

February 18, 2011

Via electronic filing

Hon. Donald S. Clark
Federal Trade Commission
Office of the Secretary, Room H-135 (Annex P)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Comments on the Federal Trade Commission's Staff Report on "Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Businesses and Policymakers" – Project No. P095416

Dear Secretary Clark:

The American Association of Advertising Agencies ("4A's"), American Advertising Federation ("AAF"), Association of National Advertisers ("ANA"), Direct Marketing Association ("DMA"), and Interactive Advertising Bureau ("IAB") (collectively "we" or the "undersigned associations") provide these comments to the Federal Trade Commission ("Commission") on its interim report titled *Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Businesses and Policymakers*.¹ We are the leading trade associations for the advertising and marketing industries, collectively representing more than 5,000 leading U.S. corporations across the full spectrum of businesses that shape and participate in today's transformed media landscape. For almost two decades, online advertising has been an economic driver that has fueled Internet growth and delivered innovative tools and services used by consumers and business to connect, communicate, and contribute to the continued evolution of the Internet. This advertising-based model continues to drive Internet growth and deliver consumer benefit.

We believe self-regulation and education constitute the most effective framework for protecting consumer privacy while ensuring the Internet remains a platform for innovation. We also believe that legislative solutions inevitably would be too inflexible to respond appropriately to the rapidly developing technological environment, thus seriously impeding innovation. In addition, laws should not dictate a framework or impose requirements for the operation of self-regulatory mechanisms. Such an approach would inhibit industry's ability to efficiently respond to a developing marketplace and foster innovation on the Internet.

We believe the Self-Regulatory Program for Online Behavioral Advertising ("Program") demonstrates that self-regulation is the appropriate approach for protecting

¹ Federal Trade Commission Staff Report, *Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Businesses and Policymakers* (December 2010) available at <http://ftc.gov/os/2010/12/101201privacyreport.pdf>.

consumers while fostering online innovation. We would like to take this opportunity to provide you details on the status of the Program and our related educational campaigns.

I. A self-regulatory program for online behavioral advertising has been implemented

The undersigned associations, in participation with the Council of Better Business Bureaus (“CBBB”), led the development of the groundbreaking *Self-Regulatory Principles for Online Behavioral Advertising* (“Principles”).² The Principles are designed to apply broadly to the diverse set of actors that work interdependently to deliver relevant advertising intended to enrich the consumer online experience, and to foster consumer friendly standards that are to be applied throughout the online ecosystem. The Principles were developed over a year-long period in which broad consensus was developed among the key constituencies of the Internet community. There are seven Principles, which call for education, the provision of new choice mechanisms, data security, heightened protection for certain sensitive data, consent for certain material changes to online behavioral advertising data collection and use policies, and strong enforcement mechanisms. Lastly, the Principles require enhanced notice outside of the privacy policy so that consumers can be made aware of the companies they interact with while using the Internet. Together, these Principles will increase consumers’ trust and confidence in how information is gathered from them online and how it is used to deliver advertisements based on their interests.

In July 2009, we formally released the Principles.³ Following their release, we turned to building the Program, educational campaigns, and accountability mechanisms. We have achieved several significant milestones in the last few months and have identified next steps for this effort, which we detail below.

A. Establishment of the Program

On October 4, 2010, we launched AboutAds.info – the official Program website – where consumers can learn about online behavioral advertising and exercise choice, and organizations can register to participate in the Program.⁴ At AboutAds.info, entities can register to use the “Advertising Option Icon” and acquire specific technical guidance for the icon’s implementation and use. A prominent feature of the Program is the call for the use of the Advertising Option Icon in or near ads or on web pages where data is collected for online behavioral advertising purposes. The Advertising Option Icon lets consumers know when the advertisements they see are interest-based, and links to information about the data practices of entities engaged in online behavioral advertising and choices about the interest-based ads they receive. The icon has already appeared in ad impressions

² American Association of Advertising Agencies, Association of National Advertisers, Direct Marketing Association, Interactive Advertising Bureau, and Council of Better Business Bureaus, *Self-Regulatory Principles for Online Behavioral Advertising* (July 2009), available at <http://www.aboutads.info/resource/download/seven-principles-07-01-09.pdf>

³ Press Release: *Key Trade Groups Release Comprehensive Privacy Principles for Use and Collection of Behavioral Data in Online Advertising*, July 2, 2009, available at <http://www.ana.net/content/show/id/555>.

⁴ See www.aboutads.info.

across the Internet. With the large number of major companies and ad networks now participating in the Program, the icon is already being served on the Internet in billions of ads. More than a trillion impressions are expected to have been placed by the end of the year.

Since November 2010, consumers have been able to visit the AboutAds Consumer Opt-Out Page to easily opt-out of some or all of the interest-based ads they receive.⁵ This choice page is linked to the Advertising Option Icon, which is appearing across the Internet. This universal choice mechanism provided in a centralized location realizes the Commission's vision for a Do-Not-Track mechanism with respect to online behavioral advertising. In addition, there is widespread participation by companies engaged in online behavioral advertising. Currently, over 60 companies are participating in the choice mechanism, providing consumers control over whether their data is *collected or used* for online behavioral advertising. Dozens more companies are in the process of joining the Program and are expected to be providing choice through the Consumer Opt-Out Page.

We have also selected three companies – DoubleVerify, Evidon (formerly Better Advertising), and TRUSTe – as approved providers to assist companies in complying with the Principles. These approved providers' services help companies to provide enhanced notice and choice as required by the Principles.

Credible and vigorous accountability is the linchpin of any successful self-regulatory program. Accordingly, accountability is integrated into the Program as one of its seven core Principles. The Accountability Principle subjects all entities engaged in online behavioral advertising to oversight by the CBBB and the DMA, which are providing independent and coordinated Accountability Programs to monitor and enforce compliance with the Program, as well as manage consumer complaint resolution. The DMA and CBBB Accountability Programs are empowered under the Principles to provide a public report on entities that do not come into compliance and to refer such cases to the appropriate government agency for action.

1. The DMA Accountability Program

The DMA has incorporated the Principles into its self-regulatory Guidelines for Ethical Business Practice ("Guidelines"). The DMA has a long history of proactive and robust enforcement under its Guidelines. The DMA's Committee on Ethical Business Practice examines promotions and practices that may violate DMA's self-regulatory Guidelines. The Committee works with both member and non-member companies to gain voluntary cooperation in adhering to the guidelines and to increase good business practices.

The DMA Guidelines have been applied to hundreds of direct marketing cases concerning deception, unfair business practices, personal information protection, and other ethics issues. In order to educate marketing professionals on acceptable marketing

⁵ See www.aboutads.info/choices.

practices, a case report is regularly issued which summarizes questioned direct marketing promotions and how cases were administered. The report also is used to educate regulators and others interested in consumer protection issues about DMA's self-regulatory guidelines and how they are implemented.

The DMA Corporate Responsibility team and Ethics Operating Committee receive matters for review in a number of ways: from consumers, member companies, non-members, or, sometimes, consumer protection agencies. Complaints referred to the Committee are reviewed against the Guidelines and if a majority of Committee members believe there is a potential violation, the company is contacted. If a potential violation is found to exist, the company will be advised on how it can come into full compliance. Most companies work with the Committees to cease or change the questioned practice. However, if a company does not cooperate and the Committees believe there are ongoing guidelines violations, the Committees can recommend that action be taken by the Board of Directors and can make case results public. Board action could include censure, suspension or expulsion from membership, and the Board may also make its actions public. If a non-member or a member company does not cooperate with the Committees and the Committees believe violations of law may also have occurred, referral of the case is generally made to federal and/or state law enforcement authorities for their review.

The DMA's Accountability Program, which started on January 31, 2011, actively enforces the Principles.⁶ While the initial focus is on assisting companies with compliance, the DMA will switch to monitoring and enforcement activities as companies come on line. The DMA helps ensure accountability among not only DMA member companies, but also the entire advertising and marketing industries. The DMA is continuing the complaint-based program that it has run for more than forty years, supplementing that long-standing program with the use of monitoring technology that enables the DMA to look proactively for compliance issues across the Internet. This technology will also be used to gather evidence to inform investigation of the complaints received.

2. The CBBB Accountability Program.

The CBBB Accountability Program, which is administered by the Council of Better Business Bureaus, with policy direction and guidance from the National Advertising Review Council ("NARC"), is designed to monitor and initiate inquiries into industry compliance using a combination of a sophisticated technology platform and reports generated by the public, competitors, academic researchers, other interested stakeholders, and government agencies. The technology platform software will monitor and analyze online behavioral advertising activity, and from that analysis provide the CBBB with indicia of potential industry non-compliance with the Transparency and Control Principles for further investigation. An online report form located on the CBBB website provides an easy way for entities to file reports of suspected non-compliance. Procedures have been designed in accordance with models established in other

⁶ Press Release: *DMA Launches Enforcement for Online Behavioral Advertising* (January 31, 2011) available at <http://www.the-dma.org/cgi/dispanouncements?article=1524>.

NARC/CBBB accountability programs such as National Advertising Division (“NAD”), the Electronic Retailing Self-Regulation Program (“ERSP”), and the Children’s Food and Beverage Advertising Initiative. To resolve issues of suspected non-compliance, a review will be undertaken, which gives the company an opportunity to respond to the concerns of the CBBB Accountability Program. Upon completion of a review, the CBBB Accountability Program will publish a final decision, which will identify the company and the Principle(s) that were reviewed in the course of the review, and include a written decision. The purpose of this process is to move the company to coming into compliance. If the company chooses not to participate or does not agree to come into compliance, a press release, decision, and referral to the appropriate government agency will be issued.

The CBBB Accountability Program is operational and is conducting outreach to companies and consumers through its website, direct contacts with entities covered by the Principles explaining what is required for compliance, and publicity in CBBB publications and other channels such as speaking engagements and press interviews. The program’s website, which is reached through the CBBB website, provides an overview of behavioral advertising and the self-regulatory program, and contains a report form for consumers.⁷ The CBBB has reached agreement in principle with a vendor to supply the technology platform that will provide online monitoring of behavioral advertising activity and compliance. Negotiations on a contract are in the final stages and an announcement should be made shortly. It is expected that the use of this technology platform for enforcement will be up and running before the end of March.

B. Next steps for the Principles

As the online advertising environment continues to evolve rapidly, we have started work to advance the scope and application of the Principles in new ways. First, we are working with our international counterparts to encourage their adoption of standards consistent with the Principles and their use of the Advertising Option Icon as the means for providing notice concerning online behavioral advertising practices. Our members operate in a global marketplace. By promoting a uniform code of conduct internationally, we will reduce regulatory uncertainty and encourage compliance with the Principles. Our goal is to foster multinational interoperability of the Principles.

We are also considering the application of the Principles to mobile media and other platforms. Mobile is a dynamic and emerging channel with characteristics (*e.g.*, device, screen size, character limitations, etc.) that requires a self-regulatory program tailored to the unique nature of the platform. For this reason, we will evaluate how to appropriately implement the Principles’ concepts of transparency and choice to mobile media, particularly with regard to mobile web interfaces and applications built for mobile devices.

While the Principles already include provisions addressing sensitive data, we will consider further refinement of the treatment of sensitive data. We will also lead an effort

⁷ See consumer complaint form at <http://www.bbb.org/us/consumers/online-behavioral-advertising/>.

to develop a persistent opt-out that will be effective against the collection *and* use of such data for online behavioral advertising purposes. Already, the marketplace is developing tools to address persistency of opt-outs, which demonstrates that the market, when permitted, can provide solutions to privacy concerns.⁸ Finally, we are also developing an educational campaign around the Principles and the Program to expand upon the information already provided at AboutAds.info.

Industry's quick response in the area of online behavioral advertising demonstrates the benefits of self-regulation. Self-regulation is responsive to government and consumer concerns, feasible in light of existing technology and business practices, and flexible enough to respond to the rapid innovation that is characteristic of this highly complex and technologically sophisticated and rapidly developing marketplace. The undersigned associations are committed to vigorous enforcement of our self-regulatory programs, which helps compliant businesses by promoting consumer trust.

II. Consumer and business education is critical to protecting consumers online

We believe that consumer education is vital to demystifying online advertising practices and informing consumers of the availability of choice and tools to control one's online experience. For this reason, we are expanding our educational efforts. As discussed in more detail below, following the success of the "Privacy Matters" consumer education initiative, we are now widely promoting awareness of the Principles and the Program among both consumers and businesses.

A. Phase One: Consumer Education

In December 2009, IAB launched "Privacy Matters," an education campaign designed to educate consumers about how they can manage their online experience and to help consumers better understand and appreciate how Internet advertising supports the Internet.⁹ IAB, through the participation of its online publisher members, has delivered close to 600 million online public service announcements ("PSAs"), which provide details about online advertising and tools that consumers can use to manage their online privacy. The eye-catching "Privacy Matters" campaign is designed to provide interactive educational messages for consumers about key aspects of online advertising, as well as to make resources available to consumers about the availability of choice, online security, and tips on how to safely surf the web.

The results of the campaign have been very promising. Nine percent of all delivered impressions are being "moused-over" by consumers and the average amount of time that consumers spend on the PSA once they roll over it is 28 seconds. This rate is much higher than usual for these types of Internet informational campaigns. The time spent viewing one of these PSAs, for example, is equivalent to about twice the exposure time of the most common, 15-second, TV commercial. These numbers demonstrate that

⁸ Google announced a new tool called "Keep My Opt Outs" designed to make a consumer's opt out persistent, *available at* <http://googlepublicpolicy.blogspot.com/2011/01/keep-your-opt-outs.html>.

⁹ IAB's "Privacy Matters" campaign, *available at* <http://www.iab.net/privacymatters>.

consumers are taking the time to read the information and interact with the educational resources. In all, the “Privacy Matters” initiative has effectively engaged consumers.

B. Phase Two: Principles & Program

We have started a second phase of educational outreach intended to inform consumers and businesses about the Principles and the Program. This multifaceted campaign includes the launch of AboutAds.info where consumers can find educational materials about online advertising. Shortly, a PSA campaign will be undertaken similar to the approach taken in the Privacy Matters campaign. The campaign will describe the availability of the Advertising Option Icon in all instances when and where online behavioral advertising occurs. Consumers will be made aware of the types of information collected and used for advertising purposes and will be informed of the availability of new choice mechanisms and how to exercise such choice.

We are currently educating the business community about the nature and operation of the new Program, including the purpose and functionality of the Advertising Option Icon and the Consumer Choice Page. The trade associations continue to work with their members to explain how businesses can come into compliance with the Principles. Specifically, we have provided a series of educational webinars in 2010 that were attended by representatives of more than 350 companies engaged in online behavioral advertising. Companies can access an audio version of this webinar at AboutAds.info as well as implementation guides concerning the Principles. In addition, each trade association has also reached out to its membership – over 5,000 companies – through letters, meetings, emails, and conference programs to educate members about the Program.

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We thank you for the opportunity to offer our comments on this important matter, and we look forward to continuing to work with you as the Commission addresses these matters. Please contact Stu Ingis at 202-344-4613 with any questions.

Sincerely,

American Association of Advertising Agencies
American Advertising Federation
Association of National Advertisers
Direct Marketing Association
Interactive Advertising Bureau

cc: Stuart Ingis, Venable LLP
cc: Michael Signorelli, Venable LLP