach.

**Context.** The continuous growth and evolution of OSM means that commercial practices and the ways in which they are presented to consumers also evolve continuously. As such, quantitative insights presented in this report are specific to a set of practices observed on OSM platforms at a specific point in time. Although sufficiently robust, these findings could quickly become out-dated as new commercial formats are introduced in these contexts. The close monitoring of the rapid evolution of these media is key to ensuring consumers enjoy sufficient protection under the existing laws. Future studies could, therefore, engage in systematically monitoring OSM contexts to identify potential issues related to consumer protection as they arise.

**Disclosure.** Given the challenge of introducing a consistent, visually salient disclosure label across different OSM providers, further research could provide detailed recommendations with respect to what such a uniform disclosure should look like. Such a study could analyse the effects on consumer behaviour of various levels of harmonization. Uniformity in wording at the language level should maximize label comprehensibility and hence effectiveness. In analysing the effectiveness of a (more) uniform disclosure, a future study should extend to the full range of disguised advertising practices identified, covering not only native advertising but also influencer marketing.

**Algorithms.** The present study did not focus on the indirect route via which social proof indicators may influence user responses, that is, via their influence on the probability that the ad post is displayed in the users' news feed in the first place. While it is clear that the number of likes and tie strength interact in the algorithms to determine which posts are presented in a users' news feed<sup>1</sup>, the weight that these factors receive in

---

<sup>1</sup> <https://www.bluecorona.com/blog/facebook-news-feed-algorithm-tips>

comparison to the countless other factors that together determine what is exposed to whom and when is largely unknown. Future work could zoom in on the potentially detrimental impact of social proof on exposure to advertising, and specifically the extent to which it affects the spreading (and hence the effectiveness) of sponsored content.

**Social ties.** While a friend induction was used in the behaviour experiments, the impact of endorsements from close network connections should be stronger when it concerns real connections. This would be consistent with Bakshy et al. (2012), who show that even minimal social cues impact users' responses to advertising when these cues come from strong ties. In contrast, the confusion arising from recycled likes could be weaker when it concerns users' real close ties, as it can be assumed that consumers have much more knowledge regarding tastes and preferences of their real friends. It is unclear what the net effect (less confusion, but stronger social influence) would be. Future research could examine the effects of extrapolated likes in their natural environment.

**Vulnerable groups.** Future studies could pay particular attention to potentially vulnerable consumer groups in OSM contexts. For example, the target population for the behavioural experiments included consumers who were at least 18 years old. Given that young adults increasingly use OSM providers, and are particularly vulnerable to the effects of advertising, research is also needed to examine the effects of the studied practices in younger populations. In addition, key differences were observed between light (inexperienced) and heavy (experienced) OSM users, suggesting that light users may be more susceptible to misleading practices and can also be considered a relevant (vulnerable) group of consumers in future studies.

**Product relevance.** A key limitation of the behavioural experiments is that the advertising stimuli were not tailored to the personal information of the user the way targeted advertising content is (based on the algorithms used by the OSM provider). As such, these situations were not fully indicative of a realistic OSM context. For example, studies show that the personal relevance of a product increases the effect that information about a product has on people's willingness to pay for the product.<sup>2</sup> Thus, participants may pay less attention to the advertisement or process it in a different way. The untargeted nature of the stimuli means that the advertised products may have had low personal relevance to participants, which may account for why their product preferences were not influenced by their ability to identify the commercial intent of native ads. Future research should feature advertisements of products/services that are of personal relevance to participants, in order to better replicate the targeted advertising environment of OSM providers.

---

<sup>2</sup> Ajzen, I., Brown, T. C., & Rosenthal, L. H. (1996). Information bias in contingent valuation: effects of personal relevance, quality of information, and motivational orientation. *Journal of environmental economics and management*, 30(1), 43-57.

## 9 Lists of Annexes

### Task 1: Exploratory phase

- Annex 1.0: Literature review
- Subtask 1.1: Mapping of the OSM providers in Europe
  - Annex 1.1.1 – Country fiches - 30 countries
  - Annex 1.1.2 – OSM providers selection for Desk Research
  - Annex 1.1.3 – Provider fiches desktop
  - Annex 1.1.4 – Provider fiches applications
- Subtask 1.2 Business model identification
  - Annex 1.2 Business model identification
- Subtask 1.3: Mapping of the OSM commercial practices
  - Annex 1.3.1 – Desk research report
  - Annex 1.3.2 – Online communities report
- Subtask 1.4: Examining the role of OSM providers in commercial practices
  - Annex 1.4.1 – Stakeholder survey
  - Annex 1.4.2 – B2B Mystery shopping
- Subtask 1.5: Legal assessment
  - Annex 1.5 – Legal assessment of problematic practices
- Subtask 1.6: Identification of remedies
  - Annex 1.6 – Identification of remedies

### Task 2: Behavioural experiments

- Annex 2.1 – Behavioural experiments

## HOW TO OBTAIN EU PUBLICATIONS

### Free publications:

- one copy:  
via EU Bookshop (<http://bookshop.europa.eu>);
- more than one copy or posters/maps:  
from the European Union's representations ([http://ec.europa.eu/represent\\_en.htm](http://ec.europa.eu/represent_en.htm));  
from the delegations in non-EU countries  
([http://eeas.europa.eu/delegations/index\\_en.htm](http://eeas.europa.eu/delegations/index_en.htm));  
by contacting the Europe Direct service  
([http://europa.eu/europedirect/index\\_en.htm](http://europa.eu/europedirect/index_en.htm)) or calling 00 800 6 7 8 9 10 11  
(freephone number from anywhere in the EU) (\*).

(\* ) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

### Priced publications:

- via EU Bookshop (<http://bookshop.europa.eu>).

### Priced subscriptions:

- via one of the sales agents of the Publications Office of the European Union  
([http://publications.europa.eu/others/agents/index\\_en.htm](http://publications.europa.eu/others/agents/index_en.htm)).