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Clarence W. VonBergen

Southeastern Oklahoma State University, cwvonbergen@se.edu

Courtney Kernek

Southeastern Oklahoma State University, ckernek@se.edu


Martin S. Bressler

Southeastern Oklahoma State University, mbressler@se.edu

Lawrence S. Silver

Southeastern Oklahoma State University, lsilver@se.edu

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Cueing the Customer Using Nudges and Negative Option Marketing

Clarence W. VonBergen
cwvonbergen@se.edu

Courtney Kernek

Martin S. Bressler

Lawrence S. Silver

All of Southeastern Oklahoma State University

Abstract - Nudges—subtle, covert, and often unobtrusive interventions that take advantage of individuals’ mental shortcuts and biases—frequently change the context of people’s choices and in so doing influence individual and societal behavior. They have become fashionable in recent years, and the ability of such phenomena to bring about significant change for relatively little cost has captured the imagination of governments and businesses. One simple yet potent nudge empowered by the status-quo bias that has received increased attention involves default rules which specify the condition imposed on persons when they fail to make a decision or choice. Marketers have used default options successfully for decades within the context of negative option marketing where sellers interpret consumers’ silence or inaction as permission to continue charging them for goods or services. Despite their attractiveness, nudges, defaults, and negative option marketing are controversial issues that require further examination which the authors present in this paper.

Keywords - cueing, nudges, negative option marketing, defaults

Introduction

The concept of ‘nudging’ was popularized by behavioral economist Richard H. Thaler and law scholar Cass R. Sunstein in their 2008 book *“Nudge: Improving decisions about health, wealth, and happiness.”* Thaler and Sunstein (2008) suggest that public policy-makers and other individuals called choice architects (persons who organize and structure the way choices are presented) influence decision-making processes in a manner that promotes behavior which is in the interest of society as well as the well-being of the decision maker. They argue that public policy-makers can influence the daily behaviors of citizens by simply modifying the context. For example, choice architects who place candidates first on a ballot win office between 4-5% more often than expected (Meredith & Salant, 2013).

Since the publication of the Thaler and Sunstein (2008) volume the concept of nudging has received widespread interest, reflected for example by Sunstein becoming an advisor on regulatory affairs for U.S. President Barack Obama, while Thaler has been an advisor for U.K. Prime Minister David Cameron’s Behavioural Insights Team, referred to as the ‘Nudge-unit’ (Behavioural Insights Team, n.d.) whose goal is to “persuade citizens to choose what is best for themselves and society” (Basham, 2010, p. 4). Several years later, this team has doubled in size because of its success in nudging British consumers to pay taxes on time, insulate their attics, sign up for organ donation, stop smoking during pregnancy, and make charitable donations. Likewise in the U.S., the Obama administration embraced nudges (Dorning, 2010) and has used them to increase enrollment in the President’s signature piece of legislation, The Patient Protection and Affordable Care Act (Maher, 2012). In addition to political activities the use of nudging has gained momentum in a number of other disciplines (Saghai, 2013).

Thaler and Sunstein (2008) define a nudge as: “any aspect of the choice architecture that alters people’s behavior in a predictable way without forbidding any options or significantly changing their economic incentives. To count as a nudge, the intervention must be easy and cheap to avoid” (p. 6). Furthermore, it should be noted that although Thaler and Sunstein (2008) and many others use the term ‘nudging’ about assisting people make ‘positive’ choices, the term is not exclusively used in this manner (Saghai, 2013). For example, John Balz, editor of The Nudge blog, indicated that “nudging takes place in [a] variety of realms where the nudger’s explicit goal is to promote [the nudger’s] own welfare (think of almost any consumer marketing strategy or retail store layout)” (Balz, 2013).

Nudges gently steer individuals to make decisions by changing the way choices are presented and involves engineering people’s choices so as to channel them to make more desirable decisions (from the perspective of the choice architect) without substantively limiting their choice. Nudges are not legal or regulatory mandates. Taxing “un-healthy” food at a higher rate than “healthier” food is a nudge; making “un-healthy food” illegal is not. Thaler (2009) noted that “We’ve

been nudged forever. Eve and the serpent nudged Adam. Religions have been nudging us for thousands of years. Marketers nudge us. Ads are nudges.”

Nudges often include a variety of soft touches and are passive/easy in that they require little effort. They encourage people to make choices that are good for themselves or society by taking advantage of imperfections in human decision-making abilities (French, 2011). The idea of nudge is best grasped by reference to specific examples, rather than by formal definition. One frequently cited nudge example is the etching of the image of a housefly into the men’s room urinals at Amsterdam’s Schipol Airport which was intended to “improve the aim” (Thaler & Sunstein, 2008, p. 4) of patrons resulting in reduced spillage by 80% (Goldstein, Johnson, Herrmann, & Heitmann, 2008).

Other examples include arranging food in cafeterias so that healthy items are displayed prominently at eye level, with the fattier, sugar-laden options displayed further back in order to encourage customers to choose the healthy options (Thaler & Sunstein, 2008), changing

plate sizes in cafeterias from 12-inch dinner plates to 10-inch dinner plates leading to reduced food consumption (Wansink, 2006), painting white stripes on road bends spaced more closely together at the most dangerous points to create the illusion that the vehicle’s speed is increasing thereby prompting drivers to brake before the apex of the curve (Selinger & Whyte, 2011), increasing honesty by having people sign self-declarations at the top, rather than the bottom of forms thereby making ethics more salient (Shu, Mazar, Gino, Ariely, & Bazerman, 2012), and changing default options so that employees are automatically enrolled into retirement plans (Madrian & Shea, 2001).

Nudges and Mental Shortcuts

Central to the idea of nudges is that human reasoning comprises two underlying systems with one characterized as intuitive, reflexive, and automatic and the second described as logical, analytical, and reflective (Kahneman, 2011; Shafir & LeBoeuf, 2002; Slovic, 1996; Stanovich & West, 2000). Thaler and Sunstein (2008) characterize the automatic thinking system as “rapid and is or feels instinctive, and it does not involve what we usually associate with the word thinking” (p. 19). Examples of the automatic system in action include smiling upon seeing a puppy, becoming nervous by experiencing air turbulence, and ducking when a ball is coming toward a person. Thaler and Sunstein (2008) characterize the reflective system as being deliberate and self-conscious. Examples of the operations of this system include deciding which college to attend or where to go on vacation.

Nudges aim at influencing behavior change through (primarily) automatic modes of thinking without engaging the reflective system (Haug & Busch, 2014). Dolan, Hallsworth, Halpern, King, Metcalfe, and Vlaev (2012) have collated the nine most robust effects that influence behavior in mostly automatic—rather than

deliberate—ways and summarized them under the mnemonic, MINDSPACE (Messenger, Incentives, Norms, Defaults, Salience, Priming, Affect, Commitments, Ego). Defaults are of particular importance in this paper.

Such instinctive thinking is prejudiced heavily by mental shortcuts and heuristics (Kahneman, 2011). Nudges “... work by making use of those flaws” (Hausman & Welch, 2010, p. 126) and in ways that do not make it likely to be recognized and transparent. Research has identified a number of such biases including anchoring, availability, representativeness, loss aversion, and the status quo or inertia bias.

More recently the status quo cognitive misstep has received increased attention. It involves the propensity of decision makers to keep things the way they are (Anderson, 2003; Samuelson & Zeckhauser, 1988) often leading to choices that guarantee that things remain the same, or change as little as possible. This judgmental error encourages people to stick with their current situation. Because of this, people rarely move their bank accounts or pensions or cancel initially enticing magazine subscriptions.

Remaining with the status quo can be rational. There are costs to change, and existing states often have the advantage of history, of being well-understood, and of having popular support (Burke, 1790/1999). Institutions, rules, customs, and habits may not be for the best, but changing them would be too costly in terms of time, money, and/or effort. Still, there are a variety of non-rational, psychological processes that enhance the strength of status quo maintenance, and this preference in many cases is rightfully labeled a bias (Eidelman & Crandall, 2012).

It appears that preserving the status quo is grounded in loss aversion and regret avoidance (Anderson, 2003; Kahneman, Knetsch, & Thaler, 1991). People give more weight to losses than to equal gains (i.e., they are “loss averse;” Tversky & Kahneman, 1991, p. 1039). Because the status quo operates as a reference point from which change is considered, the costs of change carry more weight than potential benefits, creating a relative advantage for the existing state of affairs (Moshinsky & Bar-Hillel, 2010). Loss aversion also leads to greater regret for action than for inaction (Kahneman & Tversky, 1982) and more regret is experienced when a decision changes the status quo than when it maintains it (Hesketh, 1996). Together these forces provide an advantage for the present state of affairs; people are motivated to do nothing and to continue current or previous decisions (Samuelson & Zeckhauser, 1988) and change is avoided.

Defaults

The inertia bias is the underlying heuristic that makes defaults the quintessential nudge (Maylin, 2012). A default is the designated course of action for those who fail to explicitly choose for themselves (Willis, 2012). Default options are automatically chosen when individuals make no active choice and stay with the given state or

condition (Brown & Krishna, 2004) and are sometimes considered “hidden persuaders” (Smith, Goldstein, & Johnson, 2009, p. 1) because people tend to remain with preset options.

Defaults exert significant and pervasive influence as individuals regularly accept the default setting, even if it has significant consequences (Levav, Heitmann, Herrmann, & Iyengar, 2010). Structuring the default option to maximize benefits for people and firms can influence behavior without restricting individual choice. For instance, compared to non-enrollment defaults, governments that presume citizens as willing subscribers have markedly higher organ donation rates (Abadie & Gay, 2006; Johnson & Goldstein, 2003); companies with automatic 401(k) enrollments have more employees who save for retirement (Madrian & Shea, 2001); cities with “green” electricity defaults have lower energy usage (Pichert & Katsikopoulos, 2008); and states with limited tort defaults have drivers who pay lower insurance premiums (Johnson, Hershey, Meszaros, & Kunreuther, 1993). Default effects have also been observed in the use of advanced medical directives, Internet privacy preferences, legal contracts, medical vaccine adherence, and even for how psychologists choose to analyze their data (Bellman, Johnson, & Lohse, 2001; Chapman, Li, Colby, & Yoon, 2010; Fabrigar, Wegener, MacCallum, & Strahan, 1999; Johnson, Bellman, & Lohse, 2002; Korobkin, 1998; Kressel, Chapman, & Leventhal, 2007; Young, Monin, & Owens, 2009).

Thus, defaults matter and their appeal is considered so strong that it has been referred to as the “iron law of default inertia” (Ayres, 2006, p. 5). Defaults generally become effective through three principal mechanisms: (1) implied endorsement, where the default option may be perceived as a recommendation; (2) cognitive bias, where deviating from a default may be felt as a loss; and (3) inertia or “going with the flow,” where deviating from a default requires additional effort (Smith, Goldstein, & Johnson, 2013).

Defaults do not force anyone to do anything. On the contrary, they maintain freedom of choice by allowing people to opt-out or opt-in as they see fit. Defaults can be valuable and worth a fight. For example, search engines like Google and MSN want their browser to be the default preloaded on computers and go to court to preserve such status so as to garner more of the roughly \$20 billion search-advertisement market (Kesan & Shah, 2006).

Negative Option Marketing

Marketers have exploited the power of defaults within a negative option marketing (NOM) framework where the consumer’s failure to reject or cancel an offer (i.e., to act) signals consent. NOM, also referred to as advance consent marketing, automatic renewals, continuous-service agreements, unsolicited marketing, recurring billing, inertia selling, “free trial” offers, or “book-of-the-month” type plans, uses defaults to take advantage of the status quo and inaction to achieve

marketing objectives (Sunstein, 2013). NOM requires that consumers take action in order to not purchase or renew the product or service (Licata & Von Bergen, 2007). NOM incorporates an opt-out default in which consent is presumed and where not explicitly making a choice, doing nothing, or being silent means agreement. Individuals must explicitly become involved and take steps to prevent the default from occurring and the sale or renewal from consummating (Lamont, 1995).

As shown in Table 1, four types of plans generally fall within the NOM category (U.S. Federal Trade Commission, FTC, 2009): pre-notification negative option plans; continuity plans; automatic renewals; and free-to-pay or nominal fee-to-pay conversion plans. First, in pre-notification plans, such as book, wine, or music clubs, sellers send periodic notices offering goods. If consumers take no action, sellers send the goods and charge consumers. Second, in continuity plans, consumers agree in advance to receive periodic shipments of goods or provision of services, which they continue to receive until they cancel the agreement. Third, in automatic renewals a seller automatically renews a consumer's purchase of a good or service and charges the person for it, unless the transaction is cancelled. It should be noted that with this type of plan, there may be a required notification period before the customer is no longer charged for the service, such as a ninety-day notice before a cancellation takes effect. Finally, sellers also structure trial offers as free-to-pay or nominal-fee-to-pay conversion plans, such as receiving free premium cable channels for 60 days. In these plans, consumers receive goods or services for free (or for a nominal fee) for a trial period. After the trial period, sellers automatically charge a fee (or higher fee) unless consumers affirmatively cancel or return the goods or services.

Given the fact that these plans involve a process whereby the consumer is billed at a later time without obtaining subsequent consent or payment information after the initial interaction, there is a heightened level of scrutiny surrounding the suitability and comprehensiveness of the disclosures required during the initial consumer/business operator sign-up event. NOM has received unfavorable attention from the FTC, various state attorneys general, and other regulatory bodies. Despite this, marketers and consumers alike have found this billing method to be a convenient and useful payment option over the years. With proper and prominent disclosures, a reasonable price point, an equitable refund policy, and a responsive customer service department (complete with a user-friendly cancellation policy), there is no reason to think that such billing cannot be a suitable business model.

Indeed, marketers may use defaults to encourage "virtuous" behavior, even if the subject would not normally explicitly choose to engage in that behavior. An example of such a program is a "carbon off-set" scheme by Qantas Airlines which "encourages" their customers to make an environmentally friendly decision by an opt-out donation to an Australian government-approved organization that uses the funds to offset the passenger's share of flight emissions by some form of carbon sequestration (Qantas Airlines, n.d.). Customers who do not wish pay the extra fee

must explicitly opt-out of the purchase of the carbon off-set during the on-line transaction. Thus, the Qantas NOM engineers people's choices through defaults to make more socially desirable decisions without substantively limiting their choice.

Type of NOM Plan	Characteristics of Plan	Examples
Pre-notification	Seller sends periodic offers of goods. If the customer does not take action, the goods are sent to and charged to the customer.	A music club sends a person an offer for a DVD and then later sends them the DVD if they do not first write the club and explain that they do not wish to purchase the DVD
Continuity	Customer agrees to receive periodic shipment of goods or provision of service until the customer cancels the contract	An individual agrees in advance to receive shipments of facial crème every three months until they affirmatively call and cancel future shipments
Automatic renewal	Product or service is automatically renewed at the end of a specified period unless the customer cancels the renewal.	A purchaser pays an annual subscription for a magazine, and the magazine automatically renews and charges them for an additional year subscription after their first year expires unless they first call and cancel the subscription
Free-to-pay or Nominal-fee-to-pay conversion offers	Customer receives a trial offer of a product/service at little or no cost. At the end of the trial period, customers are charged the regular price unless they cancel the service.	A consumer signs up for a free trial membership to an online social networking website, and after the trial period, the site begins to charge them a fee unless they first cancel their membership

NOM protocols can also be convenient by doing away with the need to revisit the purchase/payment process each month for a product or service that the

consumer plans to use for an extended period of time. Many people are signed up in a negative option deal with their utility company, mortgage holder, phone company, cell phone provider, cable television provider, car loan company, or the like. Every month bills come due, and every month sellers automatically charge the person's credit card or debit their checking account.

Negative option offers are not necessarily bad, if the merchant is trustworthy. Likewise, if the details of the proposal are communicated adequately to customers, free-to-pay conversion programs provide consumers with the valuable opportunity to try products before committing to a purchase. On their own, neither of these billing methods is suspect or unethical. If properly implemented, negative option billing can provide value to both sides of the transaction.

Responsible merchants will not generally be a problem but unscrupulous and unethical sellers using NOM protocols can create havoc for consumers. Bell (2013) provides an example that involves the following sequence:

1. The seller offers you a service online, such as premium membership on a website, or even Internet service, e-mail, etc.
2. The merchant requires a credit card for negative option billing, telling you that you can 'cancel at any time!'
3. You sign up for the service and use it for a while. Eventually you decide you no longer want to use the service and try to cancel.
4. You go to the merchant's website to cancel and find that you are required to CALL to cancel. Or, they have a link to cancel that does not work, or when you fill it out, they claim not to have received your submission.
5. You call and try to cancel. They send you to a 'cancellation specialist' who tries to convince you not to cancel the service—often browbeating you in the process. They finally concede and say they will cancel your service.
6. You get a bill next month for the service. You call again, and they claim never to have received notice of cancellation. This can go on for months, even after you have sent them registered letters.
7. In some instances the charges eventually stop, but only after months of excess charges, which are never refunded. In some instances, the charges stop—but mysteriously re-start after a few months. In other instances, the only way to get them to stop is to cancel your credit card and get a new one.

Unprincipled marketers overcome consumer complaints by apologizing profusely and saying something to the effect of "Our computer broke down! Our phones are being upgraded and we have experienced some problems. We're really very sorry!" If the consumer initiates legal action, the vendor often claims that (a) they never received the earlier cancellation notices by phone, e-mail, or online; (b) their computers "went haywire"; or (c) innocent mistakes were made.

Another NOM corollary that has come under increased scrutiny involves consumers who have been unwittingly charged monthly membership fees in various

buying clubs, shopping services, and discount programs that purport to offer savings on consumer goods, health and wellness products, and entertainment expenses. Consumers report that they had never heard of and neither ordered nor wanted these products or services (Huffman, 2012) and only realized they were members of such organizations when they saw charges on their credit card or checking account statements. The process generally works as follows: after first completing an Internet-based transaction using a credit card, a pop-up window appears on the consumer's computer screen featuring a different product offered by a separate company, as well as an incentive to sign-up. After the consumer enters his or her e-mail address only (not credit card information) in response to this second offer, the consumer's credit card is billed for the underlying product offering because, unbeknownst to the consumer, his or her credit card information was provided ("passed off") by the first company to the second business.

In response to such shenanigans President Obama signed the Restore Online Shoppers' Confidence Act (ROSCA) into law on December 29, 2010. This law places restrictions and limits on after sale "data passes" and NOM practices through Internet sales. The law prohibits an initial e-commerce vendor from passing-off a user's credit card information to a third-party in a post-transaction sale for the purposes of that post-transaction third-party's sale of goods or services to the user. In addition, the Act requires that the third party seller disclose to the consumer prior to obtaining their billing information:

- a description of the goods and services;
- that it is not affiliated with the initial merchant;
- the costs of the goods or services.

Before charging the consumer, the third party seller must receive the consumer's express informed consent for the charge by obtaining from the purchaser:

- the full account number to be charged;
- the consumer's name, address, and contact information;
- "additional affirmative action" indicating a consumer's consent to be charged (such as clicking on a confirmation button or checking a box).

ROSCA also restricts marketers' use of a negative option and requires that in order to use a negative option feature, the marketer must:

- clearly and conspicuously disclose all material terms and conditions of the transaction prior to obtaining the consumer's billing information;
- obtain "express informed consent" from the customer before charging the financial account provided by the individual;
- provide "simple mechanisms" for a consumer to cancel the recurring charges.

Violations of the law are considered unfair and deceptive practices under the U.S. Federal Trade Commission Act (1980) and enforcement actions may be brought by the FTC and state attorneys general.

Best Practices Guide

Based on laws, guidelines, and scenarios indicated above the following best practices for successful and legally defensible NOM protocols are now presented. This synopsis, much of which was offered by the U.S. Federal Trade Commission and the Direct Marketing Association (2014), may be considered an alternative to mandatory legislated standards and will be a valuable resource for marketers, lawyers, information technology staff, and others interested in adopting effective NOM approaches. Table 2 summarizes these guidelines.

Table 2
<i>Key Negative Option Marketing Principles</i>
1. Disclose the Material Terms of the Offer in an Understandable Manner
2. Be Clear, Conspicuous, Accurate, and Truthful
3. Obtain Buyers' Affirmative Consent
4. Do Not Make It Excessively Difficult and Onerous for Aggrieved Consumers to Successfully Navigate the Cancellation Process

- 1. Disclose the Material Terms of the Offer in an Understandable Manner.** The material terms of negative option offers should include: the existence of the offer; the price or the range of prices of the goods or services purchased by the consumer, including whether there are any additional charges; the transfer of a consumer's billing information to a third party (if applicable); that the current plan or renewal prices of the goods or services are subject to change; the terms and conditions of any refund policy; how to cancel the offer; and the time period within which the consumer must cancel.

Conversely, marketers ought to avoid making disclosures that are unnecessarily long, vague, complicated, or contain contradictory language. Many NOM programs rely on bewildering legalese to explain the material terms of their offers; however, the FTC requires sellers to explain what the customer will receive, how often they will receive it, how much it will cost, and how to cancel in plain English. Additionally, marketers should inform consumers in the initial offer of the length of any trial period, including a statement that the consumer's account will be charged after the trial period (including the date of the charge) unless the consumer takes an affirmative step to cancel, providing the consumer a reasonable time period to cancel, and the steps needed to avoid charges. Other factors to be disclosed include

whether the consumer will be billed or automatically charged and any terms with regards to a “free to keep” incentive as applicable.

2. **Be Clear, Conspicuous, Accurate, and Truthful.** To make online negative option disclosures clear and conspicuous, marketers should place them in locations on web pages where they are likely to be seen, label the disclosures (and any links to them) to indicate the importance and relevance of the information, and use text that is easy to read on the screen and illustrate the key terms of an offer in a way that grabs the attention of the consumer. It is absolutely vital that the price point of the vendor’s product or service, the applicable billing schedule, the cancellation method (complete with an 800 number for customer service) and the description of how the charges will appear on the consumer’s credit card statement are all clearly and conspicuously displayed directly above the “call to action” (usually the order “submit” button).

Further, a link to the applicable Terms of Service and Privacy Policy must appear above the order “submit” button so that the consumer is made aware of the material terms prior to consummating the transaction. Additionally, marketers should provide reminders at the frequency specified in the initial offer. Finally, organizations should be truthful in presenting their information and for Internet sales the initial merchant must never disclose a credit card, debit card, or other financial account number or other billing information that is used to charge the customer of the initial merchant to any post-transaction third party seller for use in an Internet-based sale of any goods or services from that post-transaction third party seller.

3. **Obtain Buyers’ Affirmative Consent.** Marketers should require that consumers take an affirmative step to demonstrate consent to a negative option offer before the customer is billed or charged. Marketers should not rely on pre-checked boxes as evidence of consent and should leave an affirmation box on a website unchecked, or require buyers to go through a recorded verification script. While it is important to ensure that the purchaser is made aware of the price prior to purchase, that is not the only price-related issue that a firm should be concerned with. Regulators have also increasingly shown an interest in products and/or services that are marketed via negative option and/or free-to-pay conversion methods where the applicable price of the product and/or service bears little rational relation to the value of the actual product and/or service provided. For example, a seller that is charging \$60 a month on a recurring basis for access to a database of government auctions that is made available for free to the public is asking for trouble.
4. **Do Not Make It Excessively Difficult and Onerous for Aggrieved Consumers to Successfully Navigate the Cancellation Process.** Organizations should ensure that the identity of the marketer, contact information for service, and a simple system for handling cancellations is presented. Marketers should promptly honor requests for refunds due upon

consumers' cancellation of the plan. By doing so, they protect their businesses from violations and fines, but may also establish some customer goodwill and, might be able to convince them to stay.

When nudging by default is used, it should be fairly easy for people to opt-out of the default option (Blumenthal-Barby & Burroughs, 2012) and designers may need to take vulnerable populations (e.g., those with limited cognitive ability) into account. Furthermore, firms must ensure that their customer service department is easy to access and responsive. It does not hurt to have a liberal refund policy either. The more responsive and accommodating the firm is, the more likely it is that the consumer will feel respected and made whole. Healthy customer relations remain the cornerstone of any successful business, regardless of whether it employs negative option billing mechanisms as part of its marketing strategy.

Summary

Dual process theories of thinking propose that reasoning comprises two underlying systems and numerous investigations characterize human judgment and decision making as an interplay between intuitive-heuristic and demanding-analytic reasoning processes. Decision-making heuristics are mental shortcuts that are used by individuals in making decisions and judgments are often unreflective, some even unconscious, yet they are widespread in human decision-making and greatly impact automatic thinking. Nudges take advantage of individuals' heuristics, their intuitions, their rules of thumb, their impulses, their myopia, and their laziness. Further, they guide and subtly direct people toward certain outcomes without substantively limiting their choice. Nudges can appear very small and straightforward, yet, played out on a big scale, they can become significant.

The classic example of a nudge is the default option which is simply what happens if persons do nothing. Defaults, powered by the status quo bias, refer to the human tendency not to change an established behavior unless the incentive to change is compelling. This phenomenon has been readily exploited by commercial service providers, particularly providers of energy, insurance services, telecommunications, or various membership clubs that make use of the tendency of subscribers to remain with their existing suppliers after the conclusion of the service contract, even though considerably less expensive substitutes may be readily available.

Defaults are considered nudges because they exert a substantial influence on choice without restricting decision makers' freedom to choose and are extremely potent and often inevitable (Liebig & Rommel, 2014). Many people just go with the flow and agree to whatever the default is. It is this behavioral tendency to do nothing which makes the default option ubiquitous and compelling to marketers

employing NOM approaches. Hence, careful attention to default options is important because a large number of people can be expected to end up with it.

Firms regularly employ defaults to achieve desired outcomes. Well-designed product or service defaults benefit both companies and consumers by simplifying decision making, enhancing customer satisfaction, reducing risk, and driving profitable purchases. Not all defaults only benefit firms; many benefit consumers at the same time. Products often are sold with maximally safe settings as the default, shielding consumers from physical injury and manufacturers from injury to reputation and product-defect liability (see Restatement [Third] of Torts § 2, comment a, 1998). But some business-set defaults provide benefits to firms and potential costs to consumers. Auto-renewal of subscriptions, insurance automatically sold with car rentals, default mailing list sign-ups, and pre-checked “options” added to online purchases are all common examples (Willis, 2012). Ill-conceived defaults or, simply, defaults no one thought much about can leave money on the table, fuel consumer backlashes, put customers at risk, and trigger lawsuits—costing firms dearly (Goldstein et al., 2008).

Defaults incorporated in NOM methods can significantly influence consumer behavior and this has attracted, regrettably, a number of unsavory promoters that have given this marketing scheme an unprincipled reputation. Some state governments have attempted to ban negative-option programs as a deceptive marketing practice that tricks consumers into a cycle of recurring payments for products or services they do not want but only Hawaii has actually done so. It is hoped that the guidelines presented in this paper can assist firms to properly and ethically implement their NOM offers and not have more legislative initiatives ban the practice resulting in a sizable loss of revenue. As the astute reader realizes, this last comment is a nudge based on the loss aversion heuristic which refers to people’s tendency to strongly prefer avoiding losses to acquiring gains (Kahneman & Tversky, 1984).

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(sic erat scriptum)

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