



INTERACTIVE TRAVEL SERVICES ASSOCIATION

Ms. Jessica Rich
c/o Mr. Donald S. Clark
Secretary
Federal Trade Commission
Rm. H-135 (Annex N)
600 Pennsylvania Ave., NW
Washington, DC 20580

April 11, 2008

Dear Ms. Rich:

Re: Online Behavioral Advertising
Moving the Discussion Forward to Possible Self-Regulatory Principles

The Interactive Travel Services Association (ITSA) appreciates the opportunity to comment upon the self-regulatory principles concerning behavioral advertising proposed by Commission staff. ITSA commends the staff both for its dedication to monitoring technological advances in advertising and safeguarding the privacy of consumers, in general, and for focusing the industry on behavioral advertising and its self-regulation, specifically. Nonetheless, we believe that their initiative in this case is premature and should be suspended.

ITSA is the trade association for online travel companies (OTCs) and global distribution systems.¹ ITSA's members are committed to providing the most relevant and precise travel promotional information to consumers while, voluntarily, taking the steps necessary to protect their privacy, including making available, either themselves or through links to respected third parties, the latest privacy protecting technological tools. An example of that commitment can be found in the best practices on adware and spyware recommended by the association.²

Advanced advertising, as the staff recognized, provides consumers access to free content and services, as well as promotions relevant to their interests. It benefits consumers by substantially limiting their exposure to a broad scale of unwanted promotion, solicitations and advertisements that burden their online experience.

¹ ITSA's membership includes: Expedia, Travelocity, Priceline, Orbitz, Hotels.com, Vegas.com, Sabre, Galileo, Worldspan, Amadeus and more. Please see our website, www.interactivetravel.org for a full listing of our members.

² ITSA Statement Regarding the Use of Marketing Software Applications, at 1 – 2, www.interactivetravel.org

To acquire the information necessary to provide such advertising, typically cookies are placed in a computer. A cookie can be placed on a computer when a user of that computer visits a particular website page, but a cookie does not actively collect information. Rather, the presence of a cookie in a computer only indicates that a user visited a certain page. Further, the practice of using cookies is typically described in detail in the privacy policies of OTC websites in order to properly inform users about their use.

All searches, web pages and content viewed are not the same. There should be some differentiation and exclusion from the definition. For example, if a visit is to only one site, and not across more than one, it should be excluded from the definition. By the very nature of a visit to one place, the consumer has evinced a clear interest in the information there. No evaluation of, nor inferences from, visits to multiple sites need be applied to determine the consumer's interest in that one site; no profile needs to be developed. The interest is self-evident, and the specific site's knowledge of it should not be surprising."

An ordinary example of targeting from multiple visits might be when a consumer has demonstrated an interest in travel, and more specifically investigated trips to Hawaii on, say, a travel site and a book site. Advertisers, including online travel companies, are able to narrowly tailor travel advertisements (including sale prices to Hawaii). To do this, a website may place a cookie on a consumer's computer when the consumer visits "Hawaii" in the destination guide section of the travel site and the Hawaii travel section of the book site. No data is collected by the cookies. As this user navigates areas of those websites, the ad server recognizes the cookies and advertisements with information about travel to Hawaii can be displayed to the user. Thus, the user is not personally known to the ad servers but the advanced advertising practice allows the consumer to receive more information about topics on which he/she has interest.

In the case above, as in behavioral advertising generally, no personally identifiable information (PII) is collected or used in any way. When there is no PII involved, we fail to see the harm for individual consumers. Behavioral advertising, then, when no PII is collected, offers genuine benefits to consumers without impinging on their privacy.

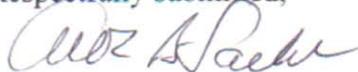
Moreover, as the technology employed in advertising develops and evolves, so do the tools available to consumers to protect their privacy. Such tools exist in the marketplace, spurring robust online competition by rewarding those entities that maximize the best technology to protect consumers while tailoring their online experience appropriately. Browsers such as Firefox enable refusing cookies from specific sites, as does AOL. The Network Advertising Initiative has long helped consumers 'opt-out' of advertising targeted to them, as have other organizations, such as the Direct Marketing Association and the Better Business Bureau. More specific tools, such as a plug-in from Adblock Plus, also aid consumers in disarming ad delivery systems.

Consumers have meaningful opportunities, through these readily understandable, available, and useable means to influence the data that is collected from their computers. Therefore, in the absence of clear harm to consumers and, in light of the benefits consumers enjoy from such practices in the form of free content and services, as well as promotions relevant to their interests with increasing precision, ITSA believes that the record does not provide justification for the staff's initiative at this time. We would strongly urge the staff to suspend their proposal and undertake a report from the town hall meetings they conducted on behavioral advertising. That report could then inform any next steps.

The current initiative seeks to solve for an unrealized problem and, in so doing, may have a chilling effect on Internet innovation and the services and content consumers expect on the web. Principles of conduct cannot truly be self-regulatory if they are driven by a regulatory entity with enforcement powers. In this case, the staff is recommending five specific principles be applied to behavioral advertising.³ This is an ambiguous construct, at best, with distinct overtones of regulation. The staff acknowledged this by noting: "The purpose of this proposal is to encourage more meaningful and enforceable (emph. supplied) self-regulation to address the privacy concerns raised with respect to behavioral advertising."⁴ When an agency with regulatory and enforcement powers makes such a recommendation, query as to whether the targeted industry would have the latitude to draft, change or adopt new standards to keep up with technology or the ever-changing trends in the advertising space? Further, could such a regime genuinely be described as a self-regulatory model or be seriously touted as voluntary?

In sum, the good intentions of a thoughtful Commission would lead to constructive regulation, not true self-regulation in an area in which consumer harm has not been identified. Further, this constructive regulation would hamper innovation on the Internet and deny consumers many of the services and content they enjoy. The Internet is driving commerce and shaping the way we live—such a fluid and changing environment demands that a nimble and competitive industry be permitted to continue on its own to develop real, effective and highly adaptable self-regulatory principles.

Respectfully submitted,



Arthur B. Sackler
Executive Director
Interactive Travel Services Association

³ We have, of course, noted and read closely the five specific principles proposed by the staff. However, because we conclude that this entire exercise is premature, we have no specific comment on them at this point.

⁴ Online Behavioral Advertising, at 3.