

June 14, 2010

Via email: privacy-noi-2010@ntia.doc.gov

National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW, Room 4725
Washington, DC 20230

Re: Comments on the Notice of Inquiry on “Information Privacy and Innovation in the Internet Economy”

The American Association of Advertising Agencies, Association of National Advertisers, Direct Marketing Association, Interactive Advertising Bureau (collectively “we” or the “undersigned associations”) appreciate the opportunity to provide our views in response to the Department of Commerce’s (“Department”) Notice of Inquiry on information privacy and innovation in the Internet economy. We encourage the Department to consider the tremendous value created by online advertising for both consumers and the economy, and the impact that self-regulation and consumer education have on consumer privacy.

The undersigned associations believe that the appropriate approach to address consumer online privacy is through industry self-regulation and education. Existing and emerging robust self-regulatory principles address privacy concerns while ensuring that the Internet can thrive, thereby benefiting consumers and the U.S. economy.

I. Online advertising generates a significant consumer and economic benefit.

For almost two decades, online advertising has been an economic driver that has fueled Internet growth and delivered innovative tools and services used by consumers and business to connect, communicate, and contribute to the continued evolution of the Internet. This advertising-based model continues to drive Internet growth and deliver consumer benefit. According to a recent study entitled *Economic Value of Advertising-Supported Internet Ecosystem* conducted by Harvard Business School Professors John Deighton and John Quelch, e-commerce and online advertising contribute \$300 billion each year to the U.S. economy and employ 3.1 million Americans.¹

The revenue generated by online advertising supports the creation and entry of new businesses, communication channels (*e.g.*, micro-blogging sites and social networks), and free or low-cost services and products (*e.g.*, email, photo sharing sites, weather, news, and entertainment media). Online advertising enables consumers to compare prices, learn about products, and find out about new and local opportunities. Additionally, the Internet empowers small businesses, enabling them to flourish and compete where costs would otherwise hinder their entry into the market. Consumers

¹ Deighton & Quelch, *Economic Value of Advertising Supported Internet Ecosystem*, at 4, 12 (June 10, 2009), available at <http://www.iab.net/media/file/Economic-Value-Report.pdf>.

value the tremendous benefit that they gain from such ad-supported services and products and from the diversity of online companies. Thus, the Department should avoid making recommendations that could unintentionally stifle this positive contribution to the economy and consumer benefit.

Perhaps most importantly, the record demonstrates that consumers are increasingly embracing and participating in Internet activities. A quick analysis of the most recent indicators reveal that online retail sales during the 2009 holiday season increased 5 percent from 2008, according to a report by the research firm comScore, with consumers spending \$27 billion more than the previous year. Consumers were more satisfied than ever with their e-commerce experiences, according to ForeSee Results' E-Retail Satisfaction Index, giving their online shopping adventures a score of 79 out of 100, the highest rating since the survey began in 2001. Perhaps most informative, research demonstrates that consumers are generally not reluctant to participate online due to advertising and marketing practices. According to a 2009 survey by the National Retail Association, of those consumers who were reluctant to shop online, just 0.1% cited concerns over privacy and the same miniscule percentage (0.1%) cited concerns about retailers tracking online activity.

II. Self-regulation addresses concerns with online advertising.

Self-regulation continues to be the appropriate approach for addressing the interplay of online privacy and online advertising practices. This approach has successfully demonstrated its ability to address consumer concerns while ensuring that the marketplace is not stifled or smothered by overreaching and rigid regulation. Unlike formal regulations, which can become quickly outdated in the face of evolving technologies, self-regulation provides industry with a nimble way of responding to new challenges presented by the evolving Internet ecosystem.

In the specific area of online behavioral advertising, recent self-regulation should be given more opportunity to succeed. The undersigned associations, with the Council of Better Business Bureaus, spearheaded the development of the groundbreaking *Self-Regulatory Principles for Online Behavioral Advertising* ("Principles"), which were released in July 2009.² The Principles are designed to apply broadly to the diverse set of actors that work interdependently to deliver relevant advertising intended to enrich the consumer online experience, and to foster consumer friendly standards that are to be applied throughout the online ecosystem. There are seven basic Principles, which call for consumer education, the provision of new choice mechanisms, data security, heightened protection for certain sensitive data, consent for certain material changes to online behavioral advertising data collection and use policies, and strong enforcement

² American Association of Advertising Agencies, Association of National Advertisers, Direct Marketing Association, Interactive Advertising Bureau, and Council of Better Business Bureaus, *Self-Regulatory Principles for Online Behavioral Advertising* (July 2009), available at <http://www.iab.net/media/file/ven-principles-07-01-09.pdf>.

mechanisms.³ Lastly, the Principles require enhanced notice outside of the privacy policy so that consumers could be made aware of the companies they interact with while using the Internet. Together, these Principles will increase consumers' trust and confidence in how information is gathered from them online and how it is used to deliver advertisements based on their interests.

This cross-industry self-regulatory initiative represents an unprecedented collaborative effort by the entire marketing-media ecosystem. The effort began in April 2008 by convening a task force to evaluate existing self-regulatory efforts. In October 2008, the task force began drafting principles together with eight industry associations and 25 companies. In January 2009, we publicly announced our efforts, and in April 2009, we began socializing the principles within industry.⁴ In July 2009, we formally released the *Self-Regulatory Principles for Online Behavioral Advertising*.⁵

Beginning in August 2009, the undersigned associations have turned to enforcement, operational implementation, and educational planning related to the Principles. The Direct Marketing Association ("DMA") has incorporated the Principles into its *Guidelines for Ethical Business Practice*, which are binding on all DMA member companies and are actively enforced by the DMA.⁶ The Council of Better Business Bureaus is also implementing accountability mechanisms and evaluating technology solutions for a robust monitoring and compliance program.

In January 2010, the same coalition announced its intention to select wording and a link/icon that participating companies will use when engaged in online behavioral advertising to indicate their adherence to the Principles and as the link that provides consumers with easily accessible disclosures about data collection and use practices associated with online behavioral advertising. In April 2010, the IAB, along with the Network Advertising Initiative, released the CLEAR (Control Links for Education and Advertising Responsibly) Ad Notice Technical Specifications, a set of common technical standards for this standard, clickable icon.⁷

³ The Principles apply heightened protection for children's data by applying the protective measures set forth in the Children's Online Privacy Protection Act. Similarly, this Principle requires consent for the collection of financial account numbers, Social Security numbers, pharmaceutical prescriptions, or medical records about a specific individual for online behavioral advertising purposes.

⁴ Press Release: *Key Advertising Groups to Develop Privacy Guidelines for Online Behavioral Advertising Data Use and Collection*, January 13, 2009, available at http://www.iab.net/about_the_iab/recent_press_releases/press_release_archive/press_release/pr-011309.

⁵ Press Release: *Key Trade Groups Release Comprehensive Privacy Principles for Use and Collection of Behavioral Data in Online Advertising*, July 2, 2009, available at http://www.iab.net/about_the_iab/recent_press_releases/press_release_archive/press_release/pr-070209.

⁶ Direct Marketing Association, *Guidelines for Ethical Business Practice* (revised January 2010) available at <http://www.dmaresponsibility.org/guidelines/>.

⁷ Press Release: *IAB and NAI Release Technical Specifications for Enhanced Notice to Consumers for Online Behavioral Advertising: Critical Step in Interactive Industry's Ongoing Self-Regulatory Efforts*, April 14, 2010, available at http://www.iab.net/about_the_iab/recent_press_releases/press_release_archive/press_release/pr-041410.

Industry's quick response in the area of online behavioral advertising demonstrates the benefits of self-regulation. Self-regulation is responsive to government and consumer concerns, feasible in light of existing technology and business practices, and flexible enough to respond to the rapid innovation that is characteristic of the high-technology marketplace. The undersigned associations are committed to vigorous enforcement of our self-regulatory programs, which helps compliant businesses by promoting consumer trust.

III. Consumer and business education is critical to protecting consumers online.

The undersigned associations believe that consumer education is vital to demystifying online advertising practices and informing consumers of the availability of choice and tools to control one's online experience. The "Privacy Matters" consumer education initiative to deliver information about online advertising is now expanding into its second phase. In this phase of the educational campaign, we will promote awareness of the Principles among both consumers and businesses.

A. Phase One: Consumer Education

In December 2009, IAB launched "Privacy Matters," an education campaign designed to educate consumers about how they can manage their online experience and to help consumers better understand and appreciate how Internet advertising supports the Internet.⁸ IAB, through the participation of its online publisher members, has committed to deliver more than 500 million online public service announcements ("PSAs"), providing details about online advertising and tools that consumers can use to manage their online privacy. The eye-catching "Privacy Matters" campaign is designed to provide interactive educational messages for consumers about key aspects of online advertising, as well as to make resources available to consumers about the availability of choice, online security, and tips on how to safely surf the web.

Through February 2010, the campaign has delivered more than 353 million impressions. The results thus far have been excellent. Ten percent of all delivered impressions are being "moused-over" by consumers and the average amount of time that consumers spend on the PSA once they roll over it is 28 seconds. Thus, the time spent viewing a PSA is equivalent to about twice the exposure time of the most common, 15-second, TV commercial. Perhaps most encouraging, the click-through-rate ("CTR") for this campaign is out performing the standard 0.03% - 0.06% CTR range for public service campaigns. These numbers demonstrate that consumers are taking the time to read the information and interact with the educational resources. In all, the "Privacy Matters" campaign is effectively engaging consumers.

B. Phase Two: Principles

Currently, the undersigned associations are poised to embark upon a second educational phase intended to educate consumers and businesses about the Principles.

⁸ IAB's "Privacy Matters" campaign, available at <http://www.iab.net/privacymatters/>.

This multifaceted campaign will include the launch of an industry Web site that will include educational resources, the delivery of public service announcements regarding the Principles, and community outreach by the participating trade associations.

This campaign will educate the online community about the nature and operation of the new self-regulatory program. We will educate the community on the purpose and functionality of the selected icon/link used to provide notice of online behavioral advertising practices. For consumers, the campaign will describe the availability of this enhanced notice in all instances when and where online behavioral advertising occurs. Consumers will be made aware of the types of information collected and used for advertising purposes and will be informed of the availability of new choice mechanisms and how to exercise such choice. The campaign will also provide educational materials and resources to the business community that will explain the scope and purpose of the Principles. In addition, the trade associations will continue to work with their members to explain how businesses can come into compliance with the industry principles.

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We thank you for the opportunity to offer our comments on this important matter, and we look forward to continuing to work with you as the Department addresses these matters. Please contact Stuart Ingis at (202) 344-4613 with any questions.

Sincerely,

American Association of Advertising Agencies
Association of National Advertisers
Direct Marketing Association
Interactive Advertising Bureau

cc: Stuart Ingis, Venable LLP
Michael Signorelli, Venable LLP