

Native Advertising

Information or Illusion

Final Report of the Research Project
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Union des consommateurs, *Strength through Networking*

Union des consommateurs is a non-profit organization comprised of 13 consumer rights groups.

UC's mission is to represent and defend the rights of consumers, with special emphasis on the interests of low-income households. Its activities are based on values cherished by its members: solidarity, equity and social justice, and improving consumers' economic, social, political and environmental living conditions.

UC's structure enables it to maintain a broad vision of consumer issues while developing in-depth expertise in certain programming sectors, particularly via its research efforts on the emerging issues confronting consumers. Its activities, which are nation-wide in scope, are enriched and legitimated by its field work and the deep roots of its member associations in their communities.

UC acts mainly at the national level, by representing the interests of consumers before political or regulatory authorities, in public forums or through class actions. Its priority issues, in terms of research, action and advocacy, include the following: household finances and money management, energy, issues related to telephone services, broadcasting, cable television and the Internet, public health, financial products and services, and social and fiscal policies.

Executive Summary

Native advertising is broadly defined as advertising that adapts its form to the platform hosting it. It aims mainly at blending in the background, to be accepted (even appreciated) more easily by consumers. In the news media, native advertising takes the form of a journalistic article, and is occasionally called editorial advertising.

Native advertising is currently a popular marketing method among advertisers. Given the need for funding from advertisers, the news media adapt their advertising offer to them. The advertiser can at times: 1) sponsor an editorial article, without getting involved in or influencing the content; 2) be involved in writing editorial advertising, in concert with a journalist or a marketing expert hired by the news organization; or 3) write its own content and publish it in an advertising space on the news organization's website. Those three types of advertising offers have in common a visual integration of content with the news organization's digital platform, as well as the use of the page layout, normally reserved for journalistic content.

Various methods are used by the news media to distinguish advertising content from journalistic content. A mention of the advertising nature, beside the content or the hyperlink leading to it, can inform the reader of the content's commercial nature; that disclosure's effectiveness will depend on the wording chosen and its location. Several other methods are used for alerting the reader about the content's commercial nature: visual differentiation (of the content or hyperlinks), the advertiser's logo, the advertiser's name, a notice regarding the respective involvement of the news organization and the advertiser in writing the content.

While using multiple methods to attract the reader's attention and notify him of the commercial nature of content is more effective than using a single method, disclosure of the advertising nature should always be explicit, clear and unambiguous. However, our field survey revealed that good practices are the exception rather than the rule.

Despite its popularity, using native advertising in the news media is controversial within the news industry, because it involves serious ethical problems. First, the erosion of the impenetrable wall that, in the news media, must separate editorial from advertising content exposes the news organization to a potential conflict between its economic interests, the advertiser's interests and the public interest, and thus could imperil the independence of journalists and undermine public trust in them.

From the consumer's viewpoint, it's certainly difficult to recognize advertising content that takes a native form, despite the disclosure mechanisms currently used by the news media. So the reader can be manipulated by incentives that take the form of a journalistic article. But there's worse: The public has a constitutional right to independent and quality information, a foundation of democracy, which is threatened.

Like any advertising, native advertising is regulated by the *Competition Act* and provincial consumer protection laws, which prohibit misleading representations and advertisements. A broad reading of the general provisions would theoretically allow legal control of native advertising, at least with regard to non-disclosure of or misleading information about its content.

And yet, the application of those laws to native advertising remains uncertain, and they don't appear well adapted to the digital environment.

In addition, ethical standards have been adopted by self-regulatory agencies and associations originating from both the news and marketing industries. We mainly find a separation between editorial and advertising content, as well as a prohibition against disguised advertising. However, those voluntary standards don't appear sufficient for ensuring independence or transparency.

Our field survey reveals a misunderstanding of legal standards by the news media, and an ineffectiveness by self-regulatory agencies in controlling those who adopt reprehensible practices. Indeed, although some news organizations opt for good disclosure practices, we found the practices of most of the fifteen Canadian news organizations analyzed to be reprehensible.

Our consultation of the stakeholders revealed certain points of consensus. Notably, all agree on the importance of transparency and of the distinction between journalistic information and advertising. Moreover, the stakeholders generally agree with our identification of exemplary and reprehensible practices. Still, the idea of imposing a legal and regulatory framework for native advertising divided the stakeholders.

Our analysis of foreign legislative models identified the existence of interesting legislative interventions. Notably, Belgium imposes an obligation to write "advertisement" near advertising content, and France applies the presumption of a misleading practice regarding editorial content in the media when disclosure of the advertising nature is inadequate. In addition, the agency charged with applying the law against misleading advertising in the United States, the *Federal Trade Commission*, has already taken concrete actions regarding native advertising, given its prevalence.

Lastly, based on the field survey and our analysis, we estimate that tightening standards and intervening legislatively in matters of native advertising have become necessary, both to establish a standard framework for disclosing the advertising nature of media content, and to preserve in practice an impassable barrier between editorial and advertising content.

Introduction

While author Charles Taylor calls native advertising marketing industry's "black sheep¹," the Wall Street Journal's editor-in chief, Gerard Baker, qualifies native advertising contracts between the news and marketing industries as a Faustian pact². Native advertising raises, with reason, many debates in the news and marketing industries. Some acclaim it and boast about its effectiveness with consumers, while others view it as a clear menace to democracy. At the heart of the controversy: The difficulty in distinguishing information produced by an independent and rigorous journalistic process from content that serves mainly commercial purposes, but is presented in a manner that tends to confuse it with journalistic content.

The digital revolution has caused panic in the media industry, particularly in the written press, which is recording historic revenue losses. The chain of dependency that used to exist between advertisers, the news media and news consumers has been weakened, notably through the arrival of Web giants, which garner a large portion of advertising revenues. In this context, the news media have been compelled to adapt their advertising offer to the model requested by advertisers: native advertising in the form of paid information content. Given consumers' irritation with intrusive advertising, the marketing industry considers native advertising as the miracle cure in the digital environment. Indeed, because a reader doesn't recognize at first glance native advertising as such, he is less inclined to use his defence mechanisms. However, this practice could eventually harm the digital economy itself, because consumers could feel deceived by this way of presenting biased content.

This study aims at drawing a portrait of native advertising adopting a journalistic appearance in the Canadian news media. A review of the literature will enable us first to define the concept of native advertising and identify its uses, detect the models used within news organizations, and identify the issues surrounding this type of advertising, from the viewpoints of the news media and consumers.

We will then draw a portrait of the framework that currently applies in Canada on the subject. We will focus on the legal framework for misleading advertising and false and misleading representations, and on the voluntary standards provided by self-regulatory agencies and by journalism and advertising associations.

We will report afterward on the field survey we conducted that aimed at describing the prevalence and uses of native advertising in the Canadian news media, and at assessing whether this type of content's advertising nature is disclosed adequately. We will report the highlights of that field survey conducted among fifteen news organizations that disseminate information in Canada on their digital platform (websites, mobile applications, Facebook).

Following our field survey, we also consulted various stakeholders, i.e. the news organizations analysed, associations representing journalists, the media and the advertising sector, self-regulatory organizations, and academic experts. We will report the participants' positions and

¹ Charles R. TAYLOR, *Native Advertising: The Black Sheep of the Marketing Family*, International Journal of Advertising, vol. 36, No. 2, February 1, 2017, p. 207.

² Joe POMPEO, 'Wall Street Journal' editor Gerard Baker decries native advertising as a 'Faustian pact', Politico Media, September 25, 2013, online: <<https://www.politico.com/media/story/2013/09/wall-street-journal-editor-gerard-baker-decries-native-advertising-as-a-faustian-pact-001773>> (page consulted on February 14, 2018).

views.

We will then discuss the adequacy of current standards in countering the potential misleading effects of native advertising and in ensuring the transparency of that practice. To that end, we will draw a summary portrait of standards prevailing in the European Union, the United States and Australia, to compare those standards and identify the best practices.

Our report will close with a few recommendations to better regulate that practice.

1. Native Advertising: General Principles

1.1 Definition

No consensus currently exists on the definition³ of “native advertising”⁴. Accordingly, we will use a definition for the purposes of our study, while taking into account other ones found in the current literature.

An advertisement is a message “the content of which [...] is controlled directly or indirectly by the advertiser” and that aims at influencing consumers’ choices, opinions or behaviours⁵. Claude Cossette defines advertising as a “communication technique with the main purpose of promoting a brand image to induce among the public a favourable attitude toward a brand or product⁶.”

Native advertising is above all a type of advertising. Its particularity is to integrate naturally, if not imperceptibly, with its environment, as though it were *native* to it, by adopting its form⁷; this type of advertising aims at “integrating sponsored content at the heart of journalistic content⁸,” first in terms of the visual aspect, and even at times attempting to present a certain relevance to the journalistic content offered to the target audience⁹. Thus, native advertising “transmits values and information to promote a product and/or a brand, in a subtler form¹⁰” than standard advertising.

³ Our research project used, in French, the term “*publicité indigène*,” used by the Press Council in *Proulx and Lavigne v. La Presse+*, Quebec Press Council, October 2, 2015, D2014-12-061; D2014-12-070 (QC CPQ), online: <<https://conseildepresse.qc.ca/decisions/d2014-12-061-d2014-12-070/>>. However, the term “*publicité native*” is more widely used in the industry. The Office québécois de la langue française indicated (January 24, 2018) that the latter term is the preferred one for naming this type of advertisements, which is the object of our study. We thus decided to use the preferred term in this report. N.B. – The OQLF record consulted has since been modified and now expresses reservations about use of the term. For its part, the government of Canada’s terminological and linguistic databank still suggests using “*publicité native*.” PUBLIC SERVICES AND PROCUREMENT CANADA, “Publicité native,” Record 1, TERMIUM Plus, March 28, 2018, online: <http://www.btb.termiumplus.gc.ca/tpv2alpha/alpha-fra.html?lang=fra&i=1&srchtxt=publicite+native&index=alt&codom2nd_wet=1#resultrecs>.

⁴ INTERACTIVE ADVERTISING BUREAU (IAB), *The Native Advertising Playbook*, December 4, 2013, online: <<https://www.iab.com/wp-content/uploads/2015/06/IAB-Native-Advertising-Playbook2.pdf>> (document consulted on June 24, 2018), p. 2; Mitch JOEL, *We Need a Better Definition of “Native Advertising”*, Harvard Business Review, February 2013, online: <<https://hbr.org/2013/02/we-need-a-better-definition-of>> (page consulted on June 24, 2018).

⁵ AD STANDARDS (ASC), *Canadian Code of Advertising Standards*, revised in October 2016, online: <<http://www.adstandards.com/en/Standards/canCodeOfAdStandards.pdf>> (document consulted on February 13, 2018).

⁶ Claude COSSETTE, *La Publicité de A à Z. Dictionnaire technique français-anglais*, Quebec, Les Presses de l’Université Laval, 2006, p. 221. Our translation.

⁷ Bartosz W. WOJDYNSKI, “Native Advertising: Engagement, Deception, and Implications for Theory” in Ruth E. Brown, Valerie K. Jones, and Ming Wang (Editors), *The New Advertising: Branding, Content and Consumer Relationships in a Data-Driven Social Media Era. Traditional Advertising Transformed*, Praeger, Santa Barbara, September 2016. Also: Robert A. GOTTFRIED, *Six Ways This Article Is Most Definitely Not an Ad: Deceptive Marketing and the Need for Clearly-Defined Disclosure Rules in Online Native Advertisement*, Loyola Consumer Law Review, vol. 27, No. 3, 2015, p. 401.

⁸ *Proulx and Lavigne v. La Presse+*, *op. cit.* note 3. Our translation.

⁹ Bernard DAGENAIS, *La publicité : stratégie et placement média. Ou comment choisir la campagne intégrée la plus efficace*, 2nd ed., Quebec, Les Presses de l’Université Laval, 1997, p. 89.

¹⁰ CONSEIL DES DIRECTEURS MÉDIAS DU QUÉBEC (CDMQ), *Le Native Advertising : une nouvelle opportunité pour les annonceurs ?*, p. 1. online: <<http://cdmq.ca/data/IDVGD704/le-native-advertising.pdf>> (document consulted on February 11, 2018). Our translation.

The concept of native advertising thus pertains mainly to the form of advertising – to any advertisement presented in a form that visually reflects the one adopted by the host platform¹¹. Such an advertisement takes the form of a tweet on Twitter, a publication on Facebook or *information* content¹² presented by a news organization¹³. A consumer may thus not perceive the advertising nature, because of visual integration with the host platform's native content.

From the advertisers' viewpoint, native advertising ideally adopts the tone and look of editorial content and offer readers sufficiently interesting content for them to miss at first or to forget the advertising nature. Indeed, "by emulating editorial content or creating content near the editorial space of the host site, advertisers would raise more interest¹⁴." In other words, a news organization's readers are intended to have the impression that information contained in a native advertisement will be useful, interesting or entertaining, and to associate it with the news organization publishing it and with the rest of the editorial content.

Purists even state that an advertisement is correctly considered native only if its content harmonizes with the host platform's vision, since the advertisement must merge with that platform¹⁵. Otherwise it would stand out and lose its native aspect¹⁶. In that sense, a reader would have to be unaware at any moment that he is in the presence of native advertising: "[i]nherent in that statement, of course, is that native advertising is done right only when deception is not just involved but accomplished¹⁷."

The *Conseil des directeurs médias du Québec* provides the following definition:

Le Native Advertising se définit d'abord et avant tout par sa capacité à se fondre dans son contexte de diffusion en misant sur la pertinence du contenu développé dans un environnement précis et consulté par la cible convoitée. D'après James O'Brien, auteur sur le site Mashable et personnalité reconnue des médias, une publicité native diffusée sur Facebook serait nécessairement différente si elle était publiée sur LesAffaires.com ou sur ici.radio-canada.ca.

[...]

¹¹ Robert A. GOTTFRIED, *Six Ways This Article Is Most Definitely Not an Ad: Deceptive Marketing and the Need for Clearly-Defined Disclosure Rules in Online Native Advertisement*, op. cit. note 7, p. 401.

¹² We will discuss below the concept of "information" content: See section 2.1.2.1 *infra* "Blurring the Boundaries between Editorial and Advertising Content."

¹³ Regarding the print media, the term "editorial advertising" ("publicité rédactionnelle") is also used: Charles MOUMOUNI, "Quand la publicité ressemble à l'information" in Marc-François Bernier *et al.*, *Pratiques novatrices en communication publique – Journalisme, relations publiques et publicité*, Québec City, Les Presses de l'Université Laval, 2005, p. 135.

¹⁴ Dany BAILLARGEON *et al.*, "Confrontations et convergences éthiques entre marketing et information autour de la publicité native" in *Professionnalisation et éthique de la communication. Des principes à la formation*, No. 5, Communication & Professionnalisation, Presses universitaires de Louvain, No. 5, 2017, online: <<https://ojs.uclouvain.be/index.php/comprof/article/view/863>>, p. 40. Our translation.

¹⁵ Matt CARLSON, "When news sites go native: Redefining the advertising – editorial divide in response to native advertising" in *Journalism*, vol. 16, No. 7, 2015, p. 858.

¹⁶ Charlie WARZEL, *The Real Problem With The Atlantic's Sponsored Post*, Adweek, January 15, 2013, online: <<http://www.adweek.com/digital/real-problem-atlantics-sponsored-post-146553/>> (page consulted on February 15, 2018).

¹⁷ Erin E. SCHAUSTER, Patrick FERRUCCI and Marlene S. NEILL, "Native Advertising Is the New Journalism. How Deception Affects Social Responsibility" in *American Behavioral Scientist*, vol. 60, No. 12, 2016, p. 1420.

Par définition, il n'existe donc pas vraiment de format standardisé pour le Native Advertising : sa capacité à changer de forme et s'adapter à la plateforme qui l'accueille est ce qui caractérise le mieux cette nouvelle approche¹⁸.

For the purpose of this study, we define native advertising as any advertisement intended for consumers that uses the formats and codes of the digital host platform, to integrate visually with the platform's native content in order to merge with it and be confused with it¹⁹.

Although native advertising can take various forms, we will limit our analysis to editorial advertising found in a journalistic context, in which a news organization publishes written articles. That includes any type of content 1) that offers information; 2) in writing; 3) on a news organization's platform; and 4) that has been controlled directly or indirectly by a third party. Our research will therefore include, notably, what is called *sponsored content*, *informercial* or other terms designating information content paid by an advertiser²⁰.

1.2 Emergence of the Concept and Rationalization

The first use of the term "native" to designate this type of advertising reportedly dates from 2011²¹; but the concept of integrated advertising that resembles editorial content is not new in the news media²². In fact, infomercials – "advertising presented with the appearance of editorial content"²³ or "editorial advertising inserted in a publication"²⁴ – was already used by the news industry well before the digital revolution²⁵. Already in 1990, the *Quebec Press Council* "decided to sound the alarm" because it "was concerned by the ever-more frequent use of journalistic

¹⁸ CDMQ, *Le Native Advertising : une nouvelle opportunité pour les annonceurs ?*, op. cit. note 10.

¹⁹ See notably: B. W. WOJDYNSKI, "Native Advertising: Engagement, Deception, and Implications for Theory," op. cit. note 7.

²⁰ In the context of a news organization, we take it for granted that the advertiser will generally pay for advertising content published on the organization's platform, and that the payment will enable the advertiser to control that content directly or indirectly; so at times we use the term "paid information content."

²¹ Fred Wilson was reportedly first to use, in a 2011 conference, to use the concept of "native," but without the term "native advertising" per se: Sam PATTISON, *Native advertising doesn't need to be rocket science*, The Guardian, April 11, 2014, online: <<https://www.theguardian.com/media-network/media-network-blog/2014/apr/11/native-advertising-content-marketing-fred-wilson>> (page consulted on June 24, 2018).

²² See notably: C. MOUMOUNI, "Quand la publicité ressemble à l'information," op. cit. note 13, pp. 134 and fol; D. BAILLARGEON et al., "Confrontations et convergences," op. cit. note 14, pp. 30-31; Mark CODDINGTON, "The wall becomes a curtain. Revisiting journalism's news-business boundary" in Matt Carlson and Seth v. Lewis (editors), *Boundaries of Journalism: Professionalism, Practices and Participation*, New York, Routledge, 2015, pp. 75-76; Bartosz W. WOJDYNSKI and Guy J. GOLAN, "Native Advertising and the Future of Mass Communication" in *American Behavioral Scientist*, vol. 60, No. 12, 2016, p.1404; Bong-Hyun KIM, Yorgo PASADEOS and Arnold BARBAN, "On the Deceptive Effectiveness of Labeled and Unlabeled Advertorial Formats" in *Mass Communication & Society*, vol. 4, No. 3, 2001, pp. 265-266.

²³ COSSETTE, *La Publicité de A à Z*, op. cit. note 6, p. 224. Our translation.

²⁴ Paul ROUX, *Lexique des difficultés du français dans les médias*, Éditions La Presse, updated on January 1, 2010, online: <<https://issuu.com/cyberpresse/docs/lexique2010>> (page consulted on June 24, 2018). Our translation.

²⁵ While the definition of "informercial," in a journalistic context, coincides with that of "native advertising," other native advertising formats, such as "sponsored links," leading directly to the advertiser's website, can also be used by the news media. See notably: D. BAILLARGEON et al., "Confrontations et convergences," op. cit. note 14, pp. 32 and fol.

processes in infomercials. These practices, which lower the barriers between advertising and news, endanger the journalistic profession's credibility and the public's right to information²⁶."

Despite the definitions' similarity, what we call infomercials is generally limited to product or service advertisements that adopt the form of regular reporting²⁷, whereas the concept of native advertising includes several forms of informative content of a commercial nature, and is not limited to journalism. For example, native advertising is used by Google (a champion, with Facebook, in terms of profits from native advertising²⁸): native advertising takes there the form of a hyperlink paid by a third party and appearing in search results, so as to be confused with "unpaid" results.

The rise of this type of advertising in recent years results from, among other things, its effectiveness with the consumer, in an era when he has developed defence mechanisms against traditional advertising. Already sceptical about advertising²⁹, he has immunized himself against some of its forms (*banner blindness*³⁰) and uses tools, ad blockers, that prevent advertisements from even appearing. A study by the *Interactive Advertising Bureau* (IAB) indicates that consumers would be more inclined to view a native advertisement than a banner advertisement³¹. Native advertising thus attracts consumers' attention and engages them more effectively – two of the main goals of marketing³².

²⁶ Julien ACOSTA, *Publireportage : le Conseil de presse donne l'alarme*, Quebec Press Council, May 4, 1990, online: <<https://conseildepresse.qc.ca/actualites/nouvelles/publireportage-le-conseil-de-presse-donne-l-alerte/>> (page consulted on May 25, 2018).

²⁷ *Beauchamp v. Le Courrier du Sud*, 2011 CanLII 85232 (QC CPQ), par. 5.

²⁸ Robert HOF, *Native Ads Arrive: They'll Be Half Of All Display Spending This Year*, Forbes, March 21, 2017, online: <<https://www.forbes.com/sites/roberthof/2017/03/21/native-ads-arrive-theyll-be-half-of-all-display-spending-this-year/#267b47ea5c95>> (page consulted on June 24, 2018).

²⁹ "Our characterization of the advertising skeptic is one who regards advertising as not to be believed and, therefore, not worth processing. That they tend not to believe the information claims does not imply that they are predisposed toward informational approaches."; Carl OBERMILLER and Eric SPANGENBERG, "Ad Skepticism: The Consequences of Disbelief" in *Journal of Advertising*, vol. 34, No. 3, March 2013, pp. 310 and 320.

³⁰ Jan PANERO BENWAY, *Banner Blindness: What Searching Users Notice and Do Not Notice on the World Wide Web*, Rice University, Houston (Texas), April 1999, online:

<<https://scholarship.rice.edu/bitstream/handle/1911/19353/9928505.PDF>> (document consulted on June 24, 2018)..

See also: Marie-France BAZZO, Nathalie COLLARD and René-Daniel DUBOIS, *De quels médias le Québec a-t-il besoin?*, Leméac Éditeur, Montreal, 2015, p. 96.

³¹ ETHICS ADVISORY COMMITTEE OF THE CANADIAN ASSOCIATION OF JOURNALISTS (CAJ), *Sponsored Content: How Should Journalism Ethics Respond To Advertising Dressed Up As Journalism?*, CAJ, September 2015, online:

<http://caj.ca/images/downloads/Ethics/caj_ethics_advisory_committee_sponsored_content_discussion_paper.pdf>

(document consulted on June 24, 2018), p. 1.

³² Cassandra GODIN-BERGERON, *Étude du marketing de contenu et de son influence sur les comportements d'engagement des consommateurs*, Service des bibliothèques de l'Université du Québec à Montréal, August 2017, online: <<https://archipel.uqam.ca/10761/1/M15212.pdf>> (document consulted on June 24, 2018), pp. 25, 27 and 28.

The arrival of native advertising has created “ethical turmoil” in the news media and advertising industries³³. A disparity exists between the motivations of news and marketing professionals regarding native advertising³⁴. That disparity manifests the “ideological differences opposing two ethical principles: whether to provide an unintrusive and engaging experience to reach an audience that resists advertising, or to maintain content integrity by separating advertising and journalism³⁵.”

Marketing professionals estimate notably that “advertising must now be part of the content,” that the content must be of quality, and that native advertising offers consumers “a better experience than traditional advertising³⁶.”

News professionals want, on the contrary, a clear distinction between editorial and advertising content, and estimate that native advertising must be better regulated and identified³⁷. Some journalists consider native advertising to be misleading because it offers the reader “fake stories” and is used to “trick” or “fool” him³⁸. That being said, although native advertising is unethical according to news professionals, it remains a necessary evil due to the necessity for news organizations to generate revenue³⁹.

1.3 Native Advertising Models in the News Media

Native advertising in the news media can adopt various models. A 2013 article published by the *American Press Institute* identifies in particular three types of offers made by the news media to advertisers or companies:

- 1) the advertiser can sponsor an editorial (*underwriting model*),
- 2) the news organization can act as an advertising agency (*agency model*) or
- 3) the advertiser is offered a platform (*platform model*)⁴⁰.

Accordingly, paid information content “can be provided by the advertiser itself (through its communications service or a public relations firm) or by the news organization’s writing personnel⁴¹.” According to the *Canadian Association of Journalists*, none of those three models constitutes journalism, because the content is created to serve the advertisers’ private interests rather than the public interest⁴².

³³ D. BAILLARGEON *et al.*, “Confrontations et convergences,” *op. cit.* note 14, pp. 31, 37. Our translation.

³⁴ *Ibid.*, pp. 35-40.

³⁵ *Ibid.*, pp. 41-42. Our translation.

³⁶ *Ibid.*, pp. 36-38. Our translation.

³⁷ *Ibid.*, p. 37.

³⁸ E. E. SCHAUSTER *et al.*, “Native Advertising Is the New Journalism,” *op. cit.* note 17, p. 1413.

³⁹ “[N]ecessary evil, a means to inject much needed financial gain”: *Ibid.*, p. 1419.

⁴⁰ Jeff SONDERMAN and Millie TRAN, *Understanding the rise of sponsored content*, American Press Institute, November 13, 2013, online: <<https://www.americanpressinstitute.org/publications/reports/white-papers/the-four-business-models-of-sponsored-content-2/>> (page consulted on June 24, 2018). See also: Angela MOMBOURQUETTE, *A look at the ethically complex world of native advertising*, J-Source, online: <<http://j-source.ca/article/a-look-at-the-ethically-complex-world-of-native-advertising/>>.

⁴¹ C. MOUMOUNI, “Quand la publicité ressemble à l’information,” *op. cit.* note 13, p. 135. Our translation.

⁴² ETHICS ADVISORY COMMITTEE OF THE CAJ, *Sponsored Content*, *op. cit.* note 31, p. 1.

1.3.1 Editorial Underwriting

In the editorial underwriting model, the news organization offers the advertiser the possibility of financially supporting a current editorial article, which would have been written with or without that funding⁴³, to associate the advertiser's brand with the quality content produced by the editorial team⁴⁴. According to this model, the advertiser usually has no access to the writing of the article⁴⁵.

Several major news organizations use this model: *BBC World*⁴⁶, for example, and *The Guardian*, which now publishes "sponsored investigations"⁴⁷. The *Canadian Association of Journalists* gives two examples of Canadian news organizations that adopt this model⁴⁸: *The Globe and Mail*⁴⁹ and *The National Post*⁵⁰.

1.3.2 News Organizations as Advertising Agencies

Some news organizations choose to produce paid information content themselves, in collaboration with an advertiser, which will thus be involved in producing the content. To that end, the news organization establishes an in-house advertising agency by recruiting marketing professionals or journalists⁵¹. According to this model, the news organization sometimes leverages its expertise in writing information content; indeed, in this type of advertising, "[c]ontent is king, and who is the king in creating content? The editorial team⁵²."

For example, *The Atlantic* acts as an advertising agency. Among the Canadian press, *The Globe and Mail*⁵³, *Buzzfeed Canada*⁵⁴ and *The Toronto Star*⁵⁵ also do this. Similarly, *Cogeco*

⁴³ J. SONDERMAN *et al.*, *Understanding the rise of sponsored content*, *op. cit.* note 40.

⁴⁴ ETHICS ADVISORY COMMITTEE OF THE CAJ, *Sponsored Content*, *op. cit.* note 31, p. 2.

⁴⁵ J. SONDERMAN *et al.*, *Understanding the rise of sponsored content*, *op. cit.* note 40.

⁴⁶ Mark SWENEY, *BBC World Service's sponsored content plan will 'threaten impartiality'*, *The Guardian*, February 13, 2014, online: <<https://www.theguardian.com/media/2014/feb/13/bbc-world-service-sponsored-content-threaten-impartiality>> (page consulted on June 24, 2018).

⁴⁷ FPJQ, "Le Guardian se lance dans l'enquête commanditée" in *Marketing de contenu*, FPJQ, April 7, 2016, online: <<https://www.fpq.org/guardian-se-lance-lenquete-commanditee/>> (page consulted on June 24, 2018).

⁴⁸ ETHICS ADVISORY COMMITTEE OF THE CAJ, *Sponsored Content*, *op. cit.* note 31, p. 2.

⁴⁹ GLOBE AND MAIL, *Mattresses by mail? Canadian startup joins the memory-foam party*, July 29, 2015, online: <<https://www.theglobeandmail.com/report-on-business/small-business/sb-growth/the-challenge/mattress-by-mail-canadian-startup-joins-the-memory-foam-party/article25529743/>> (page consulted on June 24, 2018).

⁵⁰ FINANCIAL POST, *Managing Wealth*, online: <<http://business.financialpost.com/category/personal-finance/managing-wealth>> (page consulted on June 24, 2018).

⁵¹ In the case *Syndicat de la rédaction du Soleil v. Le Soleil*, 2011 CanLII 22166 (QC CPQ) (which, however, did not pertain to native advertising), the union reproached the newspaper for assigning journalists to prepare advertisements "in order to ensure that they resemble the newspaper's front page as closely as possible." [Our translation] On occasion, pressure from unions compels press companies to have such work done by freelance journalists. See: Suzanne DANSEREAU, "On ne peut plus cracher là-dessus" in *Dossier publicité native*, FPJQ, summer 2015, online: <<https://www.fpq.org/on-ne-cracher-dessus/>> (page consulted on June 24, 2018).

⁵² Jesper LAURSEN *et al.*, *Native Advertising Trends in News Media*, Native Advertising Institute, December 2017, online: <https://nativeadvertisinginstitute.com/wp-content/uploads/2017/12/inma_2017NativeAdvertising.pdf> (document consulted on June 24, 2018), p. 15.

⁵³ GLOBE AND MAIL, *Retail's big bet: Do you love your phone more than your wallet?*, April 2, 2015, online: <<https://www.theglobeandmail.com/partners/thomsonreuterscapitalize/advtrfinance/retails-big-bet-do-you-love-your-phone-more-than-your-wallet/article23766302/>> (page consulted on June 24, 2018).

⁵⁴ BUZZFEED CANADA, *If Classic Movie Tropes Were Motivational Posters*, August 25, 2015, online: <https://www.buzzfeed.com/scotiabank/if-classic-movie-tropes-were-motivational-posters?utm_term=.jIAK4KZob#.awQBKB7RJ> (page consulted on June 24, 2018).

⁵⁵ TORONTO STAR, *Balancing body and mind*, August 27, 2015, online: <https://www.thestar.com/sponsored_sections/continuingeducation/2015/08/27/balancing-body-and-mind.html> (page consulted on June 24, 2018).

Media now offers advertisers the possibility of “disseminating information” in the form of editorial advertising written, apparently, by the digital media team, in collaboration with advertisers⁵⁶. Lastly, *Radio-Canada/CBC* has been offering, since 2017, native advertising through the *CBC & Radio-Canada Media Solutions*: “content creation has been fully done by writing teams hired by CBC/Radio-Canada, with the advertising agency Braque supervising and approving francophone and anglophone content⁵⁷.”

1.3.3 Offering Advertisers a Platform

According to the platform model, the news organization offers the advertiser a space on its digital platform, so that the advertiser can write and insert its own message there, under its own name⁵⁸. To name but a few, *Forbes*, *The Toronto Star*, *The Washington Post* and *Mashable* use this model⁵⁹.

1.4 Disclosure of the advertising nature

The possibility of the reader identifying the advertising nature is perceived as the solution to the intrinsically misleading aspect of native advertising⁶⁰. Some authors think the commercial nature of a native advertisement should be indicated in a completely transparent way, if the news organization and the advertiser want to maintain a relation of trust with the reader: “[t]his clarity and openness gives consumers control over the interaction, speaks volumes about the intention of the advertised brand, and lays the foundation for a trusting relationship⁶¹.”

This is of course a dilemma, since the effectiveness of native advertising rests precisely, according to some, on its ability to merge imperceptibly with the editorial content with which it is integrated.

Nevertheless, for purposes of transparency, the advertising nature of content must be disclosed unambiguously. To be truly effective with consumers, and ensure they clearly realize that the content presented to them or that they’re invited to consult is of an advertising nature, disclosure must be clear and limpid.

Various methods are used by the news media, on the Web, to disclose the advertising nature of content, whether such disclosure is attached to the content itself or to the hyperlink leading to that content. Among the methods used are: a chosen term written in the form of a label, visual differentiation, a notice specifying the involvement of the advertiser and the news organization in writing the content, naming the content’s author, or using the advertiser’s logo.

⁵⁶ Gabrielle JACQUES, *Cogeco se lance dans la publicité native*, March 31, 2017, online: <<http://www.infopresse.com/article/2017/3/31/cogeco-lance-une-nouvelle-offre-de-publicite-native>> (page consulted on June 24, 2018). Our translation.

⁵⁷ Louis THERRIEN-GALASSO, *De la publicité native d'un océan à l'autre grâce à CBC/Radio-Canada*, Grenier, October 24, 2017, online: <<https://www.grenier.qc.ca/nouvelles/14304/de-la-publicite-native-dun-océan-a-lautre-grace-a-cbcradio-canada>> (page consulted on June 24, 2018). Our translation.

⁵⁸ J. SONDERMAN *et al.*, *Understanding the rise of sponsored content*, *op. cit.* note 40.

⁵⁹ ETHICS ADVISORY COMMITTEE OF THE CAJ, *Sponsored Content*, *op. cit.* note 31.

⁶⁰ Bartosz W. WOJDYNSKI *et al.*, “Building a Better Native Advertising Disclosure” in *Journal of Interactive Advertising*, vol. 17, No. 2, 2017; B. W. WOJDYNSKI, “Native Advertising: Engagement, Deception, and Implications for Theory,” *op. cit.* note 7.

⁶¹ Colin CAMPBELL and Lawrence J. MARKS, “Good native advertising isn’t a secret” in *Business Horizons*, vol. 58, No. 6, 2015, p. 604.

Absent those indications, which may be explicit or implicit, we sometimes find certain contextual or circumstantial cues that some content is in fact native advertising. Lastly, the news media can use a combination of different disclosure methods.

1.4.1 Clear and Unambiguous Disclosure, Understandable at First Glance

What enables consumers to distance themselves from advertising content is recognizing its advertising nature, and they can do so only if disclosure is clear and limpid⁶². A consumer who knows in advance that an attempt is made to influence him commercially will interpret, evaluate and react in consequence to that attempt, but if not informed beforehand he may treat the information as though it were objective⁶³.

In the digital age, when everything is accelerated, it is necessary to make a disclosure that is, at first glance, evident and unambiguous. In a 2015 decision, the *Quebec Press Council* stated that regarding the distinction between advertising and information, “the average reader must be able to make this assessment at first glance, without needing a search or other action⁶⁴.” Thus, “distinctions must be clear, visible and written in sufficiently large characters for the reader to identify them immediately. They must be present from the first to the last screen consulted by the Web surfer⁶⁵.”

Some disclosures are explicit and others rather implicit. A label displaying a chosen term, or a notice specifying the advertiser’s involvement in the writing, would constitute an explicit disclosure, so long as the words chosen are also explicit, of course. If on the contrary, certain disclosure methods require deduction or interpretation, they will reveal only implicitly the content’s commercial nature.

Certain contextual or circumstantial cues can also suggest that some content may actually be native advertising; for example, “indulgent” content can lead the reader to question its advertising nature⁶⁶.

Implicit as well as contextual or circumstantial cues don’t constitute clear and unambiguous disclosure, since they’re not understandable at first glance.

1.4.2 Mention Disclosing the Advertising Nature

One prevalent disclosure method is mentioning a chosen word, to inform the consumer of the presence of paid information content⁶⁷. That mention generally takes the form of a label displayed near a hyperlink or that content⁶⁸.

⁶² *Arseneault v. L’hebdomadaire Les Versants du Mont-Bruno*, April 28, 2017, D2016-07-003 (QC CPQ), online: <<https://conseildepresse.qc.ca/decisions/d2016-07-003/>>.

⁶³ B. W. WOJDYNSKI, “Native Advertising: Engagement, Deception, and Implications for Theory,” *op. cit.* note 7, p. 203.

⁶⁴ *Proulx and Lavigne v. La Presse+*, *op. cit.* note 3.

⁶⁵ IAB FRANCE, *Le Native advertising*, France, October 2014, available at: <<https://www.iabfrance.com/contenu/livres-blancs/le-native-advertising>>, p. 18 (page consulted on June 24, 2018). Our translation.

⁶⁶ *Legros v. La voix des Mille-Îles*, 2 décembre 2016, D2016-02-102(2) (QC CPQ), online: <<https://conseildepresse.qc.ca/decisions/d2016-02-102/>> (page consulted on June 24, 2018). Our translation.

⁶⁷ C. MOUMOUNI, “Quand la publicité ressemble à l’information,” *op. cit.* note 13, pp. 135-136.

The words used for indicating that content is a native advertisement are highly varied. We identified a few of those words: advertisement (*publicité*), sponsored content (*contenu commandité*), sponsor (*commanditaire*), brought to you by or presented by (*présenté par*), paid post (*publication payée*), supported by (*supportée par*), brand-voice ou branded content (*contenu de marque*), in association with (*en collaboration avec*), advertorial (*publireportage*), partner content (*contenu partenaire*) and in partnership with (*en partenariat avec*)⁶⁹. It's important to know that the advertiser's name doesn't necessarily accompany the mention.

The clarity of the words used by a news organization is crucial for the consumer's quick assessment of presented or suggested content; so is the mention's visibility⁷⁰. Indeed, while the words chosen are likely to enable a consumer – as is not always the case – to conclude that content is of an advertising nature, he still has to see that mention, understand it and associate it with the content:

Clarity of disclosure language is one important consideration that is mentioned specifically in the FTC guidelines and borne out by empirical studies. However, the labeling used in the eye-tracking study, "Sponsored Content by Dell," would be expected to be among the clearest of labeling options, using relatively clear language ("sponsored" rather than other conventions "presented by") and mentioning the sponsor by name. Thus, while it is possible that some viewers did not correctly understand the meaning of the words, it is more likely that perhaps they understood the words but did not accurately apply them to the content.

Disclosures on sponsored news content are typically located outside of the content text, contain references to an advertiser or sponsor, and may be distinguished from the main content by virtue of background color or a border box. They also are often ignored by consumers⁷¹.

[References omitted]

⁶⁸ B. W. WOJDYNSKI *et al.*, "Building a Better Native Advertising Disclosure," *op. cit.* note 60, p. 10.

⁶⁹ See notably: Raul FERRER CONILL, "Camouflaging Church as State. An exploratory study of journalism's native advertising" in *Journalism Studies*, vol. 17, No. 7, 2016, pp. 907, 911; Bartosz W. WOJDYNSKI and Nathaniel J. EVANS, "Going Native: Effects of Disclosure Position and Language on the Recognition and Evaluation of Online Native Advertising" in *Journal of Advertising*, vol. 45, No. 2, 2016, p. 161; B. W. WOJDYNSKI, "Native Advertising: Engagement, Deception, and Implications for Theory," *op. cit.* note 7, p. 203.

⁷⁰ B. W. WOJDYNSKI *et al.*, "Building a Better Native Advertising Disclosure," *op. cit.* note 60, p. 2.

⁷¹ Bartosz W. WOJDYNSKI, "The Deceptiveness of Sponsored News Articles: How Readers Recognize and Perceive Native Advertising" in *American Behavioral Scientist*, vol. 60, No. 12, 2016, p. 1479.

It goes without saying that some mentions are more effective than others. Explicit terms, known to the public and used in their primary meaning, will obviously be more effective than neologisms or ambiguous terms⁷². A study by Professor Wojdyski concludes that terms such as “brand-voice” or “presented by” are ineffectual and don’t enable the reader to conclude that content has been paid for by a third party⁷³. Similarly, more-technical terms, although known to news or marketing professionals (brand-voice, for example), are usually less familiar to the general public and thus cannot inform it adequately.

1.4.3 Visual Differentiation

Some news organizations also use “visual differentiation” to distinguish advertising content from information⁷⁴. Although that method is not used unanimously⁷⁵, some think it desirable to use visual differentiation that makes it possible to distinguish the advertisement from the journalistic article, by means of a distinct page layout “that reflects its advertising nature⁷⁶.” Still, they want the visual harmony sought by native advertising to be preserved⁷⁷.

This method of implicitly disclosing the advertising nature has an effect on the general impression given to a consumer as he reads content. Visual differentiation is produced, for example, by using a background or text box of a different colour, or a distinct font (in type, size or colour)⁷⁸. However, the visual aspect or the design of paid information content, even if they differ from those of editorial content, will not alone suffice to reveal the advertising nature of content⁷⁹.

1.4.4 Naming the Advertiser and Cautioning about the Respective involvement of the News Organizer and the Advertiser in Writing Content

For the sake of transparency with the reader, it’s essential to name the advertiser explicitly and explain clearly the respective involvement of the news organization and the advertiser in producing content. Indeed, “disclosing the author of a news item has become one of the landmarks for transparency in western journalism, and thus it is important when addressing the blur between commercial and editorial barriers⁸⁰.” [References omitted]

⁷² B. W. WOJDYNSKI *et al.*, “Going Native”, *op. cit.* note 69, p. 162 ; B. W. WOJDYNSKI *et al.*, “Building a Better Native Advertising Disclosure,” *op. cit.* note 60, p. 6.

⁷³ B. W. WOJDYNSKI *et al.*, “Going Native”, *op. cit.* note 69, pp. 161-162, 166.

⁷⁴ D. BAILLARGEON *et al.*, “Confrontations et convergences éthiques,” *op.cit.* note 14, p. 34.

⁷⁵ E. E. SCHAUSTER *et al.*, “Native Advertising Is the New Journalism”, *op. cit.* note 17, pp. 1419-1420.

⁷⁶ Julien ACOSTA, *Publireportage : le Conseil de presse donne l’alarme*, *op. cit.* note 26. Our translation. See also: Robert MARTIN, *Media Law*, 2nd ed., Irwin Law, Toronto, 2003, pp. 584-585: “Typically, any advertising that has the appearance of editorial copy must be clearly distinguished for the reader or viewer. [...] Generally, the design and fronts used in special advertising sections are different from those used by the publication.”

⁷⁷ That is one of three solutions suggested by IAB France (“Mention, désignation, différenciation”): IAB FRANCE, *Le Native advertising*, *op. cit.* note 65, p. 18.

⁷⁸ D. BAILLARGEON *et al.*, “Confrontations et convergences éthiques,” *op.cit.* note 14, p. 34; *Proulx and Lavigne v. La Presse+*, *op. cit.* note 3.

⁷⁹ *Proulx and Lavigne v. La Presse+*, *op. cit.* note 3; IAB FRANCE, *Le Native advertising*, *op. cit.* note 65.

⁸⁰ R. FERRER CONILL, *Camouflaging Church as State*, *op. cit.* note 69, p. 908. See also: Michael KARLSSON, “Rituals of Transparency: Evaluating Online News Outlets’ Uses of Transparency Rituals in the United States, United Kingdom and Sweden” in *Journalism Studies*, vol. 11, No. 4, 2010, pp. 535–545.

Explicitly naming the advertiser seems an obvious requirement for disclosing the advertising nature of content. But it doesn't seem so obvious to everyone: Following three complaints filed before *Advertising Standards* about the disguised nature of its advertisements, a news organization admitted its fault and declared:

*Nous avons cru nous conformer en étiquetant le matériel comme du contenu commandité, et ce, en conformité avec les pratiques que nous avons observées dans d'autres journaux. Toutefois, l'ajout du nom du commanditaire supprime toute ambiguïté quant à la source du matériel, et nous sommes heureux de modifier notre politique de manière à ce que les commanditaires soient toujours identifiés avec leur contenu*⁸¹⁸². [Our underlined]

Naming the advertiser is one of three solutions proposed by IAB France (mention, naming, differentiation)⁸³ to clearly distinguish between editorial and sponsored content, in an effort at transparency.

A notice should of course contain more words than a simple mention in the form of a label; the goal is in fact to improve the reader's chances to recognize easily the content's advertising nature⁸⁴. Moreover, a notice serves to confirm explicitly – when well written – the respective involvement of the news organization and the advertiser in writing paid information content:

*The disclosure on sponsored content from the Los Angeles Times and its sister papers states, "Paid Post: This is sponsored content. It does not involve the editorial or reporting staffs of the Los Angeles Times." In a similar vein, The Guardian offers a detailed explanation of its sponsored content practices, including three different wording variations to connote different levels of advertiser involvement over content production (The Guardian 2016); however, this information is available only if readers click a small link ("About This Content") positioned by the side of the content*⁸⁵.

Thus, while some of those notices aiming at greater transparency appear directly to readers, others are camouflaged and require the reader to do something for the notice to appear. Writing an explicit and transparent notice and then camouflaging it seems to us counter-productive. But this perfectly illustrates the dilemma facing those who want the advertising nature of content to go unnoticed but also want to reveal the stratagem.

1.4.5 Affixing the Advertiser's Logo

Affixing the advertiser's logo near paid information content (or near the hyperlink leading to that content) gives the reader, but not explicitly, a clue to the content's possible advertising nature and to a third party's involvement. Indeed, "using the advertiser's logo with its distinctive colours and calligraphy would contribute more to attract the reader's attention to the true nature of the content that follows⁸⁶." However, the logo alone doesn't enable the reader to conclude with

⁸¹ AD STANDARDS (ASC), *Ad Complaints Reports – 2017*, online: <<http://www.normespub.com/en/Standards/adComplaintsReports.aspx?periodyear=2017>> (page consulted on May 23, 2018), advertiser: Kamloops This Week.

⁸² *Id.*

⁸³ IAB FRANCE, *Le Native advertising*, *op. cit.* note 65, pp. 18 and fol.

⁸⁴ B. W. WOJDYNSKI *et al.*, "Building a Better Native Advertising Disclosure," *op. cit.* note 60, p. 3.

⁸⁵ *Ibid.*, p. 4.

⁸⁶ *Proulx and Lavigne v. La Presse+*, *op. cit.* note 3. Our translation.

certainty regarding the respective involvement of the news organization and the advertiser in the content; on the contrary, a badly placed logo likely adds to the confusion, because the reader can only perceive the advertisement as stand-alone⁸⁷. An American study still notes that the logo's presence contributes to the recognition of content's advertising nature: The detection rate is reportedly 11.6% when the logo is absent, and 22.9% when it is displayed⁸⁸.

1.4.6 Combination of Several Disclosure Methods

The literature often mentions the first sponsored content published by the *New York Times*, paid by Netflix⁸⁹, and combining three distinct disclosure methods: 1) a fixed strip (blue and white) appears at the top of the page (and not in the journalistic content) and remains visible when the content is scrolled vertically; 2) in that fixed strip, the explicit term "paid post," the advertiser's logo and a mention of "BrandStudio," the newspaper's advertising agency, are indicated legibly; and 3) a caution (although in fine print) at the end of the article states: "The news and editorial staffs of The New York Times had no role in this post's preparation⁹⁰."

Taken separately, the above disclosure methods might not suffice for ensuring that a consumer clearly understands the advertising nature of the content presented to him. In fact, a majority of consumers "may miss disclosure labels entirely, and thus fail to recognize the content as paid advertising"⁹¹; the addition of disclosure methods thus multiplies the reader's occasions to detect the content's advertising nature.

⁸⁷ B. W. WOJDYNSKI, "The Deceptiveness of Sponsored News Articles," *op. cit.* note 71, p. 1475.

⁸⁸ *Id.*

⁸⁹ See notably: E. E. SCHAUSTER *et al.*, "Native Advertising Is the New Journalism", *op. cit.* note 17, p. 1409.

⁹⁰ Melanie DÉZIEL, *Woman Inmates: Why the Male Model Doesn't Work*, The New York Times, online: <<https://paidpost.nytimes.com/netflix/women-inmates-separate-but-not-equal.html>> (page consulted on June 24, 2018).

⁹¹ B. W. WOJDYNSKI, "The Deceptiveness of Sponsored News Articles," *op. cit.* note 71, p. 1487.

2. Native Advertising Issues for the News Media

In an ideal world, the news media would contain no native advertising, given the latter's intrinsically misleading nature, with the primary goal of confusing information and advertising. But the current situation of traditional news media – particularly the written press – requires weighing the ethical and economic issues, to fashion a compromise that doesn't imperil the public's right to independent and quality information and doesn't have the effect of manipulating consumers.

On one hand, the news media's financial situation compels an advertising model that meets advertisers' current requirement of native advertising. On the other hand, the news media must comply with certain ethical rules, while native advertising attempts to blur certain ethical boundaries and puts the news media in a situation of potential conflicts of interest, imperiling journalists' independence and risking an erosion of public trust in the news media.

From the viewpoint of consumers, the difficulty recognizing native advertising in the news media accentuates the impression of being manipulated, both by advertisers and the news media.

The stakes are high. This issue ultimately imperils the public's right to independent and quality information.

2.1 Issues for the News Media

Nul ne peut nier que la révolution numérique a passablement changé la donne en secouant les colonnes du temple médiatique⁹².

The surge of native advertising in the news media is propelled by a crisis⁹³. To compensate for their revenue shortfall, news organizations rationalize the use of this type of advertising on their platforms, to meet the demands of advertisers.

That being said, the news media's use of native advertising raises serious ethical issues, notably because it appears to blur the ethical boundaries between editorial and advertising content, even though there seemed to be a consensus about those boundaries⁹⁴. The news media find themselves in a possible conflict of interest (between the economic interests of advertisers and news organizations on one hand, and the public interest on the other) that could well affect the independence of journalists. In addition, native advertising has the effect of misleading consumers, who risk losing trust in the three perpetrators of that practice: the news organization, the advertisers, and journalists associated with the writing of such advertisements.

⁹² Pierre CAYOUILLE, Robert MALTAIS *et al.*, *Les journalistes pour la survie du journalisme*, Éditions Québec Amérique Inc., Montreal, 2015, p.11.

⁹³ M.-F. BAZZO *et al.*, *De quels médias le Québec a-t-il besoin ?*, *op. cit.* note 30, p. 11.

⁹⁴ Those ethical boundaries are often referred to as a "wall of China" to emphasize their insurmountable character, or, in reference to the American Constitution, as "the separation of church and state" to illustrate the importance and necessity of maintaining an impassable distance between information and mercantile concerns. See: Alain PILON, *Sociologie des médias du Québec. De la presse écrite à Internet*, Éditions Saint-Martin, Montreal, 2008, p. 25 ; R. FERRER CONILL, *Camouflaging Church as State*, *op. cit.*, note 69, pp.904-914.

2.1.1 Broken Business Model

“Par bonheur il y a la publicité, l’indispensable, la bienfaisante publicité...,” wrote Hubert Beuve-Méry, founder of Le Monde, in 1956⁹⁵

The business model of news organizations is largely built on advertising revenue. But some authors think that model is broken⁹⁶:

Je pourrais développer, mais je me contenterai de cette affirmation forte : c’est le lecteur qui fait vivre la presse, l’auditeur qui fait vivre la radio, le spectateur qui fait vivre la télévision. Et la publicité ne vient que par surcroît.

Le corollaire de cette affirmation est que ce sont les consommateurs, par l’intermédiaire des médias, qui font vivre le secteur publicitaire, client lui-même des annonceurs. Nous sommes ici dans une chaîne de rapports entre clients et producteurs. Les médias, qui ont créé la publicité, la font vivre : c’est le client (les médias) qui fait vivre le producteur (la publicité).

Mais cette position est insupportable pour les publicitaires. Pour modifier le rapport de forces, les publicitaires s’efforcent de faire croire que leurs propres clients, les annonceurs, sont les clients des médias, afin de placer ces derniers en position de producteurs donc de demandeurs⁹⁷.

In 1980, the Kent Commission observed a “massive dependence on advertising⁹⁸.” In those days, indeed, 80% of newspaper revenues came from advertising and 20% from readers’ subscriptions. That business model ensured newspapers’ prosperity⁹⁹, which rested on a strong interdependence between the three parties concerned. Only the traditional media could communicate advertisers’ messages to a mass audience and, before the advent of the Web, consumers had mass access to news only through those media.

While the news media have kept their dependence on the two other parties, the Web and social media now offer other options to readers and advertisers, whose dependence on the traditional news media has thus dramatically declined. First, “anyone can become a disseminator, something that had never been the case. ‘From one to many’ has become ‘from many to many’¹⁰⁰.” Advertisers now have access to other channels for communicating with consumers.

⁹⁵ Patrick EVENO, “Médias et publicité : une association équivoque, mais indispensable” in *Le Temps des Médias*, No. 2, Paris, spring 2004, online: <<https://www.cairn.info/revue-le-temps-des-medias-2004-1-page-17.htm>> (page consulted on May 23, 2018), p. 20.

⁹⁶ Pierre-Elliott LEVASSEUR, *Mot de l’éditeur – Un grand pas en avant pour La Presse*, La Presse, May 8, 2018, online: <<http://www.lapresse.ca/debats/mot-de-lediteur/201805/08/01-5176941-un-grand-pas-en-avant-pour-la-presse.php>> (page consulted on May 8, 2018).

⁹⁷ P. EVENO, “Médias et publicité,” *op. cit.* note 95, p. 20.

⁹⁸ Eugene HALLMAN *et al.*, *The Newspaper as a Business*, Royal Commission on Newspapers, vol. 4, Ottawa, 1980, online: <http://publications.gc.ca/collections/collection_2017/bcp-pco/Z1-1980-1-41-4-eng.pdf> (page consulted on June 24, 2018), p. 7.

⁹⁹ *Ibid.*, p. 79.

¹⁰⁰ Jean-Herman GUAY, “Libéralisme et médias : entre l’ordre et le désordre” in *Enjeux éthiques et pratiques déontologiques du 4e pouvoir*, vol. 15, No. 1, 2013, online: <<http://journals.openedition.org/ethiquepublique/1055>> (page consulted on June 24, 2018). Our translation.

While some of those channels become “media” themselves¹⁰¹, others opt for the advertising offer of Web giants, such as Facebook and Google¹⁰². The digital world also enables targeted advertising, considered more effective than mass advertising¹⁰³.

The offer of advertising channels has thus diversified and the news media now constitute only one of the options available to advertisers among a range of possibilities; but advertisers still prefer the news media¹⁰⁴, with their attentive audience and the trust they have built with it:

[S]i la « manne publicitaire » s'abat avec tant de constance depuis deux siècles sur les médias, ce n'est pas par pure philanthropie de la part des annonceurs et des publicitaires, mais plus vulgairement parce que les médias savent trouver le consommateur, l'intéresser, le fidéliser, et par conséquent parce que les annonceurs ne trouvent pas de meilleur chemin que celui des médias pour accéder à leur cible¹⁰⁵.

Accordingly, the news media's credibility in the eyes of readers is the main attraction for advertisers. More on that below¹⁰⁶.

Nevertheless, the digital revolution and the upheaval of consumer habits have considerably reduced the news media companies' advertising revenues. According to the *Public Policy Forum*, “from 2006 to 2015, Canadian daily newspapers lost 40 percent of their revenues¹⁰⁷.” Moreover, consumers are now “reticent to pay for information content¹⁰⁸.”

¹⁰¹ Ira BASEN, *Is that an ad or a news story – and does it matter which?*, August 3, 2012 (updated on March 26, 2017), The Globe and Mail, online: <<https://www.theglobeandmail.com/arts/books-and-media/is-that-an-ad-or-a-news-story-and-does-it-matter-which/article4461877/?page=all>> (page consulted on June 24, 2018); Jonathan SAS, *How 'Native Advertising' Is Changing What We Read*, The Tyee, March 21, 2013, online: <<https://thetyee.ca/Mediacheck/2013/03/21/Native-Advertising/>> (page consulted on June 24, 2018). Indeed, already in 1997, Professor Pierre Trudel stated that “[l]es inforoutes sont en voie de devenir un important véhicule de marketing direct”: Pierre TRUDEL *et al.*, *Droit du cyberspace*, Les Éditions Thémis, Montreal, 1997, p. 18 – 29.

¹⁰² Facebook and Google now display a large portion of advertising revenues, to the detriment of the traditional news media. Université de Sherbrooke Professor of Taxation Marwah Rizky estimates that in 2017, “Google and Facebook together recorded advertising revenues of around \$5.8 billion in Canada” [our translation]: Maxime BERGERON, *Publicités sur Facebook : Ottawa triple ses achats*, February 1, 2018, La Presse, online: <<http://www.lapresse.ca/actualites/politique/politique-canadienne/201802/01/01-5152235-publicites-sur-facebook-ottawa-triple-ses-achats.php>> (page consulted on June 24, 2018). See also: PUBLIC POLICY FORUM, *The Shattered Mirror – News, Democracy and Trust in the Digital Age*, January 2017, Ottawa, online: <<https://shatteredmirror.ca/wp-content/uploads/theShatteredMirror.pdf>> (document consulted on June 24, 2018), pp. 31-32.

¹⁰³ Arthur OULAÏ, “La place du consommateur dans l'encadrement de la cyberpublicité au Canada” in Pierre-Claude Lafond *et al.*, *La publicité, arme de persuasion massive. Les défis de l'encadrement législatif*, Éditions Yvon Blais, Cowansville, 2012, pp. 126-127.

¹⁰⁴ Christian DÉSILETS, *L'asymétrie des revenus publicitaires des médias d'information traditionnels et modernes. Le point de vue de trois publicitaires québécois*, Enquête menée pour le Groupe de travail sur le journalisme et l'avenir de l'information au Québec, September 2, 2010, online: <https://www.mcc.gouv.qc.ca/fileadmin/documents/publications/media/Christian_Desilets_-_Asymetrie_des_revenus_publicitaires_des_medias_traditionnels_et_modernes.pdf> (document consulted on June 24, 2018), p. 13.

¹⁰⁵ P. EVENO, “Médias et publicité,” *op. cit.* note 95, p. 20.

¹⁰⁶ Voir *infra*, section “2.1.2.3 Perte de confiance envers les médias d'information,” p. 28.

¹⁰⁷ PUBLIC POLICY FORUM, *The Shattered Mirror*, *op. cit.* note 102, p. 19.

¹⁰⁸ D. BAILLARGEON *et al.*, “Confrontations et convergences éthiques,” *op. cit.* note 14, p. 30. Our translation.

In tandem with those revenue losses, the news media have faced the necessity of multiplying expenditures to transition toward digital platforms¹⁰⁹. To compensate for revenue losses and expenditure increases, news organizations have adapted their advertising offer to the demand of advertisers and have opted for native advertising¹¹⁰.

2.1.2 Issues Related to Native Advertising in the News Media

If not regulated correctly, native advertising is not without risk for the news industry: This practice is dangerous¹¹¹, due to “hybridation of information and advertising¹¹²,” and to an increased risk of conflicts of interest for the news media, by imperiling journalists’ independence and credibility in the eyes of readers. In addition, “the ethical issue is raised when consumers falsely believe or are misled to think they’re reading a news report rather than a paid advertisement¹¹³.”

2.1.2.1 Blurring the Boundaries between Editorial and Advertising Content

A barrier theoretically exists in the news media between editorial and advertising content – an ethical barrier for avoiding conflicts of interest. Reasonable measures must be established, within a news organization, to separate the editorial team from commercial influences, particularly from the advertising sales team¹¹⁴. Professor Emeritus Florian Sauvageau recalls: “when I was managing editor at Le Soleil, a clause of the collective agreement prohibited the advertising management team from talking to journalists¹¹⁵.” That separation constitutes the ethical boundary that protects journalistic integrity from commercial influence¹¹⁶.

That barrier, which must be impenetrable, is necessary because advertising and journalistic content do not have the same interests and goals. A journalist writing an article must have the primary goal of serving the public interest. To that end, the news media adopt an “informative discourse” aiming at communicating “socially useful information” about an idea, an event or a fact of general interest¹¹⁷. “The primary role of news media consists of informing the public, i.e. disseminating without hindrance information of public interest, of social utility¹¹⁸.” In addition to

¹⁰⁹ Antoine CHAR, *La quête de sens à l'ère du Web 2.0. Rencontre avec des journalistes du Devoir*, Les Presses de l'Université du Québec, Québec, 2010, pp. 96-102; Guy CREVIER, *La Presse+ sera offert gratuitement*, March 20, 2013, La Presse, online: <<http://www.lapresse.ca/debats/mot-de-lediteur/201303/20/01-4633052-la-presse-sera-offerte-gratuitement.php>> (page consulted on June 24, 2018).

¹¹⁰ INTERACTIVE ADVERTISING BUREAU CANADA, *IAB Canada 2016 Actual + 2017 Estimated Canadian Internet Advertising Revenue Survey. Detailed Report*, June 29, 2017, p. 16, online:

<<https://iabcanada.com/content/uploads/2017/07/IABCanadaRevenueSurveyFinal2017.pdf>> (document consulted on June 24, 2018); Amar BAKSHI, “Why and How to Regulate Native Advertising in Online News Publications” dans *Journal of Media Law & Ethics*, University of Baltimore School of Law, vol. 4, No. 3/4, winter/spring 2015, p. 7.

¹¹¹ Nathalie VILLENEUVE, *Info et promo : danser avec le diable ?*, November 25, 2013, Quebec Press Council, online: <<https://conseildepresse.qc.ca/actualites/nouvelles/info-et-promo-danser-avec-le-diable/>> (page consulted on June 24, 2018).

¹¹² C. MOUMOUNI, “Quand la publicité ressemble à l'information,” *op. cit.* note 13, p. 134. Our translation.

¹¹³ Patrick E. Murphy, “Recherche en éthique du marketing : thèmes récurrents et émergents” in *Recherche et Application en Marketing*, vol. 32, No. 3, 2017, p. 93. Our translation.

¹¹⁴ M. CODDINGTON, “The wall becomes a curtain,” *op. cit.* note 22, pp. 68 and fol.

¹¹⁵ M.-F. BAZZO et al., *De quels médias le Québec a-t-il besoin ?*, *op. cit.* note 30, p. 83. Our translation.

¹¹⁶ R. FERRER CONILL, *Camouflaging Church as State*, *op. cit.* note 69, p. 906.

¹¹⁷ A. PILON, *Sociologie des médias du Québec*, *op. cit.* note 94, p. 25. Our translation.

¹¹⁸ *Ibid.* Our translation.

news information, the news media present articles written by journalists specializing in specific fields¹¹⁹: the law, the economy, culture, cars, science, technology, fashion, gastronomy, art, entertainment and many others¹²⁰.

For their part, advertisers serve private economic interests. Advertising therefore adopts an “incentive discourse” rather than an informative discourse¹²¹:

[...] cherche à séduire, persuader, voire convaincre ; son but est mercantile. [...] On y vend du rêve par le biais de la consommation. Le discours incitatif publicitaire est parfois trompeur en présentant sous un jour informatif les caractéristiques dites positives et évidentes de tel produit. Or, le caractère "informatif" de son discours n'est pas une fin en soi, mais un moyen pour séduire le consommateur. Ce faisant, il cherche à acquérir une légitimité¹²².

The “information” content paid by the advertiser to improve its image has thus nothing in common with journalistic information. Indeed:

[...] son contenu ou encore son message ne partage rien avec l'information et ses qualités objectives d'expliquer le monde des événements. Au contraire, on s'en éloigne, on ne se retrouve plus dans l'impartialité informative [...], mais dans la subjectivité du communicateur/émetteur¹²³.

In other words, the content paid by an advertiser – even when disguised as information on a news organization’s platform – is never in the public interest, but rather serves a commercial and incentivizing goal. But a reader who visits a news organization’s digital platform likely expects to find information emanating from that organization, and not information, necessarily biased, paid by a third party¹²⁴. And if he also expects to find advertising there, he’s counting on it being presented as such to him.

Although the ethical barrier has never been perfectly impenetrable, given that commercial interests still influence news organizations¹²⁵, native advertising used in the news media has blurred that boundary between journalistic and advertising content, and has been replaced by a thin curtain¹²⁶. Precisely because native advertising “consists of blurring the boundary between journalistic and advertising content in the media¹²⁷” and attempts to disguise paid information content as journalistic content. Indeed, “even though the content is inherently commercial, it is expected to behave, look, and feel like the editorial content¹²⁸.”

¹¹⁹ Pierre SORMANY, *Le métier de journaliste. Guide des outils et des pratiques du journalisme au Québec*, 3rd ed., Éditions du Boréal, Montreal, 2011, pp. 377 and fol.

¹²⁰ C. MOUMOUNI, “Quand la publicité ressemble à l’information,” *op. cit.* note 13, p. 137.

¹²¹ A. PILON, *Sociologie des médias du Québec*, *op. cit.* note 94, p. 21.

¹²² *Ibid.*, p. 22.

¹²³ *Ibid.*, p. 23.

¹²⁴ Amanda SCHREYER, “Beyond the Buzzwords: Sponsored Content, Native Advertising, and Consumer Protection” in *Landslide Magazine*, American Bar Association, vol. 8, No. 2, November-December 2015, online: <https://www.americanbar.org/publications/landslide/2015-16/november-december/beyond_buzzwords_sponsored_content_native_advertising_and_consumer_protection.html> (page consulted on June 24, 2018).

¹²⁵ M. CODDINGTON, “The wall becomes a curtain,” *op. cit.* note 22, pp. 68-69 ; E. E. SCHAUSTER *et al.*, “Native Advertising Is the New Journalism,” *op. cit.* note 17, p. 1421.

¹²⁶ M. CODDINGTON, “The wall becomes a curtain,” *op. cit.* note 22, p. 67.

¹²⁷ P. E. MURPHY, *Recherche en éthique du marketing*, *op. cit.* note 113, p. 93. Our translation.

¹²⁸ R. FERRER CONILL, *Camouflaging Church as State*, *op. cit.* note 69, p. 905.

2.1.2.2 Conflict of Interest and Journalists' Independence

The blurring of the ethical boundary as a result of native advertising puts media organizations in a conflict of interest, because they must juggle three distinct interests: their own commercial interests, the advertisers' private interests, and the public interest.

There's a basic ethical rule: The public interest must take precedence over the news media's economic interests¹²⁹. Still, news organizations have their own economic interests and must remain profitable, which continually puts them in a potential conflict of interest in terms of the public interest¹³⁰. Advertisers can use a pressure tactic on a news organization: If the latter gives it bad press, they can remove their advertisements¹³¹. So the news organization must consider at times the advertisers' private interests when covering the news¹³².

This situation is not new and not exclusive to native advertising. However, that conflict of interest appears aggravated by native advertising. Some editorial advertising models – a news organization offering to sponsor an article and acting as an advertising agency – could particularly endanger the independence of journalists.

Faced with what resembles an editorial article, but what visibly has a commercial aim, a reader may question the news organization's real interests: What led it to publish such an article? The public interest, the advertiser's interest, or its own financial interest? Does the news organization choose subjects to cover based on its advertisers? We know that to maintain the quality of information, journalists must be able to produce content without interference from advertisers¹³³: "editorial topics, issues and decisions should not be influenced by advertisers¹³⁴."

Native advertising often involves, in addition to a news organization, editorial journalists, who eventually have to report the news or write an article implicating the advertiser in question. Accordingly, this model can lead the reader to have doubts that will have consequences on the news organization's credibility¹³⁵.

A journalist who collaborates with an advertiser that becomes his unique source of information puts himself in an uncomfortable position, which risks undermining his independence and credibility. A journalist who writes such paid content becomes, in reality, an advertiser:

¹²⁹ QUEBEC PRESS COUNCIL, *Quebec Press Council Guide of Journalistic Ethics*, adopted at a general meeting on November 24, 1996, amended on November 28, 2010, online: <https://conseildepresse.qc.ca/wp-content/uploads/2017/09/QPC_EthicsGuide.pdf> (document consulted on June 24, 2018), section 6.2.

¹³⁰ M. CODDINGTON, "The wall becomes a curtain.," *op. cit.* note 22, pp. 68-69.

¹³¹ See the following decision to that effect: *La Métropole c Applebaum*, 2013 CanLII 66604 (QC CPQ).

¹³² For example, a journalist reports the following: "When the City withdraws its advertising from a news organization, that hurts an awful lot. 'You know, at City Hall, they don't like it when you look around. And they're worth \$10,000 a year to the station. Next year it's even going to be \$50,000. It's really not the time to drop them.'" [our translation]: M.-F. Bazzo *et al.*, *De quels médias le Québec a-t-il besoin?*, *op. cit.* note 30, p. 83.

¹³³ E. E. SCHAUSTER *et al.*, "Native Advertising Is the New Journalism," *op. cit.* note 17, p. 1409; Marc-François BERNIER, "Pourquoi les journalistes ? Les contours d'un idéal journalistique," dans Marc-François Bernier *et al.*, *Pratiques novatrices en communication publique – Journalisme, relations publiques et publicité*, Québec City, Les Presses de l'Université Laval, 2005, pp. 30-31.

¹³⁴ R. MARTIN, *Media Law*, *op. cit.* note 76, p. 584.

¹³⁵ Rezwana MANJUR, LOOK When Mondelez 'supported' a negative story on Nestle, Marketing, February 2, 2016, online: <<http://www.marketing-interactive.com/look-when-mondelez-supported-a-negative-story-on-nestle/>> (page consulted on June 24, 2018).

*[Le publicitaire] est lié à la source d'information, l'annonceur, pour promouvoir de façon stratégique des produits dont la consommation renvoie à la satisfaction d'intérêts individuels. À l'inverse, le journaliste serait indépendant de sa source pour rapporter de façon objective des faits qui renvoient à l'intérêt général*¹³⁶.

When a news organization acts as an advertising agency, some journalists – even within the news organization – are assigned at times to write the information content paid by the advertiser, to give it a more credible look similar to journalistic content¹³⁷. And yet, it seemed well established that “[j]ournalists cannot afford to have divided loyalties. They are paid to report the truth as they see it. They must have the freedom to cover events and controversies without being hamstrung by connections to the peoples and institutions they report on¹³⁸.”

To minimize the risks of conflicts of interest and protect the independence and credibility of journalists, the latter insist that their employer distinguish, at the time of publication, between information and advertising. The maintenance of journalistic values depends on it: “[j]ournalists have worked exceptionally hard to maintain a strong boundary against commercial influence, making it a core element of their professional values¹³⁹.” Accordingly, journalists’ unions negotiate the insertion of clauses to that effect in collective agreements¹⁴⁰, to make the news organization accountable to its journalists by way of a grievance¹⁴¹, or to hold it ethically responsible by way of a complaint to an appropriate press council¹⁴².

2.1.2.3 Loss of Trust in the News Media

A social contract exists between the news media and society¹⁴³. While news organizations report, in the public interest, independent and quality information on various subjects of societal interest, readers – from all segments of society – constitute a receptive audience and offer their precious trust¹⁴⁴. “Certainly, such a contract doesn’t exist in the text, but it naturally extends freedom of expression and related democratic virtues¹⁴⁵.”

¹³⁶ Jean-Michel UTARD, *Du discours de l'information aux genres journalistiques : proposition pour une étude socio-discursive du journalisme*, X^e Colloque bilatéral franco-roumain, CIFSIC University of Bucarest, June 28 – July 3, 2003, Oct. 2003, online: <https://archivesic.ccsd.cnrs.fr/sic_00000723/document>, cité dans Charles MOUMOUNI, “Le discours normatif des journalistes et les pratiques de publi-reportage dans les journaux québécois” in *Les Cahiers du journalisme*, No. 16, fall 2006, online: <http://www.com.ulaval.ca/fileadmin/contenu/Cahiers_Journalisme/PDF/16/05_MOUMOUNI.pdf> (document consulted on June 24, 2018), p. 132.

¹³⁷ N. VILLENEUVE, *Info et promo : danser avec le diable ?*, op. cit. note 111.

¹³⁸ Dean JOBB, *Media Law for Canadian Journalists*, 2nd ed., Toronto, 2011, p. 407.

¹³⁹ M. CODDINGTON, “The wall becomes a curtain,” op. cit. note 22, p. 68.

¹⁴⁰ C. MOUMOUNI, “Le discours normatif des journalistes et les pratiques de publi-reportage dans les journaux québécois”, op. cit. note 136, p. 145.

¹⁴¹ See notably: *Syndicat des travailleurs de l'information de La Presse et La Presse, Itée*, 2007 CanLII 83607 (QC SAT), *Syndicat des travailleuses et travailleurs du Journal de Montréal v. Journal de Montréal*, 2009 CanLII 26675 (QC SAT).

¹⁴² *Syndicat des travailleurs de l'information du Journal de Montréal v. Le Journal de Montréal*, D2004-10-029, Press Council, online: <<https://conseildepresse.qc.ca/decisions/d2004-10-029/>> (page consulted on June 24, 2018).

¹⁴³ Marc-François BERNIER, *Éthique et déontologie du journalisme*, 3rd ed., Les Presses de l'Université Laval, 2014, Quebec, pp. 10 and fol. See also: M.-F. BERNIER, “Pourquoi les journalistes ? Les contours d'un idéal journalistique,” op. cit. note 133, pp. 19-20.

¹⁴⁴ That trust is reportedly decreasing, for various reasons. “[...] some think the only trustworthy sources of information are the ‘citizens’ news organizations appearing on the Web, beyond the control of journalists and major press groups”: P. SORMANY, *Le métier de journaliste*, op. cit. note 119, p. 24. Our translation. See also: Robert

It is also admitted (or tolerated) that when a news organization publishes advertisements in its pages, it offers advertisers access to its readership in order to finance its activities, without vouching for the content of those advertisements.

However, with native advertising, the reader's trust itself is instrumentalized by advertisers for commercial purposes. Indeed, what makes a news organization's digital platforms attractive to advertisers is the relation of trust forged by the organization with its audience on the basis of its content – a relation of trust that advertisers can use for their own purposes:

*By presenting information in a format that is familiar to consumers, but familiar to them as non-advertising content, these ads are likely to trigger consumers' prior associations with those particular forms of media content, which then form a lens through which the consumer views the content*¹⁴⁶.

In 2014, the self-regulatory organization *Ad Standards Canada* conducted a survey of consumers on their perception of advertising. Regarding native advertising in serious publications, their conclusion was clear:

*When it comes to sources where Canadians turn for hard news or medical information – particularly newspapers, newsmagazines and the sources they turn to for medical advice – a majority said it would be unacceptable for advertisers to pay for editorial content*¹⁴⁷.

A 2017 study, conducted by the same self-regulatory organization, provides indications about a breach of trust with readers:

*Most consumers said placing advertising that looks like news stories on news websites would make them much less trusting of both the company doing the advertising (58%) and the news website itself (50%). One in five Canadians agreed they often click on ad links expecting news stories*¹⁴⁸.

Those studies confirm the risks – loss of credibility and of readers' trust – taken by news organizations (and, by the same token, by their journalists) using native advertising¹⁴⁹. That loss of trust also appears to result when hyperlinks have led consumers to an advertisement without notifying them in advance about the nature of that content.

"The reputation of any journalist worthy of the name depends on his credibility with the public. A good professional reputation is based on meeting professional standards¹⁵⁰." Authors who are

MALTAIS, *L'éthique élastique – L'éthique, pour qui ?*, FPJQ, vol. 32, No. 6, June 2008, online: <<https://www.fpq.org/lethique-elastique-lethique-pour-qui/>> (page consulted on June 24, 2018).

¹⁴⁵ P. SORMANY, *Le métier de journaliste*, *op. cit.* note 119, p. 11. Our translation.

¹⁴⁶ B. W. WOJDYNSKI, "The Deceptiveness of Sponsored News Articles," *op. cit.* note 71, p. 1478.

¹⁴⁷ AD STANDARDS, *2014 Consumer Perspectives on Advertising*, 2014, online: <<http://www.adstandards.com/en/ASCLibrary/2014ASCCConsumerResearch.pdf>> (document consulted on June 24, 2018), p. 19.

¹⁴⁸ AD STANDARDS, *2017 Consumer Perspectives on Advertising*, Ad Standards Research, 2017, online: <<http://www.adstandards.com/en/ASCLibrary/2017ASCCConsumerResearch.pdf>> (document consulted on June 24, 2018), p. 3.

¹⁴⁹ Several authors also mention those risks. See notably: Mu WU *et al.*, "A Tale of Two Sources in Native Advertising: Examining the Effects of Source Credibility and Priming on Content, Organizations, and Media Evaluations" in *American Behavioral Scientist*, vol. 60, No. 12, 2016, p. 1493.

¹⁵⁰ R. MALTAIS, *L'éthique élastique – L'éthique, pour qui ?*, *op. cit.* note 144. Our translation.

more alarmist think news organizations' use of this type of advertising can be fatal¹⁵¹. This is because, among other things, social media have led to the emergence of a "fifth estate" citizen "who observes, scrutinizes, discusses, criticizes or commends the fourth estate and its journalists¹⁵²" and imposes new accountability on the media¹⁵³.

It goes without saying that the news media must maintain the public's trust. Despite the Internet revolution multiplying sources of information to a staggering extent¹⁵⁴, the news media remain essential to our democratic way of life¹⁵⁵; they "shape public opinion, carve the contours of our frame of mind, nourish the ambient conversation, contribute on an industrial scale to the spirit of the times, and occasionally have educational value while influencing our understanding of the world¹⁵⁶."

It's clear that "the press in general and a news organization specifically cannot achieve social responsibility without credibility¹⁵⁷." So to avoid losing the public trust, a news organization must demonstrate the greatest transparency when displaying native advertising¹⁵⁸, particularly by disclosing in a clear and limpid way the advertising nature of that type of content.

2.2 Consumer Issues

In the context of the crisis, notably financial, experienced by the traditional news media, native advertising does offer the latter certain benefits. It may also offer consumers certain benefits. Advertising gives consumers access to journalistic information free of charge (or at lesser cost), since the news media are funded by advertisers. Some authors recognize the positive contribution of some content paid by third parties, when such content is produced professionally. Although criticized at times, one example of native advertising is often evoked in the literature as an example of successful content: An article describing women's prisons, published by *The New York Times* and paid by *Netflix*, that advertised the second season of its show *Orange is the New Black*, with a plot set in that prison environment¹⁵⁹. However, the benefits of a native advertisement will always depend on a transparent disclosure of its advertising nature; absent that, the attack on the right to independent and quality information would certainly supplant those benefits.

¹⁵¹ See notably: John CARR, *Storytelling Ads May Be Journalism's New Peril*, *The New York Times*, September 15, 2013, online: <<https://www.nytimes.com/2013/09/16/business/media/storytelling-ads-may-be-journalisms-new-peril.html>> (page consulted on May 8, 2018).

¹⁵² Marc-François BERNIER, *Le Cinquième pouvoir. La nouvelle imputabilité des médias envers leurs publics*, Les Presses de l'Université Laval, Quebec, 2016, p. 11. Our translation.

¹⁵³ *Ibid.*, pp. 9 and fol.

¹⁵⁴ P. SORMANY, *Le métier de journaliste*, *op. cit.* note 119, p. 35.

¹⁵⁵ A. PILON, *Sociologie des médias du Québec*, *op. cit.* note 94, p. 26.

¹⁵⁶ M.-F. BAZZO *et al.*, *De quels médias le Québec a-t-il besoin ?*, *op. cit.* note 30, p. 8. Our translation.

¹⁵⁷ E. E. SCHAUSTER *et al.*, "Native Advertising Is the New Journalism", *op. cit.* note 17, p. 1420.

¹⁵⁸ M.-F. BAZZO *et al.*, *De quels médias le Québec a-t-il besoin ?*, *op. cit.* note 30, p. 90.

¹⁵⁹ Melanie DEZIEL, *Woman Inmates: Why the Male Model Doesn't Work*, *op. cit.*, note 90.

2.2.1 Difficulty Recognizing Native Advertising in the News Media

From a business standpoint, advertisers have no interest in disclosing too directly to readers the advertising nature of a native advertisement; that would contradict the very concept of such advertising and would make it less effective¹⁶⁰, since readers try to avoid advertising content.

Studies demonstrate that disclosure practices regarding native advertising lack transparency¹⁶¹, that consumers don't distinguish native advertising from the rest of content¹⁶² and that a strong majority (between 77% and 92%, according to the studies) don't perceive the advertising nature of this type of content¹⁶³. Despite that, advertisers often argue, to shrug off their responsibility, that readers are *smart enough* to recognize the advertising nature of content¹⁶⁴.

Consumers have difficulty recognizing native advertising partly because the nature of that practice is still not well known¹⁶⁵, but also because of inconsistency in the disclosures provided by online news organizations:

[...] because online media consumption encompasses such a wide variety of presentational modalities, sources, and functions, and because native ads and disclosures can appear in a wide variety of forms and locations, developing proficiency at spotting paid content online is a more difficult task. As a result of the inconsistencies in disclosure, the potential for consumers to be deceived is that much greater¹⁶⁶.

Ambiguous disclosure of the advertising nature is another cause of readers' detection difficulty¹⁶⁷; lack of clarity can be such that even a well-informed consumer can mistake editorial advertising for journalistic content produced by the news organization¹⁶⁸.

¹⁶⁰ Brenda L. PRITCHARD, "New age advertorials: best practices in native advertising" in *Food, natural health products & cosmetics law*, Gowling WLG, September 2016, online: <<https://edoctrine.caij.qc.ca/publications-cabinets/gowlings/2016/a89741/en/PC-a95846>> (page consulted on June 24, 2018).

¹⁶¹ See to that effect: Suzanne VRANICA, *Majority of Native Ads Lack Transparency*, The Wall Street Journal, August 3, 2016, online: <<https://www.wsj.com/articles/majority-of-native-ads-lack-transparency-1470218409>> (page consulted on June 24, 2018).

¹⁶² M. WU *et al.*, "A Tale of Two Sources," *op. cit.* note 149, p. 1493.

¹⁶³ CONTENTLY, *Fixing Native Advertising: What Consumers Want From Brands, Publishers, and the FTC*, 2016, online: <<https://contently.com/strategist/2016/12/08/native-advertising-study/>> (page consulted on June 24, 2018); B. W. WOJDYNSKI *et al.*, "Going Native", *op. cit.* note 69, pp. 161.

¹⁶⁴ D. BAILLARGEON *et al.*, "Confrontations et convergences éthiques," *op. cit.* note 14, pp. 40, 43.

¹⁶⁵ Joe LAZAUSKAS, *Study: Sponsored Content Has a Trust Problem*, The Content Strategist, July 9, 2014, online: <<https://contently.com/strategist/2014/07/09/study-sponsored-content-has-a-trust-problem-2/>> (page consulted on June 24, 2018).

¹⁶⁶ B. W. WOJDYNSKI, "The Deceptiveness of Sponsored News Articles," *op. cit.* note 71, p. 1477.

¹⁶⁷ *Ibid.*, p. 1481.

¹⁶⁸ "The distinction is not 'clear' or 'manifest' at all. In this regard, the members of the complaints committee [of the Quebec press Council] emphasize that they themselves had difficulty making that distinction, which eloquently demonstrates the level of confusion to which the general public is exposed.": *Proulx and Lavigne v. La Presse+*, *op. cit.* note 3. Our translation.

2.2.3 Persuading and Manipulating Consumers

Generally, commercial advertising aims at manipulating and persuading consumers, on a conscious or unconscious level¹⁶⁹. According to Professor Emeritus Nicole L'Heureux, advertising constitutes:

[...] une des forces de persuasion et de manipulation les plus importantes de la société actuelle. Avec l'aide des techniques raffinées de la mise en marché, de la psychologie et des moyens modernes de diffusion, elle agit sur les décisions du consommateur, même à son insu¹⁷⁰.

Advertising techniques are sophisticated, with an accent on “seduction¹⁷¹,” and effective; according to Claude Cossette, “advertising is persuasive indeed¹⁷².” No one is invulnerable to manipulation targeting the unconscious: “even well-balanced and informed adults are now vulnerable to actual behaviour triggers revealed by social psychology research and used by advertisers¹⁷³.” The Supreme Court of Canada stated that “To say that advertising can place consumers under a merchant's influence is an understatement¹⁷⁴.”

Native advertising counts precisely on that type of manipulation. By definition, such advertising is intentionally disguised and misleading, since its primary goal is to blend in the background and camouflage its commercial nature in order to bypass consumers' reflexes of ignoring or doubting ads¹⁷⁵. Whereas some authors attempt to temper that aspect¹⁷⁶, it is generally admitted that the misleading nature is intrinsic to native advertising¹⁷⁷. Manipulation is even more evident when an advertisement takes the form of journalistic content on a news platform, because such advertising is counting on the consumer's defence mechanisms being weakened by his trust in the news organization. So it's not surprising that consumers feel misled by native advertising¹⁷⁸.

¹⁶⁹ Victor DANCIU, “Manipulative marketing: persuasion and manipulation of the consumer through advertising” in *Theoretical and Applied Economics*, vol. XXI, No. 2(591), 2014, p. 24.

¹⁷⁰ Nicole L'HEUREUX and Marc LACOURSIÈRE, *Droit de la consommation*, 6th ed., Éditions Yvon Blais, Cowansville, 2011, p. 479.

¹⁷¹ Pierre-Claude LAFOND et al., *La publicité, arme de persuasion massive. Les défis de l'encadrement législatif*, Éditions Yvon Blais, Cowansville, 2012, p. 3. Our translation.

¹⁷² Claude COSSETTE, *Éthique & publicité*, Les Presses de l'Université Laval, Quebec, 2008, p. 25. Our translation.

¹⁷³ *Ibid.* Our translation.

¹⁷⁴ *Richard v. Time Inc.*, [2012] 1 SCR 265, 2012 SCC 8 (CanLII), par. 118.

¹⁷⁵ B. W. WOJDYNSKI, “Native Advertising: Engagement, Deception, and Implications for Theory,” *op. cit.* note 7.

¹⁷⁶ “[T]hose who use native advertising techniques argue that native advertising is simply a way to create advertising content that is more enjoyable and interesting for readers. Michael S. Perlis, the president of Forbes Media, has summarized the movement by stating, “[Native advertising] is, in fact, content... It's not advertising.” [References omitted]: Anthony B. POKIVAR, “Ever-Blurred Lines: Why Native Advertising Should Not Be Subject to Federal Regulation” in *The North Carolina Law Review*, vol. 93, No. 1187, 2015, p. 1194.

¹⁷⁷ See notably: B. W. WOJDYNSKI, “Native Advertising: Engagement, Deception, and Implications for Theory,” *op. cit.* note 7 ; E. E. SCHAUSTER et al., “Native Advertising Is the New Journalism,” *op. cit.* note 17, p. 1413-1414 and 1419; B. W. WOJDYNSKI, “The Deceptiveness of Sponsored News Articles,” *op. cit.* note 71, pp. 1475-1491; B. W. WOJDYNSKI and G. J. GOLAN, “Native Advertising and the Future of Mass Communication,” *op. cit.* note 22, pp. 1403-1404 ; ETHICS ADVISORY COMMITTEE OF THE CAJ, *Sponsored Content*, *op. cit.* note 31, p. 5; Brandon R. EINSTEIN, “Reading between the lines: the rise of native advertising and the FTC's inability to regulate it” in *Brooklyn Journal of Corporate, Financial & Commercial Law*, vol. 10, No. 1, 2015, p. 225.

¹⁷⁸ See notably: J. LAZAUSKAS, *Study: Sponsored Content Has a Trust Problem*, *op. cit.* note 165 ; B. W. WOJDYNSKI, “The Deceptiveness of Sponsored News Articles,” *op. cit.* note 71, p. 1481.

2.2.4 Access to Independent and Quality Information

The consumer, who is above all a citizen, looks for independent and quality information, since it enables him to express himself and act in an informed way. According to journalistic principles, news information refers notably to “the part of communication that tells us about the state of events, situations and people in the world around us¹⁷⁹.”

Democracy is indivisible from the quantity and quality of information available to citizens¹⁸⁰. In fact, “the very ability to formulate critiques that are constructive and useful to the democratic debate is inextricably linked to the ability to access sufficient information for making an informed judgment on the issues in our lives¹⁸¹.” Native advertising, disguised as information and attempting to sell rather than inform, risks leading independent journalism to “dissolve in commercial communication” and thus endangers freedom of the press¹⁸².

The democratization of information, proliferating sources of information, and the quality and quantity of original information may also bring their share of problems¹⁸³. The news is largely produced by the traditional news media (written press/newspapers, radio, television), but it is passed on, without the source necessarily being cited, by Web “parasites¹⁸⁴,” which can give news consumers the impression that the traditional news media are no longer useful¹⁸⁵.

While native advertising lowers trust in the media and raises doubts about the independence of information, this situation could worsen still. Native advertising could well, ultimately, limit the quantity as well as the quality of information.

The independence of information contributes to its quality. And that independence depends on journalistic work; journalism must therefore be protected from all external influences and remain independent of the objects of its reporting¹⁸⁶.

¹⁷⁹ Bill KOVACH and Tom ROSENSTIEL, *Principes de journalisme. Ce que les journalistes doivent savoir, ce que le public doit exiger*, translated from English by Monique Berry, Paris, Gallimard, coll. Folio actuel, 2014 [2001], p. 20. Our translation.

¹⁸⁰ *Ibid.*

¹⁸¹ Louis-Philippe LAMPRON, *La démocratie, tributaire d'une information de qualité*, Les blogues de Contact – Droits de la personne et démocratie, February 28, 2018, online: <http://www.contact.ulaval.ca/article_blogue/democratie-tributaire-dune-information-de-qualite/> (page consulted on June 24, 2018). Our translation.

¹⁸² B. KOVACH *et al.*, *Principes de journalisme*, *op. cit.* note 179, p. 17.

¹⁸³ Antoine CHAR, *La quête de sens à l'ère du Web 2.0.*, *op. cit.* note 109, p. 88.

¹⁸⁴ *Ibid.*, pp. 88-89.

¹⁸⁵ P. SORMANY, *Le métier de journaliste*, *op. cit.* note 119, pp. 26-29.

¹⁸⁶ B. KOVACH *et al.*, *Principes de journalisme*, *op. cit.* note 179, p. 104.

3. Current Framework in Canada

Canada has no specific legislative framework for native advertising in written form. Of course, native advertising, like any other, remains subject to broader legal frameworks that protect consumers against misleading advertising and false representations, notably, because “provisions with respect to advertising that are found in the Consumer Protection Act [...] and the Competition Act apply to online advertising¹⁸⁷.”

The news and advertising industries also have self-regulatory ethical standards. The following pages present a non-exhaustive portrait of the main standards recognized by a majority of the two industries’ players.

3.1 Legal Framework

3.1.1 Areas of Expertise

Canada’s federal and provincial governments have, regarding consumer protection, concurrent constitutional jurisdictions, and “important – and often complementary – roles¹⁸⁸.” The federal government acts mainly to protect the Canadian economy¹⁸⁹ (the *Competition Act*, for example), whereas the provinces, which have exclusive jurisdiction over property and civil rights, local commercial law, contractual matters¹⁹⁰, intervene more explicitly in issues directly related to consumer protection¹⁹¹.

As for jurisdiction on the media themselves, the Supreme Court of Canada confirms that “Publishers of newspapers are amenable to civil and criminal laws which bear equally upon all businessmen and employers, generally, in the community”; it also specifies that despite freedom of the press protections, “False and misleading advertising may properly be proscribed¹⁹².”

Although the federal government has jurisdiction over broadcasting and telecommunications¹⁹³, the provinces can, within their jurisdiction over contractual relations, intervene regarding advertising, whatever its platform¹⁹⁴.

¹⁸⁷ A. OULAÏ, “La place du consommateur dans l’encadrement de la cyberpublicité,” *op. cit.* note 103, p. 129.

¹⁸⁸ *Richard v. Time Inc.*, *op. cit.* note 174, par. 38.

¹⁸⁹ In accordance with its jurisdiction on commerce: *Constitution Act of 1867*, 30 & 31 Victoria, v. 3 (R.U.), sec. 91(2); *General Motors of Canada Ltd. v. City National Leasing*, [1989] 1 SCR 641, 1989 CanLII 133 (SCC).

¹⁹⁰ *Constitution Act of 1867*, *op. cit.* note 289, art. 92(13).

¹⁹¹ *Banque de Montréal v. Marcotte*, [2014] 2 SCR 725, 2014 SCC 55 (CanLII), par. 74.

¹⁹² *Gay Alliance Toward Equality v. Vancouver Sun*, [1979] 2 SCR 435, 1979 CanLII 225 (SCC), p. 487.

¹⁹³ *Regulation & Control of Radio Communication in Canada, Re*, 1932 CanLII 354 (UK JCPC); *Capital Cities Comm. v. CRTC*, [1978] 2 SCR 141, 1977 CanLII 12 (SCC); P. TRUDEL *et al.*, *Droit du cyberespace*, *op. cit.* note 101, p. 3-27 : “The main branches of public law that are affected by the emergence of the electronic environments are those that cover criminal law, telecommunications, broadcasting, competition, as well as intellectual property (which is also partly governed by private law). All those subjects are, in Canada, under the exclusive jurisdiction of the federal Parliament.” [references omitted]. Our translation.

¹⁹⁴ *Attorney General (Quebec) v. Kellogg’s Co. of Canada and other*, [1978] 2 SCR 211, 1978 CanLII 185 (SCC), p. 225; Sonia RASQUINHA *et al.*, “Pratiques commerciales trompeuses en ligne : intermédiaires, quels risques juridiques courez-vous ?” in *Le Droit de savoir*, Lavery, August 2017, online: <<https://edoctrine.caij.qc.ca/publications-cabinets/lavery/2017/a80959/fr/PC-a101057>> (page consulted on May 29, 2018).

3.1.2 Federal Legislation

3.1.2.1 Canadian Charter of Rights and Freedoms

First, it should be noted that the *Canadian Charter of Rights and Freedoms* (hereinafter the “*Canadian Charter*”) does not cover, in principle, private relations, “unless a government action is involved¹⁹⁵.”

Among the fundamental rights guaranteed by the *Canadian Charter*, we find “freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication¹⁹⁶.”

A constitutional law’s recognition of the link between freedom of thought, belief, opinion and expression, and freedom of the press, is certainly not misplaced: “The freedom of expression guaranteed by such charters includes freedom of the press, which is equivalent to recognizing that freedom of expression includes the public’s right to information that the news media have the mission to provide¹⁹⁷.” And as the *Royal Commission on Newspapers* stated in 1981: “Freedom of the press is not a property right of owners. It is a right of the people. It is part of their right to free expression, inseparable from their right to inform themselves¹⁹⁸.” The Supreme Court of Canada (hereinafter the “SCC”) has reiterated numerous times the news media’s essential role in satisfying the public’s right to information¹⁹⁹.

Indeed, the public’s right to independent information was an essential constitutional guarantee long before the *Canadian Charter*. Section 1 of the *Canadian Bill of Rights*²⁰⁰ recognizes “that there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms,” which includes freedom of the press (sec. 1f).

Already in 1957, Justice Rand stated the following about the importance of freedom of expression:

This constitutional fact is the political expression of the primary condition of social life, thought and its communication by language. Liberty in this is little less vital to man’s mind and spirit than breathing is to his physical existence²⁰¹.

¹⁹⁵ Christian BRUNELLE and Mélanie SAMSON, “Les domaines d’application des Chartes des droits” in École du Barreau du Québec, *Droit public et administratif*, Collection de droit 2017-2018, vol. 8, Cowansville, Yvon Blais, 2017, online: <<https://edoctrine.caij.qc.ca/collection-de-droit/2017/8/803122425>>, p. 37. Our translation.

¹⁹⁶ Sec. 2 b), *Constitutional Act of 1982* (UK), constituting Schedule B of the Canada Act 1982 (UK), 1982, c 11.

¹⁹⁷ Henri BRUN, “Le droit du public à l’information politique : un droit constitutionnel aux ancrages multiples” in *Développements récents en droit de l’accès à l’information 2005*, Barreau du Québec – Service de la formation continue, Yvon Blais, Cowansville, 2005, online: <<https://edoctrine.caij.qc.ca/developpements-recents/233/367112995>>, p. 97. Our translation.

¹⁹⁸ DEPARTMENT OF SUPPLY AND SERVICES CANADA, *Royal Commission on Newspapers*, Kent Report, Ottawa, 1981, online: <http://publications.gc.ca/collections/collection_2014/bcp-pco/Z1-1980-1-1-eng.pdf>, p. 1.

¹⁹⁹ See notably: *Société Radio-Canada v. New Brunswick (Attorney General)*, [1991] 3 SCR 459, 1991 CanLII 50 (SCC), *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 SCR 1326, 1989 CanLII 20 (SCC); *Société Radio-Canada v. Lessard*, [1991] 3 SCR 421, 1991 CanLII 49 (SCC).

²⁰⁰ S.C. 1960, v. 44.

²⁰¹ *Switzman v. Elbling and A.G. of Quebec*, [1957] SCR 285, 1957 CanLII 2 (SCC), pp. 306-307.

3.1.2.2 Competition Act

The purpose of the *Competition Act*²⁰² (hereinafter the “CA”), adopted by federal lawmakers, is to “maintain and encourage competition in Canada,” particularly in order “to provide consumers with competitive prices and product choices²⁰³.” The CA’s main objective is thus to protect the Canadian economy²⁰⁴, notably by maintaining consumer trust, including toward the “digital economy²⁰⁵.”

The CA contains, in that regard, provisions against false or misleading representations applicable to the advertising sector. According to the *Competition Bureau*, native advertising is a new issue where “the overarching principles of misleading advertising – that consumers should not be misled – apply directly. Firms should adequately disclose who is making the representation or on whose behalf the representation is made²⁰⁶.”

In a working document, the *Competition Bureau* raised compliance issues directly related to native advertising:

The term “native advertising” has come to refer to the practice of disguising an advertisement by making it similar to the news, articles, product reviews, or entertainment that consumers are viewing online. Disguising an advertisement in this way or propagating fake reviews creates an impression of impartiality that is deceptive and harmful to consumers. [...]

The potential for misrepresentation arises because consumers are likely to attach more weight to a representation if they believe it comes from a friend, an experienced consumer, or an independent researcher. Additionally, firms may format a customized advertisement to match the style or layout of the website. Such formatting can prevent consumers from recognizing the provenance of the message and mislead consumers into believing that the message originates from a trusted source²⁰⁷. [References omitted]

The *Commissioner of Competition*, if he intends to intervene against a company, may opt for measures under civil or criminal law, which are mutually exclusive²⁰⁸. However, the consumer’s right of action is limited to obtaining reparation for damages caused by an infraction.

To date, the courts have levied no penalty regarding native advertising²⁰⁹.

a) A civil matter according to section 74.01(1)a) of the Competition Act

A key provision of the CA pertains to misleading representations:

²⁰² RSC 1985, v. C -34.

²⁰³ Section 1.1, CA.

²⁰⁴ *Canada (Directeur des enquêtes et recherches) v. Southam Inc.*, [1997] 1 SCR 748, 1997 CanLII 385 (SCC), par. 48.

²⁰⁵ COMPETITION BUREAU, *The Deceptive Marketing Practices Digest*, Bulletin, vol. 3, Ottawa, May 2, 2017, online: < [http://www.bureaudelaconcurrence.gc.ca/eic/site/cb-bc.nsf/vwapi/DMPD-Volume3-Eng.pdf/\\$file/DMPD-Volume3-Eng.pdf](http://www.bureaudelaconcurrence.gc.ca/eic/site/cb-bc.nsf/vwapi/DMPD-Volume3-Eng.pdf/$file/DMPD-Volume3-Eng.pdf) > (document consulted on May 27, 2018), p. 16.

²⁰⁶ COMPETITION BUREAU, *Big Data and Innovation: Implications for Competition Policy in Canada*, Draft Discussion Paper, Ottawa, September 18, 2017, online: < [http://www.bureaudelaconcurrence.gc.ca/eic/site/cb-bc.nsf/vwapi/Big-Data-e.pdf/\\$file/Big-Data-e.pdf](http://www.bureaudelaconcurrence.gc.ca/eic/site/cb-bc.nsf/vwapi/Big-Data-e.pdf/$file/Big-Data-e.pdf) > (document consulted on May 27, 2018), p. 41.

²⁰⁷ *Ibid.* p. 40.

²⁰⁸ Omar WAKIL, *The 2018 Annotated Competition Act*, Thomson Reuters, Toronto, 2017, p. 179.

²⁰⁹ See to that effect: COMPETITION BUREAU, *Penalties imposed by the courts*, revised on February 14, 2018, online: < <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01863.html> > (page consulted on May 31, 2018).

74.01 (1) *A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,*

a) makes a representation to the public that is false or misleading in a material respect;

Placed in the CA section titled “Reviewable conduct,” that provision allows the Competition Bureau to bring civil proceedings. The general impression will be taken into account to determine whether the conduct is reviewable²¹⁰.

According to that section, the person at fault is anyone who makes a representation *to the public* that is false or misleading; the scope is very broad, and thus cannot be limited to actions done as part of a contractual relationship. There is an infraction when a misleading representation is made *by any means whatever*. Section 52 (1.2) also clarifies section 74.01 by specifying, notably, that “the making or sending of a representation includes permitting a representation to be made or sent²¹¹.” A person who “*makes a representation to the public*” can thus plausibly include the advertiser as well as the media organization controlling the publication and layout of advertising content put online on its digital platforms, in addition to being involved, at times, in actually writing the advertising content. Moreover, the advertiser offers the public its advertisement by purchasing advertising space on the media organization’s platform; the advertiser thus plays a role in presenting the advertisement to the public. “The level of responsibility attributed to a party will depend, to a large extent, on the level of control the latter exercises over the content and on whether it has played a role in the decision to present the advertisement or not²¹².”

Accordingly, an infraction occurs if a *false or misleading representation* is given, and if that representation pertains to a *material fact*²¹³, i.e.: “could influence a consumer to buy or use the product or service advertised²¹⁴.” The term “representation” is given a broad interpretation: “An advertisement may be misleading by what is said or illustrated or by what is omitted²¹⁵.”

*Tout genre d'indication est susceptible de constituer une infraction, quels qu'en soient la forme ou le support, qu'elle soit donnée par écrit ou verbalement par le vendeur. Un signe, un dessin ou une illustration, même si aucun mot n'est utilisé, peuvent constituer une infraction. Il peut même s'agir d'une omission de mentionner un aspect important. [...] Ce peut être une combinaison de mots ou d'éléments visuels [...]*²¹⁶.

[References omitted; our underlined]

In the case of native advertising, one could argue that omitting the advertising nature would thus constitute a misleading representation on a material point, i.e. the quality and independence of

²¹⁰ Section 74.03(5), CA.

²¹¹ Section 52 (1.2), CA.

²¹² S. RASQUINHA *et al.*, “Pratiques commerciales trompeuses en ligne,” *op. cit.* note 194. Our translation.

²¹³ The federal Court of Appeal recognized that the provision doesn’t require proof of “prejudice to competition”: *Commissioner of Competition v. Premier Career Management Group Corp.*, [2010] 4 FCR 41, 2009 FCA 295 (CanLII), par. 61

²¹⁴ COMPETITION BUREAU, *False or Misleading Representations and Deceptive Marketing Practices*, revised on November 5, 2015, online: <<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03133.html>>.

²¹⁵ N. L'HEUREUX and M. LACOURSIÈRE, *Droit de la consommation*, *op. cit.* note 170, p. 503.

²¹⁶ *Ibid.*, pp. 490-491.

information transmitted. The disclosure made, on the page presenting the advertising content, about the advertising nature of that content – by a mention, notice, layout, the content itself, etc. – could also prove misleading if the advertising nature's disclosure is deficient. If such advertising is confused with independent and objective information, a consumer could consider the advertisement more credible than if he had known the biased aspect of the content offered, and he could be induced to go in the direction traced by the advertiser.

Section 74.01 of the CA apparently refers only to advertising content, and not to the way of leading readers to it; not disclosing the commercial nature at the hyperlink step doesn't lead a consumer to buy, but only to read the advertisement.

It should still be pointed out that the CA section is not limited to promoting *the supply or use of a product*, but also pertains to *any business interest*, which may be the case for native advertising, which the reader is encouraged to recognize as such.

And yet, according to the CA, disclosure at the hyperlink stage is not an *indication that pertains to a material fact*.

If he concludes that an infraction of that civil provision has been committed, “the Commissioner may apply to the Competition Tribunal, the Federal Court, or the superior court of a province (the ‘courts’) for an order requiring the person to cease the activity, publish a corrective notice and/or pay an administrative monetary penalty²¹⁷.”

Thus, the application of that CA section to native advertising, on the basis of misleading representations related to non-disclosure of a material fact, seems to us possible *in theory*, since each case is obviously unique in depending on the facts in question.

b) A criminal matter according to section 52(1) of the Competition Act

Section 52(1) CA states the following:

52 (1) No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, knowingly or recklessly make a representation to the public that is false or misleading in a material respect.

Apart from serving as a basis for criminal accusations, that provision is very similar to the preceding one, and refers to its main aspects. The Act further specifies that proof of a person actually having been deceived or misled is not necessary to establish the commission of an infraction²¹⁸, and that the general impression given by the representations reproached will form the basis for determining whether they are misleading²¹⁹.

The *Competition Bureau* is responsible “for addressing deceptive marketing practices. However, it also has responsibility for addressing different kinds of criminal misleading advertising that are similar to fraud. These kinds of mass marketing frauds pose their own unique challenges when

²¹⁷ COMPETITION BUREAU, *Enforcement Guidelines – Application of the Competition Act to Representations on the Internet*, October 16, 2009, online: <http://publications.gc.ca/collections/collection_2010/ic/lu54-1-2009-eng.pdf> (document consulted on May 29, 2018), p. 11.

²¹⁸ Section 52(1.1), CA.

²¹⁹ Section 52(4), CA.

it comes to detecting them, investigating them and protecting consumers and the marketplace from their harmful effects²²⁰.” In matters of misleading representations, the *Commissioner of Competition* usually opts for civil law, unless the infraction’s gravity and the harm to the public interest are deemed sufficiently serious – and that proof beyond a reasonable doubt can be established – to justify a criminal remedy²²¹.

As discussed in the preceding chapters, poorly disclosing the advertising nature of native advertising in the news media might plausibly be considered to harm the “public interest.”

c) Consumer recourses according to section 36 of the Competition Act

While the *Commissioner of Competition* may bring proceedings on the basis of CA sections 74.01(1)a) and 52(1), a consumer may also bring civil proceedings, according to section 36 of the Act, if he has suffered harm following an infraction of CA section 52²²² (in Part VI, Offences in Relation to Competition):

36 (1) *Any person who has suffered loss or damage as a result of*

a) conduct that is contrary to any provision of Part VI,

[...]

may, in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct or failed to comply with the order an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not exceeding the full cost to him of any investigation in connection with the matter and of proceedings under this section.

The damage suffered, for which there would be a claim, must be related to the infraction committed. Case law specifies that “*this can only be done by pleading that the misrepresentation caused him to do something – i.e., that he relied on it to his detriment*”²²³.

However, the Act provides a “plain truth presumption” if a conviction by indictment has been declared according to section 52(1). Thus, “private actions are often brought only after the announcement of a guilty plea or verdict”²²⁴.

3.1.3 Provincial Legislation: Quebec and Ontario

Provincial consumer protection laws contain sections of general application regarding false or misleading representations. An advertiser found guilty of misleading advertising could thus face

²²⁰ COMPETITION BUREAU, *The Deceptive Marketing Practices Digest*, Bulletin, vol. 2, March 7, 2016, online: <[http://www.bureaudelaconurrence.gc.ca/eic/site/cb-bc.nsf/vwapj/cb-digest-deceptive-marketing-vol-2-e.pdf/\\$file/cb-digest-deceptive-marketing-vol-2-e.pdf](http://www.bureaudelaconurrence.gc.ca/eic/site/cb-bc.nsf/vwapj/cb-digest-deceptive-marketing-vol-2-e.pdf/$file/cb-digest-deceptive-marketing-vol-2-e.pdf)> (document consulted on May 27, 2018), p. 16.

²²¹ O. WAKIL, *The 2018 Annotated Competition Act*, op. cit. note 208, p. 179.

²²² Such proceedings could also be brought by way of a class action. See: Brenda PRITCHARD and Susan VOGT, *Advertising and Marketing Law in Canada*, 5th ed., LexisNexis, Markham, 2015, pp. 7, 92-94.

²²³ *Wakelam v. Wyeth Consumer Healthcare/Wyeth Soins de Santé Inc.*, 2014 BCCA 36 (CanLII), par. 91, citing *Singer v. Schering-Plough Canada Inc.* 2010 ONSC 42 (CanLII).

²²⁴ Karounga DIAWARA et al., *Droit de la concurrence*, LexisNexis, Montreal, October 2015, p. 8/21. Our translation.

lawsuits based both on federal provisions and on the provisions of one or more provinces or territories²²⁵. The following pages focus on Quebec and Ontario laws.

Moreover, in Quebec, the *Charter of Rights and Freedoms* also contains relevant provisions regarding freedom of expression and possible remedies in case of violations.

3.1.3.1 Consumer Protection

Quebec's *Consumer Protection Act* prohibits certain business practices, such as false or misleading representations addressed to consumers, which includes representations made as part of an advertisement. In Ontario, the words used are "false," "deceptive" or "misleading" representations, qualified as unfair practices.

3.1.3.1.1 Quebec – Consumer Protection Act

Certain provisions of the *Consumer Protection Act*²²⁶ (hereinafter the "CPA") prohibit false or misleading advertisements and representations addressed to consumers. The three relevant sections (219, 228 and 242 of the CPA) lead us to analyse such advertisements under two angles: civil actions and criminal actions provided by the CPA.

a) Relevant provisions and definitions

In the part on business practices, the CPA contains provisions that pertain specifically to false or misleading representations. The general prohibitions that appear most relevant regarding native advertising are found in the following sections:

219. No merchant, manufacturer or advertiser may, by any means whatever, make false or misleading representations to a consumer.

228. No merchant, manufacturer or advertiser may fail to mention an important fact in any representation made to a consumer.

242. No merchant may fail to mention his identity, and the fact that he is a merchant, in any advertisement.

The CPA defines those practices as prohibited²²⁷. Whereas a "representation includes an affirmation a behaviour or an omission²²⁸," an advertisement is "a message designed to promote goods, services or an organization in Québec²²⁹." According to Professor Pierre Trudel, "In the context of information highways, this [latest] definition could cover any message accessible in Quebec or to Quebec users²³⁰." Given those definitions, a page displaying an advertisement on a news organization's digital platform, as well as the content itself, can plausibly constitute representations and advertisements under the CPA. Considering the broad interpretation made

²²⁵ B. PRITCHARD and S. VOGT, *Advertising and Marketing Law in Canada*, op. cit. note 222, p. 9.

²²⁶ *Consumer Protection Act*, RLRQ v. P -40.1.

²²⁷ Section 215, CPA.

²²⁸ Section 216, CPA.

²²⁹ Section 1 m), CPA.

²³⁰ P. TRUDEL et al., *Droit du cyberspace*, op. cit. note 101, p. 18-30. Our translation.

of the terms *representation* and *advertisement*²³¹, it also appears that hyperlinks leading to the advertising content could constitute a representation, or even an advertisement, under the CPA. This is notably the case when a hyperlink is not limited to a clickable link, but rather takes the form of a text box, or when a logo is affixed near the hyperlink.

Evidently, an advertisement doesn't necessarily have to contain "literally false" statements to contravene section 219; misleading representations suffice²³².

As mentioned above, the advertising nature of content presented as journalistic content constitutes an important aspect that should be disclosed systematically. The page displaying advertising content and the hyperlink leading to that page thus omit what seems a very material fact if they don't disclose the content's advertising nature.

Moreover, the prohibitions stated in CPA sections 219 and 228 apply to merchants as well as advertisers: "'advertiser' means a person who prepares, publishes or broadcasts an advertisement or who causes an advertisement to be prepared, published or broadcast"²³³. Both the news organization and the advertiser could therefore be included in that definition.

As for section 242, because the CPA refers only to a merchant who fails to mention *his identity, and the fact that he is a merchant*, it appears that in the context of native advertising, only the advertiser could be sued. Thus, the civil remedy based on CPA section 242 seems to us impossible in the case of native advertising, since there will likely be no contract with the advertiser (the merchant). That being said, criminal proceedings remain possible.

However, omitting the merchant's identify and status could be equivalent to omitting a material fact according to section 228, which, it should be recalled, pertains to the advertiser, against which civil proceedings could thus be brought on that basis.

b) Civil proceedings according to CPA section 272

Section 272 provides civil proceedings that can be brought against a merchant with whom a consumer has contracted:

272. If the merchant or the manufacturer fails to fulfil an obligation imposed on him by this Act, by the regulations or by a voluntary undertaking made under section 314 or whose application has been extended by an order under section 315.1, the consumer may demand, as the case may be, subject to the other recourses provided by this Act,

- a) the specific performance of the obligation;*
- b) the authorization to execute it at the merchant's or manufacturer's expense;*
- c) that his obligations be reduced;*
- d) that the contract be rescinded;*
- e) that the contract be set aside; or*
- f) that the contract be annulled,*

without prejudice to his claim in damages, in all cases. He may also claim punitive damages.

²³¹ *Ibid.*, pp. 18-31 – 18-32.

²³² *Richard v. Time Inc.*, *op. cit.* note 174, par. 87.

²³³ Section 1 m), CPA.

To win that civil action, the consumer must establish:

- the existence of a consumer contract²³⁴ of which the object is a good or service and that has been concluded between himself, as a *consumer*²³⁵, and the *merchant acting in the course of his business*²³⁶;
- an infraction of the CPA, notably of sections 219 and 228;
- without having to prove the harm sustained because he has a presumption to that effect, he may demand contractual remedies²³⁷, but he must justify and quantify the moral, material or punitive damages claimed.

Existence of a contract with the merchant

To have a legal interest for acting under section 272, a consumer must be bound contractually with the merchant. It should be kept in mind that:

A consumer contract is not necessarily formed at the precise time when the consumer purchases or obtains goods or services. In Quebec civil law, a contract is formed when the acceptance of an offer to contract is received by the offeror (art. 1387 C.C.Q.)²³⁸.

The *Civil Code of Québec* defines a consumer contract as follows:

1384. *A consumer contract is a contract whose field of application is delimited by legislation respecting consumer protection whereby one of the parties, being a natural person, the consumer, acquires, leases, borrows or obtains in any other manner, for personal, family or domestic purposes, property or services from the other party, who offers such property or services as part of an enterprise which he carries on.*

Some authors suggest a tacit contract exists between the reader and the news organization²³⁹, due to the reader's tacit agreement to the news organization's offer of journalistic information – even when the consumer accesses the organization's content free of charge.

However, a 2011 Superior Court decision concluded that a contract concluded free of charge could not be a consumer contract; the latter must be in return for payment and consideration²⁴⁰. A more recent decision of the Court rejected that precedent; after analysis, and based on the Supreme Court decision in the *Douez v. Facebook Inc.* case²⁴¹, the Court concluded that a contract, even when no payment or consideration is involved, can be a consumer contract²⁴².

²³⁴ *Richard v. Time Inc.*, *op. cit.* note 174, par. 105, 107.

²³⁵ The consumer is responsible for proving his status as a consumer: *Multiple Business Systems M.B.S. Ltd. v. Randhawa*, 1997 CanLII 10014 (QC CA). The consumer is "any physical person who is a party to a contract in a capacity other than that of merchant" under CPA section 1e).

²³⁶ Section 2, CPA.

²³⁷ *Richard v. Time Inc.*, *op. cit.* note 174, par. 123.

²³⁸ *Ibid.*, par. 108.

²³⁹ C. MOUMOUNI, "Le discours normatif des journalistes et les pratiques de publi-reportage dans les journaux québécois", *op. cit.* note 136, p. 131.

²⁴⁰ *St-Arnaud v. Facebook inc.*, 2011 QCCS 1506 (CanLII), par. 53, 54.

²⁴¹ [2017] 1 SCR 751, 2017 SCC 33 (CanLII).

²⁴² *Demers v. Yahoo! Inc.*, 2017 QCCS 4154 (CanLII), par. 25 to 37.

Accordingly, a consumer contract can be reached between a news organization and a reader, once the consumer accepts the offer, and when the object of the contract is information produced from journalistic work (a service offered in the course of the press company's activities). But it should be noted that one of the contract's implicit terms is that the consumer agrees to receive advertising.

Defaulting on an obligation and general impression

To examine whether violations of CPA section 219 or 228 have occurred, an assessment must be made of the merchant's representation according to the general impression it makes. Indeed: "To determine whether or not a representation constitutes a prohibited practice, the general impression it gives, and, as the case may be, the literal meaning of the terms used therein must be taken into account²⁴³." In a key ruling rendered in 2012 in the *Richard v. Time Inc.* case²⁴⁴, the Supreme Court of Canada established the applicable criteria for evaluating whether an advertisement constitutes a false or misleading representation, by focusing notably on the concept of "general impression." According to the SCC, the viewpoint of a credulous and inexperienced consumer must be adopted in our analysis, rather than the viewpoint of a hypothetical, average, prudent and diligent consumer, who would be able to detect the merchant's traps²⁴⁵. So it's the credulous, inexperienced and hurried consumer who must constitute the standard of an average consumer, because he is the real target of the general impression given by the advertiser's message:

[67] The general impression test provided for in s. 218 C.P.A. must be applied from a perspective similar to that of "ordinary hurried purchasers", that is, consumers who take no more than ordinary care to observe that which is staring them in the face upon their first contact with an advertisement. The courts must not conduct their analysis from the perspective of a careful and diligent consumer.

[72] The words "credulous and inexperienced" therefore describe the average consumer for the purposes of the C.P.A. This description of the average consumer is consistent with the legislature's intention to protect vulnerable persons from the dangers of certain advertising techniques. The word "credulous" reflects the fact that the average consumer is prepared to trust merchants on the basis of the general impression conveyed to him or her by their advertisements. However, it does not suggest that the average consumer is incapable of understanding the literal meaning of the words used in an advertisement if the general layout of the advertisement does not render those words unintelligible²⁴⁶.

Thus, according to the SCC, a determination of whether a representation constitutes a prohibited practice will be made by observing the general impression that representation is likely

²⁴³ Section 218, CPA.

²⁴⁴ *Op. cit.* note 174.

²⁴⁵ *Ibid.*, par. 71.

²⁴⁶ *Richard v. Time Inc. op. cit.* note 174, par. 67, 72.

to give a credulous and inexperienced consumer, and then by determining if that impression is true to reality²⁴⁷.

By nature, native advertising seeks to deceive; this is precisely why the media too often fail to mention the content's advertising nature, which, as we have seen, is an essential element that must be made known to the reader, and is therefore a material fact. It's not by chance, but by design, that the media and advertisers give readers the general impression of being faced with journalistic content. And when disclosures are made, they often remain vague precisely not to spoil that general impression, misleading by design.

Damages

First, section 272 establishes "an absolute presumption of prejudice to the consumer" and he therefore doesn't have to prove the prejudice suffered in order to claim the contractual remedies provided for by that section²⁴⁸.

The same provision also establishes the possibility of obtaining, on one hand, compensation for material or moral damages suffered, and, on the other hand, an order to pay punitive damages. If he contracts with the merchant following a false or misleading representation, several claim possibilities are thus open to the consumer:

Les dommages-intérêts punitifs ont un caractère autonome et les consommateurs lésés en raison d'une pratique interdite ont le choix de demander à la fois des réparations contractuelles, des dommages-intérêts compensatoires et des dommages intérêts punitifs ou, au contraire, de ne réclamer que l'une de ces mesures²⁴⁹.

The possibility of a contractual remedy appears at first purely theoretical in the context of a no-payment contract of a nature relevant to this study. It would be difficult in fact to see a consumer's possible interest in having his obligation reduced or in having such a contract cancelled. But claims for damages could be applicable in the case of a paid subscription to a media organization.

Regarding material or moral damages a consumer could claim on the basis of misleading representations regarding to the advertising nature of native advertising, it seems difficult to see what could be claimed and how such damages could be quantified.

However, punitive damages could be a possible remedy even if the consumer is not able to demonstrate that he has suffered moral or material prejudice.

c) Criminal proceedings according to CPA section 277

A consumer's civil proceedings are possible only if he has contracted with the merchant. For its part, section 217, under which "The fact that a prohibited practice has been used is not

²⁴⁷ *Ibid.*, par. 78.

²⁴⁸ *Ibid.*, par. 112 and 121.

²⁴⁹ Luc THIBAudeau, *Guide pratique de la société de consommation*, Éditions Yvon Blais, Cowansville, 2013, p. 136.

subordinate to whether or not a contract has been made,” allows criminal proceedings to be brought against any merchant or advertiser who engages in a prohibited practice, whether or not consumers have fallen into the trap:

277. Every person who:

a) contravenes this Act or any regulation;

[...]

is guilty of an offence.

An advertiser or merchant who contravenes CPA sections 219, 228 or 242 de la LPC is guilty of a criminal offence.

Whereas the *Competition Bureau* will likely bring proceedings only if misleading representations affect competition or provoke market distortions, the finding that a prohibited practice has harmed consumers’ collective interests would also likely justify that such proceedings be brought under the CPA. To date, no proceedings of this type have been brought against native advertising.

d) Conclusion

Eventually, an argument that several aspects of native advertising – the hyperlink leading to an advertisement, or the page displaying the advertisement, or disclosures of the commercial nature of certain content – constitute or involve a misleading representation could be made if disclosure of the advertising nature is inadequate.

Indeed, the visual aspect alone of an advertisement that takes the form of an article written by a journalist could constitute a misleading representation, if no effective disclosure of the content’s advertising nature tempers the general impression given. The hyperlink leading to an advertisement, when adopting the same look as hyperlinks leading to journalistic content, could constitute a misleading representation if it attracts the consumer to an advertisement by apparently announcing journalistic content. In addition, an argument could be made that a lack of transparency regarding the advertising nature of native advertising is an omission to disclose a “material fact.”

That being said, a consumer who wants to bring civil proceedings would likely hit many legal obstacles, whether in terms of interpreting or applying the provisions. Moreover, it’s difficult to imagine circumstances that would allow a consumer to establish sufficient damages for motivating or justifying proceedings. We recall that the most serious damages we have identified are those caused to the public interest and fundamental freedoms.

In the current state of the law, criminal proceedings seem the most appropriate weapon against native advertising that doesn’t adequately disclose its advertising nature. Since those are criminal proceedings, the much heavier burden of proof and the lack of public funding could make those proceedings futile, all the more so because they would not directly seek to protect consumers, but citizens generally.

3.1.3.1.2 Ontario – Consumer Protection Act, 2002

Ontario provides measures against a merchant engaging in *unfair practices* against a consumer, particularly through false or misleading representations.

a) Relevant provisions and definitions

Like the CPA and the *Competition Act*, the *Consumer Protection Act, 2002*²⁵⁰ (hereinafter the “2002 Act”) contains provisions that prohibit merchants’ attempts to mislead consumers. Under section 14(1) of the 2002 Act, “It is an unfair practice for a person to make a false, misleading or deceptive representation.” The following are notably considered to be misleading representations:

14(2) [...]

14. A representation using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if such use or failure deceives or tends to deceive.

15. A representation that misrepresents the purpose or intent of any solicitation of or any communication with a consumer.

[Our underlined]

The term “representation” is defined as follows in section 1:

representation, claim, statement, offer, request or proposal that is or purports to be:

a) *made respecting or with a view to the supplying of goods or services to consumers, or;*

b) *made for the purpose of receiving payment for goods or services supplied or purporting to be supplied to consumers.*

At first sight that definition appears to restrict the scope of what would constitute a misleading representation. The latter could still, apparently, be broad enough to include a statement made to conceal the advertising nature of a native advertisement, because the representation is made *for goods or services supplied*, i.e. for the purposes of commercial content, which is falsely presented as journalistic content.

b) Remedies

Section 109 of the 2002 Act confers powers of action to the “the person designated as the Director under the *Ministry of Consumer and Business Services Act*”²⁵¹:

109 (1) *If the Director believes on reasonable grounds that any person is making a false, misleading or deceptive representation in respect of any*

²⁵⁰ *Consumer Protection Act, 2002*, S.O. 2002 c. 30, Schedule A.

²⁵¹ Section, 2002 Act.

consumer transaction in an advertisement, circular, pamphlet or material published by any means, the Director may,

a) order the person to cease making the representation; and

b) order the person to retract the representation or publish a correction of equal prominence to the original publication.

Moreover, under section 116(1)b)(ii) of the 2002 Act, “A person is guilty of an offence if the person” contravenes section 17(1), which states that “No person may engage in an unfair practice.” The Act presumes an unfair practice when a person “performs” an action prohibited notably in sections 14 and 15²⁵².”

A consumer victimized by an unfair practice may cancel any agreement (written, verbal or tacit) reached during or after the use of such a practice “and the consumer is entitled to any remedy that is available in law, including damages²⁵³.” However, Part IX of the 2002 Act, “Procedures for Consumer Remedies,” does not apply to remedies claimed for unfair practices²⁵⁴.

c) Conclusion

The 2002 Act’s provisions are of general application and are less specific than the CPA’s. But remedies under the 2002 Act, in terms of applicability to native advertising, would encounter the same obstacles as those we identified in our analysis of the CPA.

3.1.3.2 Charter of Rights and Freedoms

Native advertising issues cannot be analysed only under the angle of Canadian commerce protection or consumer protection. As pointed out above, the confusion between information and advertising can have consequences on citizen’s freedom of expression, by affecting their right to independent and quality information. In this sub-section, we will thus study the existing legal protection of *citizens* rather than *consumers*.

Every person benefits from civil liberties that, in Quebec, are protected by the *Charter of Human Rights and Freedoms*²⁵⁵ (hereinafter the “Quebec Charter”). More specifically: “Every person is the possessor of the fundamental freedoms, including freedom of conscience, freedom of religion, freedom of opinion, freedom of expression, freedom of peaceful assembly and freedom of association²⁵⁶.” In addition to guaranteeing freedom of expression, the *Quebec Charter* states in section 44 that “Every person has a right to information to the extent provided by law.” According to Law Professor Henri Brun, “the Quebec Charter of Rights is the only constitutional document expressly declaring a right to information²⁵⁷.”

As opposed to the *Canadian Charter*, the *Quebec Charter* covers private relations. In the event of unlawful interference, section 49 provides a right of recourse:

²⁵² Section 17(2), 2002 Act.

²⁵³ Section 18(1), 2002 Act.

²⁵⁴ Section 91, 2002 Act.

²⁵⁵ RLRQ v. C -12.

²⁵⁶ Section 3, *Quebec Charter*.

²⁵⁷ H. BRUN, “Le droit du public à l’information politique,” *op. cit.* note 197, pp. 92-93. Our translation.

49. Any unlawful interference with any right or freedom recognized by this Charter entitles the victim to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefrom.

In case of unlawful and intentional interference, the tribunal may, in addition, condemn the person guilty of it to punitive damages.

If proceedings are brought pursuant to the first paragraph of section 49, “the traditional elements of liability, namely fault, damage and causal connection, must be established²⁵⁸.”

Regarding unlawful or intentional interferences, the SCC specifies:

There is unlawful interference with a right protected by the Charter where the infringement of that right results from wrongful conduct. A person’s conduct will be characterized as wrongful if he or she violates a standard of conduct considered reasonable in the circumstances under the general law or, in the case of certain protected rights, a standard set out in the Charter itself²⁵⁹.

Native advertising that doesn’t adequately identify the advertising nature would likely violate the standard of reasonable conduct – if we take into account that advertising and information must not be confused – and would interfere with the public’s right to independent and quality information.

Recourse is a personal right, so its exercise requires a personal interest:

L’article 49 de la Charte ne modifie rien à la notion de l’intérêt direct et personnel requis pour pouvoir former l’un ou l’autre des recours prévus par cette disposition, soit l’action en réparation et l’injonction.

L’allégation d’un préjudice général, celui de la collectivité, constitue une carence fatale dans le cadre d’une demande d’injonction interlocutoire qui est une procédure extraordinaire et d’exception²⁶⁰.

As for the second paragraph of section 49, it can, according to the SCC, “constitute an autonomous scheme that creates remedies that are not subordinate to the conditions for civil liability²⁶¹.” So it will not be necessary to claim compensatory damages in order to avail oneself of that section and claim punitive damages²⁶² by proving “unlawful and intentional interference”:

Consequently, there will be unlawful and intentional interference within the meaning of the second paragraph of s. 49 of the Charter when the person who commits the unlawful interference has a state of mind that implies a desire or intent to cause the consequences of his or her wrongful conduct, or when that person acts with full knowledge of the immediate and natural or at least extremely probable consequences that his or her conduct will cause. This test is not as strict as specific intent, but it does go beyond simple negligence.

²⁵⁸ *Aubry v. Éditions Vice-Versa Inc.*, [1998] 1 SCR 591, 1998 CanLII 817 (SCC), par. 49.

²⁵⁹ *Québec (Public Curator) v. Syndicat national des employés de l’hôpital St-Ferdinand*, [1996] 3 SCR 211, 1996 CanLII 172 (SCC).

²⁶⁰ Henri BRUN *et al.*, *Chartes des droits de la personne*, 30rd ed., Alter Ego, Wilson & Lafleur, Montreal, 2017, online: <https://elois.caij.qc.ca/C-12/article49#_Toc2> (page consulted on June 4, 2018), par. 49/9 ; *Aubry v. Éditions Vice-Versa Inc.*, *op. cit.* note 258.

²⁶¹ *Hinse v. Canada (Attorney General)*, [2015] 2 SCR 621, 2015 SCC 35 (CanLII), par. 161.

²⁶² *de Montigny v. Brossard (Estate)*, [2010] 3 SCR 64, 2010 SCC 51 (CanLII), par. 22, 38-46.

*Thus, an individual's recklessness, however wild and foolhardy, as to the consequences of his or her wrongful acts will not in itself satisfy this test*²⁶³.

[Our underlined]

It was explained above that native advertising's aim of voluntary confusion between information and advertising could be considered to affect freedom of expression and citizens' right to independent and quality information, as guaranteed by the *Quebec Charter*.

In the context of native advertising, an advertiser and a news organization could therefore be targeted by an action for punitive damages if knowledge of their wrongful conduct's consequences could be proven, even without an allegation of moral or material prejudice.

Nevertheless, the requirement of proof of interest to act could pose an obstacle.

3.2 Self-regulatory Ethical Standards

After analysing legal standards of general application, we will now focus on voluntary news and advertising standards for native or similar advertising. We will also examine provisions regarding conflicts of interest and journalistic independence.

3.2.1 News Sector

For the news sector, we selected three press councils in Canada, i.e. the National NewsMedia Council of Canada, the *Quebec Press Council* and the *Alberta Press Council*, to verify what each proposes in terms of voluntary standards. Of those three self-regulatory organizations, only the Quebec Press Council has a clear provision for prohibiting disguised advertising in the news media.

Moreover, we verified the voluntary standards of two journalist associations, i.e. the *Fédération professionnelle des journalistes du Québec* and the *Canadian Association of Journalists*; both associations propose guidelines to their members regarding journalistic independence and conflicts of interest.

3.2.1.1 National NewsMedia Council of Canada, Quebec Press Council and Alberta Press Council

Since the merger, in 2015, of the press councils of the Atlantic provinces, Manitoba, Ontario and British Columbia, the *National NewsMedia Council of Canada* has become the "voluntary, self-regulatory ethics body for the English-language news media industry in Canada"²⁶⁴. Thus, "Membership of news organizations supporting the Council includes most daily and community newspapers, magazines and online news organizations across Canada, with the exception of Alberta and Quebec, each of which is served by a separate provincial press council"²⁶⁵. The

²⁶³ *Québec (Public Curator) v. Syndicat national des employés de l'hôpital St-Ferdinand*, op. cit. note 259, par. 121.

²⁶⁴ NATIONAL NEWSMEDIA COUNCIL OF CANADA, *About Us*, online: <<http://mediacouncil.ca/fr/qui-sommes-nous/>> (page consulted on May 25, 2015).

²⁶⁵ NATIONAL NEWSMEDIA COUNCIL OF CANADA, *Members*, online: <<http://mediacouncil.ca/about-us-ethics-journalism/>> (page consulted on May 25, 2015).

distinct provincial press councils of Quebec and Alberta are, respectively, the *Quebec Press Council* and the *Alberta Press Council*.

All those councils are private organizations with voluntary subscriptions. They receive complaints against the media or journalists, and act as “courts of honour” with respect to their members – without legal, regulatory, legislative or coercive power – on the basis of their moral authority²⁶⁶.

The *National NewsMedia Council of Canada* has no ethics code (or guide); its members are free to adhere to their own code “or some generally-accepted code of journalistic standards, practice and ethics²⁶⁷.” Nevertheless, a decision has been observed regarding native advertising in the form of sponsored articles. In that case, the plaintiff objected to a set of articles sponsored by a brand of medications that displayed an advertisement near an article on exercise and arthritis in which she discussed her experience. The plaintiff alleged that the advertisement’s proximity to her article could suggest that she praised the merits of the advertised medication. Rejecting her complaint, the Council explained that “*placement of articles near advertising is not a breach of ethics or of acceptable editorial practices*²⁶⁸.”

The *Alberta Press Council* also does not require its members to comply with its *Code of Practice*²⁶⁹, in which no provision deals with media advertising²⁷⁰. Still, the Council accepts complaints on the conduct of news media with regard to publication of advertisements²⁷¹. However, it doesn’t seem to put online any search tool to access its decisions’ database; we found only the 2016 decisions, thanks to a hyperlink placed in the *2016 Chair’s Report*²⁷²; no decision pertains to advertising or conflicts of interest²⁷³.

The *Quebec Press Council Guide of Journalistic Ethics* (hereinafter the “QPC Guide”), intended for regulating the practice of journalism in Quebec, applies to journalists as well as the news media²⁷⁴.

A *QPC Guide* article pertains explicitly to the influence of commercial interests:

²⁶⁶ QUEBEC PRESS COUNCIL, *Règlement 1 : Règlement général du Conseil de presse du Québec*, adopted on December 9, 2016, online: <<https://conseildepresse.qc.ca/wp-content/uploads/2018/01/R%C3%A8glement-1-2016.pdf>> (document consulted on May 26, 2018), sec. 1; ALBERTA PRESS COUNCIL, *About us*, online: <<https://albertapresscouncil.ca/about-us>> (page consulted on May 25, 2015); NATIONAL NEWSMEDIA COUNCIL OF CANADA, *About Us*, online: <<http://mediacouncil.ca/fr/qui-sommes-nous/>> (page consulted on May 25, 2015).

²⁶⁷ NATIONAL NEWSMEDIA COUNCIL OF CANADA, *Ethics*, online: <<http://mediacouncil.ca/about-us-ethics-journalism/standards/>> (page consulted on May 25, 2015).

²⁶⁸ *Anne Fouliard v. Globe and Mail*, NNC, 2016-02, online: <<http://mediacouncil.ca/decisions/anne-fouliard-vs-globe-mail/>> (page consulted on May 26, 2018).

²⁶⁹ “The Council does not monitor its print media members. It is presumed that the member newspapers are responsible bodies with their own codes of practice.” That being said, of the the Alberta Press Council’s objectives is “[t]o encourage the print media to follow the Code Of Practice issued by the Council”: ALBERTA PRESS COUNCIL, *About us*, *op cit.* note 266.

²⁷⁰ ALBERTA PRESS COUNCIL, *Code of Practice*, online: <<https://albertapresscouncil.ca/code-of-practice>> (page consulted on May 25, 2018).

²⁷¹ ALBERTA PRESS COUNCIL, *Objectives of the Alberta Press Council*, online: <<https://albertapresscouncil.ca/about-us>> (page consulted on May 25, 2018).

²⁷² ALBERTA PRESS COUNCIL, online: <<https://albertapresscouncil.ca/theme/abpress/media/documents/APC-Chairs-%20Annual-Report-2016.pdf>> (document consulted on May 25, 2018).

²⁷³ ALBERTA PRESS COUNCIL, *2016-2017 Decisions*, online: <https://albertapresscouncil.ca/theme/abpress/media/documents/croswell_REV_2017.pdf> (document consulted on May 25, 2018).

²⁷⁴ QUEBEC PRESS COUNCIL, *Quebec Press Council Guide of Journalistic Ethics*, *op. cit.* note 129, sections 1 and 3.

6.2 – Political, ideological and commercial influences

News media shall under no circumstances let their commercial, political, ideological or other interests outweigh the public's right to information of quality or restrain the professional independence of their journalists.

Regarding disguised advertising, the *QPC Guide* states the following:

6.3 – Disguised advertising

News media must avoid any form of indirect or disguised advertising in reporting news or information.

14.2 – Clear distinction between ads and news

News media must clearly delineate between news and advertising in order to avoid confusing the public.

In addition, the *QPC Guide* provides a “process” for any natural or legal person to lodge a complaint²⁷⁵. Some complaints about disguised advertising have in fact been processed by the *QPC*. In one of those cases, it stated the following:

[39] Le guide DERP du Conseil énonce, à ce sujet, que les médias doivent établir une distinction nette entre l'information et la publicité sur tous les plans : contenu, présentation, illustration. Tout manquement à cet égard est porteur de confusion auprès du public quant à la nature de l'information qu'il croit recevoir. Ils doivent éviter de faire de la publicité déguisée ou indirecte dans leur traitement de l'information ou de se faire les publicistes ou les promoteurs de quelque cause, produit, activité, événement culturel ou sportif que ce soit²⁷⁶.

In 2011, the *Press Council* rejected a complaint about a “mix of genres” and an “incentive to mix genres,” i.e. advertising and news (disguised or indirect advertising). On the question of incentive, the *Council* recognized the absence of an “editor’s guideline inciting journalists to display journalistic and advertising content closer together and to mix the genres.” The *Council* also concluded that to harmonize an ad’s visual and graphic aspect with journalistic content “in no way constitutes a fault that can cause confusion²⁷⁷.”

More recently, the *Press Council* accepted a complaint against a news organization being reproached for using insufficient disclosure methods to indicate the presence of advertising content, although that organization had used three methods (different font, article not signed by a journalist, and mention “Propriété Sommet Prestige Inc.”). The *Council* specified that the term to be used is “advertising” because it’s “unmistakable²⁷⁸.”

In a 2014 case, *Proulx and Lavigne v. La Presse+*²⁷⁹, seven disclosure methods were mentioned by the news organization, including the specific name, *XTRA*, given to the section containing native advertisements; the *Council* nevertheless accepted the complaint, and deemed that disguised advertising was present:

²⁷⁵ Section 5, *Quebec Press Council Guide of Journalistic Ethics*, op. cit. note 129.

²⁷⁶ *Levert v. Le Journal du Nord*, 2009 CanLII 84805 (QC CPQ), par. 39.

²⁷⁷ *Syndicat de la rédaction du Soleil v. Le Soleil*, op. cit. note 51, par. 18 et 19. Our translation.

²⁷⁸ *Arseneault v. L'hebdomadaire Les Versants du Mont-Bruno*, op. cit. note 62. Our translation.

²⁷⁹ *Proulx and Lavigne v. La Presse+*, op. cit. note 3.

Le Conseil observe d'emblée que la mention XTRA ne se rapporte à aucun mot français désignant une publicité ou un élément promotionnel. Il s'agit d'un terme inventé, suggérant le mot « extra », qui non seulement n'indique pas qu'un annonceur a payé pour la création d'un contenu, mais pourrait bien convenir comme titre d'une section s'ouvrant sur un reportage journalistique, par exemple. Pour le Conseil, ce terme « XTRA » entraîne un degré de confusion qui ne permet pas d'établir une distinction nette entre l'information journalistique et la publicité.

Le Conseil juge également que la différence entre les polices de caractère utilisées dans la section XTRA et dans les sections rédactionnelles n'est pas suffisamment importante pour aider le lecteur à faire la distinction entre les deux types de contenu.

De la même façon, on doit reconnaître que l'encadré gris ne peut être considéré comme une référence acceptée et reconnue par tous en matière de distinction de ce qui relève du publicitaire et de ce qui relève du rédactionnel. Il s'agit plutôt d'un code, créé par La Presse+, et qui n'a pas la portée d'une convention.

De même l'absence de signature ne peut agir, à elle seule, comme un élément distinctif de la publicité.

Ainsi, on doit conclure que ces éléments et les autres moyens cités par les mis en cause, qu'ils soient considérés individuellement ou de façon combinée, ne parviennent pas à identifier clairement les contenus publicitaires visés par la présente plainte et à les distinguer de façon manifeste du contenu journalistique.

Il est à noter qu'aux yeux du Conseil, il est également important que le commanditaire d'un contenu soit identifié clairement. S'il est vrai que dans les cas des textes « Facile et utile le sans-fil » et « Décrochez pour le temps des Fêtes », figurait, aux côtés de la mention XTRA, le nom des annonceurs (Stéréo+ et Telus), reste que le ou les commanditaires des deux autres textes sont passés sous silence. En effet, l'expression « industrie pétrolière » est vague et ne permet pas d'identifier qui paye pour le contenu présenté.

Par ailleurs, dans le cas de Stéréo + et de Telus, le nom de l'annonceur est écrit dans le même caractère d'imprimerie que la mention XTRA. L'utilisation de cette même police pour désigner la section et le commanditaire fait que l'ensemble ressemble plus à un titre identifiant la section ou une série d'articles qu'à une divulgation de l'identité de l'annonceur qui paie pour le contenu qui suit. À cet égard, l'utilisation du logo de l'annonceur avec ses couleurs et sa calligraphie distinctives contribuerait davantage à attirer l'attention du lecteur sur la véritable nature du contenu qui suit.

That being said, the *Press Council* rejected, in 2017, another complaint against La Presse, while taking care to distinguish that case from the *Proulx and Lavigne* decision, because the website's page displaying a native advertisement contained a visible notice addressed to readers:

Le cas présent diffère puisque la précision « produits pour ou par des annonceurs » est évidente dès le commencement de l'article. Ainsi, de l'avis du Conseil, la distinction entre publicité et information est effective d'entrée de jeu, de sorte que le lecteur moyen est en mesure de constater, au premier coup d'œil, qu'il se trouve devant une publicité²⁸⁰.

²⁸⁰ *Bouchard v. Lapresse.ca*, May 26, 2017, D2016-07-012 (QC CPQ), online: <https://conseildepresse.qc.ca/decisions/d2016-07-012/>.

A complaint was also accepted in the *Gazette Vaudreuil-Soulanges v. Ville d'Hudson* decision, in a case where the news organization reproached an advertiser for having used advertising as a pressure tactic²⁸¹.

If the *QPC Guide* is contravened, “the committee may declare that the fault is of minor importance and deserves no blame, it may blame the defendant or blame it severely²⁸².” At its discretion, the committee may also “make recommendations to the parties²⁸³.” In addition, “when a complaint is accepted, the press company concerned by the decision has the ethical obligation to publish or broadcast the decision. Member news organizations pledge to meet that obligation²⁸⁴.”

However, not everyone recognizes the *Press Council's* moral authority; some news organizations refuse to cooperate²⁸⁵ or to follow its guidelines “The Press Council points out that the *Courrier du Sud* has been reminded on a few occasions, notably in the recent 2011-03-074 case, of the ethical principles regarding news and advertising²⁸⁶.”

3.2.1.2 Fédération professionnelle des journalistes du Québec

One of the missions of the *Fédération professionnelle des journalistes du Québec* (hereinafter the “FPJQ”) is to “contribute to protecting the public’s right to honest, complete, diverse and quality information, and the journalist’s right to freedom of the press and of expression” and to “promote the highest ethical standards in journalistic practices²⁸⁷.” The FPJQ groups almost 2,000 journalists²⁸⁸, who must, when joining the FPJQ, pledge to comply with the latter’s ethics guide²⁸⁹, which applies to all its members²⁹⁰. Article 5d) states the following about advertising:

Les journalistes ne s'engagent pas auprès de leurs sources à diffuser l'information que celles-ci désirent, et ils refusent de diffuser une information en échange d'un contrat publicitaire pour leur entreprise de presse ou en échange de tout autre avantage. L'information et la publicité doivent être séparées. Les journalistes n'écrivent pas de publiereportages. S'ils sont tenus de le faire, ils ne les signent jamais. Les publiereportages doivent être très clairement identifiés comme tels afin de ne pouvoir être confondus, même par leur mise en pages, avec l'information. Les journalistes doivent couvrir les

²⁸¹ *Gazette Vaudreuil-Soulanges v. Ville d'Hudson*, 2014 CanLII 7209 (QC CPQ).

²⁸² QUEBEC PRESS COUNCIL, *Règlement 2 : Règlement sur l'étude des plaintes du public*, adopted on June 2, 2017, online: <<https://conseildepresse.qc.ca/wp-content/uploads/2018/01/R%C3%A8glement-2-2017.pdf>> (document consulted on May 26, 2018), art. 27.02. Our translation.

²⁸³ *Ibid.*, art. 27.03. Our translation.

²⁸⁴ *Ibid.*, art. 31.02. Our translation.

²⁸⁵ Several Press Council decisions mention a “refusal to cooperate.” See notably: *Toulouse v. Le Journal de Montréal*, 2015 CanLII 44137 (QC CPQ), par. 7 and 8; *Beauchamp v. Le Courrier du Sud*, *op. cit.* note 27, par. 8 and 9.

²⁸⁶ *Beauchamp v. Le Courrier du Sud*, *op. cit.* note 27, par. 4 and 5. Our translation.

²⁸⁷ FÉDÉRATION PROFESSIONNELLE DES JOURNALISTES DU QUÉBEC (FPJQ), *Règlements généraux*, latest update on November 22, 2015, online: <<https://www.fpq.org/profil/reglements/>> (page consulted on May 26, 2018), art. 1.02 c) and d). Our translation.

²⁸⁸ FPJQ, *Description*, online: <<https://www.fpq.org/profil/description/>> (page consulted on May 26, 2018).

²⁸⁹ FPJQ, *Règlements généraux*, *op. cit.* note 287, art. 2.01 f).

²⁹⁰ FPJQ, *Guide de déontologie*, adopted in a general meeting on November 24, 1996, amended in a general meeting on November 28, 2010, online: <<https://www.fpq.org/deontologie/guide-de-deontologie/#pt1>> (page consulted on May 26, 2018).

événements que commandite leur média avec la même rigueur que tout autre événement.

Dans tous les cas, les journalistes jugent de la pertinence de diffuser une information selon son mérite, son intérêt public et en tenant compte des autres informations disponibles.

To preserve their duty of independence or avoid “casting doubt among the public,” article 9 states that “journalists must avoid conflicts of interest and the appearance of conflicts of interest.” [Our translation] That article also states the following:

Le choix des informations rendues publiques par les journalistes doit être guidé par le seul principe de l'intérêt public. Ils ne doivent pas taire une partie de la réalité aux seules fins de préserver ou de rehausser l'image de tel individu ou de tel groupe. Les conflits d'intérêts faussent ou semblent fausser ce choix en venant briser l'indispensable lien de confiance entre les journalistes et leur public.

Les conflits d'intérêts ne deviennent pas acceptables parce que les journalistes sont convaincus, au fond d'eux-mêmes, d'être honnêtes et impartiaux. L'apparence de conflit d'intérêts est aussi dommageable que le conflit réel.

In that vein, “journalists must abstain from performing, outside of journalism, tasks related to communications: public relations, advertising, promotion [Our translation],” because:

[c]es tâches servent des intérêts particuliers et visent à transmettre un message partisan au public. Les journalistes ne peuvent pas communiquer un jour des informations partisans et le lendemain des informations impartiales, sans susciter la confusion dans le public et jeter un doute constant sur leur crédibilité et leur intégrité²⁹¹.

3.2.1.3 Canadian Association of Journalists

The *Canadian Association of Journalists* (hereinafter the “CAJ”) is “*the national voice of Canadian journalists and upholds the public’s right to know*²⁹².” In June 2011, the CAJ’s Ethics Advisory Committee submitted the *Ethics Guidelines*, which include provisions regarding journalists’ independence, conflicts of interest and accountability²⁹³. On this last point, the guidelines indicate what must be journalists’ priorities: “*we serve the public interest, and put the needs of our audience – readers, listeners or viewers – at the forefront of our newsgathering decisions*²⁹⁴.” Regarding independence, the guidelines raise the following points:

➤ *We serve democracy and the public interest by reporting the truth. This sometimes conflicts with various public and private interests, including those*

²⁹¹ Article 9a).

²⁹² AJC, *Bylaws*, last revised on april 30, 2017, online: <<http://caj.ca/Bylaws>> (page consulted on May 26, 2018), sec. 1.

²⁹³ ACJ, *Ethics Guidelines*, submitted in June 2011, online: <http://caj.ca/images/downloads/Ethics/ethics_guidelines.pdf> (document consulted on May 26, 2018).

²⁹⁴ *Ibid.*

of sources, governments, advertisers and, on occasion, with our duty and obligation to an employer.

[...]

➤ *We do not give favoured treatment to advertisers and special interests. We resist their efforts to influence the news.*

Regarding conflicts of interest, the provision makes no mention of the journalist's relationship with the advertiser.

3.2.2 Advertising Sector

First, we will examine the provisions contained in the *Advertising Standards* regarding native or similar advertising, and pertaining to the veracity, clarity and accuracy of advertisements, and to disguised advertising techniques. Then we will focus on provisions applied by the *Canadian Marketing Association* against false representations and sponsored sections.

3.2.2.1 Advertising Standards

Ad Standards (ASC, formerly: *Advertising Standards Canada*) is an advertising self-regulatory organization broadly recognized by the industry across Canada²⁹⁵. Its primary mission consists of “fostering community confidence in advertising and to ensuring the integrity and viability of advertising in Canada through responsible industry self-regulation”²⁹⁶.

ASC has established the *Canadian Code of Advertising Standards*²⁹⁷, which notably states the following:

1. Accuracy and Clarity

In assessing the truthfulness and accuracy of a message, advertising claim or representation under Clause 1 of the Code the concern is not with the intent of the sender or precise legality of the presentation. Rather the focus is on the message, claim or representation as received or perceived, i.e. the general impression conveyed by the advertisement.

[...]

(f) The advertiser must be clearly identified in the advertisement [...]

2. Disguised Advertising Techniques

No advertisement shall be presented in a format or style that conceals the fact that it is an advertisement.

Like all the councils mentioned above, the ASC receives complaints from the public about advertising, on which the organization renders decisions. The *ASC Standards Council*, charged

²⁹⁵ B. PRITCHARD and S. VOGT, *Advertising and Marketing Law in Canada*, op. cit. note 222, pp. 9-10.

²⁹⁶ AD STANDARDS (ASC), *About ASC*, online: <<http://www.normespub.com/en/AboutASC/aboutASC.aspx>> (page consulted on May 26, 2018).

²⁹⁷ ASC, *Canadian Code of Advertising Standards*, op. cit., note 5.

with applying the ASC's voluntary standards²⁹⁸, rendered a decision in 2014 regarding a complaint alleging a violation of the section 2 of the *Code*:

To Council, the term used to identify the article did not convey to the reader that it was advertising sponsored by a commercial brand. Council found that the general impression conveyed by the article was that it was informational, not commercial in nature, and that the article was written by an independent health specialist. Because it was not made clear that the content of the article was actually sponsored by an advertiser, Council found that the advertisement was presented in a format and style that concealed its commercial intent. The advertiser is not identified in this case summary because the advertisement was appropriately dealt with by the advertiser before Council met to adjudicate the complaint. Furthermore, the advertiser agreed it would make appropriate amendments in future advertising²⁹⁹.

[Our underlined]

In another decision, in 2017, the Council pointed out that the expression “sponsored message” is insufficient, since the general impression imparted by advertising is what must be analysed³⁰⁰. In the specific case analysed, “the advertisement was misleading and was presented in a format or style that concealed its commercial intent³⁰¹.” Moreover, not indicating the advertiser’s identify also contravened section 2 of the *Code* because that further *concealed its commercial intent*³⁰².

3.2.2.2 Canadian Marketing Association

The *Canadian Marketing Association* (hereinafter the “CMA”) is reportedly “the largest marketing association in Canada,” because its members include “Canada’s major business sectors and [...] represent the integration and convergence of all marketing disciplines, channels and technologies³⁰³.” The CMA’s mission is to shape “the future of Marketing in Canada,” particularly by “creating a marketplace for marketing to succeed³⁰⁴.”

The CMA has adopted standards that its members must or *should* apply, in the words of the provision³⁰⁵, and that are found in its *Code of Ethics & Standards of Practice*. The Code contains provisions specific to certain media; for “Magazines, Newspapers and Trade Press,” the Code states the following:

²⁹⁸ ASC, Standards Council. *Organization and Procedure*, online:

<<http://www.normespub.com/en/ConsumerComplaints/Standards-Council-Procedure.pdf>> (page consulted on May 23, 2018), sec. 1.1.

²⁹⁹ ASC, *Ad Complaints Reports – 2014*, online:

<<http://www.normespub.com/en/Standards/adComplaintsReports.aspx?periodyear=2014>> (page consulted on May 26, 2018), advertiser: a media company (anonymous).

³⁰⁰ ASC, *Ad Complaints Reports – 2017*, *op. cit.* note 81, advertiser: Insauga.

³⁰¹ *Ibid.*

³⁰² ASC, *Ad Complaints Reports – 2014*, *op. cit.* note 299, advertiser: defence organization (anonymous).

³⁰³ CMA, *Code of Ethics & Standards of Practice*, July 2015, online: <<https://www.the-cma.org/Media/Default/Downloads/Regulatory/2015/CodeofEthics.pdf>> (document consulted on May 26, 2018), sec. A3.

³⁰⁴ *Ibid.*, sec. A2.

³⁰⁵ Indeed, sec. F of the Code states that: “Throughout this Code, use of the word ‘must’ indicates that a clause is compulsory for marketers. Use of the word ‘should’ indicates that the clause is not compulsory but strongly encouraged as a best practice.” If a member fails to comply with a compulsory clause, he may be excluded from the CMA (sec. Q4 c.).

N2.1 Misrepresentation: Marketers must not employ text or design elements that mimic a publication's editorial style unless the pages clearly and conspicuously contain the word "advertisement", "advertising" or "advertorial".

N2.2 Sponsored Sections: Where "advertorial" formats are used, the sponsored section must be identified as such.

[Our underlined]

In addition, a provision of general application, titled "Disguise," pertains to the accuracy of representations:

I5.1 Marketers should identify themselves and must not engage in marketing communications in the guise of one purpose when the intent is a different purpose.

[...]

I1.3 Marketers must recognize the importance of the general impression of the marketing communication and must ensure that it can be readily comprehended upon first exposure and, even if strictly true, does not deceive by omission or commission.

Lastly, the *Code of Ethics & Standards of Practice* establishes, in section Q, a mediation process between consumer and company, in case of complaints, and also allows for hearings to be held before an independent panel that can issue recommendations.

4. Field Survey

4.1 Methodology

4.1.1 Objectives

Our field survey aimed at drawing a portrait of the prevalence and uses of native advertising in the form of paid information content in the Canadian news media. The main objective was thus to identify problematic practices and examples regarding disclosure of the advertising nature of some content.

We also sought to analyse the various methods likely to confuse journalistic information and advertising content; we limited ourselves to analysing advertisements that take the form of an article or report, a practice we also call editorial advertising or paid information content.

4.1.2 Selected News Organizations

First, each news organization selected for our analysis must meet the following two criteria:

- 1- *offering* information in the form of journalistic articles written in Canada;
- 2- having a digital platform where information is offered to the public (minimally a website).

To identify a variety of disclosure methods, we tried to diversify the news organizations to be analysed. Several criteria were used for meeting that goal. First, in our selection, we assumed that a press company owning several news organizations likely uses the same disclosure methods in its different news organizations. When that assumption was verified, we selected for analysis only one of the company's news organizations³⁰⁶.

Then, we tried to balance our selection in terms of francophone and anglophone representation.

The majority of the selected news organizations come from the traditional written press. But we thought it relevant to broaden the selection by including the websites of television and radio networks, of Web news organizations, and of magazines offering journalistic information.

Accordingly, in making our selection, we took into account the news organizations' readership and their notoriety among the Canadian public³⁰⁷, without that criterion necessarily being a determining one. We also selected news organizations that, according to our review of the literature or our prior research, offered the type of content for which we wanted to discover the disclosure methods.

In accordance with those criteria, the fifteen news organizations we examined as part of this study were: **Radio-Canada, La Presse, Le Devoir, Le Journal de Montréal, Le Soleil, Les Affaires, The National Post, CBC News, The Toronto Star, The Globe and Mail, The**

³⁰⁶ For instance, we observed that PostMedia was using the same disclosure practices (and sometimes even the same advertisements) for several of its dailies. Accordingly, we excluded The Montreal Gazette, The Ottawa Citizen, The Toronto Sun and The Vancouver Sun, and chose The National Post, due to its readership size and cross-Canada presence.

³⁰⁷ We consulted notably an Infopresse summary of a 2017 Vividata study: Maxime RUEL, *Lectorat des quotidiens et des magazines : qui lit quoi au Québec*, Infopresse, January 25, 2018, online: <http://www.infopresse.com/article/2018/1/25/vividata-devoile-son-rapport-trimestriel-sur-le-lectorat-des-quotidiens-et-magazines> (page consulted on April 10, 2018).

Huffington Post, Vice Media, The Vancouver Courier, The Hamilton Spectator and 106.9 FM Mauricie.

4.1.3 Analytical Grid

We studied the main platforms on which citizens usually consume the news, i.e. the websites and mobile applications of the selected news organizations. We also consulted their Facebook pages, given the common use of that platform as a news source³⁰⁸. Our examination of fifteen news organizations in Canada enabled us to identify practices and trends regarding disclosure of certain texts' advertising nature.

The research of native advertising concentrated first on the selected news organizations' websites. Afterward, we tried to find, on those news organizations' mobile apps and on Facebook, the paid information content we had identified and analysed on the websites. We noted distinctions between the practices used on those platforms. Because that procedure was not applicable to Twitter pages, according to our preliminary findings, we made a briefer overview of that platform.

Our goal was not to perform a compliance test or to gauge the quantity of native advertising displayed by a given news organization, so we selected and then analysed only three native advertisements per news organization, in order to obtain a portrait of the latter's practices.

At the time of our research, it was possible that a given news organization didn't have three native advertisements online. In those cases, we examined what was available at the time of our visits to those websites.

4.1.3.1 Websites

Our analysis of each news organization began on its website. Before examining disclosure placed near editorial advertisements, we searched the website's home page (and then the pages of various sections, if necessary) for hyperlinks that likely led to editorial advertisements.

First, we searched for *explicit cues* clearly designating native advertising, and then *implicit cues* apparently but not clearly indicating, even after analysis or deduction, possible information content paid by a third party. We also searched for *contextual and circumstantial cues*, which indicate that editorial advertisements may be found on a website, but without making it possible to conclude with certainty that text of that type is present or to identify as such a given text³⁰⁹.

On the basis of those three types of cues, we followed the hyperlinks that led or appeared to lead to editorial advertisements, and then we performed a first analysis, which served to set aside evident false positives and identify three apparent native advertisements.

³⁰⁸ A CEFRIO study indicates that 39% of Quebec adults – and 72% of young adults – use Facebook “as a means for accessing journalistic information or news on a weekly basis (at the very least).” CEFRIO, *Médias sociaux et économie de partage en ligne au Québec*, 2016, NETendances, vol. 9, No. 9, 2017, online: <https://cefrio.qc.ca/media/uploader/NETendances2016-Medias_sociaux_economie_de_partage27072017.pdf> (document consulted on June 24, 2018), p. 13. Our translation.

³⁰⁹ Our analytical grid is reproduced in **Annex 1**.

Afterward, we analysed the methods for disclosing the advertising nature of paid information content and classified the disclosure methods according to the criteria identified in our analytical grid.

Lastly, we tried to identify the editorial advertising model of each advertisement analysed, according to the notices or information contained in the “media kit” intended for advertisers, when those kits were available on the websites.

4.1.3.2 Mobile Applications

According to our preliminary findings, a news organization’s mobile apps usually use much the same content as its website; we assumed that disclosure methods would also be much the same. Still, certain formatting differences could be present, which our research would reveal.

We searched on the mobile platform for the three native advertisements identified on the news organization’s website, to verify our assumption. Where applicable, we noted the few disclosure distinctions between those two platforms.

When we couldn’t find the same paid information content on the mobile platform, we made an overview while following the same protocol as for the website.

4.1.3.3 Facebook

As with the mobile app, we searched on a news organization’s Facebook page for the same paid information content as on its website, to verify the type of disclosure applied.

When we couldn’t find the same native advertisements, we analysed the news organization’s Facebook page according to the same parameters as for its website, while limiting ourselves to two months of publications.

4.1.3.4 Twitter

Our preliminary search revealed that “sponsored” tweets don’t necessarily appear on a news organization’s Twitter page³¹⁰. We thus tried to identify an example of published content paid and presented by a news organization, in order to illustrate, without having examined the organization’s Twitter pages, the method used on Twitter for disclosing the content’s advertising nature.

4.2 Highlights

4.2.1 Websites

We searched for and found three native advertisements for each of the 15 selected news organizations (see **Annex 2**). For certain organizations, our search required several visits, from

³¹⁰ TWITTER, *What Are Promoted Tweets?*, online: <<https://business.twitter.com/en/help/overview/what-are-promoted-tweets.html>> (page consulted on June 24, 2018).

January 6 to April 6, 2018, to maximize the findings. Although we found 45 native advertisements, we examined 44 hyperlinks leading to them³¹¹.

Our examination of the 45 native advertisements revealed the diversity of methods used to disclose their advertising nature. Our research revealed certain best practices that deserve mention, that we think should enable readers to understand they're faced with non-journalistic content, and that lower the risk of confusion. By contrast, we also observed practices that lack transparency and could confuse paid information content with journalistic content.

4.2.1.1 Best Practices

Although best practices were few, we observed a few examples of them in our analysis of the media organizations' websites. In our view, a combination of those best practices even better enables a reader to understand he is in the presence of non-journalistic content (or that a proposed link leads to that type of content) and lowers the risk of confusion between information and advertising.

4.2.1.1.1 Use of Explicit Terms

Result

The terms "Advertising Content," "Advertisement" and "Paid Post" are each used respectively by a single news organization. However, the term "Advertisement" only appears on the home page (near the hyperlink), whereas "Advertising Content" and "Paid Post" appear both near the hyperlink and on the editorial advertisement's page.

Discussion

As mentioned above³¹², explicit terms (such as "advertisement," "advertising content" or "paid post") must be used by news organizations to identify native advertising. They require no interpretation by the reader and can thus be understood *at first glance* (even by a credulous, inexperienced and hurried consumer), since they are known to the public and their first definition refers directly to the characteristic – payment by a third party – intended to be disclosed. It should be noted that few news organizations use explicit terms to designate the advertising content.

Placing that explicit mention in a fixed strip at the top of a Web page is a practice we find exemplary³¹³. Some Canadian news organizations use a strip at the top of a page; this is notably the case with La Presse (see illustration 2, which is exemplary for the mention's large size) or Radio-Canada (illustration 7, which, by contrast, uses fine print). However, in both examples, the strip is not fixed to the top and disappears once the reader moves toward the bottom of the page.

³¹¹ In fact, for Radio-Canada's website, despite our many visits, we found only two links to native advertisements on the home page (or other sections of the website). To discover the third advertisement, we did a Google search, and found an advertisement titled "Soyez au cœur des festivités / Programmation officielle du 375^e de Montréal."

³¹² See *supra*, section "1.4.2 Mention divulguant le caractère publicitaire."

³¹³ As mentioned in our review of the literature, that practice is used notably by The New York Times. See: Melanie DEZIEL, *Woman Inmates: Why the Male Model Doesn't Work*, *op. cit.* note 90.

4.2.1.1.2 Use of a Clear and Visible Notice

Results

Of the 44 links leading to editorial advertisements, a single visible notice – and even then, in fine print – was detected.

Illustration 1 – Hyperlink to paid information content, with visible mention and notice



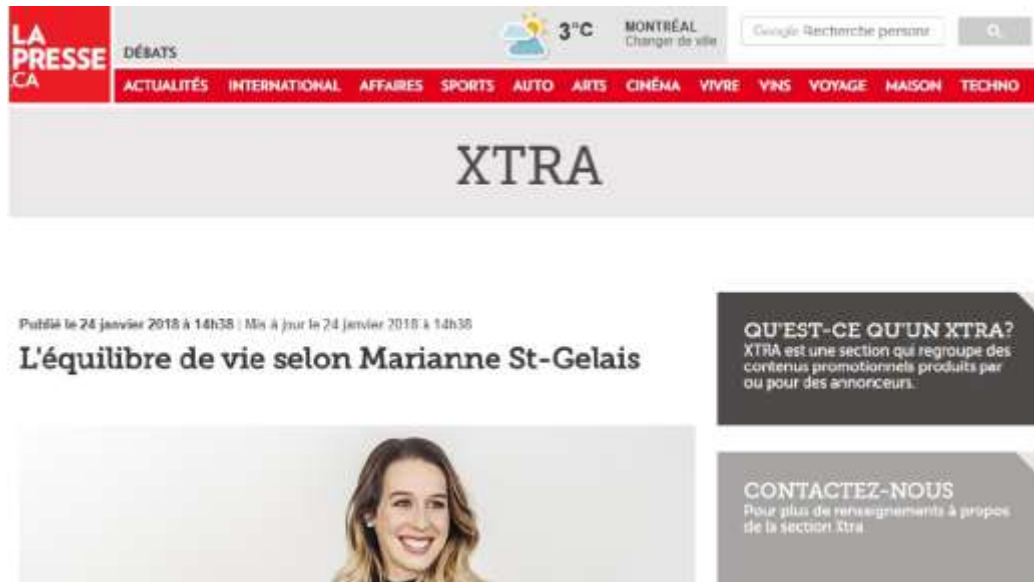
Source: RADIO-CANADA, “*Mes finances personnelles 2018*” Web page, consulted on March 8, 2018.

The wording of that notice, explaining the nearby mention “contenus publicitaires” (“advertising content”), is clear and right to the point: “The advertising content is produced by our advertisers. It is not Radio-Canada journalistic content.” [Our translation]

On pages displaying paid information content, 22 of the native advertisements identified (produced by nine news organizations) present a visible notice, in various forms.

In the following example, a notice – in a text box – beside the text is of adequate size and in inverted colours (white on black), which would make it visible upon arrival on the page. However, the notice itself doesn’t indicate with optimal clarity the respective involvement of the news organization and the advertiser.

Illustration 2 – Excerpt from the page that displays advertising content, with a visible notice in a text box



Source : LA PRESSE, *L'équilibre de vie selon Marianne St-Gelais*, consulted on March 1, 2018.

In the following example, although the notice's wording doesn't indicate the text's advertising nature (the mention "une réalisation du service de la promotion" is clearly insufficient), the idea of integrating the notice with the advertisement itself is interesting in terms of visibility:

Illustration 3 – Advertising content, with integrated notice



Source: LE SOLEIL, *Le droit comme outil de changement social*, consulted on March 15, 2018.

Here are a few examples of notices identified during our survey and in wording that seems clearer to us:

- *Cette page est du contenu promotionnel produit pour [nom de l'annonceur]. Ce n'est pas du contenu journalistique de Radio-Canada*
- *Les dossiers partenaires sont mis à la disposition d'annonceurs désirant publier des contenus destinés à la communauté d'affaires. Les sujets de ces contenus et leur traitement demeurent à l'entière discrétion des annonceurs. Les journalistes de Les Affaires ne sont pas impliqués dans la rédaction de ces contenus*
- *This section was produced by the editorial department. The client was not given the opportunity to put restrictions on the content or review it prior to publication*

Discussion

Explicit notices regarding the advertising nature better remove doubts about the content's author and the nature of an article funded by a third party. Ideally, a notice should be short, but sufficiently informative and clear, and immediately visible to the reader. Notices should appear

both near hyperlinks leading to paid information content (on the home page and other specialized sections displaying hyperlinks) and on the page displaying the paid information content.

The points that should appear in a notice are: 1) the fact that the content is paid for by an advertiser, and 2) the precise involvement of the news organization (content prepared by an internal or external journalist, an internal or external advertising agency) and of the advertiser in producing the content.

In addition, we continue to think that the news media, for purposes of clarity, should avoid euphemisms and openly use the terms “advertisement” and “advertiser” rather than “promotional,” for example.

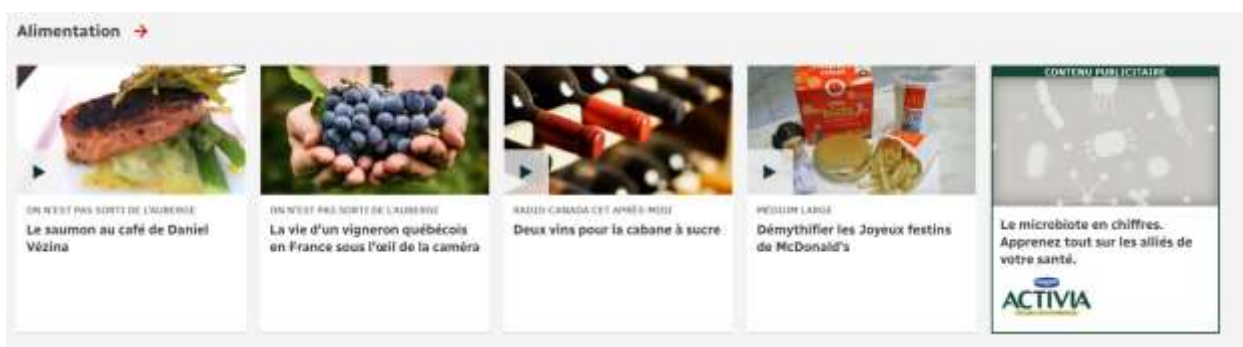
4.2.1.1.3 Visual Differentiation and a Combination of Disclosure Methods

Results

We observed that 9 out of 15 news organizations use visual differentiation methods (effective or not) for at least one of three hyperlinks leading to the advertisements studied: visually different font, different background (different colour, for example), and a text box design that stands out visually from that of hyperlinks leading to journalistic content. Some hyperlinks take the form of banner advertisements, whereas in fact they lead to paid information content within the website.

In our first example, the advertiser’s logo in the text box should help the reader associate the content to that advertiser rather than the news organization. Additionally, the text box’s design (clearly different colour) distinguishes that link from the others. We think the combination of those two indications and the explicit term “contenu publicitaire” (“advertising content”) constitutes an exemplary disclosure practice.

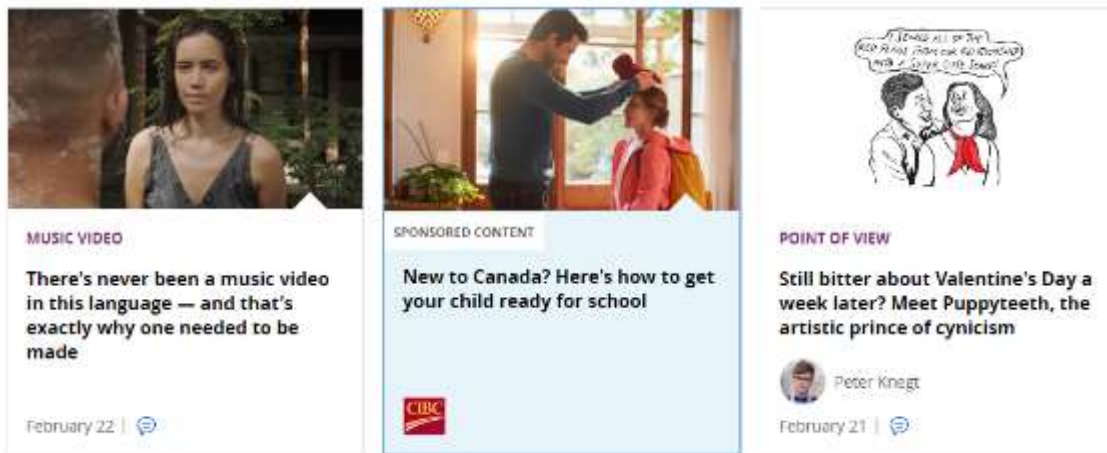
Illustration 4 – Hyperlink leading to paid information content, with a text box



Source: RADIO-CANADA, home page, consulted on February 25, 2018.

In that vein, a second example illustrates the effect of a text box in a different colour (in the background this time), used in combination with the logo and a term indicating the content’s nature:

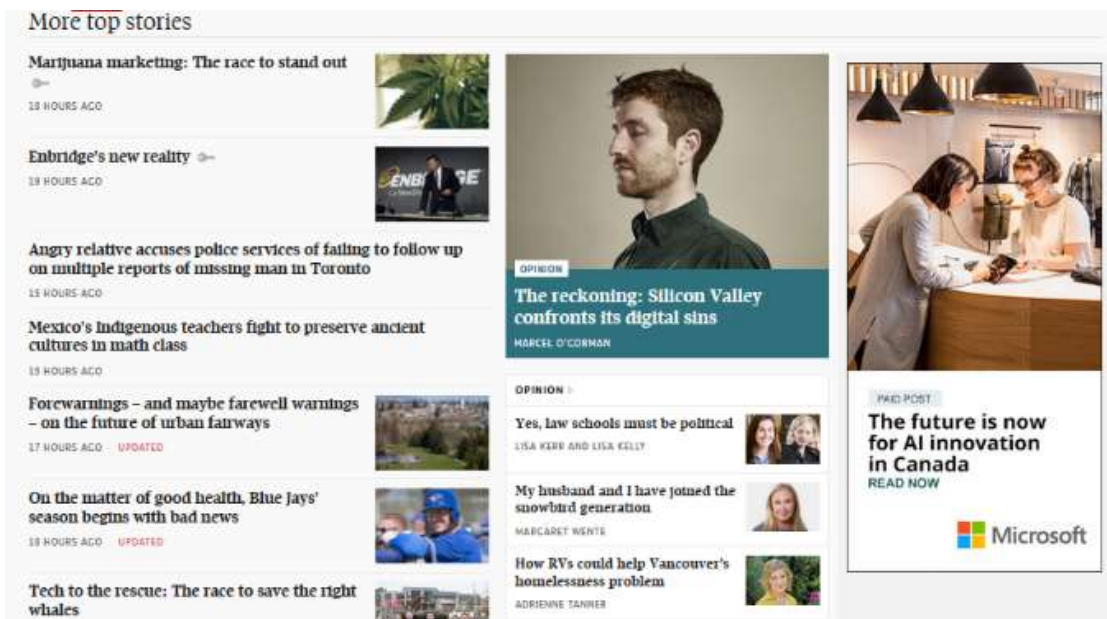
Illustration 5 – Hyperlink leading to paid information content, with a colour background



Source: CBC, “Arts” section, consulted on February 25, 2018.

Our third example also uses visual differentiation, but in a different and more evident way than the two preceding examples. This time, the text box has the look of a banner advertisement, without being one; in fact, the hyperlink leads to paid information content. The text box on the extreme right of illustration 6 mentions that the content is sponsored, and the company’s logo also appears.

Illustration 6 – Hyperlink looking like a banner advertisement, on the margin



Source: THE GLOBE AND MAIL, home page, consulted on March 31, 2018.

The page displaying the paid post can also stand out visually from those presenting the news organization's usual content; only 4 news organizations use this technique for at least one of the three ads selected. We thus noted, for the paid post, a different font colour (blue rather than black) and a different background (with a picture).

In illustration 7, with a combination of several disclosure methods (grey strip containing an explicit term, the advertiser's logo, visual differentiation, a notice at the end), the paid post's layout stands out from that of a standard journalistic text.

Illustration 7 – Native advertisement with visual differentiation (excerpt - heading)



Source: RADIO-CANADA, *Bien comprendre son microbiote*, consulted on February 25, 2018.

Discussion

At first sight, on the premise that native advertising is intrinsically misleading, it appears difficult – and utopian – for news organizations to use this type of advertising and attain a level of transparency likely to eliminate any risk of confusing the reader. Indeed, the general impression given to consumers will often, deliberately, lead them to believe such a link leads to editorial content.

The visual differentiation of text boxes containing hyperlinks to native advertising reduces the risk of confusion, especially when the box clearly indicates that the hyperlink leads to paid content. Such text boxes are thus visually and easily identified as banner advertising, despite the placement integration. Those hyperlinks can thus be placed beside those leading to journalistic content, because visual differentiation limits the risk of the reader being misled.

The combination of more than one disclosure method will affect the consumer's general impression of the paid information content. Among the many factors that risk misleading him about the advertising nature are:

- incomprehensible expressions or notices;
- inadequate placement of notices;
- inadequate presentation of notices (font size or colour);
- consulting notices too quickly.

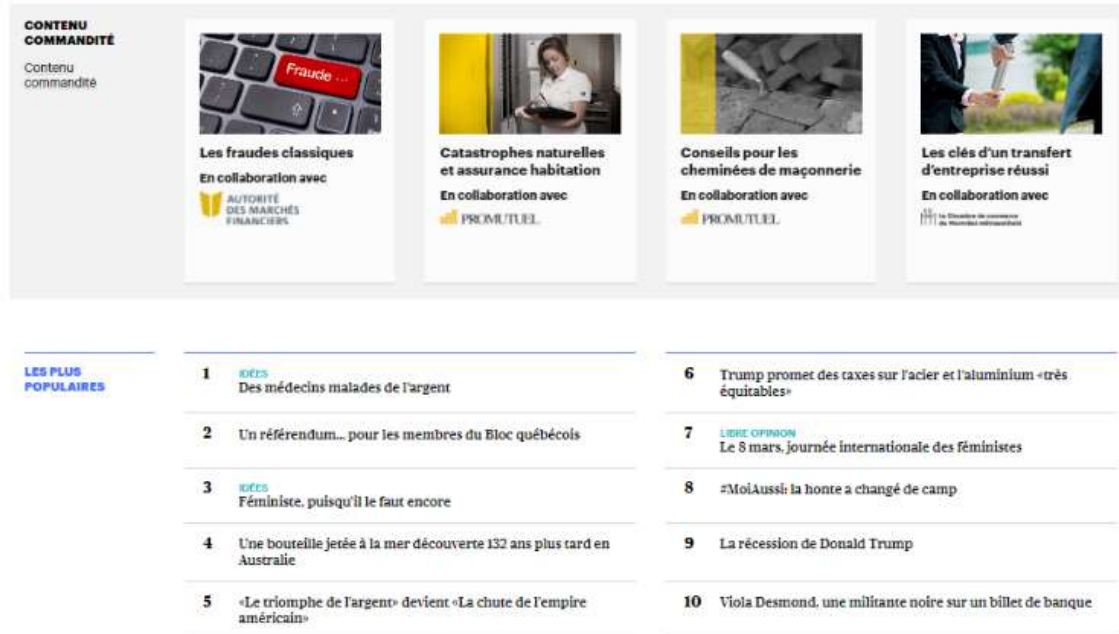
Accordingly, a news organization that opts for multiplying disclosure methods increases the chances that even a *credulous and inexperienced* consumer will notice that the content presented to him or to which an attempt is made to attract him is an advertisement.

4.2.1.1.4 Placement of Hyperlinks

Results

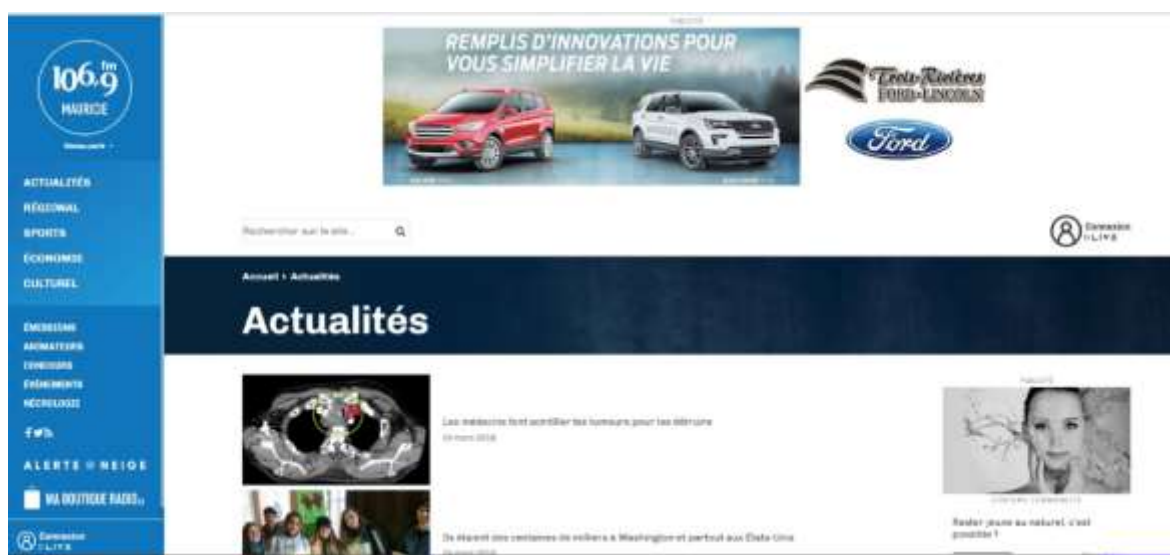
The location of hyperlinks leading to paid information content differs from one news organization to another. When those links are not mixed with others, the links are generally placed 1) in a location reserved for links to paid information content (grey section in illustration 8) or 2) apart from native content (on the right end in illustration 9).

Illustration 8 – Section reserved for paid information content



Source: LE DEVOIR, home page, consulted on March 29, 2018.

Illustration 9 – Placement apart



Source: 106.9 FM MAURICIE, “Actualités” page, consulted on March 24, 2018.

Discussion

Placement also plays a role in the general impression given by a Web page presenting a link to native advertising. We think separating hyperlinks leading to ads and to journalistic content is a good practice, so long as the separation is clear: integrating a distinct section without mentioning from the start that it only includes links to advertising content cannot constitute a good practice, obviously.

4.2.1.2 Bad Practices

4.2.1.2.1 Ambiguous, Invented, Technical or Misleading Expressions

Results

The terms “Contenu commandité” or « Sponsored Content » are used by five of the 15 news organizations, near hyperlinks to paid information content. Of those five, two news organizations use the term “Contenu commandité” near the hyperlink to editorial advertising, without that mention being present on the page displaying such content. Seven news organizations use the following variations (for hyperlinks and/or content):

- *Commandité par [advertiser's name]* and the English equivalent *Sponsored by [advertiser's name]*;
- *Commandité* and the English equivalent *Sponsored*;
- *Sponsored Content with [advertiser's logo]*;
- *Sponsor Content*; and
- *Sponsored Features*.

The more technical terms “infomercial” (“Publireportage”) and “Brand Content” (“Contenu de marque”) were found on the websites of two out of 15 news organizations, either near the hyperlink or on the page containing editorial advertising.

4 out of 15 news organizations opt rather for terms that can’t be understood on their face and thus require, for the reader to be informed of the content’s advertising nature, reading the notice accompanying the mention. The terms that share that characteristic, and appear near the hyperlink and/or on the advertisement’s page, are the following:

- *XTRA;*
- *Cahiers spéciaux;*
- *Dossier recommandé;*
- *Le savoir d’entreprise;*
- *Dossiers partenaires; and*
- *La voix des marques.*

Lastly, seven news organizations use the following terms, near the hyperlink and/or on the advertisement’s page:

- *En collaboration avec [logo or name];*
- *En partenariat avec [name] or the English equivalent In partnership with [name];*
- *Presented by [logo] or the English equivalents Presented by [logo] or This content is presented by [name];*
- *Brought to you by [logo].*

Discussion

The use of ambiguous terms (“Presented by,” “In Partnership with” or “In Collaboration with”), more-technical terms (“infomercial,” “Brand Content”), invented terms (“XTRA,” “Business Case,” “Partner Texts”) or other terms that are misleading because their first meaning doesn’t imply commercial content (“Special Sections,” “Recommended Text”) is a practice to be avoided, because it can confuse, in the reader’s mind, information content paid for by a third party with journalistic information.

Moreover, although we identified *a priori* the term “sponsored” among explicit indications, it remains ambiguous in the context of disclosure, because in practice there are several uses and definitions of the term that refer notably to a news organization’s involvement in advertising content:

- (i) Some news organizations use that term to refer to content written by the editorial team, but paid by third parties without a right of review (sponsored article);
- (ii) Other news organizations use the term to refer to content written by an advertiser or by the news organization’s in-house advertising team on behalf of the advertiser and with its collaboration (the work of an advertising agency).

The term “Sponsored” (or “*Commandité*” in French) is not used uniformly by news organizations, which can confuse the reader. For that reason, we think using more-explicit terms is clearly preferable for clearly announcing the advertising nature of content.

4.2.1.2.2 *Absent, Camouflaged or Ambiguous Notice*

Results

First, 9 out of 15 news organizations display no notice, whether visible or camouflaged, near the hyperlink to native advertisements. Two news organizations only occasionally display a notice.

Of the 44 links leading to paid information content, we find 12 camouflaged notices – i.e. that are not visible to the reader and reveal themselves only when an action is taken (hovering with the mouse or clicking on a term or symbol). The following illustration shows a camouflaged notice near the hyperlink. In this specific case, the reader has to hover with the cursor over the mention “*Sponsored Content*” to make the notice appear. Since we usually click on the title and not the mention, we found that notice purely by chance.

Illustration 10 – Notice camouflaged near the hyperlink

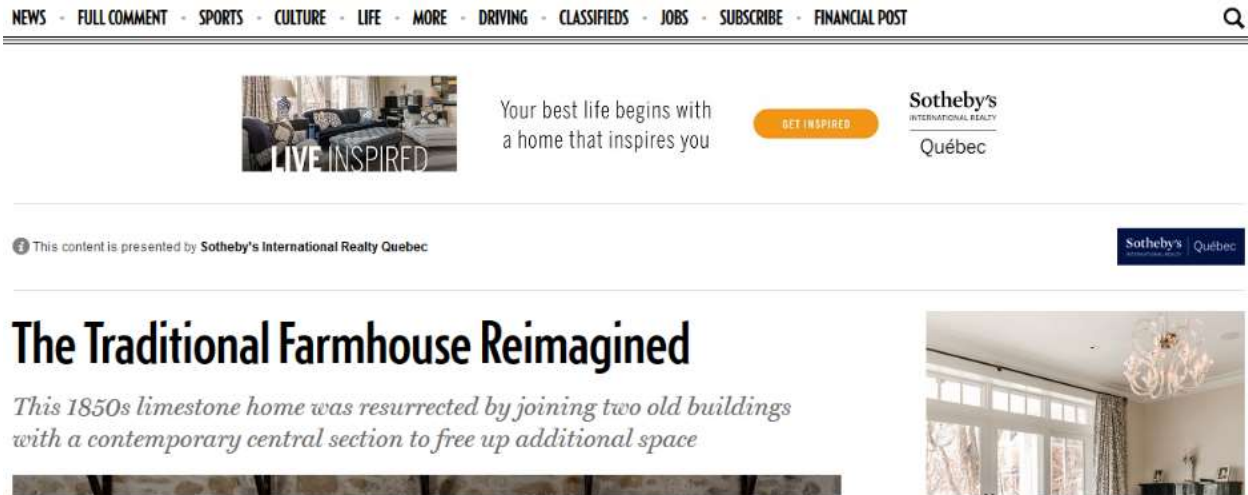


Source: VANCOUVER COURIER, home page, April 3, 2018.

On the pages displaying paid information content, 5 out of 15 news organizations present no notice, whether visible or camouflaged, for the three advertisements analysed, while 3 news organizations only occasionally display a notice (some of their advertisements don't display any notice).

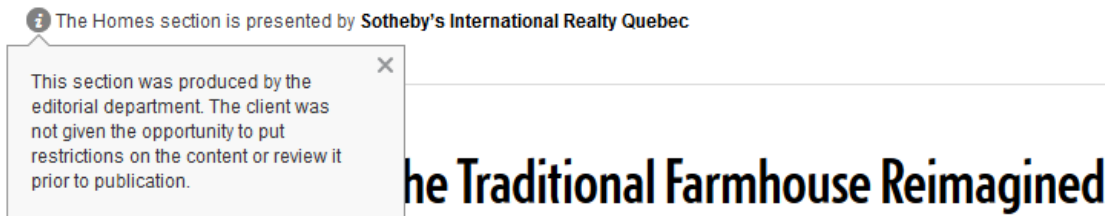
Moreover, 7 advertisements (presented by three news organizations) display a camouflaged notice. To make the notice appear in the following example, we have to click on a small round circle with “I” inside, printed in fine print above the title, beside the mention “content presented by” (illustration 11A). As the notice indicates, the advertiser has exercised no control over the content it likely funds (Illustration 11B).

Illustration 11A – Notice camouflaged near the advertising content



Source: National Post, *The Traditional Farmhouse Reimagined*, March 31, 2018.

Illustration 11B – Notice camouflaged near advertising content, once opened



Source: National Post, *The Traditional Farmhouse Reimagined*, March 31, 2018.

Lastly, some news organizations use wording that is ambiguous, to the say the least, such as:

- *Par l'intermédiaire du Savoir d'entreprise, Les Affaires souhaite offrir à ses lecteurs des connaissances de pointe provenant d'organisations désireuses de partager leur expertise*
- *Ce texte fait partie d'un cahier spécial.*

In addition, we observed the ambiguous expression “by or on behalf of” and the French equivalent “*par ou pour un annonceur*” used by several news organizations.

Discussion

Although a notice about a text’s advertising content, near the text and the link to it, is a good minimal practice, the notice must still be designed and placed so that the reader can see and understand it. So we think camouflaging the notice intended to explain the content’s advertising nature is a practice to be avoided. As mentioned above, the idea of writing an explicit and more transparent notice and then camouflaging it seems counterproductive.

Moreover, the use of “*by or on behalf of*” or its French equivalent “*par ou pour un annonceur*” doesn’t enable the reader to adequately assess the involvement of the news organization or the advertiser in producing the paid content, and is therefore also to be avoided.

4.2.1.2.3 No Disclosure at Any Stage and Total Visual Integration

Results

One news organization out of the 15 analysed provides no explicit or implicit indication for distinguishing hyperlinks leading to paid information content from those leading to journalistic content. Thus, the hyperlink leading to paid information content merges imperceptibly with hyperlinks leading to native content:

Illustration 12 – No disclosure of the advertising nature on the home page



Source: JOURNAL DE MONTRÉAL, home page, March 9, 2018.

Accordingly, a purely circumstantial clue enabled us to identify those two advertisements, i.e. their titles with a commercial connotation: “Financer un retour aux études avec le REEP” and “Check-list pour le magasinage de sa maison.” The page to which those hyperlinks lead mentions that the content was produced “in collaboration with [advertiser’s logo].”

The next two illustrations also present an almost total visual integration. The only disclosure in illustration 13 is a “Commandité” (“Sponsored”) mention that is almost invisible by having the same visual aspect as the titles of nearby hyperlinks, whereas illustration 14 only mentions “Contenu de marque” (“Brand Content”) above the picture (still, we note another distinctive aspect: the font used for the hyperlink is different from the one used on the rest of the page).

Illustration 13 – Total visual integration



Source: VICE MÉDIA, home page (francophone page of Canada), April 6, 2018.

Illustration 14 – Total visual integration



Source: HUFFINGTON POST, home page (francophone page of Canada), February 26, 2018.

Our last example shows a page displaying advertising content without clear disclosure. An attentive observer will, however, detect the mention “Contenu de marque” (“Brand Content”), which appears in fine print three times on the page (twice at the top and once at the bottom) and can deduce, from the hyperlink concluding the article and leading to a merchant’s website, that advertising content is presented:

Illustration 15A – No disclosure on the advertisement page (excerpt 1/2, top)

CONTENU DE MARQUE

Ce qu'il faut savoir sur l'Internet des objets et la maison intelligente

Contenu de marque
HuffPost Québec

08/03/2018 14:56 EST | Actualisé 08/03/2018 14:56 EST




Source: HUFFINGTON POST, *Ce qu'il faut savoir sur l'Internet des objets et la maison intelligente*, April 3, 2018.

Illustration 15B – No disclosure on the advertisement page (excerpt 2/2, bottom)

Des tâches quotidiennes simplifiées

Vous n'aurez aucune difficulté à effectuer plusieurs tâches à la fois avec la nouvelle génération d'assistants personnels à commande vocale pouvant gérer aussi bien votre emploi du temps que la lecture de podcasts. Ces systèmes automatisés sont même capables de vous tenir au courant de la météo et de l'état de la circulation avant que vous ne quittiez la maison. Et si vous saisissez correctement vos données en rentrant du supermarché, votre réfrigérateur intelligent pourra vous avertir lorsque votre yogourt atteindra sa date de péremption. En somme, l'Internet des objets peut être intégré à votre planification quotidienne de toutes sortes de manières.

Prenez le virage de l'Internet des objets en équipant votre logement avec un réseau maillé dernier cri. [Apprenez-en plus au sujet du Wi-Fi Partout chez vous de Bell](#).

Contenu de marque
HuffPost Québec

[Envoyer une correction](#)

PLUS:

[Bien-être](#) [Internet](#) [maison](#) [maison intelligente](#) [techno](#) [wi-fi](#)

Source: HUFFINGTON POST, *Ce qu'il faut savoir sur l'Internet des objets et la maison intelligente*, April 3, 2018.

Discussion

To prevent the omission of material information from confusing advertising content with journalistic content, the advertising nature of paid content must be disclosed at every step, i.e. 1) near the hyperlink leading to native advertising and 2) on the page displaying information content paid by the advertiser.

To meet its clarification objectives, any disclosure must be clear and limpid itself.

The advertising nature must be disclosed first near hyperlinks, both internal ones on the news organization's digital platform (on the home page or other sections of the website) and on social media such as Facebook and Twitter. In fact, the reader should not be led to commercial content without being notified beforehand of that content. Otherwise, he could feel misled by a news organization when he realizes he has been deviously led to an advertisement.

A second disclosure must of course appear on the page displaying paid information content. Given the digital environment, where articles shared through social media or e-mail are part of Web sociology³¹⁴, disclosure at this stage is essential. Otherwise, sharing sponsored content would mean that the notice appearing only near the hyperlink would not be visible to a reader arriving directly on that sponsored page through a third-party link.

The risk of confusion is even higher if, after clicking on a hyperlink leading to editorial advertising, the reader remains (or finds himself) on the news organization's digital platform; and if, without clear disclosure, he can't see immediately whether the content is that of an advertiser or of the host site he usually consults³¹⁵. Indeed, seeing the news organization's name, for instance in the URL and on the Web page, leads the reader to directly associate the editorial advertisement with the host platform.

In addition, disclosures appearing only near the hyperlink and not on the page of paid information content don't take into account the possibility that the reader may click too quickly on the hyperlink. The use of disclosures displayed only near hyperlinks and not on the page displaying commercial content should be prohibited if one wants the advertising nature of content to be indicated clearly.

Moreover, total visual integration with nondisclosure is a bad practice that very much risks misleading a credulous and inexperienced consumer and constituting thereby a misleading representation.

4.2.1.2.4 No Identification of the Advertiser and Confusion as to the Author of Paid Information Content

Results

The advertiser's identity was impossible to discern for one of the infomercials: no mention of the advertiser appears in the text, or even in the banner advertisements. And yet, the page displaying that content indicates "Sponsored content" as well as "Metroland Media" (an entity related to the news organization analysed) at the location where we usually find the author's name.

³¹⁴ Dominique BOULLIER, *Sociologie du numérique*, Paris, Armand Colin, coll. "U Sociologie," 2016.

³¹⁵ D. BAILLARGEON *et al.*, "Confrontations et convergences éthiques," *op. cit.* note 14, p. 35.

Illustration 16 – Unnamed Advertiser and Author (above the Content)**Tackling spring allergy season like a pro**

SPONSORED CONTENT Apr 02, 2018 Metroland Media

Source: THE HAMILTON SPECTATOR, *Tackling spring allergy season like a pro*, April 3, 2018.

In other cases, circumstantial cues enabled us to know or suspect the advertiser's identity: for example, a banner advertisement related to the content or to the Facebook publication mentioning the advertiser's name.

Discussion

Not clearly disclosing the identity of an advertisement's author or at least of the advertiser is a practice that should have no place in advertising, particularly when such content appears on a news organization's website.

We also think it obvious that a *credulous and inexperienced* consumer, even if he goes beyond the general impression, will not necessarily guess the author's identity on the basis of circumstantial cues.

4.2.1.3 Identified Native Advertising Models**Results**

Regarding templates of native advertising presented by news organizations, our findings are:

- 1- Underwriting model: three advertisements presented by 3 news organizations respectively are editorial articles sponsored by third parties, but without a right of review.
- 2- Advertising agency model: 7 out of 15 news organizations offer to accompany the advertiser in writing paid information content, which is generally the role of an advertising agency.
- 3- Platform offer model: 4 news organizations offer the advertiser a platform within their website. The reader is told that the advertiser produced its content without the involvement of the news organization or its journalists.

Some news organizations offer their advertisers more than one native advertising model.

However, given the lack of disclosure, we could not conclude with certainty as to the model used for 21 of the editorial advertisements examined, presented respectively by seven news organizations.

Discussion

The most common model consists of offering advertisers services that are those of an advertising agency.

It is surprising, and regrettable, to observe the news organizations' lack of transparency about their level of involvement in producing paid information content appearing on their website.

Moreover, in our view, when more than one model is used by a news organization, the explicit mention chosen should be essentially the same for each of the three editorial advertising models, since they're all advertisements, ultimately. The notice should of course be adapted to the respective involvement of the news organization and the advertiser in writing the advertisement.





4.2.1.4 General Findings

4.2.1.4.1 *Effect of Ad Blockers on Disclosure of the Advertising Nature*

Although this finding is tangential to our research, it should be noted that an activated ad blocker may affect the presence (or display) of links leading to advertisements (or even of the section reserved for this type of links), but may also, ironically, act only on the disclosure of the advertising nature of the content to which the link leads, so that the cues for distinguishing advertising content from journalistic content disappear, rather than the link itself.

As an illustration, here is an ad blocker's effect as observed on a news organization's website we analysed. (It proved impossible to obtain the same links, for the purposes of our example, since after opening the ad blocker and reloading the page, new advertising links appeared.)

Illustration 17 – Effect of an ad blocker on disclosure

WITHOUT AN AD BLOCKER	WITH AN AD BLOCKER
<p>SEE MORE STANDOUT »</p> <div>  <p>SPONSORED CONTENT</p> <p>5 Compelling Benefits of Homecare</p> <p>APRIL 14, 2016</p> </div> <div>  <p>SPONSORED CONTENT</p> <p>Taiwan and Hong Kong: two cultures, one trip</p> <p>MARCH 30, 2017</p> </div>	<p>SEE MORE STANDOUT »</p> <div>  <p>A grocer from the good old days: Vancouver's original natural and bulk food store</p> <p>MARCH 20, 2017</p> </div> <div>  <p>Visit the Scottish Games at the End of the Train</p> <p>APRIL 13, 2017</p> </div>

Source: VANCOUVER COURIER, home page, April 2018.

4.2.1.4.2 No Uniformity in Disclosure Methods

As we have seen, the disclosure methods used by the news media clearly lack uniformity. This can confuse the reader who, from one news organization to another, may have to perform an analysis before being able to identify clearly the editorial content, the commercial content and the different types of hyperlinks leading to different content.

4.2.1.4.3 Variable Placement

The placement of terms used for announcing the commercial nature of information also varies from one news organization to another. The placement is: on top before the title; on top before the text; in the body of the text; where the author's name is usually indicated; or at the bottom, after the text.

4.2.2 Mobile Applications

Results

Of the 15 news organizations selected as part of our survey, 13 have a mobile application for disseminating their content to the public. For 3 of the news organizations, no paid information content was detected in the mobile applications.

Generally, the news organizations concerned use the same disclosure methods on their mobile apps as on their websites. However, as we had predicted, we observed disparities, at times minor, in disclosure methods between the website and the mobile app of some news organizations. We will describe only the most striking ones.

Regarding one news organization, the notices appearing on the website – on the page displaying advertising content (see illustration 2) – are camouflaged on the mobile app and show up only when one clicks on the sentence "Qu'est-ce qu'un XTRA?"

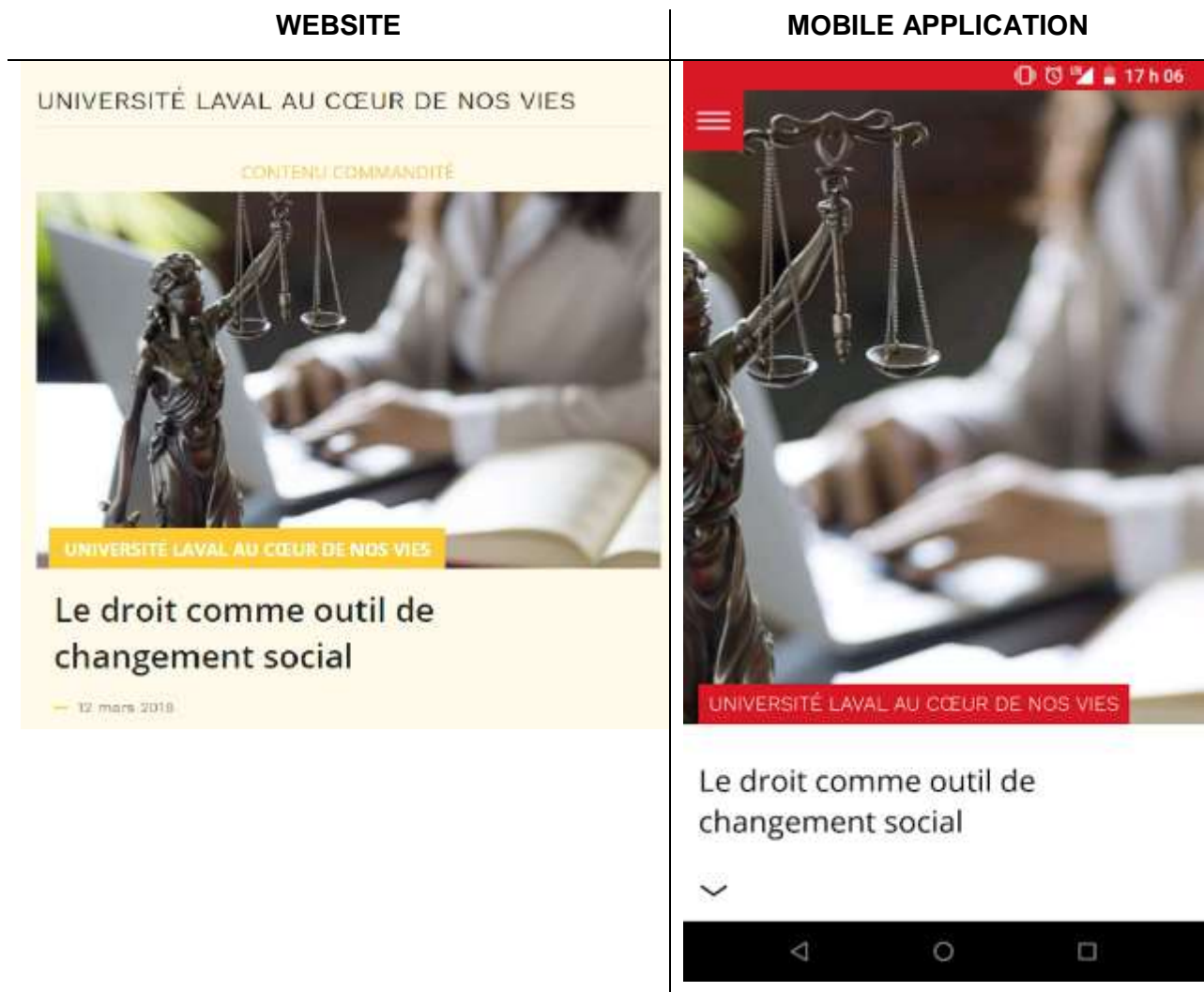
Illustration 18 – Camouflaged notice in the mobile application



Source: LA PRESSE, *Le pharmacien : une ressource accessible!*, February 27, 2018.

To that effect, it appears that 3 news organizations don't present the mention – at the hyperlink stage or on the content page – although they did on their website. In our first example's mobile app (Illustration 19), simply moving from left to right (horizontally) suffices to search for an article. The editorial advertisement mixes with journalistic articles. On the home page of that first news organization's website is the mention "Contenu commandité" ("Sponsored Content") and a slightly distinct design (orange strip surrounding the text box), but those two clues are absent in the mobile application:

Illustration 19 – Disappearance of cues in the mobile application



Source: LE SOLEIL, *Le droit comme outil de changement social*, March 15, 2018, in the "Le Soleil" mobile app and on its Web page.

Regarding a second news organization, there is no disclosure on the page displaying advertising content: no distinctive element appears, as opposed to what was found on the website (which at least mentioned the term “Sponsored”), so the advertising content could easily be confused with journalistic content.

Illustration 20A – Notice of the advertising nature on the website



Source: TORONTO STAR, *Mentorship key to Marlies success*, February 5, 2018, website.

Illustration 20B – No notice of the advertising nature on the mobile application



Source: TORONTO STAR, *Mentorship key to Marlies success*, April 3, 2018, in the "Toronto Star" mobile app.

Regarding another news organization, the term used on the website to disclose the advertising nature of sponsored articles, the accompanying notice and company logo disappear in the mobile application. Apart from the mention "Special to National Post" (which tells a credulous and inexperienced consumer strictly nothing about the content's advertising nature, no disclosure appears on the mobile application:

Illustration 21A – Disclosures on the website



Source: NATIONAL POST, *The Traditional Farmhouse Reimagined*, March 31, 2018, on the website.

Illustration 21B – Disappearance of the disclosures on the mobile application

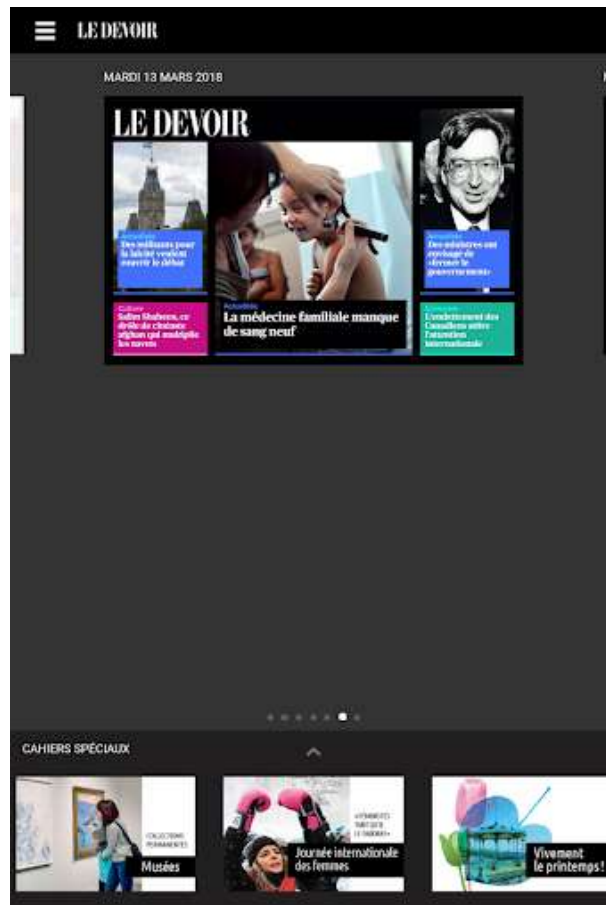


Source: NATIONAL POST, *Mentorship key to Marlies success*, April 3, 2018, in the "National Post – Canadian News, Politics & Opinion" mobile app.

Another news organization separates completely, on its mobile application's home page, paid information content and editorial content. In this case, native advertising appears at the bottom of the home page screen with the mention "Cahiers spéciaux" ("Special Sections") (see illustration 22). Although the website's home page contains a section reserved for advertising

(see illustration 8³¹⁶), that section remains visually integrated with the native content and is not placed apart as in the mobile application:

Illustration 22 – Clear separation between content types



Source: LE DEVOIR, March 14, 2018, in the “Le Devoir mobile” mobile app.

However, once the advertising page is opened, no cue appears, except the mention “Collaboration spéciale” (“Special Collaboration”), highly ambiguous, which follows the journalist’s name.

Discussion

It’s surprising to observe the total absence of disclosure for certain native advertisements. Of course, a mobile app’s display area is smaller than on a website, but that certainly doesn’t justify not disclosing (or not clearly disclosing) the advertising nature of content; indeed, it’s still possible to use on a mobile app the good practices we identified above, such as: placing the visible notice at the beginning of content, displaying the logo and the explicit mention indicating the advertising nature.

³¹⁶ That illustration (*supra*, p. 74) shows the second type of paid content presented by that news organization (as *contenu commandité* (sponsored content)). However, our search on the mobile app did not reveal such content.

In addition, we think it appropriate to clearly separate advertising and journalistic content. That certainly makes a visible distinction. But again, for disclosure to be clear, the advertising section must be adequately identified.

4.2.3 Social Networks

4.2.3.1 Facebook

Results

According to our research, 8 out of 15 news organizations publish, on their Facebook page, hyperlinks leading to paid information content.

5 news organizations use standard disclosure methods established by Facebook: 1) placing a label with the mention "paid" or "sponsored"; and 2) using the term "with" followed by the advertiser's name and taking the form of a hyperlink leading to the advertiser's Facebook page, as shown in illustration 23.

Illustration 23 – Example of a sponsored Facebook publication



Source: Facebook page of the JOURNAL DE MONTRÉAL, March 1, 2018.

Three Facebook publications leading to editorial advertising on the news organization's website use neither the disclosure methods proposed by Facebook nor any other distinctive sign, and are thus confused with the other hyperlinks displayed by the news organization.

Two news organizations have created a Facebook page distinct from their main page to share paid information content, in order to clearly distinguish between commercial and journalistic content. However, both news organizations share the publications on their main Facebook page. While, as seen in illustration 24, Les Affaires doesn't use the disclosure methods offered by Facebook, we observe in illustration 25 that La Presse, by contrast, uses those methods on the original publication (notably by placing the "Payé" ("Paid") label).

Illustration 24 – A paid Facebook publication that appears on the news organization's main page, following a "sharing" and without explicit disclosure



Source: LES AFFAIRES Facebook page, March 27, 2018.

Illustration 25 – A paid Facebook publication that appears on the news organization’s main page, following a “sharing” and with explicit disclosure



Source: LA PRESSE Facebook page, March 1, 2018

Discussion

Creating a page distinct from the news organization’s main Facebook page to share paid information content, while including an explicit notice about the advertising nature, is, in our view, a good practice.

In addition to using the tools that Facebook makes available to advertisers, i.e. the marker “Paid” and the advertiser’s identity disclosure by the indication “**with** [advertiser’s name and hyperlink leading to the advertiser’s Facebook page],” adding the term “advertisement” in the Facebook publication would certainly be helpful³¹⁷.

4.2.3.2 Twitter

Although we did not analyse the news organizations’ Twitter news threads, we found a “sponsored” tweet to illustrate the disclosure methods used on Twitter. The latter mainly uses the “Sponsored” label, which unfortunately appears only below the hyperlink, its box and Twitter’s features.

³¹⁷ That practice was found from no news organization, but constituted, in our view, a best practice.

Illustration 26 – Sponsored tweet



Source: TWITTER, March 19, 2018, on Twitter's mobile app.

4.3 Limitations of Our Survey

Our methodology's main limitation is that native advertising, by definition, hides amid editorial content. So we may not have identified certain practices, despite the various steps taken to mitigate that limitation (particularly by examining contextual or circumstantial cues).

Limiting our research to three native advertisements per news organization may also have limited our survey. Since we stopped searching after collecting and analysing three advertisements, some practices may have passed under the radar.

Lastly, our survey may have suffered from a "temporal" limitation. It is possible that, during the period when we conducted our research, some news organizations had no advertiser for certain native advertising models they offered. Some practices may thus have escaped us³¹⁸.

Regarding the editorial advertising models identified, we relied on the information generally offered in the notice provided by the news organization and in the "media kit" when it was public. Thus, our conclusion depended on the information provided and on the news organization's transparency.

³¹⁸ In addition, new practices could emerge. For example, we observed in our survey that La Presse has presented a new native advertising section, named "SUITE," identified as "un magazine promotionnel, une initiative de la Créativité Média de La Presse."

5. Consultation of Stakeholders

Union des consommateurs sent questionnaires to various stakeholders to gather their viewpoints on the use of native advertising in the news media.

More specifically, we solicited the fifteen news organizations analysed, associations representing the news media, journalists and the advertising sector (hereinafter “associations”), self-regulatory organizations of the news and advertising sectors, and academic experts on the media, marketing and media law.

The consultation of the media organizations analysed aimed at collecting their views on the various practices we observed, and their perception of applicable ethical standards for native advertising. We also thought it relevant to contact the associations and academic experts in order to obtain their views on the highlights of our research and on the legal or regulatory framework that should apply to native advertising. The authorities monitoring the media and advertising were also consulted for their perspective on native advertising.

5.1 Methodology

Four questionnaire types were prepared, addressed respectively to: the news organizations; associations representing the news media, journalists and the advertising sector; self-regulatory organizations; and academic experts on the media, marketing and media law³¹⁹. Our objective was qualitative, so we asked open questions. Attached to the questionnaires was a summary of our research highlights and a summary of our field survey’s methodology.

The questionnaires were sent on or around April 17, 2018 and we requested a response within ten days. Moreover, at least one follow-up (by phone or e-mail) was done with each stakeholder, and the response time was extended for those who requested it.

5.2 Participating Stakeholders

Of the fifteen news organizations to which we sent our questionnaire, only one – Les Affaires³²⁰ – responded. Follow-ups were done with each news organization to confirm receipt of our request and verify their intention to participate. Some news organizations did not respond to our request, while others, apparently interested at first, finally refused to answer the questionnaire, after an in-house consultation. To those that told us their refusal, we offered to report their answers anonymously. They maintained their refusal.

As for the associations, the *Fédération nationale des communications*, affiliated with the CSN³²¹ (hereinafter “FCN-CSN”) and the *Association des agences de communications créatives*³²²

³¹⁹ See **Annex 3** for the questionnaire sent to the news organizations. The other questionnaires are similar.

³²⁰ The questionnaire was filled out by the *Vice-président, Solutions d'affaires et éditeur Groupe Les Affaires*.

³²¹ The FCN-CSN represents almost 6,000 members of the communications community, including journalists: FNC-CSN, see the website’s “Mission” section, online: <<http://www.fncom.org/a-propos/mission/>> (page consulted on June 24, 2018). The FNC-CSN coordinator filled out the questionnaire.

³²² Formerly known as the “*Association des agences de publicité du Québec*,” the A2C represents the advertising sector and “numbers almost 70 member agencies with various profiles and services (communications, marketing, advertising, digital, media, design, public relations, events, etc.), which generate over 75% of the industry’s revenues

(hereinafter “A2C”) returned to us the duly completed questionnaire. We also contacted the *Fédération professionnelle des journalistes du Québec*, the *Canadian Association of Journalists*, *News Media Canada*, the *Canadian Marketing Association* and the *Conseil des directeurs de médias*, from which we received no answer.

Regarding self-regulatory organizations, *Ad Standards*³²³ and the *National NewsMedia Council of Canada*³²⁴ returned to us a completed questionnaire. In addition, the latter organization sent us two documents in attachment: “*NNC’s position paper on branded journalism*” and the decision *Foulliard v. Globe and Mail*. The *Conseil de presse du Québec* referred us to two relevant articles of its *Guide de déontologie journalistique* (articles 6.3 and 14.2) and to excerpts of recent decisions³²⁵, but did not want to answer our questionnaire.

Three academic experts also answered our questionnaire, i.e. Professors Charles Moumouni³²⁶, Colette Brin³²⁷ and Marie-Ève Carignan³²⁸. The marketing professor we had contacted answered neither our request nor our phone follow-up. However, five researchers and students who are working with Professor Carignan on a collective work on native advertising collectively answered our questionnaire³²⁹.

5.3 Results

5.3.1 Native Advertising and Disclosure Quality

We first asked the news organizations since when their press company has been offering advertisers native advertising and since when they have been publishing it. Here is the answer provided by **Les Affaires**:

Les Affaires vend des produits publicitaires rédactionnels classiques, de type publiereportage. Depuis 2014, nous avons ajouté à cette offre traditionnelle des produits de publicité native du type marketing de contenu.

In addition, **Les Affaires** estimates that native advertising has the advantage, for its readers, of offering “complementary information by experts in the field,” whereas for its advertisers, the

in Quebec.” [Our translation]. A2C, *Découvrir IA2C*, online: <<https://a2c.quebec/decouvrir-a2c>> (page consulted on May 26, 2018). The President and Executive Director filled out the questionnaire.

³²³ The Executive Director filled out the questionnaire.

³²⁴ The Communications Director filled out the questionnaire.

³²⁵ *Proulx and Lavigne v. La Presse+*, op. cit. note 3 (complaint upheld); *Bouchard v. Lapresse.ca*, op. cit. note 280, (complaint dismissed); *Legros v. La voix des Mille-Îles*, op. cit. note 66 (complaint upheld).

³²⁶ Charles Moumouni, a lawyer and a full professor at the News and Communications Department of Université Laval (where he teaches a course in journalism law and ethics), has conducted research on infomercials in Quebec newspapers and on the porosity between news and advertising.

³²⁷ Colette Brin, a full professor at the News and Communications Department of Université Laval, directs the *Centre d’études sur les médias*, which seeks to “better understand developments in the local media.” [Our translation] As a member of the scientific committee, she contributed to the *Shattered Mirror* report, published in 2017 by the Public Policy Forum.

³²⁸ Marie-Ève Carignan, an associate professor at the Literature and Communications Department of the Literature and Humanities Faculty of Université de Sherbrooke, is contributing notably to a collective work on native advertising formats and related issues: COUTANT, A., DANY BAILLARGEON, MARIE-ÈVE CARIGNAN, E. DIONNE and M. TOURIGNY, “Informer ou promouvoir : la variété des formats de publicité native sur Internet et les enjeux qu’ils charrient,” in LIÉNARD F. and ZLITNI S. (ed.), *Médias Numériques et Communication électronique* (provisional title), Limoges: Éditions Lambert-Lucas (to be published shortly).

³²⁹ The members of Professor Carignan’s team are Dany Baillargeon, Alexandre Coutant, Mikaëlle Tourigny and Élyse Dionne. MM. Baillargeon and Coutant are also professors in the field of advertising and communications.

advantages are of “positioning themselves as experts,” “publicizing their expertise,” “promoting their brand,” “showcasing their products and services” and having “access to a qualified business audience.” [our translation]

We asked whether native advertising also had drawbacks; none was mentioned by **Les Affaires**.

That news organization provided the following comment about our study’s highlights:

Nous distinguons trois types de contenus “annonceurs” dans notre pratique, et nous déplorons l’absence de ces distinctions dans votre analyse. Nous présentons des publiereportages (publicité native) où l’annonceur a entière liberté, des contenus à saveur informative qui mettent de l’avant une expertise (marketing de contenu) où nous révisons les contenus et accordons une meilleure visibilité et des contenus rédigés par notre rédaction auxquels des annonceurs peuvent associer leur marque mais dont ils ne peuvent aucunement influencer le contenu.

Par ailleurs, la lecture des résultats de votre recherche nous confirme que l’importance que nous accordons à nos balises publicitaires nous a permis d’adopter des pratiques parmi les meilleures de notre secteur.

Moreover, we asked **Les Affaires** to assess the quality of its disclosure of the advertising nature to its readers. **Les Affaires** answered:

La crédibilité de nos publications est essentielle à nos activités. Nous devons donc expliquer le plus clairement possible à nos lecteurs quel type de contenu nous publions, tout en tenant compte des attentes d’intégration de nos clients annonceurs. Nous nous sommes dotés de normes et nous les respectons. Comme nous n’avons pas de syndicats à l’interne, ces normes émanent d’un consensus entre la rédaction et le service des ventes publicitaires.

5.3.2 Transparency and Distinction between Information and Advertising

The associations and self-regulatory organizations were first questioned about their position on native advertising in the news media. What stands out from the answers we received is the importance of transparency for this type of advertising.

The **FNC-CSN** states the following:

Pour nous, à la FNC, il est primordial qu’il y ait une distinction claire entre le contenu journalistique et le contenu publicitaire et ce, peu importe sa forme. Nous défendons une information de qualité, des règles éthiques claires pour les journalistes que nous représentons et le droit à une information juste et diversifiée pour le citoyen. En ce sens, il est clair que pour nous, la publicité native pose problème, car trop souvent, elle prend l’apparence de textes journalistiques, n’est pas suffisamment « différenciée » et entraîne de la confusion chez le lecteur. De plus éthiquement, le concept de publicité native est inacceptable, car son objectif est de se confondre avec de l’information.

The **A2C** opines that:

Pour rejoindre une cible qui est sollicitée de toute part, il est de pratique courante d'utiliser différents formats et médias. Les médias d'information vivent de la vente d'espaces publicitaires. Or, avec l'omniprésence des outils technologiques, les espaces publicitaires traditionnels sont de moins en moins utilisés (notamment le passage du papier au numérique), d'autres méthodes pour rejoindre leurs lecteurs sont nées, méthodes qui deviennent des opportunités pour les annonceurs et des sources de revenus pour les médias.

L'industrie des communications créatives est d'avis que les consommateurs ont droit à de la transparence – savoir d'où vient le contenu. Cette transparence est aussi à la base de la relation entre l'annonceur, son produit ou service et le consommateur. Plus de transparence mène à plus de confiance, et ultimement à une pérennité de la marque et de sa valeur économique. Ces principes doivent donc s'appliquer à la publicité native dans les médias d'information.

According to the self-regulatory organization the **National NewsMedia Council of Canada**:

[n]ative or branded content is a fact of life in the news media. However, the NNC is aware that the intent of branded content lies with the interests of the sponsor, while the intent of news and opinion writing lies with the interests of the public good.

According to **Ad Standards**, “It’s very important that consumers be informed when in the presence of native advertising.” [Our translation] The organization draws our attention to its Code’s section 2 (which pertains to disguised advertising techniques).

5.3.3 Searching for a Balance between Ethical and Economic Issues

The second element that stands out from the results is the weighing of ethical and economic issues. To the **FNC-CSN**, very aware of the news media crisis, protecting independent and quality information must still prevail over the news media’s quest for advertising revenues:

Il faut sensibiliser les éditeurs à l'obligation de transparence et d'honnêteté auxquels ils doivent se soumettre envers la population. Le droit à l'information et à une information de qualité doit prendre le dessus sur la recherche de revenus publicitaires. Lorsque les journalistes de La Presse ont mené leur bataille sur la publicité native, la bataille fut rude et longue face à un employeur qui n'avait de cesse de nous rappeler la chute des revenus de l'entreprise et que la publicité native était une façon de conserver des emplois en faisant entrer une nouvelle source de revenus publicitaires. L'absence de sensibilité de l'employeur sur l'éthique était mortifiante [...]

Regarding our study’s highlights, the **A2C** points out notably that the consumer’s intelligence should be considered:

Votre analyse est intéressante et révélatrice: il y a encore place à l'amélioration. Nous croyons cependant que les consommateurs sont de plus en plus éduqués et de plus en plus à l'aise avec tous les types de

communications – les plus jeunes ont été élevés avec la publicité et en sont très critiques. Les plus âgés ont trop de vécu pour être à ce point naïfs. Nous devons respecter leur intelligence et ne pas cloîtrer notre industrie des médias de l'information sous des carcans qui au bout du compte, diminueront leurs capacités même d'exister.

Professor **Marie-Ève Carignan** states the following:

Une meilleure identification et distinction des formats de publicités natives viendrait conforter les journalistes dans leur pratique. Ils sont en dilemme éthique entre la confiance qu'ils ont obtenue du public et qui est menacée par ces formats publicitaires dissimulés et le besoin essentiel de financement des médias, qui doivent nécessairement se tourner vers ce genre de pratiques en raison de la baisse d'investissements publicitaires dans les médias traditionnels au profit des médias sociaux. À contrario, et ce qui est totalement contre l'éthique journalistique, les annonceurs misent sur la confusion du public et sur la crédibilité de l'information traditionnelle, c'est pourquoi ils investissent dans ce genre de format publicitaire qui est l'objet de moins de blocage et de frustration (car non identifiée) par le public. Les annonceurs risquent donc potentiellement de se désintéresser de ces formats avec des pratiques d'identifications plus structurées.

Professor **Charles Moumouni** opines that:

Le recours à toutes les formes de contenus publicitaires déguisés est l'une des conséquences de la crise que traversent les médias, notamment la presse écrite. Le problème est moins la prolifération de la publicité dans ces médias que leur traitement non professionnel. L'étude a mis en évidence des pratiques anarchiques qui ne peuvent être défendues au motif de la liberté éditoriale ou de la presse. Un minimum de standardisation des pratiques des contenus publicitaires paraît nécessaire. Il revient aux associations professionnelles d'en faire des propositions sur la base des résultats de recherche comme ceux qui sont présentés ici.

In the same vein, the three academic experts were questioned about their position on the use of native advertising by the news media, in terms of ethics. Professor **Marie-Ève Carignan** writes:

Cela va à l'encontre des principes d'indépendance entre information et publicité, c'est une pratique qui ne rencontre pas les standards éthiques de la profession journalistique, mais qui est imposée par la situation financière actuelle des institutions médiatiques.

According to Professor **Colette Brin**:

Je crois qu'elle peut être tolérée du moment qu'elle soit clairement identifiée et identifiable. Par ailleurs, le média doit s'assurer que les contenus commandités soient rigoureusement exacts et non contradictoires avec sa mission d'information.

Un e journaliste qui produit du contenu commandité ne doit pas le faire sur des sujets, ni auprès de sources, liés à ceux qu'il ou elle couvre dans son travail journalistique.

Professor **Charles Moumouni** answers that question by referring to his previous answers. But he adds that “the study’s results confirm observations made since the 2000s by the *groupe de recherche sur les Pratiques novatrices en communication publique* (PNCP) of Université Laval’s News and Communications Department, of which I am one of the six researchers.” [Our translation] He cites as references four works on the subject³³⁰.

5.3.4 Stakeholders’ Views on Best Practices³³¹

Generally, the stakeholders who answered questionnaire agree with the best practices we identified. **Les Affaires** writes:

Nous croyons en des pratiques exemplaires, et les suggestions nous semblent bonnes. Exceptée celle du point 5, nous avons adopté et nous appliquons l’ensemble de ces pratiques exemplaires. Nous sommes donc d’avis que ce sont des pratiques qui protègent la crédibilité de nos publications. Nous appliquons celle du point 5 autant que possible.

The **FNC-CSN** comments as follows:

Ce sont effectivement des pratiques exemplaires. Il faut en effet que le lecteur ait conscience qu’il navigue soit dans un environnement publicitaire, soit dans un environnement journalistique sans avoir à se poser la question. Il n’est pas souhaitable que les éditeurs de journaux, de magazine, etc. entretiennent la confusion. C’est une question de crédibilité pour le média et le personnel qui y travaille mais aussi pour l’ensemble de la profession journalistique.

The **A2C** simply states: “We endorse those practices.” [Our translation] and the **National NewsMedia Council Canada** writes: “[t]hey align reasonably well with best practices identified by the NNC.”

Ad Standards mentions that “the best practices identified are clear, effective and very accessible to advertisers.” In addition, it’s a “very good idea to specify that notices should be near hyperlinks and on the page to which the consumer is led, particularly if the content is likely to be shared.” [Our translation]

³³⁰ BERNIER, Marc-François, François DEMERS, Alain LAVIGNE, Charles MOUMOUNI and Thierry WATINE (2008), “À propos des catégories de contenus médiatiques : information, publicité, opinion, divertissement,” pp. 147-170 in Dominique AUGÉY, François DEMERS and Jean-François TÉTU (under the direction of), *Figures du journalisme : Brésil, Bretagne, France, La Réunion, Mexique, Québec City, Québec*, Les Presses de l’Université Laval, 183 p.; BERNIER, Marc-François, François DEMERS, Alain LAVIGNE, Charles MOUMOUNI and Thierry WATINE (2006), “Médias généralistes et idéal journalistique : la fin d’une époque,” special edition of *Cahiers du journalisme*, No. 16, fall, p. 7-164; MOUMOUNI, Charles (2005), “Quand la publicité ressemble à l’information : les dessous d’un glissement identitaire,” in Marc-François BERNIER, François DEMERS, Alain LAVIGNE, Charles MOUMOUNI and Thierry WATINE, *Pratiques novatrices en communication publique : journalisme, relations publiques et publicité*, Québec, Presses de l’Université Laval, pp. 127-157; BERNIER, Marc-François, François DEMERS, Alain LAVIGNE, Charles MOUMOUNI and Thierry WATINE (2005), “Repères nouveaux sur l’identité des messages médiatiques : programme de recherche du Groupe de réflexion sur les pratiques novatrices en communication publique (PNCP),” *Communication*, vol. 23, No. 2, pp.185-196.

³³¹ See **Annex 4**, *Summary of Highlights*, which we sent the participants and which details the best and bad practices we identified.

Professor **Marie-Ève Carignan** states: “I find them appropriate.” Professor **Colette Brin** writes: “they’re well justified and explained. I think they’re useful to consumers.” Lastly, Professor **Charles Mounouni** opines as follows:

Les pratiques exemplaires que vous avez identifiées correspondent à ce que recommandent les guides éthiques et codes de déontologie journalistiques. Elles pourraient constituer un nouveau standard qui permettrait d'évaluer le traitement professionnel des contenus publicitaires dans les médias.

5.3.5 Stakeholders' Views on Bad Practices

The stakeholders generally agree also about what we identified as bad practices. According to **Les Affaires**, “There’s room for improvement in the advertising industry. As for editors, they must find a balance for advertising to ensure a news organization’s sustainability in the short term (revenues) and in the long term (protection of credibility).” [Our translation]

The **FNC-CSN** repeats that those practices can confuse readers: “Those bad practices all have in common that they maintain confusion in the content presented to them.” [Our translation]

The **A2C** expresses reservations on certain aspects:

Ne pas mentionner du tout ne nous semble pas une option souhaitable ni viable pour l'annonceur. De plus, nous ne présumons pas de la mauvaise volonté de l'annonceur ou du média, mais notre mot d'ordre est de rendre le contact avec le consommateur gratifiant et honnête : de la transparence. Cependant, nous émettons une très grande réserve quant au jugement de mauvaises pratiques le fait d'utiliser des termes comme commandité, publireportage, contenu de marque, etc. Le consommateur du XXI^e siècle reçoit un nombre inouï de communications de toutes provenances dont il ne peut identifier les sources. Que les médias utilisent leurs propres appellations pour informer leurs lecteurs que ces contenus ont fait l'objet d'un échange économique nous semble tout à fait approprié.

Nos agences travaillent pour des annonceurs qui recherchent les occasions de se démarquer de leur concurrence. Il semble à peu près impensable que cet annonceur ne veuille être identifié.

As for self-regulatory organizations, the **National NewsMedia Council of Canada** states that “[i]t is helpful to have these strong examples of what not to do” and **Ad Standards** opines that “they are well identified. Consumers shouldn’t have to decipher whether they’re facing content paid by an advertiser or objective journalistic content.” [Our translation]

Professor **Marie-Ève Carignan** writes as follows about the bad practices we have identified:

Je suis en accord et elles rejoignent les principes qui étaient identifiés à l'origine dans les codes de déontologie comme celui de la FPJQ et du Conseil de presse du Québec sur l'identification des publireportages et les conflits d'intérêts potentiels. Le manque d'éducation du public aux médias est un grave problème à l'heure actuelle et même les gens qui ont une formation universitaire et une bonne connaissance des outils numériques ne sont souvent pas aptes à identifier les publicités et contenus commandités et ce,

même avec un certain niveau de distinction du format journalistique. J'en fais régulièrement l'expérience dans mes cours et même des étudiants sensibilisés à la chose se font souvent prendre au piège.

Qui plus est, l'industrie de la communication marketing soutient que les consommateurs ne sont pas dupes et qu'ils savent faire la différence. Si tel est le cas, pourquoi alors ces espaces portent-ils des noms sibyllins comme « Xtra ». D'autant plus que les auteurs de certains articles sont parfois des journalistes (pigistes) signant des articles non commandités.

Finalement, même lorsque ces contenus sont identifiés, la façon dont ils sont produits, et donc l'ingérence ou l'inclinaison imposées par l'annonceur, ne sont pas clairement expliqués aux consommateurs. Dès lors, il ne peut juger de la fiabilité de l'information qu'il lit.

Professor **Colette Brin** offers the same answer for good and bad practices: "They are well justified and well explained. That appears useful for guiding consumers." Professor **Charles Moumouni** states the following:

Les mauvaises pratiques identifiées ne respectent pas le contrat de lecture que les médias ont implicitement signé avec le public. Elles ne servent ni la cause des annonceurs, ni celle des médias démasqués. La transparence dans le traitement de l'information journalistique est une question de respect pour le public et pour la démocratie. Les mauvaises pratiques sont tôt ou tard contre-productives parce que le public n'est pas dupe. Le public devient de plus en plus expert.

5.3.6 Sufficiency of Current Self-regulatory Standards

We questioned the stakeholders about the ethical standards generally applicable to native advertising and about their observance by the Canadian news media.

Les Affaires identifies the following ethical standards: "total editorial independence," "distinct graphic charter," "visible mention that content is an advertisement" and "no signature." [Our translation]

Les normes publicitaires relèvent du Code canadien des normes de la publicité. Toutefois, en matière d'éthique dans un média d'information, les normes reposent sur l'éthique journalistique (indépendance complète de la rédaction, distinction marquée entre le contenu éditorial et le contenu publicitaire, divulgation).

That news organization states that it applies the following ethical standards:

Nous nous sommes dotés du TC Media Journalism Statement of Principles and Ethics, que toutes les rédactions respectent. Les sources : Canadian Association of Journalists, Quartz, FPJQ and CBC

Nos normes et pratiques en matière de publicité native émanent d'un consensus entre la rédaction et le service des ventes publicitaires, fondé sur ces normes d'éthique journalistique et une revue continue des pratiques de l'industrie.

The **FNC-CSN** mentions the absence of standards specific to native advertising, but expresses itself more broadly:

Je ne crois pas que la publicité native soit visée par des règles éthiques. Le tout semble laissé à la discrétion des éditeurs. Toutefois, il existe certaines lignes directrices qui ont surtout, je crois été développées à l'extérieur du Québec et du Canada. Par exemple, l'IAB France (Interactive Advertising Bureau) qui recommande 3 solutions afin de rendre la publicité native plus acceptable éthiquement : la Mention, la Désignation et la Différenciation. De même, le Code canadien des normes de la publicité endosse également des règles mettant l'accent sur la véracité, la clarté et l'exactitude, de même que l'absence de techniques publicitaires déguisées.

Moreover, the **FNC-CSN** estimates that those standards are not followed adequately: "No, not at all. The proof: no uniformity in application on this type of advertising." The **A2C** thinks that "The clearer the identifications, the greater the transparency, an essential value for a news organization," which it finds adequately observed by the news media. [Our translation]

In answer to the question about applicable ethical standards, the **National NewsMedia Council of Canada** mentions the following:

The NNC is concerned that while journalists are expected to bear in mind legal and ethical considerations of their writing, courses on branded content may or may not teach those components. Facebook, for example, states that its "journalism certificates" are designed to promote use of Facebook tools, but specifically states the courses will not focus on the practical, legal or ethical aspects of news reporting or broadcasting.

The Council adds that it doesn't know if the Canadian news media comply with the ethical standards: "As we deal with complaints about news content and another organization [Ad Standards] deals with complaints about advertising, we have too little direct experience to offer an opinion."

Ad Standards states that "the news media's willingness to be transparent is genuine but there is confusion at times." To that effect, it adds that "the advertising standards receive a few complaints annually on this subject and generally, we easily obtain cooperation from the news media and advertisers to correct advertisements." [Our translation]

Professor **Marie-Ève Carignan** writes the following:

[O]n ne peut pas parler de « normes éthiques » puisque l'éthique est personnelle à chacun. Sur le plan des normes déontologiques toutefois, les journalistes devraient appliquer les mêmes normes concernant la publicité native que pour les formats classiques de publiereportages.

Dans la profession publicitaire, ces normes déontologiques sont beaucoup plus floues, entre autres parce qu'elles sont autogérées : toutes les instances comme les Normes canadiennes de la publicité, sont constituées de gens de l'industrie, et non d'un ordre professionnel.

She adds that the ethical standards don't appear to be applied adequately by the news media:

[...] Votre étude démontre le manque d'uniformité entre les institutions médiatiques dans l'application des principes de base qui commandent de distinguer information et publicité. Une de nos étudiantes, Mikaëlle Tourigny, complète actuellement un mémoire sur le sujet et elle a aussi rencontré des journalistes qui ont pointé des situations où les employeurs leur avaient commandé des articles de publicité native sans même les en informer.

Professor **Colette Brin** writes:

Je ne crois pas qu'il y ait de normes générales, elles sont appliquées différemment selon les médias. Tout au plus l'identification de ces contenus, mais comme l'étude le démontre, les termes employés sont très variés et parfois ambigus.

Concernant la responsabilité individuelle des journalistes, celle-ci est inscrite dans le Guide de déontologie de la FPJQ (qui ne s'applique qu'à ses membres, pas à tous les journalistes). Je ne sais pas ce qui en est ailleurs au Canada.

She also thinks the ethical standards are not followed adequately:

Non, si je me fie à l'étude, ainsi qu'à ma propre consommation médiatique. À ma connaissance, certains syndicats font des pressions sur leurs patrons pour adopter des pratiques plus transparentes, mais même dans ces médias, les pratiques ne sont pas vraiment exemplaires.

Professor **Charles Moumouni** estimates that “the good practices you have identified correspond to what those standards recommend (see the Guide éthique de la Fédération professionnelle des journalistes du Québec and the Quebec Press Council Guide of Journalistic Ethics).” [Our translation] And according to him and his own academic research, the news media don't meet those standards adequately.

5.3.7 Legal and Regulatory Framework for Native Advertising

Lastly, we questioned the stakeholders on whether a legal and regulatory framework that would establish minimal standards for disclosing the advertising nature of native advertising, as well as uniform disclosure methods, is a solution they would oppose. We also solicited suggestions about minimal standards that should be met by any media organization offering the Canadian public written journalistic information on a digital platform.

a) A rather neutral position

Les Affaires mentions the following:

Un tel encadrement s'appliquerait à nos clients annonceurs avant tout. L'effet serait indirect sur nos activités à titre de diffuseur. L'encadrement devrait être appliqué dans les mêmes termes, quelle que soit la plateforme de diffusion.

b) Stakeholders open to the idea of a legal framework

Some stakeholders said they did not oppose a legal solution. First, the **FNC-CSN** writes that “such a framework is even desirable.” It suggests “the identification standards implemented by IAB France: Mention, Designation and Differentiation should be the benchmarks to enable better identification of this type of advertising and lessen confusion.” [Our translation]

The **National NewsMedia Council of Canada** “is not opposed to legal and regulatory minimum standards for disclosing native advertising, but is of the opinion those obligations should be on the advertiser rather than on the news media organization.” It suggests, as minimal standards: “[y]our best practice that the disclosure be on both the link and the content is a good one, as is the best practice of clearly distinguishing native content from news by way of clear use of logos, border, or separate ‘look’.” Regarding the imposition of uniform standards, the self-regulatory organization has reservations: “We are concerned about ‘one size fits all’, given the growing scope of native advertising. Perhaps a limited range of disclosure methods would be appropriate.”

We questioned the academic experts about the necessity of imposing a legal and regulatory framework that would establish minimal standards for disclosing the advertising nature and would have to be observed by any entity offering the Canadian public written journalistic information on a digital platform. Professor **Marie-Ève Carignan** is in favour of the idea. She writes that such minimal standards should be stated as follows:

Sans interdire la pratique de la publicité native, imposer des méthodes d'identification claires et uniformes des annonceurs et des outils pour distinguer les formats publicitaires de ceux d'information. Les solutions proposées dans la présente étude rejoignent ces principes.

De plus, il faudrait éduquer les consommateurs sur la façon dont l'annonceur modifie ou s'ingère dans les contenus, afin qu'il comprenne la relation entre les desseins de l'annonceur et l'information divulguée.

She adds that the “framework should also apply to advertisers and their agencies. Advertisers should be aware of their role in disseminating clear public information.” She also favours the imposition of uniform disclosure methods, since “it would be easier to educate the public about the necessary vigilance when faced with sponsored content.” [Our translation]

c) Stakeholders opposing the idea of a legal framework

Other stakeholders are more reluctant. That is the case for the **A2C**, which prefers the self-regulatory approach:

Nous croyons qu'avant de mettre en place des mesures légales et réglementaires, il serait bon de réunir l'industrie. Dans bien des domaines, l'autoréglementation est une façon beaucoup plus efficace de s'assurer que les normes minimales soient appliquées. Par exemple, le Conseil des normes publicitaires est un organisme d'autoréglementation qui s'est donné un code d'éthique et qui s'assure que les messages publicitaires rencontrent le code en vigueur. Ce code, par ailleurs, évolue selon les développements et changements dans l'industrie.

Regarding the imposition of uniform disclosure methods, the **A2C** writes:

Dans un univers numérique en constants changements, il nous semble peu probable de trouver un mode de divulgation qui pourra être appliqué par tous les médias sous toutes les plateformes utilisées, et ce, de façon uniforme. Ceci n'exclut pas le besoin d'établir un guide de normes ou un code d'éthique endossé par l'industrie de l'information, s'il n'y en a pas déjà un.

According to the **A2C**, “the minimal standard consists of indicating to readers that content is commercial, thus giving them the choice of reading it or not.”

Without explicitly opining on the idea of a legal framework, **Ad Standards** points out that it is responsible for handling consumer complaints about advertising:

Les Normes de la publicité est un organisme d'autoréglementation de la publicité qui reçoit et traite les plaintes des consommateurs au sujet de la publicité native et du marketing de contenu non-divulgués sous l'article 2, Techniques publicitaires déguisées du Code canadien des normes de la publicité : “Aucune publicité ne doit être présentée dans un format ou dans un style qui masque le fait qu'il s'agit d'une publicité.”

To the question about the necessity of imposing a legal and regulatory framework that would establish minimal standards for disclosing the advertising nature and would have to be observed by any entity offering the Canadian public written journalistic information on a digital platform, Professors **Colette Brin** and **Charles Moumouni** said they oppose such a measure and favour a self-regulatory framework. The former doesn't believe “that it would be effective or useful and would survive a legal challenge.” [Our translation] Still, she thinks self-regulatory standards should be imposed regarding disclosure:

Il serait pertinent que l'industrie s'entende sur des termes clairs et une visibilité/lisibilité acceptable du texte signalant du contenu commandité. Les pratiques exemplaires identifiées dans votre rapport pourraient servir de guide.

Un.e journaliste qui produit du contenu commandité ne doit pas le faire sur des sujets, ni auprès de sources, liés à ceux qu'il ou elle couvre dans son travail journalistique.

Bref : transparence maximale et éviter les conflits d'intérêts.

Au besoin, cela pourrait se faire par le Conseil de presse du Québec (qui je crois a déjà statué sur la question, du moins en matière de publireportages traditionnels) et le National NewsMedia Council.

She also estimates that “it would certainly be desirable” to impose uniform disclosure methods. [Our translation]

Professor **Moumouni** writes:

le CRTC peut imposer – comme c'est le cas – des normes de publireportage ou d'info-publicité en matière de radiodiffusion. Mais en ce qui concerne la presse écrite et le Web, il faut laisser les associations professionnelles s'en occuper. Il faut bien sûr y ajouter la pression du public et des associations de

consommateurs. Union des consommateurs fait bien son travail en menant la présente recherche.

He adds the following:

Les associations professionnelles pourraient proposer des formats et encourager leurs membres à les utiliser. Union des consommateurs pourrait attirer davantage l'attention sur les mauvaises pratiques dénoncées aux tribunaux d'honneur des journalistes et des médias. Union des consommateurs pourrait aussi reconnaître les bonnes pratiques en décernant un Prix de la transparence journalistique.

6. Foreign Legislative Models

In foreign jurisdictions, native advertising attracts the interest of various legislative bodies, particularly government agencies responsible for applying the law. In this section, we will describe the initiatives taken by the European Union, the United States and Australia regarding native advertising and likely applicable provisions.

6.1 European Union

In Directive 2000/31/EC of June 8, 2000³³², the European Parliament and the Council of the European Union established the principle of disclosing the advertising nature and the advertiser's identity:

Article 6

Information to be provided

In addition to other information requirements established by Community law, Member States shall ensure that commercial communications which are part of, or constitute, an information society service comply at least with the following conditions:

- (a) the commercial communication shall be clearly identifiable as such;*
- (b) the natural or legal person on whose behalf the commercial communication is made shall be clearly identifiable;*

French and Belgian lawmakers have adopted those disclosure rules in their internal legislation³³³. In France, the principle appears in the *Loi concernant la confiance en l'économie numérique*:

Toute publicité, sous quelque forme que ce soit, accessible par un service de communication au public en ligne, doit pouvoir être clairement identifiée comme telle. Elle doit rendre clairement identifiable la personne physique ou morale pour le compte de laquelle elle est réalisée.

*L'alinéa précédent s'applique sans préjudice des dispositions réprimant les pratiques commerciales trompeuses prévues à l'article L. 121-1 du code de la consommation*³³⁴.

³³² Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, online: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0031>> (page consulted on June 4, 2018).

³³³ A. OULAI, "La place du consommateur dans l'encadrement de la cyberpublicité," *op. cit.* note 103, pp. 132-133.

³³⁴ Article 20, *Loi concernant la confiance en l'économie numérique*, Loi n° 2004-575 du 21 juin 2004 pour la confiance dans l'économie numérique, version consolidée au 4 juin 2018, online: <<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000801164>> (page consulted on June 4, 2018).

As mentioned in that last paragraph, French legislation contains, in addition to that article, provisions on misleading commercial practices, notably article 121-3 of the *Code de la consommation*:

Une pratique commerciale est également trompeuse si, compte tenu des limites propres au moyen de communication utilisé et des circonstances qui l'entourent, elle omet, dissimule ou fournit de façon inintelligible, ambiguë ou à contretemps une information substantielle ou lorsqu'elle n'indique pas sa véritable intention commerciale dès lors que celle-ci ne ressort pas déjà du contexte.

*Lorsque le moyen de communication utilisé impose des limites d'espace ou de temps, il y a lieu, pour apprécier si des informations substantielles ont été omises, de tenir compte de ces limites ainsi que de toute mesure prise par le professionnel pour mettre ces informations à la disposition du consommateur par d'autres moyens. [...]*³³⁵

The Code even adds the presumption of a misleading practice regarding editorial advertising in the media:

Sont réputées trompeuses, au sens des articles L. 121-2 et L. 121-3, les pratiques commerciales qui ont pour objet :

[...]

*11° D'utiliser un contenu rédactionnel dans les médias pour faire la promotion d'un produit ou d'un service alors que le professionnel a financé celle-ci lui-même, sans l'indiquer clairement dans le contenu ou à l'aide d'images ou de sons clairement identifiables par le consommateur ; [...]*³³⁶

In its *Code de droit économique*, Belgium requires an explicit mention to be included in certain cases:

Art. XII.12. Sans préjudice des autres exigences légales et réglementaires en matière d'information, les publicités qui font partie d'un service de la société de l'information ou qui constituent un tel service répondent aux principes suivants :

1° dès sa réception, la publicité, étant donné son effet global et y compris sa présentation, est clairement identifiable comme telle. A défaut, elle comporte la mention "publicité" de manière lisible, apparente et non équivoque ;

*2° la personne physique ou morale pour le compte de laquelle la publicité est faite est clairement identifiable ; [...]*³³⁷

³³⁵ *Code de la consommation*, version consolidée au 25 mai 2018, online:

https://www.legifrance.gouv.fr/affichCode.do?sessionId=C4523A9915C8F99E4C2A7E852E691DA0.tplqfr41s_1?idSctionTA=LEGISCTA000032227299&cidTexte=LEGITEXT000006069565&dateTexte=20180604 (page consulted on June 4, 2018).

³³⁶ *Ibid.*, art. 121-4.

³³⁷ *Code de droit économique*, February 28, 2013, in effect since May 31, 2014, online:

<http://www.ejustice.just.fgov.be/eli/loi/2013/02/28/2013A11134/justel> (page consulted on June 4, 2018), art. XII.12.

To apply that provision, “advertising” includes, according to Belgian lawmakers, “toute forme de communication destinée à promouvoir, directement ou indirectement, des biens, des services ou l’image d’une entreprise, d’une organisation ou d’une personne ayant une activité commerciale, industrielle ou artisanale ou exerçant une activité réglementée³³⁸.”

6.2 United States

Like Canada, the United States prohibits misleading and unfair practices, as the *Federal Trade Commission Act* states:

§45. Unfair methods of competition unlawful; prevention by Commission

(a) Declaration of unlawfulness; power to prohibit unfair practices; inapplicability to foreign trade

(1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful³³⁹.

The *Federal Trade Commission* (hereinafter the “FTC”) is responsible for applying that article³⁴⁰, as part of its mandate to protect American consumers. While not having the same effect as a law, if FTC rules and policies regarding misleading or unfair practices³⁴¹ are not followed adequately, corrective action by the FTC can result³⁴².

The *FTC Act* intentionally does not define “deceptive acts or practices,” to give the FTC necessary latitude for determining what constitutes misleading advertising³⁴³. The agency stated the following regarding infomercials (“advertorials”):

Perhaps the earliest applicable FTC document comes from a 1968 advisory opinion regarding print advertorials. The commission wrote that when a published message “uses the format and has the general appearance of a news feature and/or article for public information which purports [to be] independent, impartial and unbiased view [but in fact is] paid for by advertisers, the Commission is of the opinion that it will be necessary to clearly and conspicuously disclose it is an advertisement³⁴⁴. [References omitted]

³³⁸ *Ibid.*, art. I.18 par. 6.

³³⁹ 15 U.S.C. §§ 41-58, amended, online: <<http://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title15-chapter2-subchapter1&edition=prelim>> (page consulted on June 2, 2018).

³⁴⁰ 15 U.S.C. § 45(a)(2).

³⁴¹ 15 U.S.C. § 57a(a).

³⁴² A. J. CASALE, “Going Native: The Rise of Online Native Advertising and a Recommended Regulatory Approach,” in *Catholic University Law Review*, vol. 65, No. 129, 2015, p. 141.

³⁴³ *Ibid.*, p. 138.

³⁴⁴ B. W. WOJDYNSKI, “Native Advertising: Engagement, Deception, and Implications for Theory,” *op. cit.* note 7, citing FTC, *Advisory opinion digests*, 1968.

In 1983, the FTC published *Policy on Deception*³⁴⁵, which states the necessary elements of an act involving deception:

First, there must be a representation, omission or practice that is likely to mislead the consumer. Practices that have been found misleading or deceptive in specific cases include false oral or written representations, misleading price claims, sales of hazardous or systematically defective products or services without adequate disclosures, failure to disclose information regarding pyramid sales, use of bait and switch techniques, failure to perform promised services, and failure to meet warranty obligations.

Second, we examine the practice from the perspective of a consumer acting reasonably in the circumstances. If the representation or practice affects or is directed primarily to a particular group, the Commission examines reasonableness from the perspective of that group.

Third, the representation, omission, or practice must be a "material" one. The basic question is whether the act or practice is likely to affect the consumer's conduct or decision with regard to a product or service. If so, the practice is material, and consumer injury is likely, because consumers are likely to have chosen differently but for the deception. In many instances, materiality, and hence injury, can be presumed from the nature of the practice. In other instances, evidence of materiality may be necessary³⁴⁶.

Aware of the growth of native advertising, the FTC organized, on December 9, 2013, a workshop titled "Blurred Lines: Advertising or Content? An FTC Workshop on Native Advertising," to examine the proximity of advertising to news, entertainment and other editorial content on news organizations' online platforms³⁴⁷.

Afterward, on December 22, 2015, the FTC issued the *Enforcement Policy Statement on Deceptively Formatted Advertisements*³⁴⁸ (hereinafter "EPSDFA"), which focused on native advertising³⁴⁹. On the same day, the FTC completed that policy by publishing "Native Advertising: A Guide for Businesses"³⁵⁰, which provides informal guidelines to companies using this type of advertising.

³⁴⁵ FTC, *Policy Statement on Deception*, October 14, 1983, online:

<https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf> (document consulted on June 2, 2018).

³⁴⁶ *Ibid.*, pp. 1-2.

³⁴⁷ FTC, *Blurred Lines: Advertising or Content? An FTC Workshop on Native Advertising*, December 9, 2013, online: <<https://www.ftc.gov/news-events/audio-video/video/blurred-lines-advertising-or-content-ftc-workshop-native-advertising-1>> (page consulted on June 1, 2018).

³⁴⁸ FTC, *Enforcement Policy Statement on Deceptively Formatted Advertisements*, December 22, 2015, online: <https://www.ftc.gov/system/files/documents/public_statements/896923/151222deceptiveenforcement.pdf> (document consulted on June 2, 2018).

³⁴⁹ David A. HYMAN et al., "Going Native: Can Consumers Recognize Native Advertising? Does it Matter?" in *Yale Journal of Law & Technology*, vol. 19, No. 77, 2017, p. 90.

³⁵⁰ FTC, *Native Advertising: A Guide for Businesses*, December 22, 2015, online: <<https://www.ftc.gov/tips-advice/business-center/guidance/native-advertising-guide-businesses>> (page consulted on June 1, 2018).

The EPSDFA defines “native advertising”³⁵¹ and states that:

*[r]egardless of the medium in which an advertising or promotional message is disseminated, deception occurs when consumers acting reasonably under the circumstances are misled about its nature or source, and such misleading impression is likely to affect their decisions or conduct regarding the advertised product or the advertising*³⁵².

The FTC thus confirms that an advertisement’s format can deceive consumers about its nature or source³⁵³. That’s why, in evaluating the deceptive nature of an advertisement, the Commission examines the general impression rather than the isolated representations³⁵⁴. Accordingly, “the Commission will scrutinize the entire ad, examining such factors as its overall appearance, the similarity of its written, spoken, or visual style to non-advertising content offered on a publisher’s site, and the degree to which it is distinguishable from such other content³⁵⁵.” In addition, the FTC will evaluate the particular circumstances, including consumer expectations toward the news organization presenting native advertising. For example, in the context of a news organization, “if a natively formatted ad appearing as a news story is inserted into the content stream of a publisher site that customarily offers news and feature articles, reasonable consumers are unlikely to recognize it as an ad³⁵⁶.”

Concerning disclosure of the advertising nature, the FTC recommends the following:

Advertisements may include disclosures to inform consumers of their commercial nature, including text labels, audio disclosures, or visual cues distinguishing the ad from other content into which it is integrated. Any disclosure used must be “sufficiently prominent and unambiguous to change the apparent meaning of the claims and to leave an accurate impression.” A disclosure’s adequacy ultimately will be measured by whether reasonable consumers perceive the ad as advertising.

A disclosure must be made in “simple, unequivocal” language, so that consumers comprehend what it means. For example, in infomercial cases, the Commission has required the use of the words “Paid Advertisement.” In its Advisory Opinion on Ads in a News Format, the Commission suggested use of the term “Advertisement” to prevent consumers from being deceived by those particular advertising formats. Disclosures also must be made in the same language as the predominant language in which ads are communicated.

³⁵¹ “Natively formatted advertising encompasses a broad range of advertising and promotional messages that match the design, style, and behavior of the digital media in which it is disseminated. The ads can appear in a wide variety of forms, including written narratives, videos, infographics, images, animations, in-game modules, and playlists on streaming services. Often natively formatted ads are inserted into the stream of regular content a publisher offers, generally referred to in this statement as a “publisher site,” such as news and news aggregator sites and social media platforms. In some instances, publishers place these ads on their sites and, in other instances, advertising networks operating ad content-recommendation engines do so. Advertising and promotional messages also can be embedded into entertainment programming, including professionally produced and usergenerated videos on social media.” FTC, *Enforcement Policy Statement on Deceptively Formatted Advertisements*, *op. cit.* note 348, p. 10.

³⁵² *Ibid.*, p. 2.

³⁵³ *Ibid.*, p. 11.

³⁵⁴ *Ibid.*

³⁵⁵ *Ibid.*

³⁵⁶ *Ibid.*, p. 12.

The conspicuousness of the disclosure will depend on the method of delivery and placement within the ad. Depending on the circumstances, a disclosure in the text may not remedy a misleading impression created by the headline because reasonable consumers might glance only at the headline³⁵⁷.

[References omitted] [Our underlined]

In addition, according to the FTC, the advertising nature must be disclosed at every stage, whether near the hyperlinks leading to advertising content or on the page containing such content:

To be effective, a disclosure also generally must be made contemporaneously with the misleading claim it is intended to qualify. For example, disclosures that subsequently inform consumers of a natively formatted ad's commercial nature after they have clicked on and arrived at another page will not cure any misleading impression created when the ad is presented in the stream of a publisher site. This approach also reflects and is consistent with long-standing public policy, as codified in the CAN-SPAM Act and Telemarketing Fraud Act and found in Commission cases, that material misrepresentations as to the nature or source of a commercial communication are deceptive, even if the truth is subsequently made known to consumers³⁵⁸.

[References omitted]

Following the EPS DFA's publication, a first corrective action was taken in 2016, by the FTC against *Lord & Taylor* regarding native advertising³⁵⁹. Henceforth the company "shall clearly and conspicuously, and in close proximity to the representation, disclose a material connection, if one exists, between such endorser and Respondent³⁶⁰." The decision defines as follows the terms "clearly and conspicuously" and "in close proximity" and gives indications on the ways that can be used to comply:

2. "Clear(ly) and conspicuous(ly)" means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

[...]

b. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

[...]

d. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.

³⁵⁷ *Ibid.*, pp. 13-14.

³⁵⁸ *Ibid.*, p. 14.

³⁵⁹ Lesley FAIR, *FTC's Lord & Taylor case: In native advertising, clear disclosure is always in style*, March 15, 2016, online: <<https://www.ftc.gov/news-events/blogs/business-blog/2016/03/ftcs-lord-taylor-case-native-advertising-clear-disclosure>> (page consulted on June 2, 2018).

³⁶⁰ *In the Matter of Lord & Taylor, LLC*, Decision and Order, May 20, 2016, Docket No. C-4576, online: <<https://www.ftc.gov/system/files/documents/cases/160523lordtaylordo.pdf>> (document consulted on June 2, 2018).

- e. *The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.*
- f. *The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices.*
- g. *The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.*
- h. *When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.*

3. *“Close proximity” means that the disclosure is very near the triggering endorsement or representation. In an interactive electronic medium (such as a mobile app or other computer program), a visual disclosure that cannot be viewed at the same time and in the same viewable area as the triggering endorsement or representation, on the technology used by ordinary consumers, is not in close proximity. A disclosure made through a hyperlink, pop-up, interstitial, or other similar technique is not in close proximity to the triggering endorsement or representation. A disclosure made on a different printed page than the triggering endorsement or representation is not in close proximity³⁶¹.*

So according to the FTC, the advertising nature must be disclosed near the hyperlink and on the page displaying the advertisement, and must be visible to the reader at all times, in clear and unambiguous language.

In a 2013 document, the FTC formulated recommendations on the disclosure of online advertising³⁶², and further explained the criterion of “*clear and Conspicuous disclosures*”³⁶³.

[T]he [FTC] guidance affirms that the disclosures should include terms likely to be understood, such as “Ad,” “Advertisement,” or “Paid Advertisement,” and not terms such as “Promoted” or “Sponsored,” which are ambiguous in this context and could imply, for example, that a sponsoring advertiser funded the content but did not create or influence it³⁶⁴.

6.3 Australia

Australia has legislated regarding false or misleading advertising in the *Competition and Consumer Act 2010* (formerly *The Trade Practices Act 1974*³⁶⁵). That act includes *The*

³⁶¹ *Ibid.*

³⁶² FTC, *.com Disclosures – How to Make Effective Disclosures in Digital Advertising*, March 2013, online: <<https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>> (document consulted on June 3, 2018). It's an update of a 2000 document: *Dot.Com Disclosures: Information about Online Advertising*, May 2000.

³⁶³ *Ibid.*, pp. 7 and fol.

³⁶⁴ Julie O'NEILL et Adam FLEISHER, “Advertising – FTC Guidance on Native Advertising” in *The Licensing Journal*, March 2016, p. 23.

³⁶⁵ Accessible at the following address: *Australian Competition Law*, last updated on September 3, 2014, online: <<https://www.australiancompetitionlaw.org/legislation/1974tpa.html>> (page consulted on June 3, 2018).

Australian Consumer Law, in “Schedule 2,” where we find notably the following provision on false representations:

18 Misleading or deceptive conduct

(1) A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive³⁶⁶.

The Australian equivalent of the *Competition Bureau* is the *Australian Competition & Consumer Commission* (hereinafter “ACCC”), “an independent Commonwealth statutory authority whose role is to enforce the *Competition and Consumer Act 2010* and a range of additional legislation, promoting competition, fair trading and regulating national infrastructure for the benefit of all Australians³⁶⁷.”

Our research didn’t enable us to identify an action taken by the Australian authorities regarding native advertising, although some authors think those provisions of general application also apply to the subject³⁶⁸.

³⁶⁶ AUSTRALIAN GOVERNMENT – Federal Register of Legislation, *Competition and Consumer Act 2010*, Schedule 2—The Australian Consumer Law, updated in November 2017, online: <https://www.legislation.gov.au/Details/C2017C00375/Html/Volume_3#_Toc499717716> (page consulted on June 3, 2018).

³⁶⁷ ACCC, *About the ACCC*, online: <<https://www.accc.gov.au/about-us/australian-competition-consumer-commission/about-the-accc>> (page consulted on June 3, 2018).

³⁶⁸ Baker MCKENZIE, *Australia – New Disclosure Requirements for Native Advertising*, Lexology, February 23, 2017, online: <<https://www.lexology.com/library/detail.aspx?g=ab7052c4-ebc6-4184-8ee1-222ea8ee9688>> (page consulted on June 4, 2018) ; LEGALVISION, *Is Native Advertising Misleading or Deceptive?*, January 20, 2016, online: <<https://legalvision.com.au/is-native-advertising-misleading-or-deceptive/>> (page consulted on June 4, 2018).

Conclusion

Since the collapse of their business model – whereby financing depended mainly on advertising revenues, but with a clearly established separation between the editorial and advertising sectors –, press companies have been in survival mode. Advertisers, well aware that the public has developed a resistance to traditional advertising, are making new demands, to which the news media are trying desperately to adapt their advertising platform. Native advertising, by integrating with a news organization's platform to the point of blending fully with native content, is highly popular among advertisers.

Because it takes the form of information content published by a news media organization, native advertising, as content marketing, raises controversy for good reason. Such advertising generally provokes the indignation of news professionals, aware of the ethical issues involved.

The use and practices surrounding this type of advertising certainly deserve debate, given the serious issues revealed.

The airtight wall supposed to exist in the media between journalism and advertising has become more porous, although it is fundamental to upholding journalistic ethics. The importance of that separation rests on a reality at the heart of the dilemma: the media are funded by advertising, but still must preserve total editorial independence. Indeed, advertising and journalism serve diametrically opposed interests: one has a commercial intent and adopts an incentive discourse, whereas the other serves the public interest by adopting an informative discourse. By offering the possibility of disguising incentive content as information content *in an information medium*, native advertising attempts to blur that distinction.

However, that ethical wall is indispensable for isolating the different interests at stake (of advertisers, news organizations and the public), but also for shielding journalists from external influences, to ensure journalistic independence. But some journalists are assigned – at times without their knowledge – by their employer (or by a news organization, when they're freelancers) to write advertising content, thus putting them in an awkward position: that practice imperils both their independence toward advertisers and their credibility in the eyes of the public.

One of the advantages that advertisers see in native advertising is that the reader will give advertising the same trust he gives the news organization's editorial content, since such advertising attempts precisely to confuse the two different types of content. A consumer who discovers he has been deceived by the editorial guise of paid information content risks questioning his trust in the news organization and in the journalist, even though that trust is vital to the news organization as well as the journalist, and even to the advertiser.

The risk of confusing the reader is not only theoretical. On one hand, that attempt at confusion is part of the very essence of native advertising. On the other hand, studies demonstrate the real difficulty, for the vast majority of consumers, of recognizing the advertising nature of native advertising published by news organizations. Poorly identified native advertising manipulates the consumer, by telling him it's objective and unbiased. Apart from the risk to credibility if such advertising is detected, that manipulation affects citizens' access to independent and quality information, thus weakening their freedom of expression, since it is recognized that "the Charters' freedom of expression includes freedom of the press, so that freedom of expression is

recognized to include the public's right to information that the news media are mandated to provide³⁶⁹." [Our translation]

As recognized by the Supreme Court of Canada, the news media have a special role to play in our society, given the importance of information for freedom of expression and the exercise of democracy. Because of their strategic position, news organizations cannot be considered as any other for-profit companies. The public interest must always prevail over the economic interests of news organizations. That is a foundation of journalistic ethics.

Native advertising is in vogue. However, a given practice's popularity doesn't guarantee its legality. Regarding new controversial practices, it's always wise to question the clarity of legislation and its capacity to regulate them adequately. All the more so because regarding advertising, "the law quickly demonstrates its limitations and ineffectiveness³⁷⁰." [Our translation]

Although we attempted to make a broad reading of the provisions of current legislation and their application to native advertising, they have not yet been tested in court and their adaptability to a digital environment remains uncertain.

Several authors have already concluded that existing laws are not adapted to the virtual world and that legislative intervention has become necessary³⁷¹. According to our research, the legal standards of general application that are currently in effect do appear ineffective, in practice, regarding native advertising, and the obligations of the news media and advertisers appear uncertain. In fact, several news organizations simply don't disclose sufficient information to consumers for them to identify infomercials unfailingly, and at times the advertiser is not even identified clearly. This is despite existing regulations regarding advertising and ethics, despite court decisions, and despite the positions and insistence of experts, all of whom advocate transparent disclosure.

For good reason, legal frameworks that apply more specifically to online or native advertising – notably Belgian legislation and FTC recommendations – tend to impose clear mentions (i.e. the term "advertisement" itself rather than some euphemism) as well as maximum visibility. If no explicit disclosure is made, even a well-informed reader risks confusing advertising and editorial content.

The law prohibits misleading representations, including the omission of material facts. Various practices of native advertising – disguising an ad as a journalistic text, not mentioning a text's advertising nature, etc. – clearly contravene that prohibition. Does the digital environment suffice to explain why that prohibition in its spirit and letter is not understood and generally not applied?

The *Competition Bureau* recognizes that "the Internet nevertheless poses challenges and opportunities for assuring that consumers receive the clear and accurate information required to

³⁶⁹ H. BRUN, "Le droit du public à l'information politique," *op. cit.* note 197, p. 97.

³⁷⁰ Pierre-Claude LAFOND *et al*, *La publicité, arme de persuasion massive*, *op. cit.* note 171, p. VII.

³⁷¹ Véronique ABAD, *Publicité sur Internet et Protection du consommateur*, *Lex Electronica*, vol. 8, No. 2, spring 2003, online: <http://www.lex-electronica.org/files/sites/103/8-2_abad.pdf> (document consulted on June 4, 2018), pp. 11 and fol.; Vincent GAUTRAIS and Mouhamadou SANNNI YAYA, *Rapport relatif aux changements à opérer auprès de la Loi sur la protection du consommateur au regard du commerce électronique*, August 2008, UDM Chair in Cyber Security and E-commerce Law, online: <<https://www.gautrais.com/publications/rapport-relatif-aux-changements-a-operer-aupres-de-la-loi-sur-la-protection-du-consommateur-au-regard-du-commerce-electronique/rapportfinal31082008v2/>> (page consulted on May 27, 2018).

make an informed choice³⁷².” Similarly, in his report titled *Rapport relatif aux changements à opérer auprès de la Loi sur la protection du consommateur au regard du commerce électronique*, Professor Vincent Gautrais points out that “the CPA is old and faces a normal level of obsolescence for a law of that age; but other factors, other events have accentuated that obsolescence, thus aggravating the cleavage between what ‘is’ in the CPA and what ‘is’ in ‘real life’³⁷³.” In particular, he invokes the upheaval created by technological innovation:

Les technologies de l’information constituent en effet un changement communicationnel important ayant forcément des incidences sur la science juridique. Aussi, face à des pratiques contractuelles qui se sont développées soit illégalement soit dans les silences d’une loi mal adaptée aux changements technologiques, une réévaluation de la LPC nous apparaît incontournable.

His text specifically mentions the problems related to disclosing the advertising nature of online content: “Shouldn’t we, for example, focus on the fact that an ad appearing in cyberspace should be identified as such³⁷⁴?”

To a large extent, the choice of methods for disclosing the advertising nature of content published by the news media is left to their entire discretion. While a few use good practices, the vast majority use – consciously or not – practices we find reprehensible.

In its decisions on native advertising, the *Quebec Press Council* has provided guidelines, at times quite detailed, for minimal standards that news organizations must meet to maintain the necessary separation between information and advertising. However, press councils have extremely limited powers for action³⁷⁵, so they can’t impose the observance of those guidelines.

Ad Standards indicates that generally, the news media and offending advertisers easily collaborate to correct advertisements contravening the *Canadian Code of Advertising Standards* and its provisions for disguised advertising. Unfortunately, our field survey’s results demonstrate the ineffectiveness of that supervision.

Similarly, recourses based on provisions prohibiting misleading representations, whether in civil or criminal proceedings, seem highly hypothetical to us. And yet, the stakes are undeniably high: inadequate disclosure of the advertising nature of content published by a news organization infringes on freedom of expression and thus on the right to information, and imperils the indispensable bond of trust between the reader on one hand, and the news organization and journalists on the other.

Given the high stakes, would it be appropriate to consider, as in some foreign jurisdictions, establishing a tighter legislative framework as well as stronger interventions by supervisory agencies? While a consensus appears to emerge – but without the advertising industry’s participation – on the necessity of more-specific standards for native advertising, many estimate

³⁷² COMPETITION BUREAU, *Enforcement Guidelines – Application of the Competition Act to Representations on the Internet*, *op. cit.* note 217, p. 9.

³⁷³ V. GAUTRAIS and M. SANI YAYA, *Rapport relatif aux changements à opérer*, *op. cit.* note 371, p. 4. Our translation.

³⁷⁴ *Ibid.*, p. 11. Our translation.

³⁷⁵ Marie-Ève CARIGNAN and Mikaëlle TOURIGNY, “Couverture de crise. Quelle imputabilité pour les médias” in *Le Cinquième pouvoir. La nouvelle imputabilité des médias envers leurs publics*, Les Presses de l’Université Laval, Québec City, 2016, p. 299

that professional associations should be responsible for ensuring the application of those standards. But professional associations in the field have no coercive power over the news media in that regard.

That being said, it would be appropriate to use as a reference the voluntary standards in place or proposed by self-regulatory organizations³⁷⁶, but also the frameworks adopted in foreign jurisdictions, in order to develop a tighter and better adapted framework. There is no shortage of models – from codes, laws, doctrine, case law – for establishing the essential elements of adequate and effective disclosure of the advertising nature of content published by a news organization, in the form of native or other advertising.

Based on very simple criteria – visibility, accessibility, explicitness, etc. –, our field survey easily identified what we thought were best practices. Most of the stakeholders questioned, from all sources, also easily recognized the best practices, and thus found them desirable. Accordingly, we may ask why the issue is still not resolved, despite the multiple self-regulatory and government organizations that currently have a supervisory role, directly or indirectly, regarding the news media's practices and representations when native advertising is presented.

The answer may lay in the absence of firm and coercive actions that would require the news media to follow transparency rules they too often, unfortunately, neglect to apply.

For all those reasons, we think a legislative and regulatory intervention, through the imposition of strict standards, would be desirable in order to make news organizations and advertisers accountable for not doing their duty to adequately disclose advertisements taking the form of journalistic articles.

For ethical purposes, we think self-regulatory organizations should tighten their rules to guarantee that the separation between news organizations' advertising and journalistic sectors remains intact and impassable. Given the fundamental importance of that separation, and the self-regulatory organizations' absence of coercive power, lawmakers could look for a way to impose on the news media and journalists an obligation to comply with the ethics codes of those self-regulatory organizations.

A basic principle seems unanimously accepted by the news and advertising industries: a clear distinction must be drawn between journalistic information and advertising presented by a news organization. Accordingly, the methods and practices used for clearly establishing that distinction should, in our view, be regulated legislatively. To that end, legislative provisions could include standards for explicit notices and their placement. A few years ago, Professor Gautrais made, regarding online advertising, a recommendation we think should be applied strictly to any native advertising:

S'assurer à l'instar de la législation française qu'une publicité soit identifiée comme telle et comporte la mention « publicité » de manière lisible, apparente et non équivoque. Cette solution non coûteuse nous semble la réponse la plus efficiente à apporter en l'espèce³⁷⁷.

³⁷⁶ Indeed, although voluntary standards are not coercive and only constitute a moral commitment, there is a "definite interpenetration between legal standards" [our translation] and voluntary ones, because the rule of law is generally modelled on societal rules: Pierre TRUDEL, "Les effets juridiques de l'autoréglementation" in *Revue de droit de l'Université de Sherbrooke*, vol. 19, 1989, p. 262.

³⁷⁷ V. GAUTRAIS and M. SANI YAYA, *Rapport relatif aux changements à opérer*, op. cit. note 371, p. 15.

Relevant provisions should apply both to infomercials and to hyperlinks leading to them. Legislation could also require advertisements and their hyperlinks to stand out visually from editorial content, and add a few compulsory distinct elements to the regulations.

Moreover, “prohibited practices” provisions specific to native advertising in the news media could be adopted, and a presumption of misleading advertising could be established legislatively in the event that minimal disclosure standards are violated.

Possible consumer recourses in case of infractions risk remaining more theoretical than practical, and the threat of such recourses does not likely induce observance of the proposed disclosure rules. Therefore, given the high stakes, government authorities responsible for applying the provisions to be adopted will certainly have to ensure strict monitoring of disclosure practices used by the news media, and take exemplary action against culprits.

The adoption of standardized disclosure methods – for notices accompanying infomercials, for identifying advertisers and their participation or influence on that content – would also be an advisable solution. To that effect, clear guidelines should be issued, ensuring adequate disclosure, while leaving a certain flexibility regarding the visual integration of those disclosure methods. Such a standardization would facilitate the news media’s compliance and, as Professor Carignan points out, the public’s awareness of “the vigilance to be adopted when one is faced with sponsored content.” [Our translation]

Recommendations

- **Whereas** an advertisement is a message of persuasion of which the content is controlled directly or indirectly by the advertiser and that aims at influencing consumers' choices, views or behaviours;
- **Whereas** native advertising, by definition, aims at integrating visually with the digital platform hosting it, by using its formats and codes, to draw the consumer's attention more subtly to products or services such advertising promotes;
- **Whereas** native advertising, by imperceptibly integrating with a news organization's journalistic content, attempts to take advantage of the news organization's credibility with the reader and of the bond of trust between them;
- **Whereas** the news media's use of native advertising is widespread in Canada and is gaining in popularity among advertisers, given its effectiveness with consumers;
- **Whereas** the news media's business model involves funding based mainly on advertising revenues;
- **Whereas** the fall in the news media's advertising revenues has led those companies to a financial crisis;
- **Whereas**, to generate revenues, the news media must make an advertising offer that meets advertisers' requirements for native advertising;
- **Whereas** the use of native advertising in the news media is provoking ethical dilemmas due to erosion of the impassable wall that must separate editorial and advertising content, prevent conflicts of interest and preserve the independence of journalists;
- **Whereas** the public's right to independent and quality information, which the news media have the mission to provide, derives from the right to free expression guaranteed by the Charters;
- **Whereas** advertising cannot and must not be considered in any way as a source of objective information or be confused with it;
- **Whereas** all consumers are likely, absent clear disclosure of its advertising nature, to be tricked by native advertising presented in the guise of journalistic information;
- **Whereas** maintaining public trust in the news media and journalists is primordial in a democratic society;
- **Whereas** practices intended to deceive and manipulate the consumer risk, when he detects the trick, eroding his trust in the news media and journalists and in advertisers;
- **Whereas** advertising should always be identified as such and stand out expressly from any journalistic content;
- **Whereas** only perfectly clear disclosure methods likely enable readers to distinguish at first sight between advertising and journalistic content;

Regarding the news media's current practices:

- **Whereas** the methods of disclosing the advertising nature are not uniform from one news organization to another;
- **Whereas** that lack of uniformity makes it more difficult for the consumer to detect advertisements, when he goes from one news organization platform to another;
- **Whereas** the majority of news organizations don't spontaneously adopt good practices for disclosing the advertising nature of content;
- **Whereas** a standardized disclosure method would reduce the risk of the reader's confusion and help him detect content funded by a third party and published on a news organization's platform;
- **Whereas** there is a consensus among stakeholders about the best practices we identified;
- **Whereas** the bad practices we identified are also generally qualified as such by the stakeholders;
- **Whereas** we observed that some software or extensions intended to block the display of advertising still allow at times native advertising to be displayed, but block the display of accompanying disclosures;

Union des consommateurs recommends that the news media and advertisers:

1. Apply as soon as possible the good practices we identified, to wit:
 - disclosure of the advertising nature of content at every stage (hyperlink and content) by:
 - using an explicit notice of the advertising nature of content, with a clear term: "advertisement" or "advertising content" placed near the content and link;
 - visual differentiation between journalistic content on one hand, and advertisements and the links to them on the other hand;
 - distinct placements separating advertising and information;
 - identification of the advertiser (by a logo or other means);
 - a combination of several disclosure methods;
 - using a clear and visible notice, near the advertisement, about the respective involvement of the news organization and the advertiser in writing such content;
2. Avoid the bad practices identified in our field survey, i.e. the use of ambiguous, invented, technical or misleading terms, the absence of notices, or their camouflaged or ambiguous use, the lack of disclosure at any stage, total visual integration, and the absence of the advertiser's identification;
3. Draw particular attention to the effect of ad blockers on their disclosure methods and ensure that, if advertisements still continue to appear, disclosures of their advertising nature also continue to appear;

Regarding legal and self-regulatory standards:

- **Whereas** the principle of separation between information and advertising is an ethical principle of which the paramount importance is largely recognized;
- **Whereas** our field survey reveals flaws in the disclosure of the advertising nature of content;
- **Whereas** the *Competition Act* and provincial consumer protection laws containing legislative provisions of general application that prohibit misleading advertising and false or misleading representations, and that likely apply to native advertising, appear poorly suited and difficult to apply regarding native advertising;
- **Whereas** an advertisement or the advertising nature of content must not be disguised;
- **Whereas** the legal framework of general application and the self-regulatory standards of the news and advertising industries prove ineffective, in practice, for guaranteeing the maintenance of an impassable separation between information and advertising;
- **Whereas** foreign legislatures have made it compulsory to expressly use the term “advertisement” or have established that failure to disclose the advertising nature of editorial advertising entails the presumption of a misleading practice;
- **Whereas** legislative frameworks can be modelled usefully on the industry’s voluntary standards and their interpretation by self-regulatory organizations;
- **Whereas** native advertising blurs the boundaries between information and advertising, both published on a news organization’s very platform;
- **Whereas** the boundaries between the news media’s editorial and advertising sectors must be maintained, and even reinforced;
- **Whereas** self-regulatory organizations don’t have the necessary coercive powers to enforce observance of rules that are crucial for protecting freedom of expression and the exercise of democracy;

Union des consommateurs recommends that self-regulatory organizations in the information and advertising industries:

4. Adopt benchmarks for standardizing, in the news media, the content and presentation of notices that will have to accompany advertisements, and for identifying advertisers and disclosing their participation in or influence on content production;
5. Reinforce the rules for maintaining strict boundaries between the news media’s journalistic and advertising sectors;

Union des consommateurs recommends that federal and provincial lawmakers:

6. Recognize legislatively the principle of separation between information and advertising;

7. Prohibit, in terms more explicit than provided by current laws, that advertising be disguised as information on a news organization's platform without adequate disclosure of the advertising nature;
8. Impose disclosure of content's advertising nature at every stage (hyperlink and content) by:
 - using an explicit notice of the advertising nature of content, with a clear term: "advertisement" or "advertising content" placed near the content and link;
 - visual differentiation between journalistic content on one hand, and advertisements and the links to them on the other hand;
 - identification of the advertiser (by a logo or other means);
9. Evaluate possible ways of requiring the news media and journalists to observe the ethical rules for ensuring that the news media are able, in the public interest, to effectively play their strategic role of providing independent and objective information and maintaining public trust;

Union des consommateurs recommends that government authorities responsible for applying the laws:

10. Ensure strict monitoring of the news media's disclosure practices and, if applicable, take exemplary action against culprits.

Mediagraphy

a) Laws and regulations

Canada

Federal

Canadian Bill of Rights, S.C. 1960, v. 44.

Canadian Charter of Rights and Freedoms, in *The Constitutional Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, v. 11.

Constitutional Act, 1867, 30 & 31 Victoria, c. 3 (UK).

Competition Act, RSC 1985, v. C-34.

Quebec

Charter of Human Rights and Freedoms, RLRQ v. C -12.

Civil Code of Québec, CQLR v. CCQ-1991.

Consumer Protection Act, CQLR v. P-40.1.

Regulating respecting the application of the Consumer Protection Act, CQLR c. P-40.1, r. 3.

Ontario

Consumer Protection Act, 2002, S.O. 2002 c. 30, Schedule A.

O. Reg. 17/05: General.

European Union

Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, online: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0031>> (page consulted on June 4, 2018).

France

Code de la consommation, version consolidée au 25 mai 2018, online:

<https://www.legifrance.gouv.fr/affichCode.do;jsessionid=C4523A9915C8F99E4C2A7E852E691DA0.tplgfr41s_1?idSectionTA=LEGISCTA000032227299&cidTexte=LEGITEXT000006069565&dateTexte=20180604> (page consulted on June 4, 2018).

Loi concernant la confiance en l'économie numérique, Loi n° 2004-575 du 21 juin 2004 pour la confiance dans l'économie numérique, version consolidée au 4 juin 2018, online: <<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000801164>> (page consulted on June 4, 2018).

Belgium

Code de droit économique, February 28, 2013, in effect since May 31, 2014, online: <<http://www.ejustice.just.fgov.be/eli/loi/2013/02/28/2013A11134/justel>> (page consulted on June 4, 2018).

United States

Federal Trade Commission Act, 15 U.S.C. §§ 41-58, amended, online: <<http://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title15-chapter2-subchapter1&edition=prelim>> (page consulted on June 2, 2018).

Australia

Australian Competition Law, latest update on September 3, 2014, online: <<https://www.australiancompetitionlaw.org/legislation/1974tpa.html>> (page consulted on June 3, 2018).

Competition and Consumer Act 2010, Schedule 2 – The Australian Consumer Law, updated in November 2017, online: <https://www.legislation.gov.au/Details/C2017C00375/Html/Volume_3#_Toc499717716> (page consulted on June 3, 2018).

b) Self-regulatory standards

ALBERTA PRESS COUNCIL. *Code of Practice*, online: <<https://albertapresscouncil.ca/code-of-practice>> (page consulted on May 25, 2018).

CANADIAN ASSOCIATION OF JOURNALISTS.

Bylaws, last revised on April 30, 2017, online: <<http://caj.ca/Bylaws>> (page consulted on May 26, 2018).

Ethics Guidelines, submitted in June 2011, online: <http://caj.ca/images/downloads/Ethics/ethics_guidelines.pdf> (page consulted on May 26, 2018).

CANADIAN MARKETING ASSOCIATION. *Code of Ethics & Standards of Practice*, July 2015, online: <<https://www.the-cma.org/Media/Default/Downloads/Regulatory/2015/CodeofEthics.pdf>> (page consulted on May 26, 2018),

QUEBEC PRESS COUNCIL

Quebec Press Council Guide of Journalistic Ethics, adopted in a general assembly on November 24, 1996, amended on November 28, 2010, online: <https://conseildepresse.qc.ca/wp-content/uploads/2017/09/QPC_EthicsGuide.pdf> (page consulted on June 24, 2018).

Règlement 1 : Règlement général du Conseil de presse du Québec, adopted on December 9, 2016, online: <<https://conseildepresse.qc.ca/wp-content/uploads/2018/01/R%C3%A8glement-1-2016.pdf>> (page consulted on May 26, 2018).

Règlement 2 : Règlement sur l'étude des plaintes du public, adopted on June 2, 2017, online: <<https://conseildepresse.qc.ca/wp-content/uploads/2018/01/R%C3%A8glement-2-2017.pdf>> (page consulted on May 26, 2018).

FÉDÉRATION PROFESSIONNELLE DES JOURNALISTES DU QUÉBEC.

Guide de déontologie, adopted in a general assembly on November 24, 1996, amended in a general assembly on November 28, 2010, online: <<https://www.fpqj.org/deontologie/guide-de-deontologie/#pt1>> (page consulted on May 26, 2018).

Règlements généraux, latest update on November 22, 2015, online: <<https://www.fpqj.org/profil/reglements/>> (page consulted on May 26, 2018).

AD STANDARDS.

Canadian Code of Advertising Standards, online: <<http://www.adstandards.com/en/Standards/canCodeOfAdStandards.aspx>> (consulted on February 13, 2018).

Standards Council. Organization and Procedure, online: <<http://www.normespub.com/en/ConsumerComplaints/Standards-Council-Procedure.pdf>> (page consulted on May 23, 2018).

c) Decisions cited

Supreme Court of Canada

Attorney General (Quebec) v. Kellogg's Co. of Canada et al, [1978] 2 SCR 211, 1978 CanLII 185 (SCC).

Aubry v. Éditions Vice-Versa inc., [1998] 1 SCR 591, 1998 CanLII 817 (SCC).

Bank of Montreal v. Marcotte, [2014] 2 SCR 725, 2014 SCC 55 (CanLII).

Canada (Director of Investigation and Research) v. Southam Inc., [1997] 1 SCR 748, 1997 CanLII 385 (SCC).

Capital Cities Comm. v. C.R.T.C., [1978] 2 SCR 141, 1977 CanLII 12 (SCC).

de Montigny v. Brossard (Estate), [2010] 3 SCR 64, 2010 SCC 51 (CanLII).

Douez v. Facebook, Inc., [2017] 1 SCR 751, 2017 SCC 33 (CanLII).

Edmonton Journal v. Alberta (Procureur général), [1989] 2 SCR 1326, 1989 CanLII 20 (SCC).

Gay Alliance Toward Equality v. Vancouver Sun, [1979] 2 SCR 435, 1979 CanLII 225 (SCC).

General Motors of Canada Ltd. v. City National Leasing, [1989] 1 SCR 641, 1989 CanLII 133 (SCC).

Hinse v. Canada (Attorney General), [2015] 2 SCR 621, 2015 SCC 35 (CanLII).

Quebec (Public Curator) v. Syndicat national des employés de l'hôpital St-Ferdinand, [1996] 3 SCR 211, 1996 CanLII 172 (SCC).

R. v. Oakes, [1986] 1 SCR 103, 1986 CanLII 46 (SCC).

Regulation & Control of Radio Communication in Canada, Re, 1932 CanLII 354 (UK JCPC).

Richard v. Time Inc., [2012] 1 SCR 265, 2012 SCC 8 (CanLII).

Société Radio-Canada v. Lessard, [1991] 3 SCR 421, 1991 CanLII 49 (SCC).

Société Radio-Canada v. Nouveau-Brunswick (Procureur général), [1991] 3 SCR 459, 1991 CanLII 50 (SCC).

Snyder v. Montreal Gazette Ltd, [1988] 1 SCR 494, 1988 CanLII 66 (SCC).

Switzman v. Elbling and A.G. of Quebec, [1957] SCR 285, 1957 CanLII 2 (SCC).

Appeal Courts (federal and provincial)

Commissioner of Competition v. Premier Career Management Group Corp., [2010] 4 FCR 41, 2009 FCA 295 (CanLII).

Multiple Business Systems M.B.S. Ltd. v. Randhawa, 1997 CanLII 10014 (QC CA).

Singer v. Schering-Plough Canada Inc. 2010 ONSC 42 (CanLII).

Wakelam v. Wyeth Consumer Healthcare/Wyeth Soins de Sante Inc., 2014 BCCA 36 (CanLII).

Lower courts (federal and provincial)

Demers v. Yahoo! Inc., 2017 QCCS 4154 (CanLII).

St-Arnaud v. Facebook Inc., 2011 QCCS 1506 (CanLII).

Labour Arbitration Awards

Syndicat des travailleurs de l'information de La Presse and La Presse, Ltd., 2007 CanLII 83607 (QC SAT).

Syndicat des travailleuses et travailleurs du Journal de Montréal v. Journal de Montréal, 2009 CanLII 26675 (QC SAT).

Federal Trade Commission

In the Matter of Lord & Taylor, LLC, Decision and Order, May 20, 2016, Docket No. C-4576, online: <<https://www.ftc.gov/system/files/documents/cases/160523lordtaylordo.pdf>> (page consulted on June 2, 2018).

Decisions by self-regulatory organizations

Alberta Press Council

ALBERTA PRESS COUNCIL. *2016-2017 Decisions*, online: <https://albertapresscouncil.ca/theme/abpress/media/documents/croswell_REV_2017.pdf> (page consulted on May 25, 2018).

Quebec Press Council

Arseneault v. L'hebdomadaire Les Versants du Mont-Bruno, April 28, 2017, D2016-07-003 (QC CPQ), online: <<https://conseildepresse.qc.ca/decisions/d2016-07-003/>>.

Beauchamp v. Le Courrier du Sud, 2011 CanLII 85232 (QC CPQ).

Bouchard v. Lapresse.ca, May 26, 2017, D2016-07-012 (QC CPQ), online: <<https://conseildepresse.qc.ca/decisions/d2016-07-012/>>.

Gazette Vaudreuil-Soulanges v. Ville d'Hudson, 2014 CanLII 7209 (QC CPQ).

La Métropole v. Applebaum, 2013 CanLII 66604 (QC CPQ).

Legros v. La voix des Mille-Îles, December 2, 2016, D2016-02-102(2) (QC CPQ), online: <<https://conseildepresse.qc.ca/decisions/d2016-02-102/>>.

Lever v. Le Journal du Nord, 2009 CanLII 84805 (QC CPQ).

Proulx et Lavigne v. La Presse+, October 2, 2015, D2014-12-061 ; D2014-12-070 (QC CPQ), online: <<https://conseildepresse.qc.ca/decisions/d2014-12-061-d2014-12-070/>>.

Syndicat de la rédaction du Soleil v. Le Soleil, 2011 CanLII 22166 (QC CPQ).

Syndicat des travailleurs de l'information du Journal de Montréal v. Le Journal de Montréal, October 28, 2005, D2004-10-029 (QC CPQ), online: <https://conseildepresse.qc.ca/decisions/d2004-10-029/>.

Toulouse v. Le Journal de Montréal, 2015 CanLII 44137 (QC CPQ).

National NewsMedia Council of Canada

Anne Foulliard v. Globe and Mail, NNC, 2016-02, online: <http://mediacouncil.ca/decisions/anne-foulliard-vs-globe-mail/> (page consulted on May 26, 2018).

Ad Standards

AD STANDARDS.

Ad Complaints Reports – 2014, online: <http://www.normespub.com/en/Standards/adComplaintsReports.aspx?periodyear=2014> (page consulted on May 26, 2018).

Ad Complaints Reports – 2017, Advertiser: Kamloops This Week, online: <http://www.normespub.com/en/Standards/adComplaintsReports.aspx?periodyear=2017> (page consulted on May 23, 2018).

d) Monographs or books

BAZZO, Marie-France, Nathalie COLLARD and René-Daniel DUBOIS. *De quels médias le Québec a-t-il besoin?*, Leméac Éditeur, Montreal, 2015, 138 pages.

BERNIER, Marc-François.

Éthique et déontologie du journalisme, 3rd ed., Les Presses de l'Université Laval, 2014, Québec City, 410 pages.

"L'émergence d'un 5^e pouvoir comme source d'imputabilité" in Marc-François Bernier (dir.), *Le Cinquième pouvoir. La nouvelle imputabilité des médias envers leurs publics*, Les Presses de l'Université Laval, Québec City, 2016, pp. 9- 62.

"Pourquoi les journalistes ? Les contours d'un idéal journalistique", in Marc-François Bernier et al., *Pratiques novatrices en communication publique – Journalisme, relations publiques et publicité*, Québec City, Les Presses de l'Université Laval, 2005, pp. 13-41.

BOULLIER, Dominique. *Sociologie du numérique*, Paris, Armand Colin, coll. "U Sociologie," 2016, 350 pages.

BRUN, Henri. "Le droit du public à l'information politique : un droit constitutionnel aux ancrages multiples" in *Développements récents en droit de l'accès à l'information 2005*, Barreau du Québec – Service de la formation continue, Yvon Blais, Cowansville, 2005, online: <https://edocrtrine.caij.qc.ca/developpements-recents/233/367112995> (page consulted on June 4, 2018).

BRUN, Henri et al. *Chartes des droits de la personne*, 30th ed., Alter Ego, Wilson & Lafleur, Montreal, 2017, online: <https://elois.caij.gc.ca/C-12/article49#_Toc2> (page consulted on June 4, 2018).

BRUNELLE, Christian and Mélanie SAMSON. “Les domaines d'application des Chartes des droits” in *École du Barreau du Québec, Droit public et administratif, Collection de droit 2017-2018*, vol. 8, Cowansville, Yvon Blais, 2017, online: <<https://edoctrine.caij.gc.ca/collection-de-droit/2017/8/803122425>>.

COMPETITION BUREAU, Ottawa, Canada.

Big Data and Innovation: Implications for Competition Policy in Canada, Draft Discussion Paper, September 18, 2017, online: <[http://www.bureaudelaconcurrence.gc.ca/eic/site/cb-bc.nsf/vwapi/Big-Data-e.pdf/\\$file/Big-Data-e.pdf](http://www.bureaudelaconcurrence.gc.ca/eic/site/cb-bc.nsf/vwapi/Big-Data-e.pdf/$file/Big-Data-e.pdf)> (page consulted on May 27, 2018).

Enforcement Guidelines – Application of the Competition Act to Representations on the Internet, October 16, 2009, online: <http://publications.gc.ca/collections/collection_2010/ic/lu54-1-2009-eng.pdf> (page consulted on May 29, 2018).

False or Misleading Representations and Deceptive Marketing Practices, revision date November 5, 2015, online: <<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03133.html>> (page consulted on June 24, 2018).

The Deceptive Marketing Practices Digest, Bulletin, vol. 2, March 7, 2016, online: <[http://www.bureaudelaconcurrence.gc.ca/eic/site/cb-bc.nsf/vwapi/cb-digest-deceptive-marketing-vol-2-e.pdf/\\$file/cb-digest-deceptive-marketing-vol-2-e.pdf](http://www.bureaudelaconcurrence.gc.ca/eic/site/cb-bc.nsf/vwapi/cb-digest-deceptive-marketing-vol-2-e.pdf/$file/cb-digest-deceptive-marketing-vol-2-e.pdf)> (page consulted on May 27, 2018).

The Deceptive Marketing Practices Digest, Bulletin, vol. 3, May 2, 2017, online: <[http://www.bureaudelaconcurrence.gc.ca/eic/site/cb-bc.nsf/vwapi/DMPD-Volume3-Eng.pdf/\\$file/DMPD-Volume3-Eng.pdf](http://www.bureaudelaconcurrence.gc.ca/eic/site/cb-bc.nsf/vwapi/DMPD-Volume3-Eng.pdf/$file/DMPD-Volume3-Eng.pdf)> (page consulted on May 27, 2018).

Penalties imposed by the courts, revision date February 14, 2018, online: <<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01863.html>> (page consulted on May 31, 2018).

CARIGNAN, Marie-Ève and Mikaëlle TOURIGNY. “Couverture de crise. Quelle imputabilité pour les médias” in Marc-François Bernier (dir.), *Le Cinquième pouvoir. La nouvelle imputabilité des médias envers leurs publics*, Les Presses de l'Université Laval, Québec City, 2016, pp. 299- 320.

CAYOINETTE, Pierre, Robert MALTAIS et al. *Les journalistes pour la survie du journalisme*, Éditions Québec Amérique Inc., Montreal, 2015, 290 pages.

CHAR, Antoine. *La quête de sens à l'ère du Web 2.0. Rencontre avec des journalistes du Devoir*, Les Presses de l'Université du Québec, Québec City, 2010, 112 pages.

COSSETTE, Claude. *Éthique & publicité*, Les Presses de l'Université Laval, Québec City, 2008, 148 pages.

DAGENAIS, Bernard. *La publicité : stratégie et placement media. Ou comment choisir la campagne intégrée la plus efficace*, 2nd ed., Québec City, Les Presses de l'Université Laval, 1997, 664 pages.

DIAWARA, Karounga et al. *Droit de la concurrence*, LexisNexis, Montreal, october 2015.

EVENO, Patrick. "Médias et publicité : une association équivoque, mais indispensable" in *Le Temps des Médias*, No. 2, Paris, Spring 2004, online: <<https://www.cairn.info/revue-le-temps-des-medias-2004-1-page-17.htm>> (page consulted on May 23, 2018), 192 pages.

FEDERAL TRADE COMMISSION. Washington, United States.

.com Disclosures – How to Make Effective Disclosures in Digital Advertising, March 2013, online: <<https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>> (page consulted on June 3, 2018).

Blurred Lines: Advertising or Content? An FTC Workshop on Native Advertising, December 9, 2013, online: <<https://www.ftc.gov/news-events/audio-video/video/blurred-lines-advertising-or-content-ftc-workshop-native-advertising-1>> (page consulted on June 1, 2018).

Enforcement Policy Statement on Deceptively Formatted Advertisements, December 22, 2015, online: <https://www.ftc.gov/system/files/documents/public_statements/896923/151222deceptive_enforcement.pdf> (page consulted on June 2, 2018).

Native Advertising: A Guide for Businesses, December 22, 2015, online: <<https://www.ftc.gov/tips-advice/business-center/guidance/native-advertising-guide-businesses>> (page consulted June 1, 2018).

Policy Statement on Deception, October 14, 1983, online: <https://www.ftc.gov/system/files/documents/public_statements/410531/831014deception_stmt.pdf> (page consulted on June 2, 2018).

JOBB, Dean. *Media Law for Canadian Journalists*, 2nd ed., Toronto, 2011, 440 pages.

LAFOND, Pierre-Claude et al. *La publicité, arme de persuasion massive. Les défis de l'encadrement législatif*, Éditions Yvon Blais, Cowansville, 2012, 198 pages.

L'HEUREUX, Nicole and Marc LACOURSIÈRE. *Droit de la consommation*, 6th ed., Éditions Yvon Blais, Cowansville, 2011, 911 pages.

MARTIN, Robert. *Media Law*, 2nd ed., Irwin Law, Toronto, 2003, 244 pages.

MOUMOUNI, Charles. "Quand la publicité ressemble à l'information" in Marc-François Bernier et al. *Pratiques novatrices en communication publique – Journalisme, relations publiques et publicité*, Québec City, Les Presses de l'Université Laval, 2005, p. 127-157.

OULAÏ, Arthur. "La place du consommateur dans l'encadrement de la cyberpublicité au Canada" in Pierre-Claude Lafond et al., *La publicité, arme de persuasion massive. Les défis de l'encadrement législatif*, Éditions Yvon Blais, Cowansville, 2012, pp. 123-172.

PILON, Alain. *Sociologie des médias du Québec. De la presse écrite à Internet*, Éditions Saint-Martin, Montreal, 2008, 264 pages.

PRITCHARD, Brenda et Susan VOGT. *Advertising and Marketing Law in Canada*, 5th ed., LexisNexis, Markham, 2015, 586 pages.

SORMANY, Pierre. *Le métier de journaliste. Guide des outils et des pratiques du journalisme au Québec*, 3rd ed., Éditions du Boréal, Montreal, 2011, 552 pages.

THIBAUDEAU, Luc. *Guide pratique de la société de consommation*, Éditions Yvon Blais, Cowansville, 2013, 384 pages.

TRUDEL, Pierre et al., *Droit du cyberspace*, Les Éditions Thémis, Montreal, 1997, 1,296 pages.

WAKIL, Omar. *The 2018 Annotated Competition Act*, Thomson Reuters, Toronto, 2017, 1,060 pages.

e) Academic articles or studies

BAILLARGEON, Dany et al. “Confrontations et convergences éthiques entre marketing et information autour de la publicité native” in *Professionnalisation et éthique de la communication. Des principes à la formation*, no. 5, Communication & Professionnalisation, Presses universitaires de Louvain, no. 5, 2017, online: <https://ojs.uclouvain.be/index.php/comprof/article/view/863>, pp. 30-55.

BAKSHI, Amar. “Why and How to Regulate Native Advertising in Online News Publications” in *Journal of Media Law & Ethics*, University of Baltimore School of Law, vol. 4, No. 3/4, winter/spring 2015, pp. 1-46.

CAMPBELL, Colin and Lawrence J. MARKS. “Good native advertising isn’t a secret” in *Business Horizons*, vol. 58, No. 6, 2015, pp. 599-606.

CARLSON, Matt. “When news sites go native: Redefining the advertising– editorial divide in response to native advertising” in *Journalism*, vol. 16, No. 7, 2015, pp. 849-865.

CASALE, A. J. “Going Native: The Rise of Online Native Advertising and a Recommended Regulatory Approach”, in *Catholic University law review*, vol. 65, No. 129, 2015, pp. 129-154.

CODDINGTON, Mark. “The wall becomes a curtain. Revisiting journalism’s news-business boundary” in Matt Carlson and Seth v. Lewis (éditeurs), *Boundaries of Journalism: Professionalism, Practices and Participation*, New York, Routledge, 2015, pp 67-82.

DANCIU, Victor. “Manipulative marketing: persuasion and manipulation of the consumer through advertising” in *Theoretical and Applied Economics*, vol. XXI, No. 2(591), 2014, pp. 19-34.

EINSTEIN, Brandon R. “Reading between the lines: the rise of native advertising and the FTC’s inability to regulate it” in *Brooklyn Journal of Corporate, Financial & Commercial Law*, vol. 10, No. 1, 2015, pp. 225-248.

FERRER CONILL, Raul. "Camouflaging Church as State. An exploratory study of journalism's native advertising" in *Journalism Studies*, vol. 17, No. 7, 2016, pp. 904-914.

GAUTRAIS, Vincent and Mouhamadou SANNI YAYA. *Rapport relatif aux changements à opérer auprès de la Loi sur la protection du consommateur au regard du commerce électronique*, UDM Chair in Cyber Security and E-commerce Law, August 2008, online: <<https://www.gautrais.com/publications/rapport-relatif-aux-changements-a-operer-aupres-de-la-loi-sur-la-protection-du-consommateur-au-regard-du-commerce-electronique/rapportfinal31082008v2/>> (page consulted on May 27, 2018).

GODIN-BERGERON, Cassandra. *Étude du marketing de contenu et de son influence sur les comportements d'engagement des consommateurs*, Service des bibliothèques de l'Université du Québec à Montréal, August 2017, online: <<https://archipel.ugam.ca/10761/1/M15212.pdf>> (page consulted on June 24, 2018), 206 pages.

GOTTFRIED, Robert A. *Six Ways This Article Is Most Definitely Not an Ad: Deceptive Marketing and the Need for Clearly-Defined Disclosure Rules in Online Native Advertisement*, *Loyola Consumer Law Review*, vol. 27, No. 3, 2015, pp. 399-422.

GUAY, Jean-Herman. "Libéralisme et médias : entre l'ordre et le désordre" in *Enjeux éthiques et pratiques déontologiques du 4e pouvoir*, vol. 15, No. 1, 2013, online: <<http://journals.openedition.org/ethiquepublique/1055>> (page consulted on June 24, 2018).

HYMAN, David A., David FRANKLYN, Calla YEE and Mohammad RAHMATI. "Going Native: Can Consumers Recognize Native Advertising? Does it Matter?" in *Yale Journal of Law & Technology*, vol. 19, No. 77, 2017, pp. 77-112.

KARLSSON, Michael. "Rituals of Transparency: Evaluating Online News Outlets' Uses of Transparency Rituals in the United States, United Kingdom and Sweden" in *Journalism Studies*, vol. 11, No. 4, 2010, pp. 535-545.

KIM, Bong-Hyun, Yorgo PASADEOS and Arnold BARBAN. "On the Deceptive Effectiveness of Labeled and Unlabeled Advertorial Formats" in *Mass Communication & Society*, vol. 4, No. 3, 2001, pp. 265-281.

KOVACH, Bill and Tom ROSENSTIEL. *Principes de journalisme. Ce que les journalistes doivent savoir, ce que le public doit exiger*, Translated from English by Monique Berry, Paris, Gallimard, coll. Folio actuel, 2014 [2001], 384 pages.

MOUMOUNI, Charles. "Le discours normatif des journalistes et les pratiques de publi-reportage dans les journaux québécois" in *Les Cahiers du journalisme*, No. 16, fall 2006, online: <http://www.com.ulaval.ca/fileadmin/contenu/Cahiers_Journalisme/PDF/16/05_MOUMOUNI.pdf> (page consulted on June 24, 2018), pp. 130-165.

MURPHY, Patrick E. "Recherche en éthique du marketing : thèmes récurrents et émergents" in *Recherche et Application en Marketing*, vol. 32, No. 3, 2017, pp. 90-96.

OBERMILLER, Carl and Eric SPANGENBERG. "Ad Skepticism: The Consequences of Disbelief" dans *Journal of Advertising*, vol. 34, No. 3, March 2013, pp. 309-324.

O'NEILL, Julie and Adam FLEISHER. "Advertising – FTC Guidance on Native Advertising" in *The Licensing Journal*, March 2016, pp. 22-23.

PANERO BENWAY, Jan. *Banner Blindness: What Searching Users Notice and Do Not Notice on the World Wide Web*, Rice University, Houston (Texas), April 1999, online: <https://scholarship.rice.edu/bitstream/handle/1911/19353/9928505.PDF?sequence=1&isAllowed=y> (page consulted on June 24, 2018), 101 pages.

PONKIVAR, Anthony B. "Ever-Blurred Lines: Why Native Advertising Should Not Be Subject to Federal Regulation" in *North Carolina Law Review*, vol. 93, No. 1187, 2015, pp. 1187-1210.

SCHAUSTER, Erin E., Patrick FERRUCCI and Marlene S. NEILL, "Native Advertising Is the New Journalism. How Deception Affects Social Responsibility" in *American Behavioral Scientist*, vol. 60, No. 12, 2016, pp. 1408-1424.

TAYLOR, Charles R. *Native Advertising: The Black Sheep of the Marketing Family*, *International Journal of Advertising*, vol. 36, No. 2, February 1, 2017, pp. 207-209.

TRUDEL, Pierre. "Les effets juridiques de l'autoréglementation" in *Revue de droit de l'Université de Sherbrooke*, vol. 19, 1989, pp. 247-286.

WOJDYNSKI, Bartosz W.

"Native Advertising: Engagement, Deception, and Implications for Theory" dans Ruth E. Brown, Valerie K. Jones, et Ming Wang (Éditeurs), *The New Advertising: Branding, Content and Consumer Relationships in a Data-Driven Social Media Era. Traditional Advertising Transformed*, Praeger, Santa Barbara, September 2016, pp. 203-236.

"The Deceptiveness of Sponsored News Articles: How Readers Recognize and Perceive Native Advertising" dans *American Behavioral Scientist*, vol. 60, No. 12, 2016, pp. 1475-1491.

WOJDYNSKI, Bartosz W. and Nathaniel J. EVANS. "Going Native: Effects of Disclosure Position and Language on the Recognition and Evaluation of Online Native Advertising" in *Journal of Advertising*, vol. 45, No. 2, 2016, pp. 157-168.

WOJDYNSKI, Bartosz W. and Guy J. GOLAN. "Native Advertising and the Future of Mass Communication" in *American Behavioral Scientist*, vol. 60, No. 12, 2016, pp. 1403-1407.

WOJDYNSKI, Bartosz W. et al. "Building a Better Native Advertising Disclosure" in *Journal of Interactive Advertising*, vol. 17, No. 2, 2017, pp. 1-12.

WU, Mu et al. "A Tale of Two Sources in Native Advertising: Examining the Effects of Source Credibility and Priming on Content, Organizations, and Media Evaluations" in *American Behavioral Scientist*, vol. 60, No. 12, 2016, pp. 1492-1509.

f) Newspaper, magazine or blog articles

ABAD, Véronique. *Publicité sur Internet et Protection du consommateur*, Lex Electronica, vol. 8, No. 2, spring 2003, online: <http://www.lex-electronica.org/files/sites/103/8-2_abad.pdf> (page consulted on June 4, 2018).

ACOSTA, Julien. *Publireportage : le Conseil de presse donne l'alarme*, Conseil de presse du Québec, May 4, 1990, online: <<https://conseildepresse.qc.ca/actualites/nouvelles/publireportage-le-conseil-de-presse-donne-lalerte/>> (page consulted on May 25, 2018).

BASEN, Ira. *Is that an ad or a news story – and does it matter which?*, August 3, 2012 (updated on March 26, 2017), The Globe and Mail, online: <<https://www.theglobeandmail.com/arts/books-and-media/is-that-an-ad-or-a-news-story-and-does-it-matter-which/article4461877/?page=all>> (page consulted on June 24, 2018).

BERGERON, Maxime. *Publicités sur Facebook : Ottawa triple ses achats*, February 1, 2018, La Presse, online: <<http://www.lapresse.ca/actualites/politique/politique-canadienne/201802/01/01-5152235-publicites-sur-facebook-ottawa-triple-ses-achats.php>> (page consulted on June 24, 2018).

BUZZFEED CANADA. *If Classic Movie Tropes Were Motivational Posters*, August 25, 2015, online: <https://www.buzzfeed.com/scotiabank/if-classic-movie-tropes-were-motivational-posters?utm_term=.jIAK4KZob#.awQBKB7RJ> (page consulted on June 24, 2018).

CARR, John. *Storytelling Ads May Be Journalism's New Peril*, The New York Times, September 15, 2013, online: <<https://www.nytimes.com/2013/09/16/business/media/storytelling-ads-may-be-journalisms-new-peril.html>> (page consulted on May 8, 2018).

CONTENTLY. *Fixing Native Advertising: What Consumers Want From Brands, Publishers, and the FTC*, 2016, online: <<https://contently.com/strategist/2016/12/08/native-advertising-study/>> (page consulted on June 24, 2018).

CREVIER, Guy. *La Presse+ sera offert gratuitement*, March 20, 2013, La Presse, online: <<http://www.lapresse.ca/debats/mot-de-lediteur/201303/20/01-4633052-la-presse-sera-offerte-gratuitement.php>> (page consulted on June 24, 2018).

DANSEREAU, Suzanne. “On ne peut plus cracher là-dessus” in *Dossier publicité native*, FPJQ, summer 2015, online: <<https://www.fpqj.org/on-ne-cracher-dessus/>> (page consulted on June 24, 2018).

DEZIEL, Melanie. *Woman Inmates: Why the Male Model Doesn't Work*, The New York Times, online: <<https://paidpost.nytimes.com/netflix/women-inmates-separate-but-not-equal.html>> (page consulted on June 24, 2018).

FAIR, Lesley. *FTC's Lord & Taylor case: In native advertising, clear disclosure is always in style*, March 15, 2016, online: <<https://www.ftc.gov/news-events/blogs/business-blog/2016/03/ftcs-lord-taylor-case-native-advertising-clear-disclosure>> (page consulted on June 2, 2018).

FINANCIAL POST. *Managing Wealth*, online: <<http://business.financialpost.com/category/personal-finance/managing-wealth>> (page consulted on June 24, 2018).

FÉDÉRATION PROFESSIONNELLE DES JOURNALISTES DU QUÉBEC. “Le Guardian se lance dans l’enquête commanditée” in *Marketing de contenu*, FPJQ, April 7, 2016, online: <<https://www.fpq.org/guardian-se-lance-lenquete-commanditee/>> (page consulted on June 24, 2018).

GLOBE AND MAIL.

Mattresses by mail? Canadian startup joins the memory-foam party, July 29, 2015, online: <<https://www.theglobeandmail.com/report-on-business/small-business/sb-growth/the-challenge/mattress-by-mail-canadian-startup-joins-the-memory-foam-party/article25529743/>> (page consulted on June 24, 2018).

Retail's big bet: Do you love your phone more than your wallet?, April 2, 2015, online: <<https://www.theglobeandmail.com/partners/thomsonreuterscapitalize/advtrfinance/retails-big-bet-do-you-love-your-phone-more-than-your-wallet/article23766302/>> (page consulted on June 24, 2018).

HOF, Robert. *Native Ads Arrive: They'll Be Half Of All Display Spending This Year*, Forbes, March 21, 2017, online: <<https://www.forbes.com/sites/roberthof/2017/03/21/native-ads-arrive-theyll-be-half-of-all-display-spending-this-year/#267b47ea5c95>> (page consulted on June 24, 2018).

JACQUES, Gabrielle. *Cogeco se lance dans la publicité native*, March 31, 2017, online: <<http://www.infopresse.com/article/2017/3/31/cogeco-lance-une-nouvelle-offre-de-publicite-native>> (page consulted on June 24, 2018).

JOEL, Mitch. *We Need a Better Definition of “Native Advertising”*, Harvard Business Review, Février 2013, online: <<https://hbr.org/2013/02/we-need-a-better-definition-of>> (page consulted on February 13, 2018).

LAMPRON, Louis-Philippe. *La démocratie, tributaire d’une information de qualité*, Les blogues de Contact – Droits de la personne et démocratie, February 28, 2018, online: <http://www.contact.ulaval.ca/article_blogue/democratie-tributaire-dune-information-de-qualite/> (page consulted on June 24, 2018).

LEGALVISION. *Is Native Advertising Misleading or Deceptive?*, January 20, 2016, online: <<https://legalvision.com.au/is-native-advertising-misleading-or-deceptive/>> (page consulted on June 4, 2018).

LEVASSEUR, Pierre-Elliott. *Mot de l’éditeur – Un grand pas en avant pour La Presse*, La Presse, May 8, 2018, online: <<http://www.lapresse.ca/debats/mot-de-lediteur/201805/08/01-5176941-un-grand-pas-en-avant-pour-la-presse.php>> (page consulted on May 8, 2018).

MANJUR, Rezwana. *LOOK When Mondelez ‘supported’ a negative story on Nestle*, Marketing, February 2, 2016, online: <<http://www.marketing-interactive.com/look-when-mondelez-supported-a-negative-story-on-nestle/>> (page consulted on June 24, 2018).

MCKENZIE, Baker. *Australia – New Disclosure Requirements for Native Advertising*, Lexology, 23 février 2017, online: <<https://www.lexology.com/library/detail.aspx?q=ab7052c4-ebc6-4184-8ee1-222ea8ee9688>> (page consulted on June 4, 2018).

MOMBOURQUETTE, Angela. *A look at the ethically complex world of native advertising*, J-Source, online: <<http://j-source.ca/article/a-look-at-the-ethically-complex-world-of-native-advertising/>> (page consulted on June 24, 2018).

PATTISON, Sam. *Native advertising doesn't need to be rocket science*, The Guardian, April 11, 2014, online: <<https://www.theguardian.com/media-network/media-network-blog/2014/apr/11/native-advertising-content-marketing-fred-wilson>> (page consulted on June 24, 2018).

POMPEO, Joe. *'Wall Street Journal' editor Gerard Baker decries native advertising as a 'Faustian pact'*, Politico Media, September 25, 2013, online: <<https://www.politico.com/media/story/2013/09/wall-street-journal-editor-gerard-baker-decries-native-advertising-as-a-faustian-pact-001773>> (page consulted on February 14, 2018).

RUEL, Maxime. *Lectorat des quotidiens et des magazines : qui lit quoi au Québec*, Infopresse, January 25, 2018, online: <<http://www.infopresse.com/article/2018/1/25/vividata-devoile-son-rapport-trimestriel-sur-le-lectorat-des-quotidiens-et-magazines>> (page consulted on April 10, 2018).

SAS, Jonathan. *How 'Native Advertising' Is Changing What We Read*, The Tyee, March 21, 2013, online: <<https://thetyee.ca/Mediacheck/2013/03/21/Native-Advertising/>> (page consulted on June 24, 2018).

SWENEY, Mark. *BBC World Service's sponsored content plan will 'threaten impartiality'*, The Guardian, February 13, 2014, online: <<https://www.theguardian.com/media/2014/feb/13/bbc-world-service-sponsored-content-threaten-impartiality>> (page consulted on June 24, 2018).

THERRIEN-GALASSO, Louis. *De la publicité native d'un océan à l'autre grâce à CBC/Radio-Canada*, Grenier, October 24, 2017, online: <<https://www.grenier.qc.ca/nouvelles/14304/de-la-publicite-native-dun-ocean-a-lautre-grace-a-cbcradio-canada>> (page consulted on June 24, 2018).

TORONTO STAR. *Balancing body and mind*, August 27, 2015, online: <https://www.thestar.com/sponsored_sections/continuingeducation/2015/08/27/balancing-body-and-mind.html> (page consulted on June 24, 2018).

VILLENEUVE, Nathalie. *Info et promo : danser avec le diable ?*, November 25, 2013, Conseil de presse du Québec, online: <<https://conseildepresse.qc.ca/actualites/nouvelles/info-et-promo-danser-avec-le-diable/>> (page consulted on June 24, 2018).

VRANICA, Suzanne. *Majority of Native Ads Lack Transparency*, The Wall Street Journal, August 3, 2016, online: <<https://www.wsj.com/articles/majority-of-native-ads-lack-transparency-1470218409>> (page consulted on June 24, 2018).

WARZEL, Charlie. *The Real Problem With The Atlantic's Sponsored Post*, Adweek, January 15, 2013, online: <<http://www.adweek.com/digital/real-problem-atlantics-sponsored-post-146553/>> (page consulted on February 15, 2018).

g) Other documents

A2C. *Découvrir IA2C*, online: <<https://a2c.quebec/decouvrir-a2c>> (page consulted on May 26, 2018).

AD STANDARDS.

About ASC, online: <<http://www.normespub.com/en/AboutASC/aboutASC.aspx>> (page consulted on May 26, 2018).

2014 Consumer Perspectives on Advertising, 2014, online: <<http://www.adstandards.com/en/ASCLibrary/2014ASCConsumerResearch.pdf>> (page consulted on June 24, 2018), 24 pages.

2017 Consumer Perspectives on Advertising, Ad Standards Research, 2017, online: <<http://www.adstandards.com/en/ASCLibrary/2017ASCConsumerResearch.pdf>> (page consulted on June 24, 2018), 4 pages.

ALBERTA PRESS COUNCIL.

About us, online: <<https://albertapresscouncil.ca/about-us>> (page consulted on May 25, 2015).

Objectives of the Alberta Press Council, online: <<https://albertapresscouncil.ca/about-us>> (page consulted on May 25, 2018).

AUSTRALIAN COMPETITION & CONSUMER COMMISSION, *About the ACCC*, online: <<https://www.accc.gov.au/about-us/australian-competition-consumer-commission/about-the-acc>> (page consulted on June 3, 2018).

CEFRIO. *Médias sociaux et économie de partage en ligne au Québec*, 2016, NETendances, vol. 9, No. 9, 2017, online: <https://cefrio.qc.ca/media/uploader/NETendances2016-Medias_sociaux_economie_de_partage27072017.pdf> (page consulted on June 24, 2018).

CONSEIL DES DIRECTEURS DE MÉDIAS DU QUÉBEC. *Le Native Advertising : une nouvelle opportunité pour les annonceurs ?*, online: <<http://cdmq.ca/data/IDVGD704/le-native-advertising.pdf>> (page consulted on February 11, 2018), 6 pages.

COSSETTE, Claude. *La Publicité de A à Z. Dictionnaire technique français-anglais*, Quebec, Les Presses de l'Université Laval, 2006, 312 pages.

DÉSILETS, Christian. *L'asymétrie des revenus publicitaires des médias d'information traditionnels et modernes. Le point de vue de trois publicitaires québécois*, Enquête menée pour le Groupe de travail sur le journalisme et l'avenir de l'information au Québec, September 2, 2010, online: <https://www.mcc.gouv.qc.ca/fileadmin/documents/publications/media/Christian_Desilets_-_Asymetrie_des_revenus_publicitaires_des_medias_traditionnels_et_modernes.pdf> (page consulted on June 24, 2018), 15 pages.

ETHICS ADVISORY COMMITTEE OF THE CANADIAN ASSOCIATION OF JOURNALISTS, *Sponsored Content: How Should Journalism Ethics Respond To Advertising Dressed Up As Journalism?*, CAJ, September 2015, online: <http://caj.ca/images/downloads/Ethics/caj_ethics_advisory_committee_sponsored_content_discussion_paper.pdf> (page consulted on June 24, 2018), 6 pages.

FÉDÉRATION PROFESSIONNELLE DES JOURNALISTES DU QUÉBEC. *Description*, online: <<https://www.fpqj.org/profil/description/>> (page consulted on May 26, 2018).

FNC-CSN. “Mission” section, online: <<http://www.fncom.org/a-propos/mission/>> (page consulted on June 25, 2018).

HALLMAN, Eugene et al. *The Newspaper as a Business*, Royal Commission on Newspapers, vol. 4, Ottawa, 1980, online: <http://publications.gc.ca/collections/collection_2017/bcp-pco/Z1-1980-1-41-4-eng.pdf> (page consulted on May 8, 2018), 202 pages.

INTERACTIVE ADVERTISING BUREAU CANADA, *IAB Canada 2016 Actual + 2017 Estimated Canadian Internet Advertising Revenue Survey. Detailed Report*, June 29, 2017, online: <<https://iabcanada.com/content/uploads/2017/07/IABCanadaRevenueSurveyFinal2017.pdf>> (page consulted on June 24, 2018), 32 pages.

INTERACTIVE ADVERTISING BUREAU CANADA, *The Native Advertising Playbook*, December 4, 2013, online: <<https://www.iab.com/wp-content/uploads/2015/06/IAB-Native-Advertising-Playbook2.pdf>> (page consulted on June 24, 2018).

INTERACTIVE ADVERTISING BUREAU FRANCE, *Le Native advertising*, France, October 2014, available at: <<https://www.iabfrance.com/contenu/livres-blancs/le-native-advertising>> (page consulted on June 24, 2018).

LAURSEN, Jesper et al. *Native Advertising Trends in News Media*, Native Advertising Institute, Décembre 2017, online: <https://nativeadvertisinginstitute.com/wp-content/uploads/2017/12/inma_2017NativeAdvertising.pdf> (page consulted on June 24, 2018), 42 pages.

MALTAIS, Robert. *L'éthique élastique – L'éthique, pour qui ?*, FPJQ, vol. 32, No. 6, June 2008, online: <<https://www.fpqj.org/lethique-elastique-lethique-pour-qui/>> (page consulted on June 24, 2018).

MINISTER OF SUPPLY AND SERVICES CANADA. *Royal Commission on Newspapers*, Kent Report, Ottawa, 1981, online: <http://publications.gc.ca/collections/collection_2014/bcp-pco/Z1-1980-1-1-eng.pdf>.

NATIONAL NEWSMEDIA COUNCIL OF CANADA.

Journalistic Standards, online: <<http://mediacouncil.ca/about-us-ethics-journalism/standards/>> (page consulted on May 25, 2015).

Member News Organizations, online: <<http://mediacouncil.ca/about-us-ethics-journalism/member-news-organizations/>> (page consulted on May 25, 2015).

About Us, online: <<http://mediacouncil.ca/about-us-ethics-journalism/>> (page consulted on May 25, 2015).

PRITCHARD, Brenda L. “New age advertorials: best practices in native advertising” in *Food, natural health products & cosmetics law*, Gowling WLG, September 2016, online: <<https://edoctrine.caij.gc.ca/publications-cabinets/gowlings/2016/a89741/en/PC-a95846>> (page consulted on June 24, 2018).

PUBLIC POLICY FORUM. *The Shattered Mirror – News, Democracy and Trust in the Digital Age*, January 2017, Ottawa, online: <<https://shatteredmirror.ca/wp-content/uploads/theShatteredMirror.pdf>> (page consulted on June 24, 2018), 103 pages.

PUBLIC SERVICES AND PROCUREMENT CANADA. “Native Advertising,” Record 1, TERMIUM Plus, March 28, 2018, online: <http://www.btb.termiumplus.gc.ca/tpv2alpha/alpha-eng.html?lang=eng&i=1&srchtxt=native+advertising&index=alt&codom2nd_wet=1#resultrecs> (page consulted on June 24, 2018).

RASQUINHA, Sonia et al. “Pratiques commerciales trompeuses en ligne : intermédiaires, quels risques juridiques courez-vous ?” in *Le Droit de savoir*, Lavery, August 2017, online: <<https://edocrtrine.caij.gc.ca/publications-cabinets/lavery/2017/a80959/fr/PC-a101057>> (page consulted on May 29, 2018).

ROUX, Paul. *Lexique des difficultés du français dans les médias*, Éditions La Presse, updated on January 1, 2010, online: <<https://issuu.com/cyberpresse/docs/lexique2010>> (page consulted on June 24, 2018), 187 pages.

SCHREYER, Amanda. “Beyond the Buzzwords: Sponsored Content, Native Advertising, and Consumer Protection” dans *Landslide Magazine*, American Bar Association, vol. 8, No. 2, November-December 2015, online: <https://www.americanbar.org/publications/landslide/2015-16/november-december/beyond_buzzwords_sponsored_content_native_advertising_and_consumer_protection.html> (page consulted on June 24, 2018).

SONDERMAN, Jeff and Millie TRAN. *Understanding the rise of sponsored content*, American Press Institute, November 13, 2013, online: <<https://www.americanpressinstitute.org/publications/reports/white-papers/the-four-business-models-of-sponsored-content-2/>> (page consulted on June 24, 2018).

UTARD, Jean-Michel. *Du discours de l'information aux genres journalistiques : proposition pour une étude socio-discursive du journalisme*, X^e Colloque bilatéral franco-roumain, CIFSIC University of Bucarest, June 28 – July 3, 2003, Oct. 2003, online: <https://archivesic.ccsd.cnrs.fr/sic_00000723/document> (consulted on June 24, 2018), 8 pages.

TWITTER. *What Are Promoted Tweets ?*, online: <http://www.btb.termiumplus.gc.ca/tpv2alpha/alpha-eng.html?lang=eng&i=1&srchtxt=native+advertising&index=alt&codom2nd_wet=1#resultrecs> (page consulted on June 24, 2018).

ANNEX 1: Analytical Grid

	Recherche d'hyperlien menant au contenu informatif payé	Analyse du contenu informatif payé
Indices explicites	<input type="checkbox"/> Oui <ul style="list-style-type: none"> <input type="checkbox"/> Terme explicite <ul style="list-style-type: none"> <input type="checkbox"/> Publicité (<i>Advertisement</i>) <input type="checkbox"/> Contenu publicitaire (<i>Advertising Content</i>) <input type="checkbox"/> Contenu commandité (<i>Sponsored Content</i>) <input type="checkbox"/> Avertissement visible sur le caractère publicitaire <input type="checkbox"/> « Payé par » (« <i>paid by</i> »), suivi du nom et/ou logo de l'annonceur <input type="checkbox"/> Autre(s), spécifier : <input type="checkbox"/> Non	<input type="checkbox"/> Oui <ul style="list-style-type: none"> <input type="checkbox"/> Terme explicite <ul style="list-style-type: none"> <input type="checkbox"/> Publicité (<i>Advertisement</i>) <input type="checkbox"/> Contenu publicitaire (<i>Advertising Content</i>) <input type="checkbox"/> Contenu commandité (<i>Sponsored Content</i>) <input type="checkbox"/> Avertissement visible sur le caractère publicitaire <input type="checkbox"/> « Payé par » (« <i>paid by</i> »), suivi du nom et/ou logo de l'annonceur <input type="checkbox"/> Auteur explicitement indiqué <input type="checkbox"/> Autre(s), spécifier : <input type="checkbox"/> Non
Indices implicites	<input type="checkbox"/> Oui <ul style="list-style-type: none"> <input type="checkbox"/> Terme implicite <ul style="list-style-type: none"> <input type="checkbox"/> Publiereportage (<i>Advertorial</i>) <input type="checkbox"/> Contenu partenaire (<i>Partner Content</i>) <input type="checkbox"/> Contenu de marque (<i>Branded Content</i>) <input type="checkbox"/> Autre(s), spécifier : <input type="checkbox"/> Avertissement camouflé sur le caractère publicitaire <input type="checkbox"/> Section réservée à la publicité rédactionnelle dans la page d'accueil <input type="checkbox"/> Logo de l'annonceur situé dans le même encadré que l'hyperlien qui mène à la publicité native <input type="checkbox"/> Nom et/ou logo de l'annonceur indiqué à titre de collaborateur ou de partenaire <input type="checkbox"/> Autre(s), spécifier : <input type="checkbox"/> Non	<input type="checkbox"/> Oui <ul style="list-style-type: none"> <input type="checkbox"/> Terme implicite <ul style="list-style-type: none"> <input type="checkbox"/> Publiereportage (<i>Advertorial</i>) <input type="checkbox"/> Contenu partenaire (<i>Partner Content</i>) <input type="checkbox"/> Contenu de marque (<i>Branded Content</i>) <input type="checkbox"/> Autre(s), spécifier : <input type="checkbox"/> Avertissement camouflé sur le caractère publicitaire <input type="checkbox"/> Hyperlien menant au site internet de l'annonceur <input type="checkbox"/> Logo intégré au contenu <input type="checkbox"/> Nom et/ou logo de l'annonceur indiqué à titre de collaborateur ou de partenaire <input type="checkbox"/> Auteur implicitement indiqué <input type="checkbox"/> Autre(s), spécifier : <input type="checkbox"/> Non

	Recherche d'hyperlien menant au contenu informatif payé	Analyse du contenu informatif payé
Indices circonstanciels	<input type="checkbox"/> Oui <ul style="list-style-type: none"> <input type="checkbox"/> Titre à connotation commerciale <input type="checkbox"/> Aspect visuel différent <ul style="list-style-type: none"> <input type="checkbox"/> Couleur du texte différente <input type="checkbox"/> Toile de fond différente <input type="checkbox"/> Design de l'encadré <input type="checkbox"/> Police de caractère différente à vue d'œil <input type="checkbox"/> Autre(s), spécifier : <input type="checkbox"/> Logo de l'annonceur seul <input type="checkbox"/> Nom de l'annonceur dans le titre ou le résumé du contenu <input type="checkbox"/> Information retrouvée dans la politique du média en matière de publicité <input type="checkbox"/> Information retrouvée dans le document préparé pour les annonceurs <input type="checkbox"/> Information retrouvée sur le Web sur les pratiques publicitaires du média <input type="checkbox"/> Absence du nom de l'auteur, contrairement au contenu éditorial <input type="checkbox"/> Autre(s), spécifier : <input type="checkbox"/> Non	<input type="checkbox"/> Oui <ul style="list-style-type: none"> <input type="checkbox"/> Nom de l'annonceur dans le corps du texte <input type="checkbox"/> Ton du texte complaisant ou ton non-neutre <input type="checkbox"/> Aspect visuel différent <ul style="list-style-type: none"> <input type="checkbox"/> Couleur du texte différente <input type="checkbox"/> Toile de fond différente <input type="checkbox"/> Police de caractère différente à vue d'œil <input type="checkbox"/> Autre(s), spécifier : <input type="checkbox"/> Présence de publicité en bannière près du contenu, en lien avec le contenu présenté <input type="checkbox"/> Confusion quant à l'auteur du contenu <input type="checkbox"/> Absence du nom de l'auteur, contrairement au contenu éditorial <input type="checkbox"/> Autre(s), spécifier : <input type="checkbox"/> Non
Modèle(s) de publicité rédactionnelle	<input type="checkbox"/> Commandite d'article éditorial <input type="checkbox"/> Média agit en agence de publicité <input type="checkbox"/> Offre une plateforme à l'annonceur <input type="checkbox"/> Autre(s), spécifier :	

ANNEX 2: The 45 Native Advertisements Analysed

	NOM DU MEDIA D'INFORMATION	TITRE DE LA PUBLICITE NATIVE		
		Site Web	Application mobile	Facebook
1	Radio-Canada	« Bien comprendre son microbiote »	Aucune publicité n'a été retrouvée (s/o)	s/o
		« Épargnez-vous de passer tout droit »	s/o	s/o
		« Soyez au cœur des festivités / Programmation officielle du 375 ^e de Montréal »	s/o	s/o
2	La Presse	« L'équilibre de vie selon Marianne St-Gelais »	Même publicité que site Web (Idem)	Idem site Web
		« Les partenariats en santé, voie d'avenir »	« Le pharmacien : une ressource accessible ! »	« Être à la maison le plus longtemps possible »
		« Scandale ! Les « milléniaux » ont les mêmes aspirations que les autres générations ! »	« Retraite : boulot, épargne... et loterie »	« Les finances personnelles : un concept étranger aux jeunes »
3	Le Devoir	« Éviter les ventes pyramidales d'investissements »	s/o	s/o
		« Transfert à la relève : le défi des PME »	s/o	s/o
		« Féministes tant qu'il le faudra ! »	Idem site Web	s/o
4	Le Journal de Montréal	« Devenir propriétaire d'une maison avec le RAP »	s/o	« Êtes-vous fait pour rester locataire ou devenir propriétaire ? »
		« Les questions à se poser lors du magasinage d'une maison »	s/o	Idem site Web
		« Trouver un emploi, c'est facile avec Intégration Jeunesse du Québec ! »	s/o	« Comment initier votre enfant à l'épargne et à la gestion financière »
5	Le Soleil	« Pour des chiens et des chats souriants »	« Souriez au printemps ! Expression implantologie dentaire »	s/o
		« Le droit comme outil de changement social »	Idem site Web	s/o
		« Trouver sa voie dans l'accompagnement »	Idem site Web	s/o
6	Les Affaires	« Industrie du meuble : le double défi de l'usine 4.0 »	Idem site Web	Idem site Web
		« La numérisation mobile au service des entreprises »	Idem site Web	Idem site Web
		« Les grandes tendances TI en entreprise »	Idem site Web	« Pénurie de main d'œuvre en TI au Canada : Et si le recrutement international devenait un élément essentiel de la solution à court terme »

	NOM DU MEDIA D'INFORMATION	TITRE DE LA PUBLICITE NATIVE		
		Site Web	Application mobile	Facebook
7	National Post	« How a patient's cancer diagnosis can change your life »	s/o	s/o
		« The Traditional Farmhouse Reimagined »	<i>Idem</i> site Web	<i>Idem</i> site Web
		« How a suit should fit »	s/o	s/o
8	CBC News	« New to Canada? Here's how to get your child ready for school »	s/o	s/o
		« Recipe: Mediterranean Stuffed Roast Turkey Breast »	s/o	s/o
		« Budget-friendly looks for the little ones in your life »	s/o	s/o
9	Toronto Star	« Mentorship key to Marlies success »	<i>Idem</i> site Web	s/o
		« The library revolution »	<i>Idem</i> site Web	s/o
		« 6 new college courses for 2018 »	<i>Idem</i> site Web	s/o
10	Globe and Mail	« Business leaders face many questions with the impacts of climate change »	« Spectacular Northwest Territories »	s/o
		« Volunteer opportunities enhancing unity and engagement »	« Will your business survive the next generation? This owner has a plan »	s/o
		« The future is now for AI innovation in Canada »	s/o	s/o
11	Huffington Post	« Cinq bonnes raisons de remplir votre propre rapport d'impôt en 2018 »	« Sam Roberts On Loving Life In Music And The Key To Happiness »	« Faire appel à des professionnels est toujours une solution gagnante »
		« 6 Things To Consider Before Starting Your Own Business »	s/o	« Habits That Successful People have in Common »
		« Ce qu'il faut savoir sur l'Internet des objets et la maison intelligente »	s/o	« Procrastination Has Penalties When It Comes To Your Taxes »
12	Vice Canada-Québec	« Pour le meilleur : Sarah Fournier »	<i>Idem</i> site Web	« In the Ring with One of Mexico's Top Female Bullfighters »
		« Créer des nanomatériaux »	<i>Idem</i> site Web	s/o
		« We Asked People Checking Out a Room Full of Dirt: 'What Does it Mean?' »	« La fabrication additive transforme l'approche des ingénieurs en matière de design »	<i>Idem</i> site Web

	NOM DU MEDIA D'INFORMATION	TITRE DE LA PUBLICITE NATIVE		
		Site Web	Application mobile	Facebook
13	Vancouver Courier	« Food for thought: A toonie can buy B.C. students better grades »	s/o	s/o
		« OAC Kids' Day Camp: Summer fun starts here »	s/o	s/o
		« Good, clean fun: 5 signs of a tidy play park »	s/o	s/o
14	The Hamilton Spectator	« Create the perfect Easter arrangement with TERRA Greenhouses »	<i>Idem site Web</i>	s/o
		« Tackling spring allergy season like a pro »	<i>Idem site Web</i>	s/o
		« Can you pass the homebuyer's stress test? »	<i>Idem site Web</i>	s/o
15	106,9 FM Mauricie	« Rester jeune au naturel, c'est possible ? »	s/o	<i>Idem site Web</i>
		« 5 raisons méconnues pour lesquelles la physiothérapie peut vous aider ! »	s/o	<i>Idem site Web</i>
		« Entreprise Enfant Soleil : une nouvelle certification solidaire ! »	s/o	<i>Idem site Web</i>

Native Advertising: Information or Mirage?

Questionnaire addressed to the news media

Research Project Funded by the Office of Consumer Affairs
(Innovation, Science and Economic Development Canada)
April 2018

PRESENTATION OF THE ORGANIZATION

Union des consommateurs (hereinafter “UC”) is a Quebec non-profit organization comprised of several *Associations coopératives d’économie familiale* (hereinafter “ACEFs”) and other consumer rights groups. UC’s mission is to represent and defend the rights of consumers, with special emphasis on the interests of low-income households.

UC acts mainly at the national level, before political, regulatory or legal authorities and in public forums. Its priority issues, for research, action and advocacy, include the following: household finances and money management, energy, communications (telephone services, broadcasting, cable television and the Internet), public health, financial products and services, business practices, and social and fiscal policies.

PRESENTATION OF THE PROJECT

Native advertising is a marketing technique that is growing in popularity, particularly among the news media. This type of advertising may mislead and confuse consumers, who may have difficulty determining whether the information presented is paid by a third party or is journalistic content.

Our research includes a review of the literature, an analysis of the issues surrounding native advertising in digital news media, an analysis of the current legal and self-regulating frameworks in Canada and abroad, and a study of possible solutions. Moreover, we conducted an analysis of the digital platforms (websites, mobile applications and Facebook) of fifteen media organizations providing the Canadian public with information in the form of written journalistic articles; our analysis aimed at identifying practices regarding disclosure of the promotional character of native advertising. Our study also includes a consultation of the stakeholders, to learn their perspectives on the use of that type of advertising and on the rules they deem adequate.

Attached hereto are the highlights of our field survey at its current stage. The following pages contain a written questionnaire to which we would like you to respond, so that the views of all stakeholders may be known and contribute to an overall understanding of the subject.

Hajer
Project Manager for Union des consommateurs

Labidi

Questionnaire

1. Identification of your organization and of the respondent

Name of the organization: Click or press here to enter text

Field: Click or press here to enter text

Address: Click or press here to enter text

Resource person: Click or press here to enter text

Position: Click or press here to enter text

Telephone No.: Click or press here to enter text

E-mail: Click or press here to enter text

2. Definition

In the course of our study, we defined “**native advertising**” as a paid message addressed to consumers “*with the intent to influence their choice, opinion or behaviour*¹” and that “*uses the formats and codes of the host website*²” to conceal itself amid the native content of the platform used. In a journalistic context, native advertising takes the form of editorial advertising; so it’s information content paid by a third party.

3. Questions

Use of native advertising

1. Since when has your media company been offering native advertisements to advertisers and since when has it been publishing them?

Click or press here to enter text

2. What do you think is the quality of your disclosure to your readers of the promotional character of native advertising?

Click or press here to enter text

Issues facing the news media

3. What do you think are the pros and cons of native advertising:

¹ Advertising Standards Canada, *The Canadian Code of Advertising Standards*, definition of “advertising,” online: <<http://www.adstandards.com/en/Standards/canCodeOfAdStandards.aspx#definitions>> (consulted on February 13, 2018).

² Office québécois de la langue française, terminological record of “*publicité vidéo native*” in the Grand dictionnaire terminologique, 2018, online: http://gdt.oqlf.gouv.qc.ca/ficheOqlf.aspx?Id_Fiche=26530064, (page consulted on January 24, 2018). Our translation.

a) for your readers?

Click or press here to enter text

b) for your advertisers?

Click or press here to enter text

Highlights of our field survey

To complete this section, please refer to the attached document titled "Summary of Highlights."

4. What is your view of the exemplary practices we identified?

Click or press here to enter text

5. What is your view of the bad practices we identified?

Click or press here to enter text

6. Do you have specific comments after reading the highlights of our research?

Click or press here to enter text

Ethical standards

7. To your knowledge, what ethical standards are generally applicable regarding native advertising and its sources?

Click or press here to enter text

8. What ethical standards is your media company currently applying to native advertising and what are their sources (internal, self-regulating authority, etc.)?

Click or press here to enter text

9. What internal standards do you apply to assess the quality of your disclosure? If applicable, what guidelines and criteria are taken into account for the assessment?

Click or press here to enter text

Legal and regulatory framework

To preserve the public's right to independent information, and to preserve the public's trust in news organizations, we think it preferable to establish a legal and regulatory framework for minimal disclosure methods to be applied.

10. Would you be opposed to a legal and regulatory framework aiming to establish minimal standards for disclosing the promotional character of native advertising?

Click or press here to enter text

11. Do you have suggestions about minimal disclosure standards for native advertising that would have to be met by any media organization providing the Canadian public with written journalistic information on a digital platform?

Click or press here to enter text

12. Would you be opposed to the imposition of uniform disclosure methods to reduce readers' confusion?

Click or press here to enter text

THANK YOU for e-mailing us your comments
by Friday, April 27, 2018 at the latest
to: hlabidi@uniondesconsommateurs.ca
Thank you for your collaboration!

For further information, don't hesitate to contact us.

UNION DES CONSOMMATEURS
Hajer Labidi, Project Manager
Telephone: (514) 521-6820 ext. 240
E-mail: hlabidi@uniondesconsommateurs.ca

ANNEX 4: Summaries of Highlights

Summary of Highlights

This summary presents the highlights of our study, which aims at describing the prevalence and uses of native advertising in the form of paid information content disseminated by the news media in Canada, and to determine how the promotional character of some content is disclosed to the reader. Additionally, we tried to identify the editorial advertising models used by the news media and identify problematic as well as exemplary practices for disclosing the promotional character of such content.

Summary of the Methodology

We analysed the websites, mobile applications and Facebook pages of fifteen news organizations¹ that offer written journalistic information to the Canadian public. On one hand, we identified and then examined three native advertisements among the websites of the fifteen selected news organizations. Our analysis consisted of identifying the explicit, implicit and circumstantial indications for detecting the promotional character of some content. We first searched for those indications on the Web pages that display hyperlinks, to determine whether it was possible to notice or deduce that some hyperlinks led to native advertising. Then we examined the pages displaying such editorial advertising. On the other hand, for mobile applications and Facebook pages, we mainly looked for the same three advertisements to detect differences, if any, between the ways of disclosing the content's promotional character.

¹ As part of this study, we examined the digital platforms of the following news organizations: Radio-Canada, La Presse, Le Devoir, Le Journal de Montréal, Le Soleil, Les Affaires, National Post, CBC News, Toronto Star, Globe and Mail, Huffington Post, Vice Media, Vancouver Courier, The Hamilton Spectator and 106.9 FM Mauricie.

Highlights

General Findings

Websites

Generally, we observed that:

1. One news organization among the 15 analysed provides no explicit or implicit indication for distinguishing which home page hyperlinks lead to paid information content, and which lead to journalistic content. The content to which some hyperlinks lead mentions that it was produced “en collaboration avec [the advertiser’s logo].”
2. An activated ad blocker may have an effect on the disclosure of the promotional character, notably by removing indications for differentiating between promotional and journalistic content.

Regarding the **terms used for disclosing the promotional character**, our findings are as follows:

3. The terms “**Contenu publicitaire**,” “**Publicité**” and “**Paid Post**” are used respectively by each of the news organizations. However, the term “Publicité” only appears on the home page, near the hyperlink, whereas “Contenu publicitaire” and “Paid Post” appear both near the hyperlink and on the editorial advertising page.
4. The terms “**Contenu commandité**” or “**Sponsored Content**” are used by five out of the 15 news organizations, near hyperlinks leading to paid information content. Two of the news organizations use the term “**Contenu commandité**” near the hyperlink leading to editorial advertising, but that term is not present on the page displaying that same editorial advertisement.

Moreover, we observed that seven of the news organizations use the following variations (for hyperlinks and/or contents):

- “**Commandité par** [the advertiser’s name]” and the English equivalent “**Sponsored by** [the advertiser’s name]”;
- “**Commandité**” and the English equivalent “**Sponsored**”;
- “**Sponsored Content with** [the advertiser’s logo]”;
- “**Sponsor Content**”; and
- “**Sponsored Features.**”

5. The more technical terms “**Publireportage**” and “**Contenu de marque**” were found on the websites of two out of the 15 news organizations, both near the hyperlink and on the page containing editorial advertising.
6. Four out of the 15 news organizations opt rather for terms that cannot be understood at face value and thus require, for the reader to be informed of the content’s promotional character, reading the caution accompanying the mention. Those terms, appearing near the hyperlink and/or on the advertisement’s page, are the following:
 - “**XTRA**”;
 - “**Cahiers spéciaux**”;
 - “**Dossier recommandé**”;
 - “**Le savoir d’entreprise**”;
 - “**Dossiers partenaires**”; and
 - “**La voix des marques.**”
7. Lastly, seven news organizations opted for the following terms, appearing near the hyperlink and/or on the advertisement’s page:
 - “**En collaboration avec** [logo or name]”;
 - “**En partenariat avec** [name]” or the English equivalent “**In partnership with** [name]”;
 - “**Présenté par** [logo]” or the English equivalents “**Presented by** [logo]” or “**This content is presented by** [advertiser’s name]”;
 - “**Brought to you by** [logo].”
8. The term “**Commandité**” (or “**Sponsored**” in English) is used inconsistently by the news organizations, which may confuse the reader:
 - (i) Some news organizations use that term in reference to content written by the editorial team, but paid by third parties without supervisory power.
 - (ii) Other news organizations use that term in reference to content written by an advertiser or by the news organization’s in-house advertising team on behalf of the advertiser and with its collaboration.
9. The location of terms used for announcing the promotional character of information content varies. Those terms are often found at the top before the title, at the top before the main text, within the main text, where the author’s name is usually written, or at the bottom after the text.

The news organizations’ websites also contain **cautions disclosing the promotional character**. Our main findings to that effect are as follows:

10. Of the 45 links leading to the editorial advertisements analysed, only one visible caution was found near a hyperlink leading to editorial advertising, whereas 12 cautions were found that are somewhat camouflaged – i.e., that are not visible to the reader and are not revealed until

an action is taken (hovering with the cursor or clicking on a term or symbol).

However, on pages displaying paid information content, the reverse applies: 22 advertisements (among nine of the news organizations) display a visible caution, whereas seven advertisements (among three of the news organizations) provide a camouflaged caution.

11. Regarding pages that display editorial advertising, five out of 15 news organizations offer neither a visible nor a camouflaged caution for the three advertisements analysed. Three of the news organizations display a caution only occasionally, and some of their advertisements display none.

Regarding hyperlinks leading to editorial advertising, nine out of the 15 news organizations display neither a visible nor a camouflaged caution for the three advertisements analysed. Two of the news organizations display a caution only occasionally.

12. The advertisements' wording varies between news organizations, as does the clarity of their message. The following are examples of cautions found near hyperlinks or on the editorial advertisement's page:

- “Les contenus publicitaires sont produits par nos annonceurs. Ce ne sont pas des contenus journalistiques de Radio-Canada” (visible near the hyperlink leading to the content) – Radio-Canada

“Cette page est mise à la disposition de notre annonceur, qui en assume l'entière responsabilité. Radio-Canada et ses journalistes n'ont participé à aucun moment à la rédaction de ce contenu et n'assument aucune responsabilité quant à ce qui y figure ou aux conséquences pouvant résulter de l'utilisation ou l'interprétation de ce contenu” (visible near the content) – Radio-Canada

“Cette page est du contenu promotionnel produit pour [advertiser's name]. Ce n'est pas du contenu journalistique de Radio-Canada” (visible near the content) – Radio-Canada

- “XTRA est une section qui regroupe des contenus promotionnels produits par ou pour des annonceurs” (camouflaged near the hyperlinks, but visible near the content) – La Presse
- “Cette section contient des contenus commandités et promotionnels. L'équipe de rédaction du Devoir n'est pas impliquée dans l'élaboration de ces contenus” (camouflaged near the hyperlinks) – Le Devoir

“Ces cahiers sont produits par l'équipe des publications spéciales du Devoir, grâce au soutien des annonceurs qui y figurent. Ces derniers n'ont cependant pas de droit de regard sur les textes” (camouflaged near the hyperlinks) – Le Devoir

- “Ce contenu a été produit par l’équipe des publications spéciales du Devoir en collaboration avec l’annonceur. L’équipe éditoriale du Devoir n’a joué aucun rôle dans la production de ce contenu” (displayed near the content) – Le Devoir
- “Ce texte fait partie d’un cahier spécial” (displayed near the content) – Le Devoir
- “Une réalisation du service de la promotion” (displayed near the content) – Le Soleil

“En collaboration avec Le Soleil, [advertiser’s name] signe une série d’articles présentant les retombées de ses recherches sur le quotidien des gens. Cette semaine, nous mettons en lumière la Faculté de droit de [advertiser’s name]” (embedded in the content) – Le Soleil
 - “Par l’intermédiaire du Savoir d’entreprise, Les Affaires souhaite offrir à ses lecteurs des connaissances de pointe provenant d’organisations désireuses de partager leur expertise” (camouflaged near the hyperlinks) – Les Affaires

“Le savoir d’entreprise c’est quoi ?

Par l’intermédiaire du Savoir d’entreprise, Les Affaires souhaite offrir à ses lecteurs des connaissances de pointe provenant d’organisations désireuses de partager leur expertise.

Les contenus sont produits par le Service de contenu Les Affaires en collaboration avec l’organisation. Notez qu’à aucun moment, les journalistes de Les Affaires ne participent à la rédaction de ces articles. Pour plus d’information sur ce produit, veuillez communiquer avec [the news organization’s e-mail address]” (visible near the content) – Les Affaires

“Les dossiers partenaires sont mis à la disposition d’annonceurs désirant publier des contenus destinés à la communauté d’affaires. Les sujets de ces contenus et leur traitement demeurent à l’entière discrétion des annonceurs. Les journalistes de Les Affaires ne sont pas impliqués dans la rédaction de ces contenus” (camouflaged near the hyperlinks, but visible near the content) – Les Affaires
 - “This story was created by Content Works, Postmedia’s commercial content division, on behalf of a client” (camouflaged near the hyperlinks and the content, but a second caution is visible at the end of the content) – National Post

“This section was produced by the editorial department. The client was not given the opportunity to put restrictions on the content or review it prior to publication” (camouflaged near the hyperlinks and the content) – National Post
 - “This is paid content produced on behalf of Value Village. This is not CBC journalistic content” (visible near the content) – CBC News
 - “Advertising produced by Randall Anthony Communications. The Globe’s Editorial department was not involved in its creation” (visible near the content) – Globe and Mail

“This content was produced by [advertiser’s name]. The Globe and Mail was not

involved in its creation” (visible near the content) – Globe and Mail

“Produced by Randall Anthony Communications. The Globe’s editorial department was not involved in its creation” (visible near the content) – Globe and Mail

- “Sponsored content is content which is paid for and has been written by on behalf of an advertiser. Contact us at [e-mail] for more information” (camouflaged near the hyperlink and the content) – Vancouver Courier
- “La voix des marques est un contenu publicitaire produit par ou pour des annonceurs. Les propos tenus dans ce texte ne sont pas ceux de la station” (visible near the content) – FM 106,9 Mauricie

We also identified **other implicit methods used by the news media** on an editorial advertisement’s page, to distinguish between paid information content from journalistic content. Notably:

13. One news organization uses the colour blue for the editorial font of its paid information content, whereas black is used for journalistic content.
14. One news organization doesn’t use the standard form of journalistic text, but rather offers within its website a platform where advertisers can be creative. Thus, from one advertisement to another, the visual aspect is completely different, but is always differentiated from the journalistic content.
15. The advertiser’s logo is at times embedded in the paid information content.
16. Some news organizations insert in a single section all hyperlinks leading to paid content, whereas others display such hyperlinks amid those leading to journalistic content.

In addition, regarding the **identification of the author’s content**, our findings are as follows:

17. Of the 45 advertisements analysed, 17 may confuse the reader as to the identity of the content’s author. The confusion stems from several factors, such as: no caution about the content’s origin, no name or author mentioned, or an unclear caution².
18. Generally, when a caution is written by a news organization, there is less confusion.
19. The advertiser’s identity was impossible to discern in the case of one of the editorial

² For example, a caution indicating “by or on behalf of a sponsor” (“par ou pour un annonceur”) doesn’t clearly indicate who wrote the content or if the news organization was involved in the process.

advertisements. In other cases, circumstantial indications (for example, a banner advertisement linked with the content) enabled us to know or suspect the advertiser's identity.

Lastly, regarding **editorial advertising models** offered by the news media, here are our findings, garnered from cautions or "media kits" made available to advertisers on the websites:

20. Three advertisements, respectively from three news organizations, are editorial articles paid by third parties, but without supervisory power (editorial article sponsorship).
21. Four news organizations offer the advertiser a platform on their websites. The advertiser produces the platform's content.
22. Seven out of the 15 news organizations offer to assist the advertiser in writing the paid information content, which is generally the role of an advertising agency.
23. However, we were unable to conclude with certainty regarding the model used for 21 of the editorial advertisements studied, produced by seven news organizations.

Mobile applications

1. Of the 15 news organizations selected as part of our study, 13 use a mobile application to disseminate information to their target public. For three of those 13 mobile applications, our research did not reveal any paid information content.

Generally, mobile applications use the same disclosure methods as the websites of the news organizations concerned. However, we observed certain disparities in the disclosure methods between seven news organizations' websites and their mobile applications.

2. In one of the news organizations, the cautions that were visible on the website are camouflaged in the mobile application and appear only when the reader clicks on a term or symbol.
3. In another news organization, the term used to disclose the promotional character on the website, and the caution accompanying the term on the website, disappear in the mobile application.
4. One of the news organizations provides no indication near the hyperlink leading to editorial advertising. On the page containing commercial content, the only indication (a caution) is found at the end of that content.
5. Another news organization completely separates, in its mobile application, paid information content from editorial content. In that specific case, paid information content appears at the bottom of the home page, with the mention "Cahiers spéciaux." However, once the content page is opened, no indication appears on the page, except the mention "Collaboration spéciale" following the journalist's name.

Facebook

According to our research, eight out of the 15 news organizations display on their Facebook page hyperlinks leading to paid information content.

1. Five news organizations use standard disclosure methods established by Facebook: 1) a “payé” or “commandité” label; and 2) a link to the advertiser’s Facebook page, with the function “avec.”
2. Two news organizations created a Facebook page distinct from their main page to share paid information content, in order to distinguish clearly between commercial and journalistic content. However, both news organizations share commercial posts within their main Facebook page.
3. Three Facebook posts leading to editorial advertising on a news organization’s website don’t use the disclosure methods recommended by Facebook and have no other distinctive indication.

Exemplary Practices

Our study of the news organizations' digital platforms revealed certain exemplary practices that deserve to be recognized because, in our view, they enable the reader to understand that he is in the presence of non-journalistic content (or that the provided link leads to that type of content) and thus they reduce any risk of confusion:

1. When inserts containing a hyperlink leading to editorial advertising have a different visual design, resembling banners, from those containing a hyperlink leading to journalistic content, there is less confusion when the inserts are identified as paid content. In contrast to advertising banners, the links to editorial advertising are embedded with those leading to journalistic editorial content, but without misleading the reader.
2. Using the logo in the insert containing a hyperlink leading to paid information content reduces confusion with journalistic editorial content.
3. Some news organizations don't use the standard form of a journalistic article for native advertising, but rather make available to advertisers a space on their website. When the reader finds himself in a space different from that of journalistic content, there is less risk of confusion. The more the content differs visually from that of a journalistic article, the more a consumer of information will be alerted that the context may have changed.
4. Explicit cautions regarding the promotional character are most effective in removing the reader's doubt as to the content's author and the nature of an article funded by a third party. Ideally, a caution should be short, but sufficiently informative and clear, and be immediately visible to the reader. Cautions should appear both near hyperlinks to paid information content (on the home page and other specialized sections providing hyperlinks) and on the page where the paid information content appears.

As for the **terms used for disclosing the promotional character**, we recommend the following:

5. The terms to be preferred in French are "**Publicité**," "**Contenu publicitaire**" or "**Contenu payé par** [advertiser's logo]", because they require no interpretation.

The explicit terms to be preferred in English are "**Advertisement**," "**Advertising content**" or "**Paid post by** [advertiser's logo]", for the same reason.

6. Those terms should be easily visible (location) and legible (size and colour) to the reader.

Regarding **publications on Facebook**:

7. We think it a good practice to create a page distinct from the news organization's main Facebook page, to share paid information content while including an explicit caution regarding its promotional character.

8. In addition to using the tools that Facebook makes available to advertisers, such as the marker “payé,” and to disclosing the advertiser’s identity by indicating “avec [the advertiser’s name and a hyperlink to its Facebook page]”, it would be a good idea to add the term “contenu publicitaire” in a Facebook publication¹.

Bad Practices

Our study also revealed practices that, in our view, don’t adequately alert the reader about the promotional character of certain hyperlinks or contents:

1. Using no explicit or implicit indication to distinguish clearly, on the home page, between hyperlinks to paid information content and hyperlinks to journalistic content seriously risks misleading readers.
2. Although a caution regarding the promotional character is a minimal practice, that caution needs to be designed and placed so that the reader will see it. Thus, we think camouflaging the caution that explains the promotional character of content is a reprehensible practice.
3. Using ambiguous terms², more-technical terms³, invented terms⁴ or others that are misleading because their primary meaning doesn’t indicate commercial content at all⁷ constitutes a practice to avoid, because it risks confusing the reader in distinguishing between journalistic content and content paid by a third party.
4. Moreover, although we identified *a priori* the term “commandité” among explicit indications, it remains ambiguous in this context, because in practice it has several uses and definitions.
5. Disclosures appearing only near the hyperlink, but disappearing on the page of paid information content, don’t take into consideration the possibility of a too-rapid click on the hyperlink. The promotional character of content should be disclosed at each step. Moreover, if it is not, and if such content is shared, no caution will appear on the shared page.
6. Disclosures that appear only on the page displaying paid information content don’t constitute a good practice either. The reader should not be guided toward commercial content without prior notice.
7. Not clearly disclosing the content’s author or the advertiser’s identify is a practice that should not exist in the news media.

¹ We didn’t find this practice used by any news organization, although we find it exemplary.

² For example, “présenté par,” “en partenariat avec,” “en collaboration avec.”

³ For example, “Publireportage” and “Contenu de marque.”

⁴ For example, “XTRA,” “Le savoir d’entreprise” and “Dossiers partenaires.” For example, “Cahiers spéciaux” and “Dossier recommandé.”

General Comment

Lack of uniformity in the methods of disclosing the promotional character of text, and in the definitions of the various terms used, can confuse the reader. From one news organization to another, he may have to spend time analysing before clearly distinguishing the editorial from the commercial content, and between the various types of hyperlinks leading to those contents.