

July 11, 2012

Via Electronic Submission to <https://ftcpublic.commentworks.com/ftc/inshortworkshop>

Federal Trade Commission
Office of the Secretary
Room H-113 (Annex Y)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: In Short Workshop; FTC Project No. P114506

To Whom It May Concern:

This comment is submitted on behalf of the Email Sender and Provider Coalition (“ESPC”) in response to the Federal Trade Commission’s (“FTC”) invitation for public comments regarding the “In Short: Advertising & Privacy Disclosures in a Digital World” workshop (“Workshop”) held May 30, 2012. The ESPC appreciates the opportunity to comment on this important topic.

The Email Sender and Provider Coalition is a cooperative group of industry leaders working to create solutions to the continued proliferation of spam and the emerging problem of legitimate email deliverability. ESPC’s membership provides mail delivery services to an estimated 250,000 clients, representing the full breadth of the U.S. marketplace. The ESPC’s mission is to advocate on behalf of email senders, providers, and other digital marketers operating globally in the online, mobile and social media environments in favor of global laws and self regulatory efforts that balance consumer protection and business innovation; to educate its membership on current and emerging business and legal developments affecting its membership; and to continue to develop and refine best practices that foster innovation, industry growth, and consumer trust.

The ESPC’s comments primarily concern the process by which the FTC implements the advice it has acquired from the Workshop and generates industry guidance.

I. The Final Product of the Workshop Should Include an Update to the Existing Dot Com Disclosures Document

It is not clear that the final product of the Workshop will include an update to the Commission’s existing Dot Com Disclosures (“DCDs”) document that has proved so helpful to legitimate business for over a decade. Although a number of Workshop panelists seemed to take the position that it would, there was some discussion at the Workshop that the result may be a report, perhaps ready for release in the fall of 2012.

The ESPC strongly encourages the FTC to include an update to the DCDs in its final work product from the Workshop. The DCDs have been a practical and useful guide to members of

Federal Trade Commission
Office of the Secretary
Room H-113 (Annex Y)
600 Pennsylvania Avenue, NW
Washington, DC 20580
Page Two

the ESPC and their clients since their release in 2000. In an industry where the useful life of guidance documents can often be measured in months, the longevity of the current version of the DCDs has been astounding.

In revising the DCDs, the ESPC respectfully suggests that the Commission incorporate those characteristics that made the DCDs so useful for so long:

- **Establish a Performance Standard.** In light of rapid innovations in advertising formats and display media, the updated DCDs should establish a performance standard, rather than a design standard. By prescribing specific designs for disclosures, based on today's formats and display media, the FTC would limit the ability of online advertisements and their corresponding disclosures to evolve. Setting a design standard now would render companies unable to adjust their disclosures in response to new advances in the market.
- **Updated Examples.** There is widespread agreement that the examples in the current version of the DCDs need to be updated, and ESPC agrees with that sentiment. Examples demonstrating appropriate disclosures for various kinds of products and services, on various kinds of devices (*e.g.*, mobile phones and tablets as well as traditional computers), and for various advertising formats, will help industry interpret the revised DCD's narrative descriptions. At the same time, we urge that the Commission use these exemplars as high-level guidance only, rather than as model disclosures that should be closely followed over time and across activities, which would retard business flexibility and stand in the way of the more flexible type of performance standard that is necessary in the age of rapid innovation.

II. The Commission Should Publish a Revised Draft of the DCDs for Further Comment

Because the revised guidance that emerges from the Workshop will no doubt be of long-lasting significance, it is imperative that all stakeholders be given an appropriate opportunity to comment on its final form. While it is beneficial to have the opportunity to comment at this stage, the Commission has yet to issue anything to comment on specifically.

Federal Trade Commission
Office of the Secretary
Room H-113 (Annex Y)
600 Pennsylvania Avenue, NW
Washington, DC 20580
Page Three

Even in the case of its recently-released privacy report, the Commission produced a draft report and sought comment before releasing a final report. That report is described by the Commission itself as a set of best practices. The DCDs, on the other hand, are more in the nature of the Commission's Guides, which are interpretations of the Commission's Section 5 authority in specific circumstances. If the Commission sought comment on best practices, surely it should seek comment on a proposed revision to a document that it intends for industry to use as a means of meeting Section 5's disclosure requirements.

Accordingly, the ESPC strongly urges the Commission to produce a written draft of the guidance for stakeholder comment before final issuance. By producing an actual draft of the proposed guidance, stakeholders will be able to make substantive comments on issues of concern to themselves, other stakeholders, and the FTC. Enabling stakeholders to make more substantive comments focused more precisely on the issues of greatest concern will result in more precisely-tailored—and therefore more effective and longer-lasting—guidance.

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The ESPC appreciates the opportunity to submit comments on this important matter. If you have any questions concerning these comments, or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact me, at (202) 887-6948.

Sincerely,


D. Reed Freeman, Jr.
Outside Counsel

cc: ESPC Board of Directors