



January 31, 2012

Federal Trade Commission
Office of the Secretary
Room H-113 (Annex P)
600 Pennsylvania Avenue, NW.
Washington, DC 20580

Re: DMA Comments on “Face Facts: A Forum on Facial Recognition,” Project No. P115406

The Direct Marketing Association (“DMA”) submits these comments in response to the Federal Trade Commission’s (“FTC” or “Commission”) request for comments on facial detection and recognition technology (“FRT”).¹

The DMA (www.newdma.org) is the leading global trade association of businesses and nonprofit organizations using and supporting multichannel direct marketing tools and techniques. The DMA advocates industry standards for responsible marketing; promotes relevance as the key to reaching consumers with desirable offers; and provides cutting-edge research, education, and networking opportunities to improve results throughout the end-to-end direct marketing process. Founded in 1917, the DMA today represents thousands of companies from dozens of vertical industries in the United States and 50 other nations, including a majority of the Fortune 100 companies, as well as nonprofit organizations. Our membership includes cataloguers, financial services, book and magazine publishers, retail stores, industrial manufacturers, Internet-based businesses, and a host of other industry segments, as well as the service industries that support them.

FRT is a nascent marketplace that has the potential to generate broad consumer benefit. FRT is already enriching consumers’ daily lives through a host of exciting tools and services. This new market also benefits consumers by generating jobs, business investment, and economic growth. To protect these consumer benefits, the DMA cautions against new regulations or legislation that could endanger this emerging, innovative market. The DMA recognizes the importance of protecting the privacy of consumers, and believes that the best way to realize this goal is through industry-developed best practices and self-regulatory principles combined with consumer education, rather than imposing government standards that could limit or favor specific business models or practices.

¹ Electronic notice, *FTC Seeks Public Comments on Facial Recognition Technology*, Dec. 23, 2011, available at <http://www.ftc.gov/opa/2011/12/facefacts.shtm>.



II. FRT benefits consumers

FRT has vast potential to provide tools, products, and services that will enrich consumers' lives. While this market has not yet realized its full potential, this technology is already the engine for many products and tools that help consumers protect their private information, manage and search images, connect with each other via social networks, and receive customized services and content. For example, FRT can support secure authentication products. Today, products in market use FRT to enable consumers to unlock their mobile devices and log into services. In addition, this technology enables businesses to provide more customized and improved products and services, conduct market research and product development activities, provide more tailored and relevant messaging and advertising, and offer a more secure shopping experience.

FRT also benefits consumers by boosting the economy. As a new technological frontier, FRT is attracting entrepreneurs and venture capital investment. Businesses of all kinds are finding that FRT is an exciting way to communicate with consumers and provide innovative tools, products, and services. As companies enter this market, consumers can expect new offerings. Our members are already exploring uses of this technology to improve and enrich consumers' lives, including ways to provide parents with tools to help manage their children's exposure and access to content on multiple platforms. Companies are also examining additional ways to use this technology to help secure customer interactions and prevent fraud. These examples are but a few illustrations of the rich array of uses and product offerings that can be supported by FRT.

III. Balancing innovation, consumer benefits, and privacy

The DMA recognizes that some uses of FRT may raise privacy issues that merit careful consideration. Yet privacy preferences continue to shift rapidly as consumers embrace new technologies. Without evidence of concrete harm to consumers, public policy should seek to address privacy concerns in a manner that preserves the consumer benefits of FRT and fosters an innovative marketplace. It is therefore essential to avoid new regulation or legislation that could limit the availability or expansion of FRT for those consumers who wish to use it. For example, blanket limitations on FRT business models or practices could deter companies' from entering the marketplace, thwart innovation, and inhibit competition. The Commission should not seek to limit the collection or uses of data obtained through FRT or impose prescriptive notice obligations or choice requirements. Instead, the focus should be on encouraging companies to design products that appropriately use FRT, and to provide consumers with information on their respective FRT practices and uses of this technology. Industry self-regulation and consumer education are the best ways to realize this goal.



A. Industry best practices and self-regulation

At such an early point in the development of FRT, companies should be encouraged to explore and design innovative tools and products that benefit consumers through the use of this nascent technology. The marketplace provides inherent incentives for companies to compete on privacy. Instead of imposing restrictive regulation on undefined harms or practices, the Commission should further encourage companies to consider the privacy implications associated with the use of FRT when they design and launch products. Already, companies are demonstrating sensitivity to consumer privacy concerns and preferences, evidenced by the safeguards integrated into FRT products. For example, some market research or mapping tools use FRT to blur faces or identifying information to obscure consumers' identities and other data points. Social media tools offer varying levels of choice to consumers and provide clear notices concerning the use of FRT. In addition, some FRT tools keep facial images separate from other identifying information so the data remains anonymous. These examples illustrate that industry is developing best practices because companies are mindful of consumer concerns and preferences.

The DMA believes that industry self-regulation is the most efficient and effective way to protect consumer privacy interests in this developing marketplace. Industry participants and other stakeholders have already developed industry guidelines and codes of conduct for uses of these technologies. In our experience, industry best practices and guidelines strike an ideal balance between privacy and innovation. Industry self-regulation is flexible and can adapt in a timely manner to changes in markets, business practices, advances in technology, and consumer preferences. This flexibility ensures that rules do not become outdated, which could inhibit innovation or allow technology to outpace consumer protections.

B. Consumer education

The DMA believes that consumer education, such as the December 8, 2011 forum convened by the FTC, also plays a critical role in helping consumers to understand how these products work and make informed choices about the products. The DMA supports such efforts to help consumers become more informed about the marketplace and encourages the FTC to explore ways to continue and expand these efforts.

IV. Conclusion

Industry is demonstrating that it is cognizant of privacy concerns associated with FRT and is addressing these issues through product design and deployment, but FRT remains a rapidly changing market. The Commission should continue to monitor developments and gather information as this promising market evolves. This approach strikes an appropriate balance that protects consumer access to the benefits created through FRT and supports the steps taken by industry to address consumer privacy.



The DMA appreciates the opportunity to submit these comments, and we look forward to continuing to work with the FTC to promote innovation and protect consumers in the FRT marketplace. Please contact me with any questions at (202) 861-2444 or lwoolley@the-dma.org.

Sincerely,

/s/

Linda Woolley, Esq.
Executive Vice President, Washington Operations
Direct Marketing Association, Inc.
1615 L Street NW, Suite 1100
Washington, DC 20036

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