

January 28, 2011

Via electronic filing: privacynoi2010@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 Department of Commerce Internet Policy Task Force Report – “Commercial Data Privacy and Innovation in the Internet Economy: A Dynamic Policy Framework”

Dear Internet Privacy Task Force:

The American Association of Advertising Agencies (“4A’s”), American Advertising Federation (“AAF”), Association of National Advertisers (“ANA”), Direct Marketing Association (“DMA”), and Interactive Advertising Bureau (“IAB”) (collectively “we” or the “undersigned associations”) provide these comments to the Department of Commerce (“Department”) on its green paper titled *Commercial Data Privacy and Innovation in the Internet Economy: A Dynamic Policy Framework*.¹ We are the leading trade associations for the advertising and marketing industries, collectively representing more than 5,000 leading U.S. corporations across the full spectrum of businesses that have shaped and participate in today’s transformed media landscape. 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.

We support establishing voluntary codes of conduct developed through self-regulatory mechanisms. We believe self-regulation and education constitute the most effective framework for protecting consumer privacy while ensuring the Internet remains a platform for innovation. We also believe that legislative solutions inevitably would be too inflexible to respond appropriately to the rapidly developing technological environment, thus seriously impeding innovation. In addition, laws should not dictate a framework or impose requirements for the operation of self-regulatory mechanisms. Such an approach would inhibit industry’s ability to efficiently respond to a developing marketplace and foster innovation on the Internet.

We believe the Self-Regulatory Program for Online Behavioral Advertising (“Program”) demonstrates that development of voluntary codes of conduct through multi-stakeholder collaboration is the appropriate approach for protecting consumers while

¹ Department of Commerce Internet Policy Task Force, *Commercial Data Privacy and Innovation in the Internet Economy: A Dynamic Policy Framework* (December 2010).

fostering online innovation. We would like to take this opportunity to provide you details on the status of the Program and our related educational campaigns.

I. A voluntary code of conduct for entities engaged in online behavioral advertising has been implemented

The undersigned associations, in participation with the Council of Better Business Bureaus (“CBBB”), led the development of the groundbreaking *Self-Regulatory Principles for Online Behavioral Advertising* (“Principles”).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. The Principles were developed over a year-long period in which broad consensus was developed among the key constituencies of the Internet community. There are seven Principles, which call for 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 mechanisms. Lastly, the Principles require enhanced notice outside of the privacy policy so that consumers can 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.

In July 2009, we formally released the Principles.³ Following their release, we turned to building the Program, educational campaigns, and accountability mechanisms. We have achieved several significant milestones in the last few months and have identified next steps for this effort, which we detail below.

A. Establishment of the Program

On October 4, 2010, we launched AboutAds.info – the official Program website – where consumers can learn about online behavioral advertising and exercise choice, and organizations can register to participate in the Program.⁴ At AboutAds.info, entities can register to use the “Advertising Option Icon” and acquire specific technical guidance for the icon’s implementation and use. A prominent feature of the Program is the call for the use of the Advertising Option Icon in or near ads or on web pages where data is collected for online behavioral advertising purposes. The Advertising Option Icon lets consumers know when the advertisements they see are interest-based, and links to information about the data practices of entities engaged in online behavioral advertising and choices about the interest-based ads they receive. The icon has already appeared in ad impressions

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.aboutads.info/resource/download/seven-principles-07-01-09.pdf>

³ 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.ana.net/content/show/id/555>.

⁴ See www.aboutads.info.

across the Internet. With the large number of major companies and ad networks now participating in the Program, the icon will appear in billions of ads in the coming weeks. More than a trillion impressions are expected to have been placed by the end of the year.

Since November 2010, consumers have been able to visit the AboutAds Consumer Opt-Out Page to easily opt-out of some or all of the interest-based ads they receive, if they choose.⁵ This choice page is linked to through the Advertising Option Icon. Currently, close to 60 companies are participating in the choice mechanism, providing consumers control over whether their data is collected or used for online behavioral advertising. Dozens of more companies are in the process of joining the Program and are expected to be providing choice through the Consumer Opt-Out Page.

We have also selected three companies – DoubleVerify, Evidon (formerly Better Advertising), and TRUSTe – as approved providers to assist companies in complying with the Principles. These approved providers’ services help companies to provide enhanced notice and choice as required by the Principles.

In order to ensure accountability, this voluntary code will be enforced by the DMA and the CBBB. These entities will monitor and enforce compliance with the Program, as well as managing consumer complaint resolution. By the end of January 2011, the DMA’s enforcement program will commence. While DMA’s initial focus will be on efforts to assist companies with coming into compliance, future monitoring and enforcement activities will ensure accountability among not only DMA member companies, but the entire advertising and marketing industries. CBBB’s enforcement program will commence March 31, 2011 and they also will monitor and review the activities of entities engaged in online behavioral advertising.

B. Next steps for the Principles

As the online advertising environment continues to evolve rapidly, we have started work to advance the scope and application of the Principles in new ways. First, we are working with our international counterparts to encourage their adoption of standards consistent with the Principles and their use of the Advertising Option Icon as the means for providing notice concerning online behavioral advertising practices. Our members operate in a global marketplace. By promoting a uniform code of conduct internationally, we will reduce regulatory uncertainty and encourage compliance with the Principles. Our goal is to foster multinational interoperability of the Principles. In addition, we hope this effort will contribute to the Department’s international discussions on privacy frameworks and serve as an example of an effective voluntary code of conduct backed by strong enforcement that was developed through a multi-stakeholder forum.

We are also considering the application of the Principles to mobile media and other platforms. Mobile is a dynamic and emerging channel with characteristics (*e.g.*, device, screen size, character limitations, etc.) that requires a voluntary code of conduct tailored to the unique nature of the platform. For this reason, we will evaluate how to

⁵ see www.aboutads.info/choices.

appropriately implement the Principles' concepts of transparency and choice to mobile media, particularly with regard to mobile web interfaces and applications built for mobile devices.

While the Principles already include provisions addressing sensitive data, we will consider further refinement of the treatment of sensitive data. We will also lead an effort to develop a persistent opt out that will be effective against the collection *and* use of such data for online behavioral advertising purposes. Already, the marketplace is developing tools to address persistency of opt outs, which demonstrates that the market, when permitted, can provide solutions to privacy concerns.⁶ Finally, we are also developing an educational campaign around the Principles and the Program to expand upon the information already provided at AboutAds.info.

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 this highly complex and technologically sophisticated and rapidly developing marketplace. The undersigned associations are committed to vigorous enforcement of our self-regulatory programs, which helps compliant businesses by promoting consumer trust.

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

We 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. For this reason, we are expanding our educational efforts. As discussed in more detail below, following the success of the "Privacy Matters" consumer education initiative, we are now widely promoting awareness of the Principles and the Program 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.⁷ IAB, through the participation of its online publisher members, has delivered close to 600 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.

⁶ Google announced a new tool called "Keep My Opt Outs" designed to make a consumer's opt out persistent, available at <http://googlepublicpolicy.blogspot.com/2011/01/keep-your-opt-outs.html>.

⁷ IAB's "Privacy Matters" campaign, available at <http://www.iab.net/privacymatters>.

The results of the campaign have been very promising. Nine 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. This rate is much higher than usual for these types of Internet informational campaigns. The time spent viewing one of these PSAs, for example, is equivalent to about twice the exposure time of the most common, 15-second, TV commercial. These numbers demonstrate that consumers are taking the time to read the information and interact with the educational resources. In all, the “Privacy Matters” initiative has effectively engaged consumers.

B. Phase Two: Principles

We have started a second phase of educational outreach intended to inform consumers and businesses about the Principles and the Program. This multifaceted campaign includes the launch of AboutAds.info where consumers can find educational materials about online advertising and businesses can find implementation guidance concerning the Principles. The site also offers an audio compliance webinar, which was part of an educational webinar series offered in the fall of 2010 and attended by representatives of more than 350 companies engaged in online behavioral advertising.

Shortly, a PSA campaign will be undertaken similar to the approach taken in the Privacy Matters campaign. For consumers, the campaign will describe the availability of the Advertising Option Icon in all instances when and where online behavioral advertising occurs. This campaign will also educate the business community about the nature and operation of the new Program, including the purpose and functionality of the Advertising Option Icon used to provide notice of online behavioral advertising practices. 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. 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 Stu Ingis at 202-344-4613 with any questions.

Sincerely,

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

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