

# MARCH MADNESS ON DEMAND

## LESSONS FROM A SUCCESSFUL SPORTS PROMOTION

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- **Part I An Overview of March Madness on Demand 2009**
- **Part II Related Legal Issues – Mobile Marketing**

### **Part I An Overview of March Madness on Demand 2009**

The 2009 NCAA March Madness On Demand package provided streaming of every game from the first round to the NCAA Championship live online for free.

The March Madness on Demand streaming package (delivered in partnership with CBSsports.com), tallied 7.52 million unique visitors, a 58% increase over the 4.76 million unique visitors for the 2008 event.

The increased viewership is partly due to changes from previous year's programs.

- From 2003 to 2005, CBS charged \$15 to watch online. In 2005, 20,000 users bought the package.
- In 2006, when free coverage began, 1.3 million users registered to watch.
- CBS reportedly earned \$4 million from March Madness online coverage in 2006. Revenues increased to \$10 million in 2007 and \$23 million in 2008.

This year, all games were available (in 2007, games after Round 16 were not available online), blackout restrictions were lifted allowing viewers to watch online the same games broadcast in individual markets, and viewers did not have to register.

March Madness on Demand 2009 also included:

- The Boss Button – an application sponsored by Comcast that replaced streaming video on viewers' desktops with a spreadsheet (so the boss wouldn't catch a viewer watching the games while at work). According to Nielsen, the Boss Button received 2.77 million clicks (up from 2.5 million in 2008).

- iPhone application – iPhone users could purchase the application at the iTunes App Store for \$5 which allowed iPhone users to stream live game video over a Wi-Fi connection.
- Multiple viewing channels – the games could be watched on social networking sites, that included live messaging, such as Facebook and MySpace.
- Widgets (i.e., a mini-application that viewers can add to their blog or web page) - the CBSSports.com News widget provided the latest news regarding college basketball and the NCAA March Madness Tournament. It could be added to any web page that allowed embedding widgets including Facebook, MySpace, hi5, Xanga, Pageflakes, Netvibes, and iGoogle.
- Podcasts and RSS feeds that included weekly specials, interviews, and other exclusive content
- Interactive games and online sweepstakes
- Video on demand of highlights available from select cable channels through April 30

According to CBSSports.com, in 2009 there were 8.6 million hours of live video and audio consumed, 75% more than the 4.92 million hours during the 2008 tournament. Included in that total were 515,000 hours of audio and video for the Final Four and the title game, a 51% jump from the equivalent contests the year before, when they were added to the streaming package for the first time.

In addition, a comprehensive promotional campaign was developed to drive record level attendance for March Madness on Demand, including promotions on CBS radio and television shows *The Early Show*, *60 Minutes*, *CSI: Miami* and an outdoor billboard in Times Square.

## Part II Related Legal Issues – Mobile Marketing

### A. The Regulatory Landscape

1. The regulatory landscape for marketing to mobile devices is best described as “fluid” – it’s still the wild west in terms of regulation (but this is likely to change).
2. There are two federal laws that apply to some kinds of mobile marketing, depending on how messages are sent – the Telephone Consumer Protection Act (47 U.S.C. § 227 et seq.) and the rules promulgated under the TCPA by the Federal Communications Commission, and CAN-SPAM (The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, 15 U.S.C. §§ 7701-7713 and 18 U.S.C. § 1037; Federal Trade Commission Rules implementing CAN-SPAM are collected at 16 CFR Part 316).
3. The Mobile Marketing Association guidelines (available at [www.mmaglobal.com](http://www.mmaglobal.com)) are widely followed and have become baseline standards for many companies involved in mobile marketing because so far there are not many laws that directly regulate this area.
4. Federal and state advertising laws still apply to any message that is considered an advertisement whether it's broadcast on television or sent as a text message to a cell phone.
  - (a) These laws require, among other things, that claims made in an ad be substantiated, that the ad not be false or misleading, that certain disclosures be made, and that testimonials and endorsements contained in the ad comply with federal rules.
  - (b) Advertisers' claims about their competitors' products must be supported by the appropriate evidence and may not be unduly disparaging.
5. Since the laws that relate to mobile marketing often differ depending on how a message is sent, it's important to understand how mobile marketing works.
  - (a) Advertisers team up with mobile aggregators (intermediaries between the advertiser and the wireless carrier)

- (b) Mobile aggregators are connected to and have agreements with one or more wireless carriers
  - (c) Wireless carriers have their own restrictions as to what they will accept
  - (d) Cellular Telecommunications & Internet Association administers short codes (about \$500 for random code per month, \$1,000 for vanity code per month)
6. Fragmentation and varying platforms create challenges for advertisers - different handsets and different protocols used by the wireless carriers mean ads are displayed differently on each device – might require advertisers to provide multiple versions of ads to the mobile aggregator.
7. Carriers are typically content neutral, but they also may impose some restrictions as to what they will accept – for example:
- (a) No profanity or sexually explicit images or language
  - (b) No defamatory material
  - (c) Nothing that facilitates an illegal activity

B. Which laws apply?

1. Overview
- (a) SMS (short message service aka text message) sent to a wireless telephone number = TCPA
  - (b) Voice call (live or recorded) to a wireless telephone number = TCPA
  - (c) Email sent to an email address that contains a wireless telephone number and a wireless carrier's domain name = CAN-SPAM + TCPA (maybe)
2. Telephone Consumer Protection Act (TCPA)
- (a) The TCPA prohibits calling any number on the national Do Not Call registry unless you have an established business relationship with the consumer. Despite Internet rumors to the contrary, the registry includes land-line and wireless telephone numbers. Marketers should scrub their list every 30 days.

- (b) In addition, the TCPA prohibits placing a call using an automatic dialer or delivering an artificial or recorded message without prior express consent. There is no established business relationship exemption which means a marketer must get prior express consent whether or not it has an established business relationship with the recipient.

### 3. CAN-SPAM

- (a) CAN-SPAM applies only to email messages sent to an address that includes a wireless telephone number and a wireless carrier's domain name (such as 2124074000@wirelesscarrier.com).
- (b) The FCC maintains a list of wireless carrier domain names (available at <http://www.fcc.gov/cgb/policy/DomainNameDownload.html>); marketers should scrub against the FCC list.
- (c) If CAN-SPAM applies, a marketer must get prior express authorization from the recipient to send a message. There are also detailed disclosure and opt-out requirements.
- (d) Even if an advertiser has prior express authorization to send a message, the usual CAN-SPAM requirements still apply (such as identifying the message as an ad, including notice of right to opt-out and opt-out mechanism, and physical address of sender).
- (e) The TCPA might also apply to this type of message – an Arizona court held that such a message is a “call” and subject to TCPA. See *Joffe v. Acacia Mortgage Corp.*, 211 Ariz. 325; 121 P.3d 831 (Ariz. Ct. App. 2005) (court said this type of message is a call because result is that an email is translated into an SMS message and is forwarded to a cell phone).

### 4. State Child Protection Registries

- (a) Utah and Michigan have established child protection registries – individuals and schools can register telephone numbers, fax numbers, email addresses and instant message addresses that belong to or can be accessed by a child.
- (b) Marketers are prohibited from sending messages or calls that contain or advertise certain content such as pornography, alcohol, firearms, and tobacco products to any number or address on the registry.

(c) If an advertiser is marketing this type of content, it needs to scrub against each registry.

(d) Information about Michigan's registry is at <http://www.protectmichild.com> and information about Utah's registry is at <http://www.utahkidsregistry.com/index.html>.

### C. Mobile Marketing Association Guidelines

1. The Mobile Marketing Association (MMA) guidelines are contained in several documents available at [www.mmaglobal.com](http://www.mmaglobal.com). The documents include the Code of Conduct, Mobile Advertising Guidelines, Consumer Best Practices Guidelines, and Sweepstakes and Contest Guide.
2. Together these serve as comprehensive guidelines for all types of marketing to wireless devices. In general, the MMA guidelines stress opt-in, disclosures and privacy standards. Below are some of the more important provisions.
3. Mobile Marketing Association Guidelines on Privacy (excerpts)
  - (a) Notice – mobile marketers must inform the user of both the marketer's identity or products and services, and the key terms and conditions that govern an interaction between the marketer and the user's mobile device
  - (b) Choice & Consent – mobile marketers should ask for and obtain an explicit opt-in for all mobile messaging programs and should implement a simple opt-out process (single opt-in for standard rate SMS and double opt-in for premium SMS)
  - (c) Customization & Constraint – user information collected for marketing purposes should be used to tailor marketing to the interests of the mobile user; mobile marketers should target and limit mobile messages to that which users have requested
  - (d) Security – mobile marketers must implement reasonable technical, administrative and physical procedures to protect user information from unauthorized use, disclosure or access
4. Mobile Marketing Association Guidelines for Sweepstakes (excerpts)
  - (a) Consideration may be monetary or non-monetary
  - (b) Must provide an alternative method of entry

- (c) Should provide information in initial message on how to find official sweepstakes rules
  - (d) Poorly written sweepstakes rules will result in delays in wireless carrier approval
5. Mobile Marketing Association Guidelines for Marketing to Children (excerpts)
- (a) Mobile marketers should manage relationships with children responsibly
  - (b) Marketers should comply with all applicable laws and industry standards relating to children including COPPA
  - (c) In some cases, content providers may need to modify the advertising language of the program if children are the target market
  - (d) All advertisements must clearly disclose in the audio and visual that a service has a premium charge (where applicable)
  - (e) All advertising must clearly disclose that you must be 13 or older, or have a parent's permission to participate
  - (f) Marketers should offer subscribers the opportunity to cancel the service at any time

D. Wireless Association Guidelines for Location Based Services

1. The Wireless Association issued guidelines for location based services provided to wireless customers. The guidelines are online at [http://files.ctia.org/pdf/CTIA\\_LBS\\_BestPracticesandGuidelines\\_04\\_08.pdf](http://files.ctia.org/pdf/CTIA_LBS_BestPracticesandGuidelines_04_08.pdf)
2. The voluntary guidelines stress notice, consent and safeguarding location based data. The guidelines apply regardless of the technology or mobile device used, or the business model employed.
  - (a) Location based service (LBS) providers must inform users about how their location information will be used, disclosed and protected.
  - (b) If the LBS provider intends to use location information for any purpose other than providing the LBS itself, the notice should explain



the other uses (e.g., the use of location information to create aggregate data for location-sensitive advertising).

- (c) If the LBS provider later wants to use location information for another purpose not disclosed in the original notice, the LBS provider must provide the LBS user with further notice and an opportunity to consent to the use.
- (d) LBS providers should inform LBS users how long any location information will be retained, if at all.
- (e) LBS providers that share location information with third parties must explain what information will be provided and to what types of third parties so that the LBS user can understand what risks may be associated with such disclosures.
- (f) LBS providers should inform users whether they may terminate the LBS, and what consequences arise from doing so.
- (g) LBS providers should explain any privacy options or controls available to LBS users to restrict use or disclosure of location information by or to others.
- (h) LBS providers must obtain user consent before initiating an LBS or disclosing location information. The form of consent may vary with the type of service or other circumstances, but the LBS provider bears the burden of establishing that informed consent has been obtained before initiating an LBS or disclosing location information.
- (i) The guidelines do not dictate the form, placement, manner of collecting or content of consent as long as the consent is informed.
- (j) LBS user consent may be implicit, such as when an LBS user requests a service based on his or her location. Or, an LBS user's consent may be contained in the terms and conditions of service for an LBS to which an LBS user subscribes.
- (k) An LBS user may manifest consent electronically by clicking "I accept"; verbally by authorizing the disclosure to a customer service representative; through an IVR system or any other system reasonably calculated to confirm the LBS user's consent.

#### E. CARU and Mobile Marketing to Children

1. CARU (Children's Advertising Review Unit) is paying close attention to mobile marketing to children.

2. CARU initiated proceedings against a company that advertised a free text message joke service during kids television programming. The service allowed children to sign up without parental consent and did not disclose fees; children who responded were signed up to receive jokes by text message, and this resulted in charges from wireless carriers. The company agreed to stop advertising on children's cable network and to change its program. (The CARU press release is at <http://www.caru.org/news/2006/glomobi.pdf>.)

## **Resources**

Nielsen March Madness Scoreboard

[http://blog.nielsen.com/nielsenwire/online\\_mobile/watching-march-madness-nielsens-tv-and-online-scoreboard/](http://blog.nielsen.com/nielsenwire/online_mobile/watching-march-madness-nielsens-tv-and-online-scoreboard/)

*CBS' Cash Stream Tipoff: Network pioneered online viewing of live sports events with NCAA tourney*

Chicago Tribune, March 19, 2009

*CBS Cleans Up on the Sports Fans*

Businessweek.com, April 2009

[http://www.businessweek.com/bwdaily/dnflash/content/apr2009/db20090415\\_833886.htm](http://www.businessweek.com/bwdaily/dnflash/content/apr2009/db20090415_833886.htm)