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To: Secretary, Federal Trade Commission
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Re: Interpretation of Rules and Guides for Electronic Media--Comment, FTC File No. P974102

CommerceNet is the leading industry consortium dedicated to accelerating the growth of Internet commerce and expanding Internet markets. Launched in California's Silicon Valley in April 1994, CommerceNet's membership has grown to include over 200 leading U.S. organizations in areas such as banking, electronics, computers, online services, and information service industries, as well as major end users. Together, we are transforming the Internet into a global electronic marketplace. CommerceNet's member companies are listed at: <http://www.commerce.net/cgi-bin/memshow/memalpha.cgi?alpha=all>

CommerceNet appreciates this opportunity to provide input on the FTC's rules and guidelines as they apply to electronic media. We encourage the FTC to address this issue and provide guidance on the appropriate treatment of disclosures in electronic media. Commerce would be interested in participating in a workshop to discuss the issues raised in the FTC's May 6th notice.

Principles for Applying FTC Rules and Guidelines to Electronic Media

In addressing the issue of appropriate treatment of required disclosures in electronic media, CommerceNet suggests that the following principles should be followed:

- 1) **Disclosures and notices in electronic form should be as acceptable as those in other media, provided that they are capable of being preserved so that they can be accessed at a later date.** Disclosures and notices are sometimes required to be "in writing", "written" or "printed". The intent of those requirements is to ensure that the buyer of the goods or services can preserve the notice in order to refer to it at a later date. In electronic media, such notices and disclosures should not be denied legal effect merely because they are in electronic form rather than on paper. An FTC policy statement clarifying the acceptability of electronic documents with respect to the FTC's rules and guidelines would promote the growth of electronic commerce by clarifying the legal status of electronic documents.
- 2) **Requirements for "clear and conspicuous" disclosures should be interpreted in ways that take advantage of the ability within the context of electronic media to provide additional information beyond the constraints of a single screen display.** The use of clickable icons, hyperlinking, and pop-up scrollable windows enables electronic media to provide more extensive information to buyers than that which might conveniently be provided

in other media. The use of those techniques should be encouraged by the FTC rather than discouraged. The FTC's May 6th notice seems to equate the use of these technologies with the use in printed materials of asterisks referring to information provided elsewhere, such as in a footnote. CommerceNet believes this comparison is inappropriate. First of all clickable icons, hyperlinks, or pop-up windows are all significantly more noticeable than a mere asterisk. Secondly, both clickable icons and hyperlinks not only indicate the availability of additional information, but also serve as a mechanism to directly access that information. Pop-up windows actually pop the information up directly on the screen. With those technologies, one need not search the document, advertisement, or packaging in order to find the location of the referenced materials. Instead one is taken directly to the appropriate location. Thus while the use of an asterisk may detract from the noticability of the information so referenced, the use of clickable icons, hyperlinks and pop-up windows on the other hand adds to noticability of information. The use of such techniques should be encouraged. We note however that with the possible exception of hyperlinking, such techniques are also technology specific rather than technology neutral and therefore their use should not be specifically required.

- 3) **Criteria for determining whether a requirement for “clear and conspicuous” disclosure has been met should be technology neutral. Furthermore, such criteria should not discourage the use of automated electronic purchasing mechanisms.** The FTC's May 6 notice seems to indicate that the use of certain specific technologies may provide better notice than not using those technologies. While we agree that this may be true of many technological effects, we note that technology in this field changes rapidly. Furthermore, electronic media techniques that are conspicuous on one display platform may not be so conspicuous on another. To the extent possible, CommerceNet believes that rules and guidelines should be technology neutral as they apply to specific technologies. Thus while the FTC's policies should enable the use of electronic media in general, they should not require the use of specific electronic media techniques.

CommerceNet is especially concerned that the FTC's May 6 notice indicates that FTC rules and guidelines as adapted to electronic commerce may prohibit or discourage notices and disclosures that cannot be displayed on one screen. **We must strongly object to any such requirement.** Not only is it technologically infeasible, but it also imposes requirements on electronic media that are not imposed on other media.

CommerceNet is also concerned with the effect that FTC policies may have on automated purchasing technologies, especially when parties that have no previous contractual relationship use those technologies. We urge the Commission to keep in mind the use, even by consumers, of automated electronic purchasing agents and to ensure that notice and disclosure requirements do not interfere with the ability to make use of such agents. We suggest in particular that the Commission may wish to consider whether any notice placement or timing requirements would interfere with such use, and if so, whether specific exceptions or alternative requirements should be put in place to apply to such situations.

Conclusion

Providing certainty as to the legal environment affecting electronic commerce enhances the growth of that commerce. CommerceNet believes that updating the Federal Trade Commission's

policies regarding their rules and guidelines as they apply to electronic media is essential to enabling the growth of electronic commerce. However, care must be taken to ensure that requirements are technologically neutral and no more restrictive than those for other media. We encourage the FTC to proceed in this area and look forward to providing further comment as this process continues.

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