



February 18, 2011

**VIA ONLINE SUBMISSION**

Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

**Re: *Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Businesses and Policymakers, Preliminary Staff Report***  
**File No. P095416**

Evidon would like to thank the Federal Trade Commission (“FTC”) for allowing it the opportunity to submit comments on the FTC’s preliminary report on a proposed framework for consumer privacy. We believe the report raises important issues related to the use of data about consumer behavior on the web, and welcome the opportunity to provide our unique perspective. Our comment gives an overview of Evidon’s role and experiences in providing increased transparency for consumers and businesses today, and recommends that the FTC carefully consider emerging self-regulatory technologies before prematurely endorsing one type of universal choice mechanism for online behavioral advertising.

**About Evidon**

Evidon (formerly the Better Advertising Project) was founded specifically to support the Online Behavioral Advertising (“OBA”) self-regulatory program. Our company exists to promote transparency, consumer control, and accountability across the online advertising market, and we are committed to creating technology solutions that realize these principles. The Evidon founding team leverages a range of deep experience to address the privacy, business, and ad technology challenges that have held back the deployment of credible consumer tools in the past.<sup>1</sup> While data collection and use activities across the online advertising ecosystem can be difficult to understand, it is our belief that dedicated focus and technology will make these connections transparent and allow the market to communicate with consumers in a simple and effective manner. After over twelve months of research and development, our platform is now live and serving billions of notices each month.

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<sup>1</sup> Scott Meyer, Evidon’s CEO, was the CEO of About.com and the General Manager of the New York Times on the Web, two of the largest publishers on the Internet and early pioneers of first party behavioral targeting. Ed Kozek, Evidon’s CTO, was the VP of Engineering at Right Media, the first ad exchange, which revolutionized the way online ads are bought and sold. Colin O’Malley, Evidon’s VP for Business Development and Privacy, was the VP for Strategic Partnerships and Programs at TRUSTe, where he developed and brought to market self-regulatory programs in email and downloadable software. Lydia Parnes, a Partner at Wilson Sonsini Goodrich & Rosati, is Evidon’s outside counsel advising on privacy and regulatory matters. For more information on Evidon’s management and advisory teams, see <http://www.evidon.com/about/team>.



In July 2010, Evidon became the first independent provider of technology powering in-advertisement notice of behavioral advertising with opt-out choice, launching with several major advertiser campaigns, including Bank of America. In October 2010, after an extensive 9-month evaluation, the cross-industry coalition of five trade associations<sup>2</sup> chose Evidon to provide the technology powering the self-regulatory enforcement programs of the Better Business Bureau and Direct Marketing Association. Evidon was also the first technology platform chosen by the Digital Advertising Alliance as an Approved Provider of compliance services and endorsed as a standard method for providing evidence of proof of compliance with self-regulatory notice and choice principles. Evidon has led the market in several industry-wide initiatives, including the Open Data Partnership ([www.opendatapartnership.com](http://www.opendatapartnership.com)), which provides consolidated preference management for consumers across companies.

### **Why Online Behavioral Advertising Works**

Online behavioral advertising plays a critical role in the modern web browsing experience, both by delivering advertising content that is of interest to consumers and by supporting publishers that provide all forms of content. When executed responsibly, online advertising provides information that is relevant to the consumer, informs them about products and services of value, and drives savings. Multiple studies have validated consumer interest in relevant advertising and annoyance with irrelevant advertising. Response rates to targeted versus untargeted advertisements also confirm that consumers are, on average, many times more likely to engage with advertising messages that are relevant to their interests.

Advertising has remained the primary lifeline for the great majority of publishers online, especially as other means for support have remained largely elusive. According to a behavioral advertising study sponsored by the Network Advertising Initiative (“NAI”) and conducted by Howard Beales, the average cost per 1,000 impressions (“CPM”) for behavioral ads is over twice that of standard ads, with enormous implications for publishers.<sup>3</sup> Large and small publishers alike benefit from OBA and can utilize its increased revenue to provide free content to consumers. For smaller publishers in particular, OBA facilitates the automated pooling of audience across websites in marketable groups, presenting an alternative to the individual site sponsorship models that smaller sites are ill-equipped to provide. OBA therefore disproportionately funds the long tail of content on the web. Overall, OBA has a clear impact in providing consumers with free content that they might otherwise have to pay for, and content that might otherwise disappear entirely.

OBA provides significant value to advertisers as well. Advertisements targeted based on behavioral information have been demonstrated to generate conversions at twice the rate of non-behavioral ads and overall advertiser revenue generated from utilizing OBA is over 50%

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<sup>2</sup> The cross industry coalition consists of the AAAA, the ANA, the BBB, the DMA, and the IAB.

<sup>3</sup> HOWARD BEALES, *THE VALUE OF BEHAVIORAL TARGETING 8* (2010), *available at* [http://www.networkadvertising.org/pdfs/Beales\\_NAI\\_Study.pdf](http://www.networkadvertising.org/pdfs/Beales_NAI_Study.pdf).



higher than revenue from traditional display ads.<sup>4</sup> By multiple measures, advertisers expect to benefit by increased effectiveness on a per advertisement basis, and also from the freedom to be more selective about where and to whom their messages are presented. All of this stimulates additional economic activity, promotes new forms of innovation, and sets the stage for smaller companies with very specific messages to find a voice in a medium that might otherwise be dominated by the largest advertisers.

## **Transparency & Accountability: The FTC’s Draft Principles and Evidon’s View and Role**

New techniques are required to enable the online advertising industry to provide consumers with increased transparency and control. Evidon’s Assurance Platform, known as Evidon InForm, is only the first stage in what we see as an ongoing process to serve these goals. Combined with our Open Data Partnership, Evidon’s technical innovations provide consumers with increasing levels of notice, choice, and access.

### Providing Increased Notice and Choice: Evidon’s Assurance Platform – Evidon InForm

The FTC has made it clear that providing consumers with clear notice and simplified choice are key components of the agency’s proposed data privacy framework. Evidon’s Assurance Platform is an effective means for meeting these goals. Information presented through the platform allows consumers to make informed and meaningful decisions about data collection and use.<sup>5</sup> The platform is comprised of three components:

- A *transparency component* that notifies a consumer viewing an ad that the advertisement was delivered using online behavioral data and identifies the data providers involved in its delivery.
- A *choice component* that provides consumers choice, namely, an easy method for consumers to opt-out of the collection or use of behavioral information on a company-by-company basis.
- A *reporting tool* that provides the advertising agency, advertiser, or network insight into consumers’ interaction with the platform and evidence of compliance with self-regulatory principles.

Initially, the Assurance Platform is presented to consumers through an “Advertising Option Icon” displayed in the corner of ads or on web pages. Clicking on this icon brings up an overlay window with more information about the ad, including links to educational information about interest-based advertising, the advertiser’s privacy policy, and opting-out of data collection or use. One click takes consumers to an Evidon webpage where they can see which companies may have been involved in the collection or use of their data, and can opt-out of data collection or use from those companies. Consumer use of the platform is anonymously logged, and Evidon provides a reporting tool that gives advertisers insight into consumers’

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<sup>4</sup> *Id.* at 12; PONEMON INSTITUTE, ECONOMIC IMPACT OF PRIVACY ON ONLINE BEHAVIORAL ADVERTISING 4 (2010) [hereinafter PONEMON STUDY], available at [http://www.evidon.com/documents/OBA\\_paper.pdf](http://www.evidon.com/documents/OBA_paper.pdf).

<sup>5</sup> Most companies honor opt-out of data use; many honor opt-out of data collection as well.



interaction with the platform. This reporting provides evidence of compliance with self-regulatory principles on an advertiser-by-advertiser basis.

Evidon's Assurance Platform meets the FTC's notice and choice goals in several ways. First, the platform provides streamlined notice by presenting information on data collection to consumers through uncluttered and easy to understand in-ad notices and web pages. Importantly, this notice is provided when the consumer is viewing an individual advertisement or web page and is tailored to the consumer's particular experience at that time. Second, the platform provides simplified choice through its ease of use: the icon is easily recognizable, and will become even more so as it is adopted throughout the industry, and the opt-out option is easy to find. Choice is simple because the opt-out process is uniform across browsers, and for all identified ad networks, data providers, and other service providers.<sup>6</sup> Third, the notice and choice provided by Evidon's Assurance Platform is timely because it appears in the ad or on the web page at the same time it is delivered to the consumer. Finally, as industry adoption and consumer awareness of Evidon's Assurance Platform and similar programs increases, consumers will be able to use the advertising option icon as a quick indicator that a particular advertiser is compliant with the industry's self-regulatory principles.

Clients are increasingly deploying Evidon's Assurance Platform to communicate with consumers about more than just OBA data practices. From our initial launch, companies that would not be described as OBA firms, such as the research firm Safecount, have insisted on being included in disclosures wherever possible. Our notice interfaces allow for the presentation of relevant OBA firms, and then the separate itemization of other types of firms, with a breakdown of each of their business models and data practices, along with opt-out tools if applicable. Many of our clients are also choosing to present consumers with the icon, including notice and choice tools, on advertising campaigns and web pages that do not necessarily have an OBA component. The commercial market is extending notice and choice tools beyond the standards required by the industry's self-regulatory program and the Evidon Assurance Platform is becoming a technology framework for rich dialogue about data use more broadly, and will continue to evolve to meet changing consumer and regulatory requirements.

### Providing Increased Access: The Open Data Partnership

As mentioned by the FTC, many consumers may prefer to edit the information ad networks have associated with their browser, rather than opt-out of data collection or use entirely.<sup>7</sup> The Open Data Partnership ("ODP") enables this profile management for several industry-leading data collectors, such as BlueKai, Lotame Solutions, eXelate, Bizo, 33Across, and Turn. The key feature of the ODP is a centralized advertising preferences manager that allows consumers to see what information companies have collected about their interests, and

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<sup>6</sup> The Evidon Assurance Platform currently gives consumers the ability to opt-out of any network that may have been involved in the collection of data for the advertisement. Beginning on March 1, 2011, the platform will allow consumers to opt-out of over 175 ad networks, data providers, and service providers, and we expect that number to grow.

<sup>7</sup> FED. TRADE COMM'N, PROTECTING CONSUMER PRIVACY IN AN ERA OF RAPID CHANGE: A PROPOSED FRAMEWORK FOR BUSINESS AND POLICYMAKERS, PRELIMINARY FTC STAFF REPORT 68 (2010), *available at* <http://ftc.gov/os/2010/12/101201privacyreport.pdf>.



to edit that information or opt-out of collection or use. The partnership is free of charge for participating companies and the preference manager is easily accessible from the opt-out page that consumers can access via the in-ad notice provided by Evidon's Assurance Platform. The ODP has only recently gone live, and Evidon expects broad participation from reputable OBA providers moving forward, especially as adoption of Evidon's Assurance Platform increases.

### Approach Validation: Consumer Testing

Evidon's testing of our Assurance Platform includes both organized studies managed by third party research firms and ongoing evaluation of raw data measuring consumer interaction with our notices and control tools. Both efforts provide feedback on how we are measuring up against our goal of providing consumers with an easy and meaningful experience and help shape the development of future products and features.

Evidon commissioned a research study by Dynamic Logic in the Fall of 2010 to learn what consumers are looking for when they engage with a privacy notice on an advertisement, and the extent to which the Evidon transparency and control experience meets these expectations. The study did not attempt to measure mainstream interest in privacy, but rather to evaluate in more detail the interests of consumers who are already inclined to be proactive when given the opportunity to learn more about online data uses. According to the study, of consumers that click on the Advertising Option Icon and interact with Evidon notices, 76% want to see all companies involved in targeting the ad to them, and 67% feel more positive towards brands that give them control, including opt-out control.<sup>8</sup> Together, these metrics support the proposition that consumers interested in taking a hands-on approach to their data want more than a simple "on-off" solution – they want substantive notice regarding the companies responsible for targeting ads and content to them, and they want to have the ability to control their relationship with these companies individually. Evidon's Assurance Platform gives consumers these options.

In the four months since the launch of the Advertising Option Icon in October of 2010, Evidon has delivered over 11 billion in-ad notices to consumers through our Assurance Platform. Over 450,000 consumers have clicked through on icons served by Evidon in four months of production at scale. Of those, approximately 15,000 have requested opt-outs through our platform, with each consumer making an opt-out decision frequently requesting opt-out from more than one company.<sup>9</sup> These engagement metrics, collected in a very short period of time, reflect an order of magnitude shift in the availability of information about how data is used and the choices consumers are able to make. No longer is information presented in a generalized format, buried in privacy policies.

At the same time, Evidon firmly believes that opt-out rates should not be the primary measurement of success for the self-regulatory program. Multiple studies have validated the

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<sup>8</sup> Better Advertising & Dynamic Logic, Consumer Interactions with In-Ad Notice 7 (Nov. 3, 2010), [http://cdn.evidon.com/misc/consumer%20impact%20of%20ad%20notice%2011\\_11.pdf](http://cdn.evidon.com/misc/consumer%20impact%20of%20ad%20notice%2011_11.pdf).

<sup>9</sup> Each opt-out request for each company is counted separately, so there may be several opt-out requests counted for each consumer.



notion that consumers prefer relevant content and advertising, and it is also clear that targeted advertising supports the economic model for content creation that, in turn, provides significant benefit to consumers. There is no reason to assume that consumers, once afforded transparency and control, will react by opting-out of the system that powers customization and content creation. In fact, Google recently revealed that only 1/8 of consumers that view their profile information on the Google Ad Preferences Manager elect to opt-out.<sup>10</sup> Similarly, only approximately 15% of consumers who click on the Advertising Option Icon for Evidon's Assurance Platform continue on to the opt-out page, despite "More information and opt-out options" being the first link. Ultimately, success should be measured by the degree to which access and control tools are produced in a credible fashion, and the extent to which these tools are offered to the consumer at the point of collection and use.

### **Do Not Track: Potential Issues Created by a Generic Browser-Based Opt-Out Mechanism**

The FTC Report proposes a universal choice mechanism for OBA to address perceived concerns that existing mechanisms are insufficient, unclear, or largely unknown. Specifically, the Report suggests a persistent web browser setting – also referred to as a Do Not Track mechanism – as the likely most practical means of implementing this proposal. Evidon is concerned, however, that if the FTC endorses a generic, browser-based, opt-out switch, consumers, advertisers, and ad-supported publishers may not realize the benefits of innovative, and perhaps superior, privacy technologies that may develop in the marketplace. In effect, the FTC's endorsement of a browser-based choice technology could shift responsibility away from companies involved in the OBA market, a result clearly inconsistent with the principles of "privacy by design." Therefore, the FTC should carefully consider the risks inherent in selecting a universal choice mechanism prematurely and should allow competition to develop the best solution that meets consumers' data privacy demands, is compatible with evolving online business models, and rewards companies that are making significant investments in credible self-regulatory technologies.

We are confident that competition will, indeed, foster the most effective OBA privacy solution because advertisers and ad networks have a strong incentive to provide increased transparency to consumers and drive the responsible development of OBA. As mentioned above, the Dynamic Logic study demonstrates that privacy-conscious consumers feel more positive towards brands that give them increased transparency and control. Additionally, the Ponemon study shows that 98% of advertisers restrict spending on behavioral advertising because of perceived privacy concerns, and that the average revenue lost per advertiser because of this reduced spending is over \$30 million.<sup>11</sup> While these results may not implicate ad networks directly, advertisers rely on ad networks to meet their own transparency obligations, and have begun to direct their ad spending towards networks that help them meet this

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<sup>10</sup> Comments of Google, Inc. on Department of Commerce Internet Policy Task Force Report, Commercial Data Privacy and Innovation in the Internet Economy: A Dynamic Policy Framework, Docket No. 101214614-0614-01 (Jan, 28 2011), [http://www.ntia.doc.gov/comments/101214614-0614-01/attachments/FINALCommentsonDepartmentofCommercePrivacyGreenPaper%20\(3\).pdf](http://www.ntia.doc.gov/comments/101214614-0614-01/attachments/FINALCommentsonDepartmentofCommercePrivacyGreenPaper%20(3).pdf).

<sup>11</sup> PONEMON STUDY, *supra* note 4, at 5-6.





obligation.<sup>12</sup> When advertisers feel the pressure, everyone in the ad ecosystem is incented to cooperate, lest their access to revenue dry up. Advertisers and ad networks thus both have strong incentives to address perceived privacy concerns with OBA in order to capitalize on its increased efficiency and revenue potential.

While strong incentives exist to resolve perceived privacy concerns with OBA, industry-wide adoption takes time. As the FTC Report notes, several companies, including Evidon, have only just recently launched new tools that give consumers the type of enhanced transparency, choice, and access that the FTC has been advocating for. Nevertheless, early results from these initiatives, as described above, are promising, and Evidon and others are in vigorous competition to provide the most efficient and cost-effective solution that meets the demands of consumers and the industry.

While industry-wide OBA privacy solutions are becoming more prevalent, consumers already have access to myriad established technologies that meet individual privacy demands. Evidon, for example, provides a free web browser add-on called Ghostery that gives consumers increased transparency and choice by allowing them to see which companies are tracking them on any web page they visit. Through Ghostery, consumers can see more information about those companies, and links to their privacy policy and opt-out page, if available. Additionally, Ghostery provides users with the option to block any or all known trackers via the tool itself. Finally, Ghostery also includes an optional, opt-in feature called GhostRank that collects completely anonymous information about the trackers its users encounter.<sup>13</sup> Ghostery sends this information to Evidon to help make its privacy compliance and assurance systems more robust. Specifically, GhostRank helps Ghostery identify new trackers – for identification and blocking – and monitor industry notice and choice compliance. Ghostery has been downloaded for Firefox alone over two million times and has been covered by numerous media outlets.<sup>14</sup>

Consumers also have access to a wide variety of other privacy options in addition to Ghostery, such as:

- **NoScript:**<sup>15</sup> NoScript is a web browser add-on that blocks all JavaScript by default unless a user specifically allows it for a site.

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<sup>12</sup> Most leading advertising agencies have historically required that an ad network be a member of the Network Advertising Initiative to receive dollars from their behavioral ad spending. In Q1 2011, that focus is increasingly shifting to ask networks if they are members of the AboutAds.info program and if they have a solution in place for OBA compliance.

<sup>13</sup> The types of data GhostRank collects, and how those data are used, are fully disclosed in Ghostery's FAQ at <http://www.ghostery.com/faq>.

<sup>14</sup> E.g., Riva Richmond, *Resisting the Online Tracking Programs*, N.Y. TIMES, Nov. 10, 2010, <http://www.nytimes.com/2010/11/11/technology/personaltech/11basics.html>; Wesley Fok, *Squash Web bugs with Ghostery*, GLOBE & MAIL, Aug. 10, 2009, <http://www.theglobeandmail.com/news/technology/squash-web-bugs-with-ghostery/article1246594/>; Erik Larkin, *With Ghostery Add-On for Firefox, Learn What Web Sites Learn About You*, WASH. POST, Mar. 9, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/03/05/AR2009030502997.html>.

<sup>15</sup> NOSCRIPT, <http://noscript.net>.



- **Abine:**<sup>16</sup> Abine is a company that offers a number of privacy related tools, including a web browser add-on formerly called Taco that provides users with a persistent set of opt-out cookies for a large number of advertising networks.
- **PrivacyChoice:**<sup>17</sup> PrivacyChoice is a company that also offers a variety of tools that allow consumers to understand and make choices about their online privacy. One of these tools, TrackerBlock, is a web browser add-on that blocks OBA tracking cookies.
- **Better Privacy:**<sup>18</sup> Better Privacy is a Firefox add-on that allows users to manage and automatically delete Flash Local Shared Objects, also known as “Flash cookies.”
- **Network Advertising Initiative (“NAI”) Opt-Out Tool:**<sup>19</sup> The NAI Opt-Out Tool allows consumers to see which NAI member companies have placed an advertising cookie file on the consumer’s computer, and to opt-out of any or all member networks.
- **AboutAds.info:**<sup>20</sup> The Digital Advertising Alliance (“DAA”) has set up a website to inform consumers and companies about the Self-Regulatory Program for Online Behavioral Advertising. This website includes a tool that allows consumers to opt-out from receiving interest-based advertising from some or all of the DAA’s participating companies, learn more about the privacy practices of each company, and see which companies have enabled OBA for the consumer’s browser.

The myriad tools the market has produced, and the extent to which the most successful have taken very different technical and policy oriented paths, also indicates the diversity of preferences that individual consumers have. When an individual opts-out of tracking, many attributes of their browsing experience will change. The extent to which those changes are deemed acceptable should continue to be an individual decision. With simple and clear information, we believe consumers will be able to make these subtle decisions, balancing their individual privacy and browsing preferences. We are concerned, however, that the broad marketing of a single tool, using potentially loaded terminology, may encourage consumers to make a rapid decision without evaluating the consequences, which will only frustrate them in both the short and long term.

If the FTC endorses a generic, browser-based, opt-out switch before fully evaluating the effect of that choice on consumers, advertisers, and ad-supported content providers, existing and developing solutions could be put in jeopardy. Further, the deployment of extensive notice and choice functionality with the potential to educate and empower consumers – like Evidon’s Assurance Platform, which has exploded in adoption in the last four months – could be substantially restricted. Thus, Evidon urges that the FTC allow competition to run its course and carefully evaluate which solution best enhances consumer welfare before rushing to endorse any single, universal solution.

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<sup>16</sup> ABINE, <http://www.abine.com>.

<sup>17</sup> PRIVACYCHOICE, <http://www.privacychoice.org>.

<sup>18</sup> BETTERPRIVACY HOME, <http://netticat.ath.cx/BetterPrivacy/BetterPrivacy.htm>.

<sup>19</sup> NETWORK ADVERTISING INITIATIVE, OPT OUT OF BEHAVIORAL ADVERTISING, [http://www.networkadvertising.org/managing/opt\\_out.asp](http://www.networkadvertising.org/managing/opt_out.asp).

<sup>20</sup> THE SELF-REGULATORY PROGRAM FOR ONLINE BEHAVIORAL ADVERTISING, <http://www.aboutads.info>.





## Conclusion

Many consumers are demanding greater transparency and choice regarding the tracking of their online activities, and advertisers and ad networks have strong incentives to meet that demand. With our Assurance Platform and participation in the Open Data Partnership, Evidon is creating innovative technical solutions that fulfill the promise of enhanced notice, choice, and access. Although the industry's self-regulatory program is only newly implemented, recent successes provide strong evidence that it can work: businesses are paying to license the Advertising Options Icon, Evidon is deploying its Assurance Platform at scale, and the Better Business Bureau and Direct Marketing Association have been empowered with tools for enforcement. Evidon strongly believes industry self-regulation will succeed if given the opportunity to fully develop. We urge the FTC to carefully consider the impact of its recommendations on existing implementation of the industry's self-regulatory program, especially in light of the potential to deliver the most efficient and welfare-enhancing solution for all interested parties. If the FTC supports industry self-regulatory efforts actively and publicly, we remain confident that the industry's initial progress will accelerate. If, however, the FTC supports Do Not Track, or other, browser-based and more proscriptive measures, in a manner that does not recognize the substantial efforts now underway, it can only hinder the continued progress of the industry's self-regulatory efforts.

Again, we appreciate the opportunity to comment on this important issue. Please feel free to contact us if you have any questions about this comment.

Sincerely,

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Evidon