

Mobile Marketing Association Privacy Committee Statement on Behavioral Advertising and Mobile Devices for the FTC Roundtable “Rethinking Privacy”

On behalf of the Mobile Marketing Association, we thank you for this opportunity to share our views on the current state of self-regulation of behavioral advertising in the mobile space and to speak to future directions for mobile self-regulation as the Commission sets out to engage in its “rethink” of the privacy landscape around a host of important consumer protection issues.

The Mobile Marketing Association is a global, action-oriented association designed to clear obstacles to market development, to establish guidelines and best practices for sustainable growth, and to evangelize the mobile channel for use by brands and third party content providers. MMA members include over 700 agencies, advertisers, hand held device manufacturers, wireless operators and service providers, retailers, software and services providers, as well as any company focused on the potential of marketing via the mobile channel.

The MMA’s Privacy Work

To carry out its mission, the MMA has long recognized that establishing appropriate consumer privacy safeguards is critical to the realization of its goals. As adoption of mobile marketing increases it is important that consumers believe that their privacy is protected in order to enjoy the benefits of mobile marketing in a secure, trustworthy manner. It is also important that privacy safeguards be adapted to the technology specific to this medium, in a manner that acknowledges the importance of consumer expectations where marketers seek to communicate on this platform.

To oversee its ongoing work on privacy, the MMA has tasked a dedicated Committee to focus on outlining global best practices as they relate to protecting the consumer's private information. The first comprehensive document published by this mobile privacy committee was the MMA's Global Code of Conduct.¹ Among the key concepts discussed in this document in relation to mobile marketing are the concepts of (1) Notice; (2) Choice and Consent; (3) Customization and Constraint; (4) Security; and (5) Enforcement and Accountability. To further elaborate on the aspirational ideals of the Code of Conduct, the Privacy committee has also been chartered to work in greater detail on several important privacy issues relating to mobile advertising, including data storage, age appropriate data usage, and Location Based Services (LBS). Finally, the Committee draws on specific expertise in the area of behavioral advertising, and is currently evaluating what standards and implementations of those standards are best adapted for consumers in mobile applications.

The Committee has already identified some key considerations that will inform its work on behavioral advertising over the coming year, and as the Commission sets out its rethink we would like to take this opportunity to map out some of the considerations that our Committee has articulated as important to meaningful evaluation of this practice in the mobile space:

The Importance of Terminology

It has long been recognized that mobile is different than the online environment and the user experience it delivers, but the same can also be said for key terminology that might make its way into self-regulation, best practices Codes of Conduct or eventual legislation. The meaning and applicability of various terms

¹ The Code is available in English, Spanish and Portuguese at <http://mmaglobal.com/policies/code-of-conduct>.

and issues may vary in the parlance of the mobile environment. We encourage the Commission staff to consider any distinctions that exist in the following list of terms and considerations that our Committee has highlighted in their discussion of mobile behavioral advertising self-regulation. These terms/concepts include:

- Specificities of user data involved: individual vs. aggregate, personal vs. anonymous
- Geo/Location Data and Location-Based Services (LBS)
- The tracking of a device vs. the tracking of a person
- Mobile cookies; Network cookies vs. device cookies
- IP address and its limitations in a mobile environment
- Available device controls
- The definitions of “first party” and “third party”

As part of the Committee’s work over the coming year, one goal will be to flesh out the mobile-specific distinctions embedded in these critical concepts. Without a clear articulation of these concepts for the mobile space, neither self-regulation nor regulation would be effective. The MMA has also generated a comprehensive lexicon of key mobile terminology that Commission staff will undoubtedly find useful as the privacy rethink continues.²

Key Concerns and Issues

In addition to working through the vocabulary and concepts that must inform the mobile marketing privacy framework, the Committee is also focused on the self-regulatory dialogue underway with respect to online behavioral advertising, begun by the Commission’s own staff paper on the topic. In response to that preliminary thinking, the Committee considers the following issues critical to the meaningful accommodation of the privacy principles embodied in that document to the mobile space:

- New Data (Geo/Location, Device, etc.)

Discussions around “sensitive data” in OBA have increasingly included reference to geo-location as a data point that justifies elevated privacy protections or controls. It is important to identify exactly what data points (there are many variants) actually exist and evaluate them independently to identify which pose heightened risks to consumer privacy.

- Technology Fragmentation and “Newness” of Medium

Unlike the online space where dominant market players have ensured homogeneity of operating systems and browsers, the mobile space remains largely fragmented, with (for example), some devices focused at cost conscious users while others focus on high data consumers. For this reason, privacy solutions may not readily port from one device to another.

- Consumer Experience: Transparency and Control

While Notices and Choices are clearly relevant privacy controls in the mobile space, as discussed in our Code, the limited screen size and the reduced ability to leverage multiple messages in a single viewing experience offers new challenges across the varied mobile environments our consumers rely on today. New solutions adapted to this medium will need to be promoted as best

² See Glossary of Terms at <http://www.mmaglobal.com/glossary.pdf>.

practices to help spread workable implementations to the devices supported by various carriers that offer diverse browsing environments.

- Consumer Experience

The fact that consumers carry this device around with them matters. The use of mobile devices is one of the more intimate P2P communication tools, and as such consumer expectations may well vary as compared to more detached ‘online’ manifestations of the same marketing messages. The mobile device also can span a consumer’s private as well as business life and what constitutes an acceptable “intrusion” in one, may not be so in the other.

- Fact-based Decision Making: Limited real research availability yet

Unfortunately, there is a dearth of both public and private research into consumer expectations around the medium and around privacy relative to the medium. The discussion of privacy regulation for behavioral advertising should be informed by concrete research/education/analysis to ensure that consumers are truly being served and that trust will be reinforced through adoption of safeguards responsive to *actual consumer* preferences.

- Differences in Regulatory Environments

It is also important to recognize that the mobile environment and telecommunications generally are highly regulated industries, and discussion of best practice and self-regulation must account for and reflect the legal standards embedded in global telecommunications frameworks. These frameworks were not all designed to accommodate mobile data collection and sharing, so much work needs to be done to ensure that new mobile marketing developments can reflect both privacy best practices but also respect extant legal safeguards.

Next Steps

In light of these pressing considerations, the Privacy Committee of the MMA stands ready to work with the Commission as it evaluates the current state of privacy in mobile marketing. As a global stakeholder representing the major mobile marketing brands in the world, it is clear that our membership can bring great insight into the current discussions around behavioral advertising in this medium and we look forward to ongoing opportunities to share the work of our Committee and the evolution of our best practices project for mobile behavioral advertising in the coming year.

Respectfully submitted,

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