

Affiliates in a changing online gambling world

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According to the Oxford Dictionary, an affiliate is someone who “is adopted as a son”, and who is officially allowed to join a selected group. Consequently any relationship with an adopted affiliate must implicitly be a good one. That said, although a good relationship between online gambling operators and affiliates is imperative for the success of both parties, there are often adjustment issues involved on both sides before the adoption is successful. This is particularly the case in the heavily regulated and fragmented online gambling sector, where affiliates are increasingly required to adjust and stay abreast of political and legal developments across Europe, rather than simply hold affiliate status. In other words: the more established, “reputable” and regulated online gambling operators (are forced to) become, the more professional and legally aware their adopted affiliates must be.

Gambling affiliates have, of course, come a long way from adoption, to being one of the main contributors to online gambling operators. But there is still no real appetite for self-regulation and the development of common standards. Several organisations have been set up to represent the affiliates’ interests vis-a-vis gambling operators and to boycott some allegedly black sheep, especially when it comes to one sided contractual terms and unfair business behaviour. However legal, regulatory developments and technological opportunities are often not high on the agenda when it comes to combining forces.

The changes in the online gambling sector are not only visible on the regulatory side, but are also due to technical developments allowing for new opportunities to reach a greater target audience. Both developments are, however, closely intertwined and each new potential avenue for new business development comes with a plethora of regulatory and legal pitfalls to which affiliates should be alert. And with all the on-going changes in the online gambling sector across EU member states and the trend to multiple national gambling licensing regimes in each member state, affiliates and online gambling operators alike are faced with an uphill struggle to comply with the various requirements imposed in each of these countries.

European challenges

The simple question of “language” becomes an issue: offering affiliate sites in various languages to increase exposure and establish a brand in a particular jurisdiction raises the financial value and attractiveness of these affiliates. But some European countries already regard the use of their local language on websites as targeted advertising, leading to heavy fines and criminal penalties, regardless where the affiliate is located. It is no longer just the online gambling operator who is at risk, but also those who advertise gambling products. Ironically, the risk has increased in those regulated EU member states that allow online gambling. The reason is that these countries have introduced their own set of rules and

requirements, whereas in the good old days online gambling was still “protected” by the (arguably) more straightforward underlying EU principle on the freedom to provide services across member states, untrammelled by local rules that derogate from that general principle.

Following the EU Presidency Report on illegal gambling and Mr Barnier’s announcement (and postponement) of a Green Paper on gambling, the Council of the European Union has unanimously backed EU online gambling regulation. This means that all the main EU institutions, the Council, the Commission and the Parliament, now back the regulation of online gambling at EU level. It should be made clear however that neither the Council nor any other EU institutions promote full harmonisation, but instead envisage member states sharing information. Bearing in mind data protection laws across Europe, it will be interesting to see how this information sharing will take place. It is hoped, however, that the various national licence requirements and application processes can be streamlined through a clear set of EU rules and closer cooperation between national regulators.

Looking on the bright side however, affiliates should have fewer problems identifying which online gambling operator to adopt and which one is “legal and regulated”, given that national licences should offer some degree of security. However, a licence granted to a gambling operator does not necessarily entitle affiliates to advertise freely - and online gambling operators will want to ensure that their affiliates follow the “rules of the game”, wherever that game may be. This is particularly the case when exploring European jurisdictions: setting up a brand name and establishing a presence is expensive, getting the search engine optimisation right takes time and money - all of which could be lost if the gambling regulations change, or are not clarified, or if the US has something to say about it. In this context, some might say that affiliates today are there where gambling operators used to be: in a constant state of uncertainty that must be constantly observed to avoid falling foul of any regulations. Staying away from these jurisdictions however is not the answer, because others will go the extra mile and become an invaluable asset to online gambling operators in these countries.

Trends and regulations

The new(ish) kid on the block is called social media; and it still appears to be new territory for online gambling operators and affiliates alike. Combining search engine optimization with social media is the buzz word: one delivers targeted content through detailed and specific information; the other hands out targeted content and increases its distribution. Both are made to generate traffic, however both appear to attract a different target audience. This different target audience may become potential fresh meat to convert into players, bearing in mind the extent to which online gambling operators have diversified their offering as well, making many gambling products more “mainstream” and nearly unrecognisable to the hardened gambler. These include placing bets on popular events like the X-Factor or beauty pageants, or for customers to participate in contents or beauty pageants themselves! These new sites attract a very different target audience that has grown up with the Internet, and which regards social media in the same way as earlier generations regarded their local pub.

In many instances this fresh approach has worked well, for example, when combining special political blogs with a specialist political betting site, or when tapping on YouTube users to perform and place bets on their YouTube entries.

But combining “traditional affiliate marketing” with social media requires a very different approach and change in tactics. Some believe that the best way to exploit this new potential effectively is to use blogs and more blogs as the natural link. This may very well be one aspect of the future, however the resources required to do the job differ and the way and manner in which this is done differs greatly as well. Blogs and social media require constant updating; otherwise the potential fan base will evaporate and move on. It is the art of being “out there” constantly that will attract current bloggers and other online users to visit a site. In other words: simply having a link to a gambling website is not enough – now you need to sell it as well! In addition, different communities must be created for different products. This raises the costs, with more resources required.

Monetising social media however, is not without its downsides and legal pitfalls, let alone the dependency on the social media sites themselves. Only recently, Facebook decided to eject gambling advertising from the network site. Facebook’s advertising guidelines explicitly prohibit “gambling, including without limitation, any online casino, sports books, bingo or poker without authorisation from Facebook”. This somewhat unclear “prohibition without explicit authorisation” does raise some queries. Filters may be put in place shortly to track down the last gambling advertiser. Whether the social media giant will authorise anyone to advertise gambling in the future is a different question; will it depend on the price maybe...?

Times are indeed changing and some may argue that Google despises affiliate sites more than ever today, building one obstacle after removing another, allowing gambling products after banning them altogether and affiliates must invest more funds and resources in reaching their spoiled target audience.

When it comes to advertising and social media, the consumer protection watchdog the Office of Fair Trading (OFT) has only recently set out new ground rules which should make every blogger and affiliate watch in horror while the new rules are being implemented. The OFT has forced a blogging network to make it clear to visitors when companies are paying it for coverage. This includes any recommendation, favourable statement or any other positive endorsement. In this instance the OFT investigated “Handpicked Media”, a company that operates a network of sites purporting to recommend and review lifestyle products. The OFT said that it investigated the network because it suspected that these favourable reviews were as a result of payment and not independent objective assessments of the products and services advertised. The OFT found that the reviews were in fact “commissioned” and paid for by interested parties. This practice (regardless of payment method) is considered to be in breach of consumer protection legislation, which protects consumers from unfair practices that would lead them to be enticed into a purchase that they would otherwise not have done. All such “hidden advertising” must therefore be clearly stated on all websites. Bearing in mind how affiliates and bloggers and social media operate, it is time to include yet another disclaimer and clarifying soothing words on the websites, soon leaving little space for actual advertising itself!

How deeply associated and involved affiliates want to become with setting up their own blogs and social media sites, will not only depend on the prospect of success, but also on the establishment of a reputable brand which will without a doubt, lead to more contractual obligations and necessitate clearly drafted online terms and conditions. Most blogs for example contain chat facilities which carry the risk of defamation claims and other complaints. Bonuses and promotions are another bone of contention which until now had to be handled by online gambling operators direct. The ASA recently held that an online gambling operator based in Gibraltar was in breach for not linking bonuses and promotions advertised widely on affiliate sites and through targeted email campaigns with its online terms and conditions.

Data Protec... what?

With all these new developments and buzz words like trafficking and sourcing and targeting and social media, one can easily forget that it is (or should be) all about the consumer, or more accurately about the consumer's personal data. Until now, "traditional affiliates" managed to stay far far away from Personal Data, simply promoting online operators and leaving the headache of what can and cannot be done with this data to the operator instead. The scary concept of Data Protection comes to mind, with all its associated rules and obstacles – an ugly and boring concept for some, but essential and very valuable for many. The Information Commissioner now has extensive powers to fine Data Protection breaches and did not hesitate to imposing a fine of £100,000 on a UK company for loss of customer data.

Data Protection has not stopped online gambling operators from generating profits, nor has it stopped their customers from using their sites. The same principle applies to social media networks and to a lesser extent to blogs as well. If therefore the future or part of the future lies in exploring social media further, affiliates will have to get used to the idea that Data Protection matters. In fact, gambling affiliates, with their expertise of online affiliate marketing for a niche gambling sector, are perfectly placed to lead these social media sites and create their own distinctive brand and customer following, providing interested visitors to register with them and retain a customer following that will undoubtedly make them more of an equal partner to online gambling operators.

One of the most valuable assets in online gambling is access to Player Data and it is therefore no surprise that online gambling operators guard this data jealously, often refusing to share this information with their affiliates, who generated these users for them in the first place. The question here is: will the tables be turned if affiliates start collecting Personal Data from their blogs and social media sites as well? And most importantly: what is it worth? Surely it is worth a headache and some effort to establish ground rules for data protection, but the benefits should not be dismissed.

With the right legal and regulatory understanding of advertising rules and data protection guidelines, affiliates' should be in a most favourable position to conquer social media, blogs

and expand their offerings to other jurisdictions as well. It is a small step for man, but a big step for affiliates! In this modern world, gambling operators might consider that it is better to have an affiliate as a friend than to have been “de-friended” by one.

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