

August 10, 2011

*Via electronic filing*

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

Re: IAB's Comments on "Dot Com Disclosure" Business Guide Publication, P114506

Dear Secretary Clark:

Although the Internet ecosystem has undergone dramatic and transformative change since May 2000 when the Federal Trade Commission first issued the Dot Com Disclosures (the "Disclosures"), the core principles of the Disclosures still remain the same—advertising, whether it occurs online or offline, is subject to the same rules and framework. Online advertising lends itself just as readily as offline advertising does to the basic principles of truth in advertising, claim substantiation, and fairness, and this framework should be applied to all advertising equally, regardless of medium.

The Interactive Advertising Bureau ("IAB") provides these comments in response to the Federal Trade Commission's ("FTC" or "Commission") request for comments regarding updating and reissuing its Dot Com Disclosure business guidance publication. As the Commission contemplates providing updated guidance to the online advertising community, we ask the Commission to consider the tremendous value created by online advertising for both consumers and the economy. The explosion in online commerce and new product and service offerings during the past eleven years has largely been driven by online advertising. During this period, online advertising has been successfully governed by the framework set forth in the Disclosures. The Commission should continue to promote broad general guidance for advertising as a whole; any changes to the Disclosures should consist only of refinement and updating of the existing framework.

The IAB ([www.iab.net](http://www.iab.net)) is comprised of more than 500 leading media and technology companies who are responsible for selling 86% of online advertising in the United States. The IAB is dedicated to the growth of interactive advertising, and works to educate marketers, agencies, media companies, the business community, and policy makers about the value of interactive advertising to companies both large and small. Founded in 1996, the IAB is headquartered in New York City, with offices in Washington, D.C. and San Francisco, CA.

IAB asks that the Commission consider the following key points while reconsidering the Disclosures:

## **I. Online advertising generates significant consumer and economic benefits**

For almost two decades, online advertising has been the essential economic driver that has fueled Internet growth. Advertising subsidizes websites' delivery of innovative tools and services used by consumers and businesses to connect, communicate, and contribute to the continued evolution of the Internet. This advertising-based model continues to drive Internet expansion and benefit consumers. As a result of this expansion and the unique technical attributes of the Internet, online advertising has become a vast and complex business ecosystem.

Internet advertising is a thriving sector of the American economy. According to a study entitled *Economic Value of the Advertising-Supported Internet Ecosystem* conducted for IAB by Harvard Business School Professors John Deighton and John Quelch, e-commerce and online advertising contribute \$300 billion each year to the U.S. economy and employ 3.1 million Americans.<sup>1</sup>

The revenue generated by online advertising supports the creation and entry of new businesses, communication channels (*e.g.*, micro-blogging sites and social networks), and free or low-cost services and products (*e.g.*, email, photo sharing sites, weather, news, and entertainment media). Online advertising enables consumers to compare prices, learn about products, and find out about new local opportunities. Consumers value ad-supported services and products and benefit from the diversity of online companies. The Commission should take care to avoid unintentionally stifling these consumer benefits and positive contributions to the economy.

## **II. The existing advertising framework continues to protect consumers and should remain in place**

The Disclosures make clear that the basic principles of reputable and fair advertising—that it must be truthful and not misleading, that claims must be substantiated, and that advertisements cannot be unfair—apply equally to advertising on the Internet. The IAB fully supports equal application of these cornerstone principles to online advertising.

The IAB believes that the Internet, in fact, is a medium uniquely suited to providing consumers with comprehensive information in conjunction with the purchase of products and services. Online advertising is distinguished from offline advertising by its space constraints. Because online display advertising generally appears next to website content, there is little opportunity for full-page advertisements such as those found in print media. Display advertising typically must fit into standardized spaces with very small dimensions. For sponsored links, search engines generally permit a title line of 25 characters, two lines of text with 35 characters per line, and a display link of up to 35 characters. Social networking sites also impose length restrictions. For example,

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<sup>1</sup> Deighton & Quelch, *Economic Value of the Advertising-Supported Internet Ecosystem*, at 4, 12 (June 10, 2009), available at <http://www.iab.net/media/file/Economic-Value-Report.pdf>.

Facebook has limits of 25 characters for the title and 135 characters for the body of an advertisements, and Twitter posts (or “tweets”) are limited to 140 characters each—shorter than many sentences.

While it would appear that such space constraint would be ineffective or limited in promoting goods or services, Internet advertising is effective within these space constraints because of the interactive nature of online media. There are numerous common interactive features that allow Internet users to expand available information or seek new information from just a few words that appear in an advertisement. In an era of high-speed Internet connections, such additional information appears virtually instantly and without limits. Common interactive features include linked text or graphics, back and forward browser buttons, expandable text boxes, and scroll bars. Internet users are familiar with these types of interactive features and are adept at navigating them rapidly.

These same interactive features can be used to provide detailed and specific information to consumers, to educate consumers in advance of purchase, and to provide disclosures required by law. These features closely follow the mandates in the Disclosures, which call for web pages to use “text or visual cues” to encourage consumers to scroll, to use proximate and clearly labeled hyperlinks, and to rely upon the technology that best provides relevant messages to consumers. The Disclosures recognize that the flexibility of Internet technology can be harnessed to honor the FTC’s mandate that complete information be provided to consumers. As the Disclosures themselves point out in one example, “[h]yperlinked disclosures may be particularly useful if the disclosure is lengthy or if it needs to be repeated.”<sup>2</sup> This remains true today.

IAB publishes a number of advertising guidelines setting forth best practices for its members, including guidelines for pop-up advertising and rich video. These guidelines are geared to help consumer perception of advertising by promoting consistency in their use, specifications, and labeling and encouraging consumer confidence in interactive advertising. This consistency, in turn, helps foster legitimate online advertising and marketing and helps build trust in the medium while ensuring that online commerce can continue to thrive and grow.

Moreover, technology continues to evolve to address some of the specific concerns expressed in the Disclosures. The Disclosures, for example, advise businesses to avoid web page formats that discourage scrolling, opting instead to use the visual design of the page to encourage consumers to scroll down if necessary for more information.<sup>3</sup> This concern has been addressed by many businesses through use of the now widespread practice of allowing a consumer to move to the next screen to continue a transaction only after scrolling to the bottom of relevant text. This type of innovation grew out of industry’s desire to come up with a technological solution to a common problem and was incentivized by the market, not mandated by regulation. IAB believes that this type of organic solution is greatly preferable to the inflexibility of mandated change.

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<sup>2</sup> Disclosures, p. 8.

<sup>3</sup> Disclosures, p. 7.

### **III. There should be no disparity between requirements imposed on online and offline advertising**

IAB is dedicated to the growth of the interactive advertising marketplace. To do so, IAB knows that it and its members must foster a marketplace built upon consumer trust. Reputable participants in the advertising ecosystem, such as IAB's members, already have the incentive to provide fair and truthful advertising to consumers. The IAB believes that consumers and industry both benefit from consistent principles being applied to all advertising media, while uncertainty and disparate application only serves to confuse the industry, slow advertising spending, and stop the flow of beneficial information to consumers.<sup>4</sup>

IAB only asks for the same playing field to be applied to all forms of advertising, regardless of medium. The Commission should promote broad general guidelines for advertising as a whole while letting the expertise within the industry develop the specific means of compliance. In the constantly evolving medium of interactive advertising, applying unique and highly proscriptive rules to certain media will restrict the entire advertising ecosystem, especially as advertisers increasingly incorporate many different advertising media into single campaigns.

### **IV. Industry self-regulation continues to represent the best way forward**

Consumers have benefited and continued to benefit from the flexibility and adaptability of self-regulatory programs, which have enabled businesses to respond to technological advances and consumer expectations far more quickly than legislative and regulatory bodies. Self-regulation continues to be the appropriate approach for addressing specific concerns with online advertising against the broader backdrop of general advertising principles promoted by the Commission.

Unlike inflexible formal regulations, which can become quickly outdated in the face of evolving technologies, self-regulation provides industry with a nimble way of responding to new challenges presented by the evolving Internet ecosystem. Formal rules could also serve as a disincentive to the marketplace to innovate.

Self-regulation has effectively addressed concerns related to online behavioral advertising, an area of significant interest to the Commission. IAB was centrally involved with the development of the *Self-Regulatory Principles for Online Behavioral*

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<sup>4</sup> For example, in 2009, the Food and Drug Administration cited several companies for their online advertising practices related to advertising pharmaceuticals online. *See, e.g.*, Shefali Doshi, FDA Division of Drug Marketing, Advertising, and Communications, Letter to Fadwa Almanaky, Bayer Healthcare Pharmaceuticals, Inc. (undated). These enforcement actions had the effect of preventing many pharmaceutical companies from fully embracing online advertising, with the unfortunate consequence that consumers have less access to information about prescription drugs that may benefit them. With millions of American adults seeking health information online, this outcome is detrimental to public health, as these people would benefit from receiving full and fair information about relevant products.

*Advertising* (“Principles”), which was released in conjunction with the five other trade associations that comprise the Digital Advertising Alliance (“DAA”). This effort has developed a framework and a platform to address many of the issues raised by the Commission in the area of online behavioral advertising, including matters of transparency and choice.

## **V. Mobile is a rapidly evolving area that should be allowed time to develop**

The Commission has requested that the public discuss emerging technologies. One area that has wholly emerged since publication of the Disclosures is mobile advertising. Mobile marketing and advertising is a nascent industry that is just now beginning to enter the mainstream but has already become an important contributor to the economy. IAB cautions that rigid regulations at this time would be premature and could stifle the growth of mobile advertising.

Recognizing the importance of this medium, the IAB has founded the IAB Mobile Marketing Center of Excellence (“MMCOE”), which is charged with driving the growth of the mobile marketing, advertising, and media marketplace. IAB devotes resources to market and consumer research, mobile advertising case studies, executive training and education, supply chain standardization, creative showcases and best practice identification in the burgeoning field of mobile media and marketing. Members of the MMCOE Board of Directors include representatives from AT&T, Google, Microsoft, Millennial Media, Mojiva, New York Times, The Weather Channel, Time Inc., Univision, Yahoo! Inc. Supporting members include 24/7 Real Media, BabyCenter, Cars.com, CNN, Disney Interactive Media Group, Federated Media, IDG, Jumptap, NBC Universal, Nexage, Pontiflex, The Huffington Post, Tremor Media, Unicast, and Vdopia.

This dedicated force of industry experts is working together to promote best practices in the mobile advertising marketplace and in April 2011 announced the launch of a set of major initiatives.<sup>5</sup> Specifically, in 2011 MMCOE plans to promote and drive the success of the mobile market by:

### Unifying

- Establishing standard and best practices to help industry participants meet buyer expectations for congruent and reliable metrics, formats, and back-end systems for mobile advertising;

### Educating

- Helping marketers learn about mobile marketing strategy and tactics;
- Helping sellers of mobile advertising understand the buying community’s needs, desires, and concerns;

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<sup>5</sup> Press Release, Mobile Marketing Center of Excellence Announces Aggressive 2011 Agenda and Six New Supporting Member Companies (Apr. 27, 2011), *available at* [http://www.iab.net/about\\_the\\_iab/recent\\_press\\_releases/press\\_release\\_archive/press\\_release/pr-042711](http://www.iab.net/about_the_iab/recent_press_releases/press_release_archive/press_release/pr-042711).

Leading

- Acting as a guiding force for the mobile marketing industry, helping it understand itself better (market size, creative, technology evolution) and recognizing and celebrating excellent mobile advertising;

Evangelizing

- Educating and exciting marketers and agencies about the possibilities of mobile marketing both today and going forward.

With education efforts such as those of the MMCOE and related government agencies including the FTC, consumers' understanding of and trust in the entire mobile ecosystem will continue to grow.

Enforceable self-regulatory efforts developed by industry are the key to addressing the Commission's concerns regarding advertising in the mobile space. In a time when technology is advancing rapidly, self-regulation can keep pace with consumers' evolving expectations without hindering mobile advertising from reaching its full potential. We urge the Commission to allow self-regulation to fully develop in this arena before reflexively imposing regulations on a nascent technology.

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We thank you for the opportunity to submit these comments and look forward to working closely with the Commission on these important issues. Please do not hesitate to contact me with questions at 202-253-1466.

Sincerely,

/s/

Michael Zaneis

Senior Vice President & General Counsel

cc: Stuart Ingis, Esq., Venable LLP  
Kelly A. DeMarchis, Esq., Venable LLP