



*Leading the Marketing Community*

April 11, 2008

Assembly Member Richard Brodsky  
New York State Assembly, District 89  
Legislative Office Building  
Albany, New York 12248

RE: Assembly Bill 9275-B

Dear Assemblyman Brodsky:

I am writing on behalf of the Association of National Advertisers (ANA) to express our strong opposition to Assembly Bill 9275-B, the "Third Party Internet Advertising Consumers' Bill of Rights." While well-intended, we believe that bill could have serious negative implications for the Internet and the vast array of products and services that are available to consumers in the online world. We share your concerns about protecting the privacy rights of consumers in the online environment. We appreciate that the changes made in the most recent draft of the bill narrow the scope of the legislation. However, we believe that protecting consumer privacy in the online world can best be accomplished through strong industry self-regulation, buttressed by law enforcement on a nation-wide basis by the Federal Trade Commission (FTC).

ANA is the advertising industry's premier trade association dedicated exclusively to marketing and brand building. Representing more than 370 companies with 8,000 brands that collectively spend over \$100 billion in marketing communications and advertising, our members market products and services to consumers and businesses in the online world and all other media. Founded in 1910, the ANA is headquartered in New York City and has offices in Washington, D.C. and California. More information is available at [www.ana.net](http://www.ana.net)

Advertising plays a critical role as a funding source and economic foundation for the various services that consumers enjoy in the online world – from free e-mail to chat rooms to the rich content of thousands of newspapers and magazines. The Internet economy is strong and online advertising is a major contributor to fueling its growth. In 2007, revenues from online ad spending exceeded \$21 billion and online advertising is expected to grow 24% annually through 2011.

Behavioral advertising is just one component of all online marketing but it provides tremendous benefits for both consumers and businesses. Behavioral advertising makes it possible for consumers to see the right ad at the right time about the right product, rather than simply a series of ads that may be irrelevant to them. It also provides marketers with a more efficient and effective means of reaching consumers who are most likely interested in their offerings. This efficiency supports competition and innovation and substantially strengthens the U.S. economy.

AB9275-B appears to attempt to codify an industry self-regulatory program dealing with 3d party network advertising that was developed several years ago by the Network Advertising Initiative (NAI). We don't believe it is appropriate for the government to impose these voluntary, self-regulatory standards as a matter of law. By their nature, self-regulatory programs maintain flexibility to adapt to technological and marketplace changes and consumer demand. AB9275-B would subject all Internet advertising, wherever it originates, to a narrow, rigid and state-specific set of notice, choice and security rules, dealing primarily with the collection and use of non-personally identifiable information ("Non-PII").

Everyone agrees that consumers should have the ability to control the transfer of personally identifiable information (PII) to third parties. Under long-standing privacy self-regulation principles, consumers are provided notice and choices when PII will be transferred to third parties for marketing purposes. Such choices exist in the guidelines of every major privacy self-regulatory program and are included in the privacy policies of most major commercial websites. Providing the same choice or control over non-PII as industry currently does for PII could have serious implications for the architecture of the web and undermine many business models.

It is also important to note that there are several federal laws already in place to regulate the collection, use and transfer of the most sensitive forms of PII. The collection of PII from or about children under 13 is prohibited without parental consent under the Children's Online Privacy Protection Act (COPPA). The Gramm-Leach-Bliley Act regulates the information practices for the financial services industry and health information is subject to the Health Insurance Portability and Accountability Act. In addition, the FTC has been a very active cop on the beat in bringing law enforcement cases against companies which do not live up to the privacy or information security policies posted on their websites.

As you may know, the FTC held a two-day town hall meeting last November focusing on the possible privacy issues raised by online behavioral advertising. On December 20<sup>th</sup>, the Commission issued a staff draft of self-regulatory principles to govern the practice of online behavioral advertising. ANA and eleven other industry groups filed comments this week on those proposals. A copy of those comments, describing the on-going industry efforts in this area, is attached.

Given the global nature of the Internet, we believe that consumer privacy concerns are best addressed at the national level with enforcement by the FTC. AB9275-B would impose state-specific rules on all Internet advertising, wherever it originates, and thereby raise serious constitutional issues by burdening interstate commerce. Passage of this legislation would encourage other states to act, leading to a patchwork of inconsistent standards.

We look forward to continued dialogue with you, the FTC and other groups about online behavioral advertising. This is a very complex area involving numerous players that requires careful analysis. We urge you to provide comprehensive hearings and the opportunity for input from all interested parties before moving this legislation.

There is clearly a need for more consumer education about how online behavioral advertising works and the tremendous benefits it can provide for them. We also pledge to continue to evaluate our various self-regulatory privacy programs to make sure they are protecting the legitimate privacy interests of consumers in the online marketplace.

Thank you for your consideration of our views.

Sincerely,

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