July 14, 2011

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

RE: Dot Com Disclosures - File No. P114506

Intel Corporation commends the staff of the Federal Trade Commission (FTC) for their initiative to revise the "Dot Com Disclosures" document. The 2000 guidance document has provided essential compliance guidance to businesses for quite some time. However, given the incredible amount of innovation and technological development that have occurred in the marketing space since 2000, there are a number of key issues on which marketers do not know whether their online disclosures would be acceptable to FTC staff. We strongly believe that the time has come for an updating of the "Dot Com Disclosures" guidance, and thus support the staff's revision effort. In addition to soliciting written public comments, we also urge the Commission to hold a public workshop this year in order to solicit a full public exchange of views on these issues.

In response to the staff's request for comments on updating the business guidance document, Intel would like to offer the following views.

## I. The Computing Continuum

Intel is the leading manufacturer of computer, networking, and communications products. Intel has over 80,000 employees, operating in 300 facilities in 50 countries. In 2010, Intel had over $40 billion in revenue from sales to customers in over 120 countries. Intel develops semiconductor products for a broad range of computing applications. These products are some of the most innovative and complex products in history. For example, an Intel Core i7 processor has over 781 million transistors on each chip. It is our stated mission to serve our customers, employees, and shareholders by relentlessly delivering the platform and technology advancements that have become essential to the way we work and live. It is part of our corporate strategy to fulfill this mission by tackling big problems such as the digital divide, education, energy/environment, services, and health.

Intel's core product, the microprocessor, drives computers and servers, thus directly impacting the online experience of most individuals. Intel sees the future growth of technology moving toward a computing continuum. Specifically, computing is moving in a direction where an individual's applications and data will move as that person moves through his or her day. The person will wake to having data on a certain device in his or her home, will transition to a car that has access to those applications and data, will have access at work (which often will not be in a traditional office), and then will access the data and applications after work either at home or while socializing. To manage these applications and data, the individual will use a wide assortment of digital devices including servers, laptop computers, tablets, televisions, and handheld PCs.

The development of the computing continuum will have substantial benefits for consumers. One example illustrates this well. Soon, an individual's smartphone will be able to communicate with an individual's car (which some in Intel are calling a "computer on wheels"). The GPS functions in both devices will "know" that the devices are in the same location and that they are traveling at the same speed; thus, they will know that a specific individual is driving with the phone in the car. If the driver gets a text message, the message would not be displayed on the phone. Instead, the speaker in the car can ask the driver whether he or she wants the car's computer to read the text message. When the phone leaves the car, the devices will communicate with each other and the phone can again display text messages directly on the device.

The development of the computing continuum also allows computing to become personalized and contextually aware. Devices across the continuum will combine "hard sensing" and "soft sensing" inputs. For instance, "hard sensing" inputs would know whether a user is sitting in front of a laptop (via the laptop camera), whether an individual is sitting, walking, or running (through an accelerometer), whether an individual is chatting, commuting, or listening to music (through a device microphone), whether an individual is outdoors or indoors or whether it is light or dark (through sensors on the device), and the individual's location (through GPS). "Soft sensing" inputs could pull information from an individual's calendars, social networking activity, browsing habits, personal preferences, and device activity. For a simple example, a television will be able to determine which person is holding a remote control and can automatically change the interface and user experience to personalize it for each person. For a more complex interaction, a music player might determine that an individual is running, that it is the morning, and that the individual has been awake for at least 30 minutes. Based upon the user's preference for listening to music in the morning while running, the music player will automatically know the appropriate music to play. The aggregation of context over time and over devices will fundamentally change the way that consumers interact with their computing devices.

Intel encourages the FTC to consider the future growth of the computing continuum when updating and reissuing its "Dot Com Disclosures" document, as the multiple devices and screens that will be part of this technology development will dramatically change the way disclosures are created and received.

## II. User Experience and Interaction with Technology

In addition to our work on the development of the computing continuum, Intel also conducts research, through the work of technologists and social anthropologists in the Intel Labs group, to determine how consumers are and will be interacting with technology. Some of the findings of this group (particularly with regard to the development of television) may help FTC staff as they analyze how consumers will interact with advertising in the future and as they determine what steps businesses should take to comply with FTC law using these new mediums.[1]

Our user experience technologists predict that television in the future will be ubiquitous (consumers will be able to get content wherever and whenever they want it), personalized (for consumers, their family, and their social network), and social (individuals are inherently social, so interaction and communication with others will be a key part of entertainment). As part of this ubiquity, consumers are moving to what is being called a "three-screen" environment, in which the three screens are the PC, the television, and the mobile device. They do not view the devices as discrete platforms, as they can view TV content as easily on their phone as they can on the TV.

Additionally, it is predicted that by 2015 there will be over 500 billion hours of television content available for digital distribution, which will include mainstream television, Internet content, and user-generated content. At the same time, there also will be 15 billion devices that will be able to connect to the Internet. With the 500 billion hours of digital content that will be available, technology will need to develop to make television content indexable and searchable, similar to how Internet content can be found through search engines. For instance, an Intel Labs team in China has developed a trial program to index soccer matches shown on television. Their program makes the matches searchable by player or type of play, so that a viewer can choose to watch all shots by their favorite players or all penalty kicks in a match. This is one example of how our researchers predict that television in the future will no longer be a strictly linear experience.[2]

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[1] The discussions and statistics in this section are taken from the book "Screen Future: The Future of Entertainment, Computing, and the Devices We Love," authored by Intel futurist Brian David Johnson and published in 2010 by Intel Press.

[2] The non-linear future of television may affect when a disclosure must be made or how a disclosure may be perceived as clear and conspicuous. For example, if a consumer can choose to watch only a certain desired segment of a program by inputting particular search terms into a television search engine, guidance may be needed as to whether disclosures made in other parts of the program need to be repeated for each individual segment.

## III. General Disclosure Issues

Using information about the computing continuum and consumer interaction with technology as background, we believe there are a number of points relating to general disclosure issues that staff should consider when revising the guidance document. Intel provides a unique perspective to these issues. Historically, Intel has been an "ingredient" provider to other companies' technologies, which are in turn then directly sold by them to consumers. Thus, as we have advertised our "ingredients" in the marketplace, we have had to make a large number of disclosures and disclaimers, as often qualities such as performance and energy efficiency are outside our direct control and may vary by the original equipment manufacturer. Moreover, Intel has been at the forefront of using social media and other interactive methods of marketing our products. Accordingly, we spend a great amount of legal and compliance time determining which disclosures and disclaimers are necessary in advertising and how those disclosures should be made on new forms of technology. With the perspective we have gained from this background, we offer the following suggestions for staff to consider when revising the guidance document.

### A. Character and Text Limitations

The proliferation of mobile computing and new social networking platforms, in addition to providing substantially more ways for advertisers to reach consumers, also has created challenges for how advertisers can convey the necessary disclaimers and legal information required under FTC law. The original "Dot Com Disclosures" document does not address how to convey required information when space constraints of technology inherently create character and text limitations. In practice, we have observed some recurring scenarios for which we think additional staff guidance would be beneficial for businesses.

First, if a disclosure cannot be made because of space limitations, advertisers may refer consumers to a disclosure by using a mouseover, by jump-linking (for example, where clicking on a footnote number takes a reader immediately to the place where the footnote is located), or by hyperlinking a word or term in the advertisement. The original guidance document states that providing a hyperlink to a disclosure can be a clear and conspicuous practice, but it does not address newer forms of online interaction. We believe that these practices can be clear and conspicuous to the consumer, but concrete guidance and further examples from staff on the practices would be useful.

Second, if a marketer decides not to take advantage of one of the tools discussed in the preceding paragraph (such as a mouseover), and instead in the advertisement refers a consumer to another location when there is additional disclosure information, there is not definitive staff guidance on the term that would appropriately highlight to consumers that they should click on that term to read the additional disclosures. For instance, in a banner ad, should advertisers direct consumers to a URL by using the term "Important Information"? Or should advertisers use the term "Legal Information"? Or is neither sufficient? The original staff disclosure document gives some possible examples of terms that may or may not be

appropriate,[3] but we suggest that additional examples and more concrete guidance be given in the revision.

These specific issues point to an overarching need for guidance from the staff in light of the many different form factors and screens that are currently being used by consumers (and which will only be used more in the future). In the computing continuum world, the requirement for a "clear and conspicuous" disclosure means different things depending on the context. A statement from staff that any number of technological means, such as jump-linking or mouseovers or hyperlinks, would satisfy the disclosure requirement would help ensure that the agency's online disclosure guidance document can adapt to technological change and achieve appropriate consumer protection regardless of the device on which a disclosure is made. Additionally, we also suggest that any specific direction coming from the revised advertising guidance document should be consistent with the FTC's approach on how best to provide notice about an organization's privacy practices, as both efforts are examining similar issues.

### B. Other Specific Provisions in Need of Revision

In addition to the topics concerning character and text limitations, we would like to highlight three additional provisions of the original "Dot Com Disclosures" document that we believe are in need of revision. First, the original guidance document[4] states that in the context of a static webpage, there often is a need for disclosures to be repeated time and time again in order to ensure that they are properly understood by the consumer. This approach made sense when most online content was viewed via a browser on a PC. Today, however, many consumers do not view Internet content this way. They may look at a website on a mobile device or a tablet, or may access online content not through a website at all but rather through an application, or app. We believe staff should reconsider whether the guidance document's focus on repetition still makes sense given the myriad of devices and ways in which advertising can occur. Instead, we believe that the "prominence" requirement may actually be more important to consumers' understanding of disclosures than the "repetition" requirement. In addition to better protection of consumers, such a change in focus also would be more straightforward for marketers to convey throughout the computing continuum.

Second, the original guidance document states that businesses have an obligation to assess the effectiveness of disclosures made through hyperlinks.[5] While we agree that it is necessary for all businesses to have a monitoring and compliance program in place for their advertising, we are uncertain whether this specific requirement makes sense in today's marketplace. A detailed monitoring program often is not practical for small- and medium-size enterprises. Moreover, we do not know how a business could effectively track effectiveness of a disclosure when consumers view the same content (and disclosures) throughout the entire

[3] See pages 8-9 of "Dot Com Disclosures."
[4] See page 13.
[5] See page 9.

continuum of devices. Is a disclosure effective if it is viewed by a consumer on a PC but not a mobile device? Or what if a disclosure is made on an Internet-connected TV that is viewed by multiple members of a household? Instead of requiring a specific monitoring program for certain types of online disclosures, we suggest that staff consider urging businesses to have in place a general advertising compliance program.

Finally, we note that the original "Dot Com Disclosures" document discusses giving consumers the ability to print out terms and conditions.[6] Consumers today, however, simply do not print out these documents. Additionally, it would not be practical to enable such a functionality with content viewed on mobile and embedded devices. We suggest that this guidance be removed as it imposes impracticalities for businesses and does not offer any corresponding greater consumer protections.

## IV. Social Media and New Technology Issues

Intel has been at the forefront of using social media in our marketing efforts. For instance, Intel has a Social Media Center of Excellence, which is a cross-functional body of experts in legal, marketing, public relations, and web communications who come together to create guidelines, processes, strategies, and skill-building courses for how Intel employees can responsibly and respectfully use such social media tools as blogs, wikis, Twitter, Foursquare, and other social networks. Intel's social media guidelines are available in over 35 languages and are available on our public website. In addition, we have created a series of over 60 online courses, organized as an online university granting Intel employees a certification in Digital IQ.[7] Since its inception in 2008, more than 20,000 Intel employees have completed Digital IQ training.

The original "Dot Com Disclosures" document of course does not address the myriad complex legal issues that have arisen through the use of these social media tools. Lack of clear guidance on how to properly use social media in advertising has at times inhibited the use of this medium by businesses and certainly has caused much effort to be expended to determine proper legal compliance. We urge the FTC staff to make addressing social media issues a key part of their revision effort, and suggest the following areas of focus.

First, we have observed that when using Twitter as a marketing tool, some businesses are tweeting disclosures separately from the principal marketing message in order to save character space for the advertisement. Some in industry might find guidance on this approach useful, as there are obvious concerns as to whether the disclosures would be conveyed to consumers if only the original marketing message were to be retweeted.

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[6] See page 16.

[7] Sample topics include viral marketing, mobile marketing, China's social media landscape, and the importance of brand identity in social media.

Second, staff might consider addressing whether a company-created Twitter hashtag, handle, or username might create, by its very name, the need for disclosures. For example, if a company were to promote its products by initiating tweets with the hashtags "#bestintheworld" or "#bestwidget", would the use of those hashtags create the need for additional disclaimers?

Finally, we suggest that the staff examine how the use of dashboards affects a business's obligation to make disclosures or disclaimers. For instance, many consumers are aggregating information from a variety of sources onto dashboards, such as Mashable; as a result, consumers often are not even visiting the websites of individual businesses. What is an advertiser's responsibility to ensure that the appropriate disclaimers and disclosures are read[8] and are clear and conspicuous in the dashboard format?[9]

## V. Conclusion

Intel thanks the FTC for their foresight in recognizing that the tremendous amount of technological innovation and change that has occurred necessitates updated guidance to business on how best to apply FTC advertising law to online activities. We suggest that you commence a public workshop to further explore the topic, and we look forward to continuing our engagement with Commission staff on these important issues.

Respectfully Submitted,

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[8] The increasing use by consumers of dashboards to view information also lends force to the argument in Section III.B that a specific disclosure monitoring effort may need to be revisited.

[9] Although not directly related to the issues presented in the request for comments surrounding "Dot Com Disclosures," we suggest that FTC staff might consider providing business guidance on three other issues: (1) whether disclosures under the Endorsement Guides are needed when a business retweets another tweet (whether the act of retweeting constitutes an endorsement); (2) whether the act of a business "liking" a page or post on Facebook or retweeting on Twitter constitutes advertising for which further disclosures are necessary; and (3) whether special disclosures are needed for "in-app" purchases (purchases made once a mobile application is downloaded).