

# SELF-REGULATION: ONLINE MARKETING'S INTERNAL POLICE FORCE



LEGAL

*Why industry self-regulation is key to the longevity of any advertiser's business and why it must start with working with the right traffic partners. By Rachel Hirsch*

**"Self-regulation" has increasingly become the new mantra in business. In the last few years, various industries have shifted toward self-regulation, often in response to scandals or public outrage prompting a need for internal change.**

By definition, "self-regulation" is a system created by an industry, outside of legislation, to set rules and principles of best practice to which the industry agrees to be bound.

The key to its success lies in the cooperation of the members, who work together to "police" themselves internally. In this sense, self-regulation is a voluntary process and is dependent on the commitment of its members to ensure its success.

There is a very specific need for self-regulation in the advertising industry. Despite the current pro-business administration, there has been an alarming uptick in regulatory scrutiny in the online marketing space.

Governmental agencies like the Federal Trade Commission (FTC) continue to bring heavy-handed enforcement actions against online marketers, which, due to pressure tactics imposed by these agencies, result in negotiated consent orders that are later used as precedent to police other industry members.

With self-regulation, online marketers can show that there is an alternative to governmental regulation and one which is more effective because it has the capacity to react more quickly to the changing circumstances of the industry at large.

In order for self-regulation to succeed, online marketers must be willing to take the following steps:

1. Industry competitors must be able to put their differences aside and work together for the good of the whole.
2. A formal enterprise must be formed, like a trade association, to create legitimacy and credibility for industry members—specifically those who operate in high-risk verticals.

3. Paid membership tiers should be created, but the purpose of the association should not be a thinly-veiled attempt to create a money-making scheme for the founding members.
4. A mission statement should be written, which sets forth the goals of the association, focusing specifically on industry education, internal codes of conduct, and activism efforts (which may include formal lobbying).
5. Perhaps most importantly, the members must be committed to "weeding out" bad actors in the industry, even if those actors are their friends. The key to successful self-regulation is creating an eco-system that supports members who value the importance of compliance, while effectively making it harder for those who do not share the same values to operate in the space.

If the online marketing industry intends to survive the continuing onslaught of enforcement actions, it needs to take immediate steps to band together in a proactive and productive manner.

Finding a commonality of interests is the first step. The commonality among advertisers, agencies, networks, publishers, and processors alike may be policing the traffic sources that lead to customer complaints, chargebacks, and merchant processing concerns.

More than ever, it is time for online marketers to act responsibly and reclaim oversight of their industry. After all, who better to police change than the industry members who understand how change impacts the real-life practicalities of their business? **[FF]**



**Rachel Hirsch** is Chair of the Internet Marketing and Advertising Group at Ifrah PLLC.