

May 26th, 2009

The Honorable Richard L. Brodsky
New York State Assembly
Legislative Office Building, Room 422
Albany, NY 12248

Re: Assembly Bill 1393, the Third Party Internet Advertising Consumers' Bill of Rights Act

Dear Assemblyman Brodsky:

The undersigned include a wide range of leading trade associations representing thousands of companies across a diverse cross-section of industry. For many of our member companies, electronic commerce and Internet advertising are core economic and operational aspects of their business.

We strongly oppose any legislation, including A.B. 1393, that could undermine the Internet as a dynamic marketplace and jeopardize innovation and economic growth. A.B. 1393 would subject Internet advertising to a restrictive and detailed set of notice, consent, and security requirements with no corresponding consumer benefit. This would have a disruptive effect on online businesses and the architecture of the Internet, and would severely restrain one of the few market sectors still experiencing economic growth—while giving consumers no greater protection than is currently provided through self-regulation. The likely detrimental effect on consumers and businesses is hardly justified considering that there is no record of a discernable harm associated with Internet advertising. Before any attempt is made to codify a single standard, the particular targeted harm should be identified and considered through an appropriate and open procedure, such as through a comment and hearing process.

The proposed legislative approach could have significant adverse effects on both consumers and Internet advertising. Specifically, we provide comments on the following issues: (1) the proposed legislation would have unintended consequences for consumers and businesses; (2) self-regulation appropriately addresses any concerns associated with Internet advertising; and (3) a national standard is preferred over a patchwork of state laws.

I. The Proposed Legislation Could Have Unintended Consequences for Consumers and Businesses

While specific self-regulation, similar to that contained in A.B. 1393, may be appropriate for certain businesses, when applied broadly to online businesses, such standards could undermine the benefits derived from Internet advertising for consumers

and businesses by reducing the availability of online content and services, the relevancy of advertisements, and the customization of Internet content. In particular, the bill would limit the use of non-personally identifiable information (“non-PII”) in “online preference marketing.” Non-PII is used to deliver targeted, ad-supported content that is more likely to be relevant to a particular user’s interests, such as local news, weather, entertainment, or the availability of products in a certain area. This type of advertising underwrites important Internet business models. Any reduction in the relevancy of online advertising could result in a decrease in available content and services, such as free e-mail service, photo sharing and storage web sites, shopping and price comparison tools, or search engines. The vast amount of free content and services available on the Internet is subsidized primarily through Internet advertising. Without Internet advertising bearing the cost of access to online content and services that are offered at no charge, consumers could be forced to subscribe to such services.

In addition, businesses rely on Internet advertising to more efficiently communicate with consumers. Through Internet advertising, a business can more effectively market its goods and services, thereby reducing costs and lowering its prices for consumers. Internet advertising also has opened larger markets to small businesses by lowering the barriers to entry. Internet advertising fuels online innovation, competition, and economic growth. Any action taken in this area should ensure that it does not undermine the benefits derived by consumers and businesses from Internet advertising.

II. Self-Regulation Appropriately Addresses Concerns Associated with Internet Advertising

Self-regulation is the appropriate approach to address any concerns associated with Internet advertising while supporting business innovation. The Internet marketplace is constantly changing and evolving. It is critical that such a dynamic marketplace not be stifled by rigid standards or a “one-size-fits-all” approach. While the proposed standards may address a particular issue in today’s marketplace, tomorrow’s technology and preferences may render the issue obsolete. By codifying the proposed standards, which are based on current self-regulation, the industry could be subject to outdated or inflexible rules that could restrain innovation and market growth. This is of particular concern for New York, which is one of the key centers of the advertising industry. The more appropriate approach is self-regulation, as it is flexible to address changes in technology and consumer preferences. In addition, self-regulation has been proven to provide consumers with choice as to how their online data is collected and used, while balancing a business’s legitimate collection or use of data to improve online products and services, and to provide relevant advertisements and content to consumers.

III. A National Standard is Preferred Over a Patchwork of State Laws

Any company, individual, or group that collects online data from a New York resident, regardless of where the “third party advertising network” is located, would be subject to this proposed bill. If enacted, this would make New York the *de facto* national standard. Such a broad, sweeping law is best addressed at a national level, and not on a state-by-state basis, so that such regulation could be considered in the context of other relevant law and avoid imposing a patchwork of conflicting state-by-state requirements. For instance, Sections 5 would create burdensome, and possibly contradictory, data security and data access requirements. The legislation would require a “third party advertising network,” which includes any person who collects online data for advertising purposes, to “protect the data they collect or log ... from loss, misuse, alteration, destruction or improper access.” Online data collection practices associated with Internet advertising already are subject to federal and state regulation. For instance, the Children’s Online Privacy Protection Act, Gramm-Leach-Bliley Privacy Rules, and HIPAA Privacy Rules regulate online data collection. In addition, businesses subject themselves to state and federal laws such as prohibitions against unfair and deceptive practices (*e.g.*, Section 5 of the FTC Act) by posting online privacy statements that disclose online data collection practices.

We believe that the appropriate forum to consider this issue is at the national level. The Federal Trade Commission (“FTC”) has recently released self-regulatory principles for the Internet advertising industry. We think the FTC’s self-regulatory approach is an appropriate means to address this issue.

Thank you for considering our comments. We look forward to working with you on this legislation. If you have any questions, please contact Stu Ingis of Venable LLP at 202/344-4613.

Sincerely,

American Advertising Federation
American Association of Advertising Agencies
Association of National Advertisers
Direct Marketing Association
Electronic Retailing Association
Interactive Advertising Bureau
Internet Alliance
Magazine Publishers of America
Marketing Research Association
Motion Picture Association of America
NetChoice

Network Advertising Initiative
Online Publishers Association
AOL
Experian
Google
ValueClick
Yahoo!