

Ethics and neuromarketing 2015–2025: the lost opportunity

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Abstract

Purpose – This paper aims to examine the past decade of the relationship between ethics and neuromarketing. While neuromarketing is increasingly used in an ever-greater area of applications, the discussion around ethics is infrequently discussed.

Design/methodology/approach – The expectation was that a burgeoning movement toward more widespread ethical standards – originating in Europe and then moving to the U.S. and beyond – would provide a check on the power of this emerging specialty. Instead, the trendline in neuromarketing over the past 10 years has inexorably moved away from an ethical base and toward a “win at all costs” reality.

Findings – In the end, while there was some positive movement toward ethical frameworks prior to COVID, the worldwide implementation of neuromarketing techniques to underpin many of the pandemic’s most drastic countermeasures and suppress dissent seriously damaged the progress that had been made.

Originality/value – As the Editor of *Ethics and Neuromarketing* (Springer 2016) and Guest Editor of a Special Issue on neuromarketing for the *European Journal of Marketing* (2018) the author can evaluate the past 10 years accurately.

Keywords Social media, Ethics, Neuromarketing, Neuroscience, COVID

Paper type Viewpoint

Introduction: a look back to a more hopeful time

At its core, neuromarketing seeks to better understand how marketing techniques work- or don’t work. This is typically done through the use of neuroscience methods in interpreting consumer behavior. Common neuroscientific methods include psychophysical (galvanic skin response, eye-tracking, voice pitch analysis, heart rate, respiration, blood pressure, facial expression, etc.) and brain activity (EEG, MEG, fMRI, PET, etc.) measurement. Neuromarketing allows market researchers to steer away from traditionally flawed indirect and self-reported measurement tools; and, instead, implement more effective direct neuroscientific methods – characterized as *neuromarketing*. Neuromarketing, therefore, can be understood as the application of neuroscience measurement techniques for understanding how consumers respond, both consciously and unconsciously, to marketing (Lee *et al.*, 2007).

In the first decade of the 2000s, researchers, scholarly book publishers, and top academic journals were thinking and acting like the next “big thing” in the marketing space might be neuromarketing. They had witnessed the tremendous advances in neuroscience that were



now being harnessed for commercial purposes. For the next several years, dozens of scholarly books and peer-reviewed articles appeared. Top journals such as *European Journal of Marketing* (2018), which this author served as guest coeditor, and *Journal of Marketing Research* (2019), dedicated a special issue to the topic.

While the focus of the vast majority of the research on neuromarketing continued to focus on tactics and strategy, a small, yet increasing number of works explored the subject within an ethical context. In this case, Europe led the way. Despite the fact that many of these new technologies originated in the U.S., American industry, regulators, and scholars were not much interested in curbing their use and potential exploitation. In Europe, the landscape was much more proactive. Resultingly, a significant majority of publications on ethics and neuromarketing originated in Europe. The hope was that as neuromarketing evolved the Europeans would successfully develop the kinds of effective standards, regulations, and regimes which could then be replicated around the world. For example, one widely-cited 2016 work – coedited by this author – was *Ethics and Neuromarketing: Implications for Market Research and Business* (Springer).

All this was for naught, however, when COVID exploded on the global scene like a supernova in 2020. From then on, any discussion around neuromarketing and ethics would be challenging at best. The landscape was inexorably changed – and what came next would look like nothing that had gone before.

Neuromarketing and COVID-19: a huge boon to the industry

On February 4th, 2020, the U.S. Secretary of Health and Human Service determined there was a public health emergency that had a significant potential to affect the national security of the USA. It identified a novel (new) coronavirus (nCoV) first detected in Wuhan City, Hubei Province, China in 2019 ([US Department of Health and Human Services, Office of the Secretary, 2020](#)). The declaration was related to a Chemical, Biological, Radiological, and Nuclear (CBRN) incident, and was a formal announcement that a CBRN event had occurred. Under existing law dating back to 9/11 and the anthrax attacks which occurred in the months after, the declaration triggered specific protocols and actions: not as a public health emergency, but as a counterterrorism response. Critically, the CBRN designation triggered Emergency Use Authorization (EUA). Legally, EUA powers are intended for situations of grave, immediate emergencies involving weapons of mass destruction. Once EUA was deployed, any countermeasure used against the CBRN agent faced no regulatory oversight. In other words, the immediate threat of the CBRN attack was deemed so risky that no one should face legal consequences for any collateral damage caused by any unregulated countermeasure. Within six weeks, the lockdown-until-vaccine response went into effect across the entire world. And, by late March 2020, more than 6 billion people were living under some kind of lockdown order.

As more and more human interaction migrated online, marketers discovered expanded opportunities to further integrate their neuroscience tools into the virtual space, including eye-tracking, voice pitch and facial expression analysis. The surge in online commerce – to everything from retailing to food delivery and beyond – naturally created a growth opportunity for neuromarketing. The physical and digital infrastructure needed to make this emerging online environment possible had been in place for many years prior. It may have been one reason the lockdowns were so severe for so long in so many places. Except for the minority of “essential” workers doing their jobs to maintain the physical assets of society, the rest of the world could shop, work, and engage with others from home. The COVID marketplace was seemingly a perfect fit for neuromarketers: billions of new consumers forced online and seamlessly sharing their personal data.

Across the global economy, the lockdowns favored large firms over small and medium-sized ones. In the physical world, governments simply forced small and mid-sized firms to close deeming them “nonessential,” while larger firms in the same sector were allowed to stay open and flourish. The same outcome occurred online. The largest firms, including those who were already actively doing neuromarketing, starting with the major social media companies (Facebook, Twitter, Instagram, etc.), big data and cloud services (IBM, AWS, Google, etc.), large online retailers (Amazon, Alibaba, MercadoLibre, etc.) and the like, were in an advantageous position. When the sudden surge in traffic and volume arrived, they were ready to scale-up their operations quickly and efficiently. It appears at least at this level, ethics and neuromarketing remained compatible. The billions of new users continued to acquiesce to the capture and sharing of their neuroscientific data by clicking the “Terms of Use” without thought – or, more likely, without ever reading them.

Surveillance, suppression and cancellation: ethics pushed aside

The newfound financial bounty of the biggest digital firms after the lockdowns came as no real surprise. What wasn’t anticipated, however, was the role that those same firms would play in the coordinated pandemic response by governments. Over time, in the U.S. for example, the federal government placed increased pressure on social media firms to keep an eye on any user who was challenging the prescribed narrative.

As the lockdown-until-vaccinate strategy was executed, public health officials, not counterterrorism nor military officials, were rolled-out as the face of the countermeasures. Still, the countermeasures that they were promoting were not theirs. This is the principal reason there was so much confusion in the early days of the pandemic. Public health officials were being used to promote countermeasures that had no basis in public health.

For example, universal mask mandates had no foundation in public health pandemic planning prior to COVID. Yet, mask mandates instilled fear and compliance: a key objective in maintaining the lockdown-until-vaccinate strategy. Even as late as April 2020, public health officials were sending mixed messages around masking. Testing was another area where longtime public health practice conflicted with the counterterrorism response. Pre-Covid public health pandemic plans recognized no reason for testing and isolating once a virus is widespread. Yet, to maintain high anxiety within the population, testing continued for years. This allowed for continued isolation and justified the quarantine, which, over time, made people more desperate for the promised return “normalcy”: via the vaccines. Finally, lockdowns prior to COVID were viewed in public health planning as the last resort – and to be limited to only select areas for short periods of time. None of these measures were part of any established public health practices. They were solely implemented to ensure obedience to the counterterrorism plan of lockdown-until-vaccine.

The national security policies were announced to the public from top government health leaders like Robert Redfield, Director of the Center for Disease Control, Anthony Fauci head of the National Institute of Allergic and Infectious Diseases, and Frances Collins of the National Institute of Health (“the experts”). Instructive is that none of these prominent public health officials had any design in the policies they were promoting. However, their daily media appearances tricked the population into accepting an unknown counterterrorism policy as “the science.” The same happened in many other countries. In other words, the unified global response to the pandemic was not to advance longstanding public health practices. It was to leverage public health legitimacy to execute a biodefense strategy.

As the lockdowns continued, frustration built within the population – and debate online about the effectiveness of the initial countermeasures amplified. It was at this point, prior to the roll-out of the vaccines in early 2021, that governments began to actively engage the

biggest digital firms to surveil, suppress, and, ultimately, cancel anyone who held views contrary to the now prescribed “public health policies.” Paradoxically, of course, they were not public health policies at all. It was a façade; designed to keep the population in place, while waiting for the deployment of the vaccines.

This insidious underside of the counterterrorism measures to suppress and control debate became more widespread as time went on. As the US Fifth Circuit Court of Appeals determined in September of 2023, officials from the White House, the Surgeon General, the CDC, and the FBI, “via both private and public channels, asked the platforms to remove content, pressed them to change their moderation policies, and threatened them—directly and indirectly—with legal consequences if they did not comply.” (United States Court of Appeals for the Fifth Circuit No. 24-30252 (September 8, 2023) for USDC No. 3:22-CV-1213 *Missouri v. Biden*) Dishearteningly, as the Court found, “[...] the platforms apparently yielded. They not only continued to take down content the officials flagged and provided requested data to the White House [and other actors], but they also changed their moderation policies expressly in accordance with the officials’ wishes.”

The officials’ frustrations reached a boiling point in July of 2021. That month, in a joint press conference with the Surgeon General’s office, the White House Press Secretary said that the White House “expect[s] more” from the platforms, including that they “consistently take action against misinformation” and “operate with greater transparency and accountability.” Specifically, the White House called on platforms to adopt “proposed changes,” including limiting the reach of “misinformation,” creating a “robust enforcement strategy,” taking “faster action” because they were taking “too long,” and amplifying “quality information.” The Press Secretary said that the White House “engages with [the platforms] regularly and they certainly understand what our asks are.” She also expressly noted that several accounts, despite being flagged by the White House, “remain active” on a few platforms.

The Surgeon General also spoke at the press conference. He said the platforms were “one of the biggest obstacles” to controlling the COVID pandemic because they had “enabled misinformation to poison” public discourse and “have extraordinary reach.” He labeled social-media-based misinformation an “urgent public health threat[]” that was “literally costing [...] lives.” He asked social-media companies to “operate with greater transparency and accountability,” “monitor misinformation more closely” and “consistently take action against misinformation super-spreaders on their platforms.” The Surgeon General contemporaneously issued a public advisory “calling out social media platforms” and saying they “have a role to play to improve [] health outcomes.” The platforms responded with total compliance despite the fact that all the content in question was focused on public health issues; not the counterterrorism and biodefense strategy, which had nothing to do with public health.

Conclusion

The Appellate Court’s judgement- and the continued fallout from the revelations that government and industry conspired to squash their own citizens in the name of national security – is more than a cautionary tale. It reveals the power that has become concentrated in those organizations which can harness evolving tools like neuromarketing. That the major digital firms- often implementing the same neuroscientific tools used to enhance their financial bottom line-participated in unseemly, unethical and potentially illegal behavior thwarted the evolution of positive ethics and neuromarketing is distressing at the least.

Yet, all is not lost. In August 2024, Mark Zuckerberg, CEO of META, in a letter to the Judiciary Committee of the U.S. House of Representatives, wrote, “I believe the government

pressure was wrong, and I regret that we were not more outspoken about it [...] I feel strongly that we should not compromise our content standards due to pressure from any Administration in either direction – and we are ready to push back if something like this happens again.” (Letter from Mark Zuckerberg to U.S, 2024)

As the stress of the COVID-era begins to pass into history, a realistic assessment of what truly happened, along with admitting the hard lessons learned, will provide the way forward for any serious discussion about the role ethics plays in neuromarketing. In fact, that may be already unfolding. In the U.S., regulators are now much more aware of the implications of any decisions they undertake. And, are now operating in a much more transparent manner. In the wake of the 2024 elections, robust debates are taking place at the highest levels of the second Trump Administration and within the U.S. Congress. Following the release of the Twitter files, profound arguments around data privacy and ethics are most often driven by the same individuals who experienced deplatforming and censorship themselves. It seems for progress to take root, an open conversation that involves all stakeholders, including the private sector, regulators, and, critically, users, needs to occur.

References

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US Department of Health and Human Services, Office of the Secretary (2020), “85 FR 7316, 2020-02496, 7316-7317 (2 pages), published 2/7/2020”, available at: www.federalregister.gov/documents/2020/02/07/2020-02496/determination-of-public-health-emergency

Further reading

“United States court of appeals for the fifth circuit No. 24-30252 (8 September, 2023) for USDC No. 3:22-CV-1213 Missouri v. Biden”.

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