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July 11, 2012

Honorable Donald S. Clark  
Secretary  
Federal Trade Commission  
Room H-113 (Annex Y)  
600 Pennsylvania Avenue NW  
Washington, DC 20580

Re: In Short Workshop; FTC Project No P114506

Dear Secretary Clark:

The Retail Industry Leaders Association (RILA) is responding to the Federal Trade Commission's (FTC) request for comment on its recent workshop, In Short: Advertising and Privacy Disclosures in a Digital World. RILA appreciates the opportunity to share our thoughts on the FTC's decision to update the Dot Com Disclosures guidance document. The retail industry is keenly aware of the importance of consumer privacy and the need for clear and consistent information that enables consumers to understand how companies are handling their information. Consumer privacy is vital to securing and maintaining consumer trust, and retailers have a long history of responding to consumer privacy concerns.

By way of background, RILA is the trade association of the world's largest and most innovative retail companies. RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. Its members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

RILA supports the FTC goal of updating the Dot Com Disclosures by making privacy disclosures more clear and meaningful for consumers, consistent with our previous comments on the 2011 Preliminary FTC Staff Report<sup>1</sup>. We urge the Commission to ensure the updates are clear, flexible, and consistent with other agencies and White House initiatives.

### 1. Clarity

Businesses need clear rules regarding privacy disclosures. RILA urges the Commission to use the Dot Com Disclosure updates to provide clear guidance to businesses, thereby avoiding circumstances where companies must try to determine FTC policy by reading "between the lines" of FTC enforcement actions.

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<sup>1</sup> A copy of RILA's comment letter, dated February 18, 2011, is available here:  
<http://www.rila.org/email/RILAFinalFTCLetter021711.pdf>

For example, RILA seeks clarification regarding short-form privacy notices. At the Workshop, researchers from the University of California proffered that consumers understand privacy notices more easily if they are in short-form or layered policies, which link to the complete policy. However, businesses that provide short-form policies may be liable for omitting terms the FTC considers material. In previous comments to the Commission, we requested similar guidance regarding what is “material” in connection with retroactive changes to privacy notices. The requested guidance was included in the FTC’s privacy report released earlier this year, and while it was brief, it was certainly a step in the right direction. We would appreciate similar guidance regarding the information that must be included in short-form policies.

## 2. **Flexibility**

RILA also recommends that the Commission build flexibility into the guidelines in order to accommodate ever-changing technology and consumer experiences and expectations, as well as different business models and different ways that companies connect with consumers.

Today’s busy consumers fully expect retailers to be available to them through multi-channel environments. To meet ever higher expectations, many retailers are now converging brick-and-mortar-outlets, eCommerce sites, social media sites, and mobile applications to deliver a single, unified marketplace. The FTC should ensure the guidance is flexible in terms of timing and delivery to ensure it is appropriate for both online and offline channels. A one-size-fits-all approach cannot account for nuances that may hinder a company’s ability to protect consumers and that may stifle innovation.

## 3. **Consistency with Privacy Initiatives of Other Entities**

Third, we urge consistency and coordination among the FTC, Department of Commerce, and Federal Communications Commission in development of the Dot Com Disclosure Guidelines. Federal government guidance is still being developed as evidenced by the Commerce Department’s National Telecommunications & Information Administration (NTIA) multi-stakeholder codes of conduct initiatives, including the Mobile initiative beginning in July 2012, and the FCC’s mobile policies such as the Location-Based Services initiative. Coordination among all federal (and state and local) agencies that regulate this area is critical to developing clear, consistent programs that can be understood and implemented by companies and consumers.

RILA members support self-regulatory models and accountability mechanisms. These measures continue to be the most appropriate and effective framework for privacy protection. The retail industry stands ready to assist the FTC in its development of voluntary Dot Com Disclosure guidelines, and it is our hope that the FTC will support and encourage industry in what we have already accomplished and continue to provide. Retailers understand the importance of clear and meaningful privacy disclosures, and have long been committed to doing this well. To that end, RILA members support updates that are clear, flexible, and consistent with other privacy initiatives.

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RILA appreciates the opportunity to share its comments with the Federal Trade Commission on the Dot Com Disclosure guidelines. We would be pleased to discuss RILA's views with you further at your convenience. Should you have questions, please contact me at [doug.thompson@rila.org](mailto:doug.thompson@rila.org) or 703-600-2065

Sincerely,



Doug Thompson  
Vice President Government Affairs  
Retail Industry Leaders Association