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Controlling your Brand: Contractual Restrictions Placed by Internet Retailers on Affiliate Marketing Activities in Spain

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Abstract

Affiliate marketing programs have emerged as one of the fastest-growing methods for online retailers to acquire customers and increase sales. Affiliate marketing offers a number of advantages, including a relatively low cost and the ability to accurately track the actions of website visitors and their responses to targeted promotional activities. However, while these programs have proven effective in increasing website traffic and sales, illegal or inappropriate activities on the part of affiliates could negatively impact a retailer's brand in the eyes of customers. This study reviews the stated guidelines in one-to-many affiliate programs in the three major affiliate networks in Spain as a first step in understanding how online retailers control the business models and promotional tools used by their affiliates. The conclusion is that there is a significant lack of transparency in the guidance and restrictions communicated to affiliates, which increases the risk of inappropriate behavior or misconduct. Consequently, affiliate monitoring by online retailers becomes increasingly important. General recommendations to improve monitoring are considered.

Keywords: online advertising, affiliate marketing, pay per performance, interactive marketing.

1 Introduction

While many predicted the decline of the Internet as a commercial channel when the dot.com bubble burst in the spring of 2000, this has not come to pass. Marketers continue to increase their investments in online promotions: in 2005, Internet advertising revenues in the U.S. increased 30% over the prior year to $12.5 billion, accounting for nearly 5 percent of total advertising revenues up from 4 percent in 2004 (Interactive Advertising Bureau and PriceWaterhouseCoopers 2005). Another recent study from Ofcom found that online advertising in 2005 in the U.K. surpassed magazine advertising for the first time (as quoted on CNET by Meyer 2006). The trend has not gone unnoticed in the academic literature either, as a recent study of companies in seven countries observed an overall increase in interactive marketing expenditure of 29.8% from 2001 to 2004 (Barwise and Farley, 2005).

An obvious question is whether all of this investment is achieving the desired outcome at a reasonable cost. One type of Internet marketing, revenue-sharing affiliate marketing, is potentially the most cost-effective method for acquiring new customers on the Internet. Also called pay for performance marketing, an affiliate marketing program consists of an on-line retailer (sponsor) who places a link on a third-party website (affiliate). If a visitor to the affiliate site clicks on the link and performs a specified action (e.g. visits the sponsor's website, fills out a form, purchases a product, etc.), the affiliate receives a commission. The arrangement has been described as similar to having a large, independent sales force working solely for commission and absorbing the total risk associated with marketing a retailer's products (Duffy, 2005).

While Amazon is generally credited with creating the first major affiliate program on the Internet (launched in 1996), Hoffman and Novak first focused the attention of the academic community on this strategy in 2000, concluding that of the various forms of advertising used by online retailer CDnow, their affiliate program was by far the most cost effective (after word-of-mouth, to which they attributed a cost of zero), since it allowed the retailer to "draw a direct line from advertisement to sale" (p. 188, Hoffman and Novak 2000).

However, in spite of initial efforts to bring the topic of affiliate marketing to the fore, recent empirical studies have been few and far between. This might lead one to the conclusion that affiliate marketing was merely a fad which was popular for a time, but has since faded into obscurity. This is not the case. Duffy (2005) recently observed that "affiliate marketing is likely to become the principal mainstream marketing strategy for e-commerce businesses in the future" (p. 161). In fact, the affiliate marketing industry in the U.K. grew by over 100% in 2005, with sales generated through the channel estimated between £1.1 and £1.3 billion (E-Consultancy, 2005). It is difficult, however, to find exact estimates of market size, as affiliate marketing has yet to be clearly defined, and the entrance of dozens of intermediaries further complicates the situation (Molander, 2005). In fact, while ValueClick (2006) estimates the global affiliate marketing sector to be in the range of $400 - $500 million, MarketingSherpa places the figure at $6.5

billion (MarketingSherpa, 2006a). Today, 9-40% of a typical online retailer's sales come from affiliates (MarketingSherpa, 2006b).

Despite the growing importance of affiliate marketing, there are critical issues which have not received sufficient attention by researchers thus far. One area of particular interest is the degree to which marketers monitor the activities of affiliates. One of the main advantages of affiliate marketing is its ability to accurately track the behavior of users in terms of website visits and purchases. However, since affiliates are compensated solely on their ability to generate high traffic and sales, there is a significant risk that they may engage in activities that are illegal, fraudulent, or somehow destructive to the brand value of the sponsor. As affiliates are often the first point of contact with a potential customer, negatively-perceived activities on their part could have a detrimental effect on the retailer's brand. These risks can be divided into three main areas: 1) fraud; 2) the affiliate business model (e.g. illegal activities or activities inconsistent with the retailer's brand image); and 3) affiliate promotion tools (e.g. inappropriate use of the retailer's trademarks in search engine advertising, spam). The need for further investigation in this area was confirmed by a recent survey by AffStat (2006), in which nearly 200 affiliate managers were asked their biggest challenge in affiliate marketing. About half indicated some form of issue of controlling affiliate activities (detecting fraud, properly managing the affiliates, monitoring affiliates for brand risks and monitoring affiliates' use of trademarks in search engines).

Agency theory (Eisenhardt, 1989; Jensen & Meckling, 1976; Ross, 1973) is used as the basis for this research study. Briefly, agency theory is concerned with the relationship between a principal (in this case the sponsor) who delegates work to an agent (the affiliate) who then performs the work. Using the formal contract as the unit of analysis, the goal of the theory is to identify "the most efficient contract governing the principal-agent relationship given assumptions about people (e.g., self-interest, bounded rationality, risk aversion), organizations (e.g. goal conflict among members), and information (e.g. information is a commodity which may be purchased)" (Eisenhardt, 1989, p. 58).

As a first step to understanding how sponsors control the activities of their affiliates, this paper reviews the formal contract between sponsor and affiliate, examining the restrictions placed on affiliate behaviour in three areas: a) the program guidelines communicated to affiliates when they are accepted into a program, b) restrictions stipulated in the contract between the affiliate and the affiliate network, and c) restrictions from other intermediaries such as search engines. We constrain our first stage of the study to the affiliate market in Spain for two reasons: 1) this is a market with which the authors are most familiar, and 2) it is small enough for the sample to encompass a substantial portion of the affiliate programs in the country. Our study focuses on how sponsors control affiliate business models and promotion tools. Specifically, we address the following research questions:

- How do advertisers communicate restrictions on the types of affiliate businesses which are acceptable for their affiliate marketing programs?

- How do advertisers communicate restrictions on the types of promotion tools allowed by affiliates?

Given the complexity of fraud, it will not be addressed directly in this study.

The remainder of this paper is structured as follows. In section 2, background information is provided on types of affiliate programs, the affiliate marketing channel structure, affiliate business models and affiliate promotion tools. Section 3 describes the data collection, the research method and summarizes the data. Section 4 presents the data analysis and findings, where section 5 provides implications for the use and management of affiliate programs, summarizing the discussion and potential areas for future research.

2   Research background

Amazon.com is widely credited with creating the first affiliate program on the Internet in 1996 (Dysart, 2002; Libai *et al.*, 2003). Since then, Amazon has gone on to develop one of the largest and most successful affiliate programs in the world. According to their website, they currently have over 1,000,000 members worldwide. Many others have followed Amazon's example, making affiliate marketing an important source of customer acquisition (Hoffman and Novak, 2000; Libai et al., 2003). Today, according to market research company MarketingSherpa, 9-40% of a typical online retailer's sales come from affiliates (MarketingSherpa, 2006b).

The benefits in terms of increased sales and reduced advertising costs are clear. In spite of the financial benefits, however, there are additional risks for retailers when they entrust their marketing efforts to affiliates. According to a recent survey of affiliate managers (sponsors) by AffStat (2006), when asked their biggest challenge in affiliate marketing, a high percentage of the affiliate managers' responses were related to monitoring issues[1]:

	Pay per Sale	Pay per Lead
Detecting Fraud	14%	24%
Properly managing the affiliates	18%	22%
Monitoring affiliates for brand risks	6%	4%
Monitoring affiliate use of trademarks in search engines	8%	2%
Total	46%	52%

Table 1: Challenges in Affiliate Marketing

Table 1 summarizes these findings. Fraud is a constant problem and is difficult to manage, especially since affiliate programs can contain several thousand affiliates. In addition, affiliates use a number of different business models where affiliate activities vary from a minor source of additional income, to the core revenue

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1 The results of the survey are divided by the type of pricing scheme offering. In Pay per Sale programs, the affiliate receives a commission when the customer referred to the sponsor site makes a purchase. In Pay per Lead programs, the affiliate receives a commission for each unique visitor sent to the sponsor site.

model of the business. Furthermore, there are many promotion tools available including text messages, banner ads, search engine marketing and email. While the impact in terms of visitors and sales resulting from affiliate activities can be significant, the detrimental impact on the sponsor's brand from negatively-perceived or illegal practices on the part of the affiliate can be significant as well. In addition, there can be a negative impact on a sponsor's brand when the affiliate products and services are inconsistent with the sponsor's brand image.

The following sections provide further background on the types of affiliate programs in use and the affiliate marketing channel structure, as well as the specific areas addressed by the research questions in this paper: affiliate business models and promotion tools used.
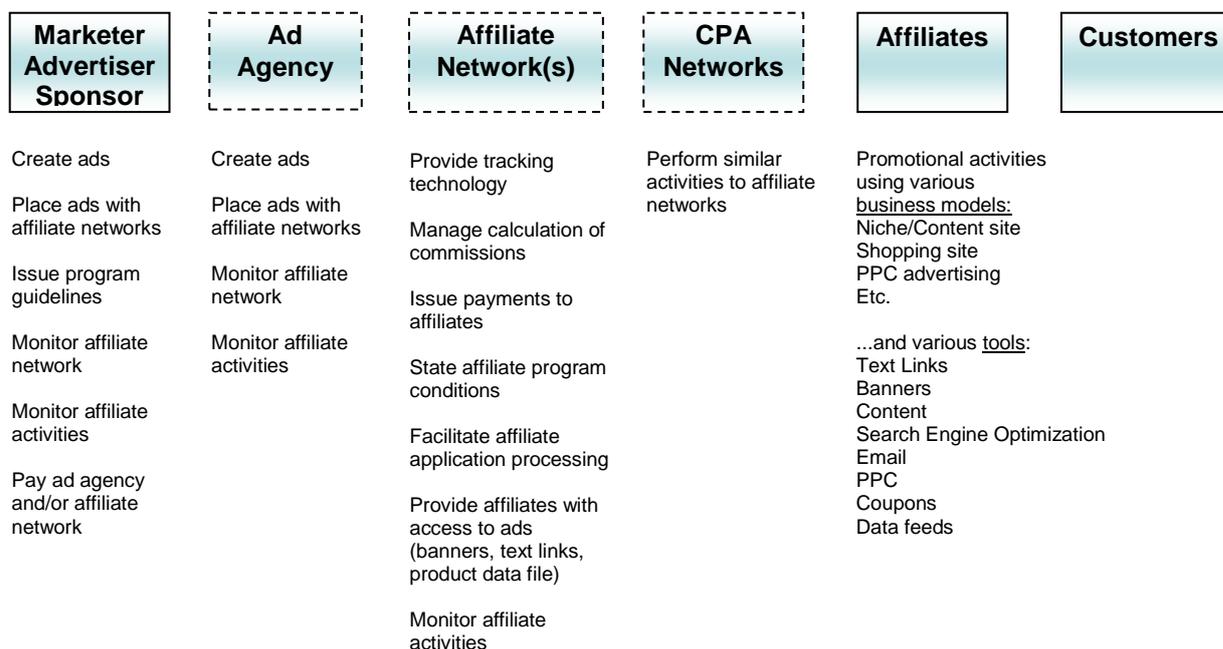
2.1   Types of Affiliate Programs

Libai et al. (2003) describe two types of affiliate programs, *one-to-one* and *one-to-many*. In a one-to-one program, the sponsor and affiliate negotiate a unique contract which specifies the terms and conditions of the arrangement. In this case, the affiliate host site has access to a large number of customers and thus has significant negotiating power with the sponsor. The fee arrangement is often long-term and often involves up-front payment of all or a portion of the commission payments.

In contrast, Amazon.com has an "open" program, where affiliates link to the Amazon.com site and earn up to an 8.5% referral fee when visitors who click on the links make a purchase. This is an example of a *one-to-many* program, in which the sponsor (Amazon in this case) makes the program available to numerous affiliates and establishes the terms of the agreement including pricing, advertising formats available, and acceptable practices. Affiliates simply decide whether or not to apply to the program. Once the affiliates sign up for the program, the sponsor has considerable power in the relationship, and may change the terms of the agreement or cancel the agreement at any time. One-to-one programs by their very nature are generally easier for partners to monitor: there are fewer affiliates, and the relationship is usually more direct. However, one-to-many programs are much more difficult, as sponsors must keep track of the performance of potentially thousands of affiliates, and often use one or more intermediaries to do so. Due to the acute nature of the monitoring problems in one-to many programs as compared to one-to-one, the remainder of this article will focus on one-to-many affiliate programs.

2.2   Affiliate Marketing Channel Structure

The affiliate marketing channel begins with the Internet retailer and ends with the affiliates (and the customers, of course), but there are various ways to implement a program, and various intermediaries who can play a role. The affiliate marketing channel structure is summarized in Exhibit 1 below.

Exhibit 1: Affiliate Marketing Value Chain

Marketer Advertiser Sponsor	Ad Agency	Affiliate Network(s)	CPA Networks	Affiliates	Customers
Create ads	Create ads	Provide tracking technology	Perform similar activities to affiliate networks	Promotional activities using various business models: Niche/Content site Shopping site PPC advertising Etc.	
Place ads with affiliate networks	Place ads with affiliate networks	Manage calculation of commissions			
Issue program guidelines	Monitor affiliate network	Issue payments to affiliates			
Monitor affiliate network	Monitor affiliate activities	State affiliate program conditions		...and various tools: Text Links Banners Content Search Engine Optimization Email PPC Coupons Data feeds	
Monitor affiliate activities		Facilitate affiliate application processing			
Pay ad agency and/or affiliate network		Provide affiliates with access to ads (banners, text links, product data file)			
		Monitor affiliate activities			

First of all, a company can either manage their affiliate program themselves, or they can use one of the many affiliate marketing networks who perform this function. Amazon has the largest in-house program, and tracks affiliates using proprietary software. Other proponents of in-house programs claim that they are only cost-effective once they reach a certain size (Ray, 2001, p.30). Affiliate networks, on the other hand, provide the following functions:

> The networks provide the technology to support tracking activities (when an affiliate sends a potential customer to an advertiser's website) and the sales transaction. They also manage the calculation of the commissions and, in most cases, the issuance of the payment(s) to affiliates and the issuance of 1099s (tax forms) to affiliates for payments made. The networks also facilitate the management of application processing (when an affiliate seeks to join an advertiser's affiliate marketing program) and the process of providing access to ads (banners, text links, product data file) to affiliates so they can adequately promote the advertiser's products and services. These networks basically make the process of participation easy for both advertiser and affiliate (Duffy, 2005, p. 162).

The value chain described above is for a regular, or one-tier, affiliate program, but there are additional models in use. One such model is a two-tier or multi-tier program, which is an "affiliate program structure whereby affiliates earn commissions on their conversions as well as conversions of webmasters they refer to the program"2 This is a pyramid structure in which the first tier of commissions works just like a regular affiliate program, but as an affiliate refers other affiliates, they earn additional commissions on sales generated by these "sub-affiliates".

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2 http://www.marketingterms.com/dictionary/two_tier_affiliate_program/

CPA networks are another link in the chain, and one which is often misunderstood. They are named for the *cost-per-action* pricing strategy, and tend to focus on lead generation, as opposed to sales (Thomases, 2005). These companies are networks unto themselves who sign up for affiliate programs and then make the offers available to *their* network of affiliates. Tracking and payment of sub-affiliates is handled by the CPA network (Collins, 2005). CPA networks generally have a negative reputation, primarily due to the popular perception that they "only cater to less savory advertisers", however "the truth is big household brands make up 30 to 45 percent of all CPA advertising" (Thomases, 2005).

As the Internet marketing channel gets longer (with additional intermediaries between the advertiser and the consumer) and wider (with additional affiliates added to the channel), controlling the activities of channel partners such as affiliates logically becomes more difficult, which increases the importance of writing effective contracts.

2.3 Affiliate Business Models

Affiliates engage in various types of business activities, where affiliate marketing can represent anything from a small source of extra income to the core activity of the business. In a recent survey by PartnerCentric (2006) of 1,041 affiliates, the majority of respondents identified themselves as niche/content sites (44.5%), coupon/discount shopping sites (26.9%) and PPC advertisers (17.5%). The remaining 11.1% included sweepstakes/contest sites, shopping malls, incentive/loyalty sites, personal websites and blog/ezine.

Affiliates vary significantly in the size of their operations and contribution to an advertiser's program, but the general rule is that the vast majority of visitors and sales come from a small number of affiliates. Some have claimed that 95% of sales come from 5% of the affiliates (Ray, 2001), while others believe that 20% of affiliates account for 80% of transactions (Fox, 2000).

Papatla and Bhatnagar (2002) proposed guidelines for how to choose affiliate partners, concluding that affiliate partnerships should be established between businesses with related products including: substitutes, strict complements, episodic substitutes and episodic compliments. Newman *et al.* (2004) conclude that when a banner ad is placed on a website, if the ad is not highly congruent with the site (consistent in terms of product class), then consumer attitudes toward the website will be harmed. Based on these findings, it may be reasonable to assume that the consumer attitudes toward the brand of the advertiser could be harmed if the ad is viewed on a site which is not highly congruent with ad. Therefore, the congruency between the sponsor and the affiliate would seem to be an important factor to consider.

There are a number of business models used by affiliates, and sponsors must take care in how they choose their affiliates, making sure that the affiliate's products and services complement the sponsor's products, and that there is congruency between the offerings. Otherwise, the relationship could negatively impact the sponsor's brand. In this study, we seek to identify the restrictions regarding the

types of content which the sponsors prohibit the affiliates from using on their sites as a first step in understanding the restrictions placed on affiliate business models. Accordingly, we formulate our first research question as follows:

RQ1: How do advertisers communicate restrictions on the types of affiliate businesses which are acceptable for their affiliate programs?

2.4 Affiliate Promotion Tools

In terms of the tools used to promote affiliate programs, the leading responses in the Partnercentric (2006) survey include:

Text links	19.88%
Banners	18.80%
Content	18.40%
Search engine optimization	11.51%
Email	9.42%
PPC	7.51%
Coupons	6.83%
Data feeds	4.09%

Table 2: Promotional Tools for Affiliate Programs

Some of the categories in Table 2 above may require some additional background, and a large portion of the risk to retailers in affiliate activities involves the degree to which affiliates can customize the sponsor's message, so this aspect will also be discussed for each of the tools. Text links are hyperlinks from an affiliate page to the sponsor's page, including placing a cookie on the visitor's computer which will track the activity of the visitor including any subsequent purchases, and ensuring that this activity is associated with the affiliate. The destination of the link could be as general as the sponsor's home page, or as narrow as the purchase page for a specific product.

Banners are colorful advertisements in a variety of formats designed by either the sponsor or the sponsor's advertising agency. These are included "as is" on the page of the affiliate. They can either be static, where clicking the ad simply links to a destination on the sponsor's page (along with the placement of a cookie) or interactive, where the visitor enters information before clicking. An example of an interactive banner would be a hotel search, where the visitor enters the city and dates that they are interested in prior to clicking. In this way the destination page can more accurately target the interests of the visitor (in this example, the destination page would show the results of the visitor's hotel search). Coupons are like banners in that they are created by the sponsor or their ad agency, but offer a specific discount to the visitor when they click on the coupon.

Content is customized text created by the affiliate or visitors to the affiliate site which serves a pre-sales function. Some examples include a visitor's guide to a travel destination which encourages the visitor to click on a link to make a flight or hotel reservation; or ratings of a product with an accompanying link for the

visitor to make a purchase. This is one area which would seem to require extensive monitoring by sponsors since affiliates can say whatever they like on their website, and the sponsor's brand may be associated with this content in the mind of the visitor.

Data feeds are provided by the sponsor and, as opposed to banner ads which are basically general and static, include detailed product information that the affiliate can incorporate into their site. For example, a data feed for computers might include photos of the various models, pricing information and detailed product specifications. Order processing and fulfillment are handled by the sponsor.

Email is a popular tool for affiliates since it allows them to send targeted advertising to customers at a low cost. However, the problem of spam looms large. In a recent survey, 52% of Internet users considered spam a big problem and 67% claimed that spam has made their online experience unpleasant or annoying (Pew Internet & American Life Project, 2005). Consumer concerns regarding spam include "privacy, false email identities, questionable email content, enticement and fraud", and in 2002 the European Parliament dictated that users must opt-in (give prior consent) to receive UCE (unsolicited commercial email) (Sipior *et al.*, 2004). It seems reasonable to conclude, therefore, that improper activities on the part of affiliates in their use of email with sponsor content can negatively impact the consumer's opinion of the sponsor's brand. These activities may include, but are not limited to: a lack of a privacy policy regarding the use of registered users' personal information, sending unsolicited email, not providing a link for users to "opt out" of receiving email messages and communicating inaccurate or misleading messages about the sponsors' products or services.

Search engine optimization and PPC (also known as search engine marketing or sponsored search) are somewhat more involved and are therefore discussed in greater detail below.

2.4.1   Search Engine Optimization and Search Engine Marketing

Search engine optimization is the process of "advancing the goals of a website by improving the number and position of its organic search results for a wide variety of relevant keywords" (Wikipedia). This is primarily achieved by improving the content of the website as well as increasing the number and quality of links from other websites. One tool used by affiliates, therefore, is to create websites with sponsor-related content, and then optimize the sites to appear in a prominent position in organic search results in search engines such as Google and Yahoo.

Sponsored search results are brief advertisements which are shown alongside organic results. In Google and Yahoo, a few results are shown at the top of the page above the organic search results, and others are displayed in a column on the right of the page; all are clearly marked "Sponsored results". The copy in the advertisement is written by the person placing the ad. When sponsored search is used as a tool in affiliate marketing, the affiliate writes his/her own ads, and therefore has a significant amount of freedom in determining how sponsor's brand is represented in search engines.

One strategy used by sponsors to control their brand is to forbid the use of their trademarks in the search engine marketing activities of affiliates. A recent survey of affiliate managers (Affstat, 2006) found that 59% of pay per sale affiliate programs and 61% of pay per lead affiliate programs forbid their affiliates from bidding on their trademark names in pay per click search engines. MarketingSherpa has also recognized this trend; according to their data, this percentage has risen from 21% to 39% between January and August of 2005, and continues to rise (MarketingSherpa, 2006b). These figures, however, are based on affiliate programs in the U.S. One contribution of this paper is to analyze the corresponding figures in the Spanish market.

An additional strategy is to prevent affiliates from using the sponsor trademark in the text of advertisements written and placed in search engines. Here, the search engines' policies also play a role. Google's policy on the matter is somewhat vague, claiming that "our Terms and Conditions with advertisers prohibit intellectual property infringement by advertisers and make it clear that advertisers are responsible for the keywords they choose to generate advertisements and the text that they choose to use in those advertisements" (Google, 2006). Yahoo requires advertisers to either "sell (or clearly facilitate the sale of) the product or service bearing the trademark" or to provide information about the trademarked product without selling competing products (Yahoo, 2006).

The efficacy of these measures is far from clear, however. While there is a risk of cannibalizing sales from the sponsors' other marketing efforts, many have suggested allowing affiliates to bid on trademarks improves reach, effectively "filling the channel" by showing multiple ads to search engine users, which ultimately should result in more sales for the advertiser (Internet Retailer, 2004; Stein, 2004). This defense is summarized by the following question: "Would you rather have a) your ad and 7 of your *competitors'* ads on your brand name keyword [in search engine results] or b) your ad and 7 of your *affiliates'* ads on your brand name keyword?" (Lewis, 2004) Consequently, our second research question is formulated:

RQ2: How do advertisers communicate restrictions on the types of promotion tools allowed by affiliates?

3   Data Collection

The first step in gaining insight into how sponsors control the activities of their affiliates is understanding the restrictions placed on affiliate behavior in the formal contracts between sponsor and affiliate, as represented by the program guidelines communicated to affiliates when they are accepted into a program. As background, existing research is used, along with experience in operating an affiliate marketing program in Spain focused on the travel segment and representing over 20 affiliate brands (as of 05/2006). In addition, data is collected on the written policies from sponsors in Spain using the three major affiliate networks operating in the country at the time this article was written. Restrictions in the contracts between affiliate networks and affiliates are also reviewed, as are the policies of additional intermediaries such as search engines.

Data was collected from a total of 136 programs managed by the three major affiliate networks in Spain: Tradedoubler (56 advertisers), Zanox (75 advertisers) and OMG (5 advertisers). These represent all of the programs in these three affiliate networks and, as such, represent a significant portion of the population. While it is difficult to gauge the total population of affiliate programs in Spain due to a lack of an aggregate listing of all programs, the authors estimate that this sample represents upwards of 75% of the population at the time the sample was taken, and perhaps as much as 90%. Therefore, while the external validity of the results of this research in terms of extrapolating to programs in other countries may be problematic, we believe that the sample is a valid representation of this phenomenon in Spain. Furthermore, due to the exploratory nature of this research, the goal is not to draw general conclusions, but rather to identify areas for future research. The results are summarized below:

Research Question 1: Affiliate business models

• Are there restrictions on the types of affiliates accepted in the program (restrictions on affiliate website content)?	18.00	13.24%
• Are there restrictions on the use of the company trademark in the affiliate's URL?	5.00	3.68%

Research Question 2: Promotion tools

• Is search engine marketing prohibited?	20.00	14.71%
• Is the affiliate restricted from using the sponsor's trademark(s) in *advertising copy*?	22.00	18.97%*
• Is the affiliate restricted from *bidding* on the *sponsor's trademark*(s)?	34.00	29.31%*
• Is the affiliate restricted from *bidding* on the *misspellings of the sponsor's trademark*?	8.00	6.90%*
• Is the affiliate restricted from *bidding* on the trademarks of the *sponsor's competitors*?	13.00	11.21%*
• Is there a restriction on the *amount* that the affiliate can bid on the sponsor's trademark(s)?	1.00	0.86%*
• Are visitors from the affiliate site sent to a *special URL* separate from the sponsor's home page?	6.00	5.17%*
• Are there restrictions on email marketing?	3.00	2.21%
• Are there restrictions related to privacy policies?	2.00	1.47%

N=136, or * **N=116** percentage of total programs which allow search engine marketing

Table 3: Research Results

4 Data Analysis

4.1 Research Question 1: Affiliate Business Models

The first question related to affiliate business models is whether or not the advertisers state restrictions on the types of affiliates accepted in their program, specifically in relation to the specific business models used by affiliates as well as the content of the affiliate website. Only 13.24% of the programs reviewed make any statement regarding this issue. These restrictions generally include some combination of nudity, sexual material, child pornography, firearms, drug consumption, gambling, illegal activity or violence. The remaining 86.76% make

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no mention whatsoever of the types of affiliate businesses which are acceptable. A well-known credit card provider had the most stringent policy regarding affiliate website content, adding restrictions against sites with religious material and sites whose content is poorly designed or of poor quality. However, this was the only program which referred to either the design of the site or its quality.

Nevertheless, this data must be evaluated in the context of the general affiliate contracts in the various affiliate networks. Tradedoubler restricts affiliates from placing sponsor advertising alongside material which is "pornographic, discriminatory by race, religion or sex, or which infringes the rights of third parties in any way" (Tradedoubler, 2006). OMG's contract states "the Affiliate website does not and shall not display or contain any information or materials or hyper text links to information or materials which are or may be objectively considered to be defamatory, obscene, pornographic, offensive, threatening, blasphemous or liable to incite racial hatred or which promote any illegal activity including (but not limited to) cracking or hacking." They further state that "the Affiliate shall not generate transactions by means which in the opinion of OMG, and communicated from time to time, are either fraudulent, unethical or that carry an unacceptable brand risk to the Merchant" (OMG Affiliate Contract, 2006).

The next question is whether there are restrictions against an affiliate's using the sponsor's trademark in the affiliate website URL (Uniform Resource Locator, or the Internet address of the affiliate site). While only 3.68% of the sponsors expressly forbid this activity, Zanox forbids "the use of domain names registered with copyrights, e.g. www.bmw-shop.de". Tradedoubler states in their affiliate contract that "the affiliate also guarantees that the information and the productions on his website do not infringe the rights of any third party, including intellectual property rights, and that the information and the productions are not offensive, forbidden or objectionable for any reason. *In case of doubt, Tradedoubler reserves the right to finalize its business relationship with the Affiliate* (author's italics)" (Tradedoubler, 2006). OMG makes similar broad statements regarding intellectual property infringements.

It seems reasonable to conclude that these broad statements give sponsors and affiliate networks considerable leeway in their interpretation of inappropriate content on the part of the affiliate and, as stated by Tradedoubler above, when in doubt, the sponsors/networks may simply terminate the relationship with the affiliate. Nevertheless, while the above restrictions address affiliates who publish illegal or offensive content, they do not consider other types of business models used by affiliates. Some of these models, such as search engine marketing and email, are discussed below in the promotion tools sections. Others, such as coupons, sweepstakes and incentive sites, are not mentioned, although they could have a potentially detrimental impact on the sponsor's brand. Furthermore, the issue of how sponsors decide which affiliates to accept, based on their offering related products (Papatla and Bhatnagar, 2002) or the congruency of their offerings (Newman *et al.,* 2004) is not addressed by affiliate program guidelines. Therefore, while sponsors may have established guidelines in this regard, these are not transparent to the affiliates.

4.2   Research Question 2: Affiliate Promotion Tools

The primary area considered under affiliate promotion tools is the use of search engine marketing. This is an area which is highly customizable by affiliates since they write their own ad copy and choose which keywords to bid on. Over 85% of the programs in the study allow search engine marketing in some form. Of these programs, 29.3% prohibit bidding on their trademark(s) in sponsored search and 6.9% forbid bidding on competitors' trademarks. These percentages are lower than U.S. studies have shown: MarketingSherpa estimates the number of sponsors who prohibit bidding on their brand names at 39% and climbing, and AffStat's survey results show 59-61%. Interestingly, one of the programs reviewed in the current study allows bidding on their trademarks, but limits the maximum amount of the bid. Presumably this is to prevent affiliates from outbidding the ads placed by the sponsor directly.

19% of sponsors prohibit affiliates from using their trademark(s) in the affiliate's ad. This low percentage is somewhat difficult to interpret, however. As described in the background section, search engine policies limit third parties' use of trademarks. Sponsors may rely on these search engine restrictions rather than making them explicit in the affiliate program guidelines. Furthermore, as discussed above, the fact that sponsors may change or cancel the affiliate contract at any time gives them significant power if they feel affiliates are using their trademark improperly in ads.

An additional control measure is preventing affiliates from sending visitors directly to the homepage, using instead a special website set up for affiliates. In some cases, this may be simply to allow for ease of tracking, but on other pages the sponsor's brand is removed, allowing for "white label" use of the site by the affiliate, where the sponsor's products are offered under the affiliate's own brand. These specialized pages are the exception, however, since only about 5% of the affiliates use this measure. Most sponsors allow the affiliate to choose the target Web page on the sponsor's site, which should aid in conversions. For example, if a visitor searches on an affiliate site for "hotels in Barcelona" and the sponsor is a hotel provider, a sale becomes more likely if the affiliate provides a link to a page on the sponsor's site offering hotels in Barcelona, rather than linking to the generic home page. Many sponsors also allow "deep links", which let the affiliates link directly to a specific product or service.

Email and privacy policies are two related areas. There are three main issues here: whether affiliates clearly communicate their privacy policies to visitors; whether affiliates only send email to individuals who have previously opted-in; and whether sponsors restrict and/or monitor the messages communicated via email regarding their products and services. In the affiliate programs we reviewed, a mere 2.2% of sponsors address email marketing: of the 3 programs which mention email marketing, one prohibits its use, and two require visitors to opt-in, or agree to receive promotional email. A mere 1.5% require affiliates to communicate their privacy policies to visitors. These areas, however, are also covered under European Union and Spanish law, which require prior opt-in for unsolicited commercial email. In addition, the program guidelines for Zanox expressly forbid spam, which they define as unsolicited email without prior opt-in. However, by

not explicitly stating these restrictions in their own program guidelines, sponsors may be leaving themselves open for problems later – if an affiliate violates these restrictions, it not only hurts the affiliate but the sponsor as well.

More importantly, there are no specific guidelines as to the *content* of the email advertisements. This is surprising, as it leaves the affiliates free to represent the sponsors' products and services however they see fit. Furthermore, while sponsors can visit affiliate websites in order to monitor the content there, sponsors have no way of knowing the content of emails sent which contain sponsor-related content.

5   Implications for Affiliate Management

The purpose of this paper has been to discuss the extent to which advertisers control affiliate activities used to promote their brand and, as a first step, to review the formal contract between sponsor and affiliate as represented by the restrictions placed on affiliate behavior in the program guidelines communicated to affiliates when they are accepted into a program. The overall conclusion is that there is a considerable lack of transparency as to how affiliates are permitted to represent the sponsors' products and services. The situation is further complicated by the fact that affiliates must consider not only the specific affiliate program guidelines, but also the network affiliate contract as well as other conditions specified by third party intermediaries such as search engines. This makes the affiliate's task more difficult when it comes to conforming to the expectations of sponsors, and it makes the sponsor's task of monitoring affiliates more important, as well as potentially more difficult. The sponsors also have significant power in their management of their affiliate programs: they generally reserve the right to alter or cancel the arrangement with a particular affiliate at any time and for any reason (which need not be communicated to the affiliate).

Two primary areas were considered: the business models and promotion tools used by affiliates. In terms of business models, there are some clear restrictions against affiliates who use illegal or offensive content or who use the trademark of the sponsor in their website address. It is unclear, however, the types of affiliate business models and product areas which are acceptable. Essentially, there is a lack of transparency in terms of how sponsors decide whether or not to accept an affiliate to represent their program, and what types of future business activities on the part of an affiliate may cause a sponsor to cancel the program. Further data gathered directly from sponsors and/or the affiliate networks would be required in order to explore this issue in greater depth.

In terms of the promotion tools used by affiliates, there are some limitations placed on the use of search engine marketing by affiliates. These restrictions are primarily related to the use of the sponsor's trademarks. The content of the advertisements is not addressed, however, either in search engine or email promotions; this is left to the discretion of the affiliates. Here, the lack of explicit guidelines increases the risk of an affiliate misrepresenting the sponsor's business, and thus increases the importance of monitoring the affiliates.

Some initial recommendations based on the study include the following:

- Sponsors should provide more explicit guidelines concerning the types of businesses which are acceptable as affiliates, the necessity of privacy policies on affiliate sites that use email marketing, and sponsored search restrictions.
- Sponsors should conduct regular reviews of affiliate web sites, especially the placement and content of sponsor-related information.
- Sponsors should do regular keyword searches for their brand and related keywords in order to identify the keywords and advertising messages used to represent the sponsor's brand.
- Email should be carefully controlled: either the affiliate should be restricted to using content prepared by the sponsor, or they should be required to send the affiliate manager a copy of any promotional emails which include sponsor-related content.

This has been a preliminary study on the stated restrictions which Internet retailers in a specific market, Spain, place on their affiliate marketing programs. While we cannot ensure that the sample was thoroughly random, we do believe that the relatively small size of the market/population enabled us to capture a large proportion of the overall phenomenon. Of course, the Spanish market may not be representative of the global phenomenon. However, since the affiliate networks reviewed each have operations throughout Europe, it may be a good indicator.

One possible path for future research could be a comparison between the results for Spain and larger, more mature markets like the U.K. and the U.S. In addition, the collection and analysis of primary data from sponsors and affiliate networks in both Spain and abroad as to the methods used to monitor affiliates could shed further light on this topic.

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