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Recognizing & Mitigating Risk in Mobile Advertising

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Mobile advertising—placing advertisements in apps or on mobile-optimized websites—is an increasingly important advertising tool. The implementation of a mobile advertising campaign presents exciting opportunities for growth, but also raises numerous challenges and potential pitfalls. Establishing clear parameters with your mobile ad partners from the beginning can help mitigate those risks and ensure a successful campaign.

In this ecosystem, the advertiser (i.e., the company that has the product being advertised) may work directly with ad networks or publishers to place their advertisements. A “*publisher*” is the entity that actually places the ad in an app or on a mobile-optimized website. An “*ad network*” is like a broker; it has relationships with multiple publishers and acts as the go-between between the advertiser and the publisher. The contract that governs the relationship between the advertiser and the network/publisher and sets the parameters for the advertising campaign is called an “*insertion order*.” There can also be a third party involved, a mobile attribution partner, that can take data from the advertiser and data from the publisher/network to match up when the ad was viewed/clicked on and when an app was installed/used. This partner helps determine who should be paid and how much they should be paid as credit for a given ad or result. If any of these steps aren’t done correctly, credit could be given for non-existent ads, incorrect ads, or ads could be placed on sites or apps that don’t fit the brand reputation of the advertiser.

While not exhaustive, the following are matters that should be considered and addressed in the insertion orders you enter into with advertising networks and/or publishers:

Pricing/Payment Structure: What triggers payment and how much are you going to pay?

There are multiple ways to structure how you are going to pay the publisher or ad network and what

triggers your obligation to pay. For example you can setup your campaign on a “cost per click” basis, which sets the amount that you will pay the publisher for

each “click” on the ad; a “cost per install” basis, which sets the amount that you pay the advertiser for an installation of your product; or a “cost per impression” basis, which sets the amount you will pay the advertiser each time the ad is displayed.

Attribution: How do you determine what ads warrant payment?

Establishing how you—or your mobile attribution partner—determine whether an install, click, or impression should result in payment is one of the most important pieces of a mobile advertising campaign. Are you going to require deterministic matching (and lose out on mobile website advertising) or will you allow fingerprinting? If you allow fingerprinting, what is your attribution window going to be? If you allow fingerprinting, will you allow it for everyone or can you limit it to only certain vendors?

Blacklists/Whitelists: Where are your advertisements going to be displayed?

Mobile advertising can have a significant impact on brand image. Establishing “whitelists” of safe websites where you ads may (or must) be displayed and “blacklists” where your ads cannot be displayed is one way to run a targeted ad campaign and also protect your brand. Working with a network to determine how they create a blacklist or a whitelist is often an important consideration. Is that network simply going

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off of criteria you provide, or has the network tracked past issues with publishers on different accounts to have a system wide blacklist?

Fake or Fraudulent Advertising: How will you prevent it and detect it?

The unfortunate truth is that the mobile advertising market has some unsavory players and there is a risk that you may be charged for fake or improper advertising. There are, however, numerous technological and legal safeguards you can put in place to reduce your risk. For example, you can mandate “ad tags” so that you can easily track your ads, require that your advertising partners pass back certain information, and establish in your insertion orders who bears the risk for fake advertising, who bears the responsibility for catching it, and what metrics will be used to determine if an advertisement is fake or violates your placement requirements. You can also mandate transparency as to where the ad ultimately appears and mandate that the transparency be done through unaltered macros from your mobile attribution partner to ensure that the tracking and attribution is done in such a way to limit the possibility of fraud exposure. Additionally, the choice on whether to allow a given network to re-broker the ad often times directly impacts the ability to detect fraud as well as the likelihood that fraud occurs. All of these issues also have different geographical considerations as

different geographical areas often have different abilities to implement certain safeguards and offer different levels of risk.

Makegoods: What do you do when an advertisement is fake or improperly placed?

If you do discover that an advertisement you have been charged for is fake or otherwise violates your placement requirements you can require that the advertising partner provide you with a “makegood.” What form this will take, when it will be paid or applied, and how you will determine the amount, are all terms that should be included in your insertion order.

These are just a few of the many considerations that go into a mobile advertising campaign. Addressing these points clearly in your insertion orders not only sets your advertising campaign up for success but reduces the risk of litigation down the road.

Our prior experience involves litigating each and every one of these issues. We have seen numerous examples of insertion orders and contracts for mobile attribution partners. Through that work, we know works and what does not work with both legal and technical safeguards. We have also seen which networks have been more responsible and what ones have been less responsible, as well as the excuses those networks offer when things go poorly.

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Foster Garvey's [Intellectual Property](#) team has worked closely with app-based and retail clients in advising on the considerations of a mobile advertising campaign, as well as litigation of the issues with partners and third-party vendors. Learn more at www.foster.com.