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

Electronic filing

Re: DMA Comments on Spring Privacy Series: Mobile Device Tracking, Project No. P145401

The Direct Marketing Association (“DMA”) submits these comments in response to the Federal Trade Commission’s request for comments on its spring privacy workshop on mobile technology.¹ The DMA supports the self-regulation of mobile marketing practices, a rapidly changing industry still at the earliest stages of development. Self-regulation strikes the appropriate balance of protecting entrepreneurs, encouraging innovation, and promoting economic growth while also ensuring that important considerations about privacy and security are addressed in an effective, yet flexible manner.

The DMA (www.thedma.org) is the world’s largest trade association dedicated to advancing and protecting responsible data-driven marketing. Founded in 1917, DMA represents thousands of companies and nonprofit organizations that use and support data-driven marketing practices and techniques. DMA provides the data-driven marketing economy a voice to shape policy and public opinion, the connections to grow members’ businesses and the tools to ensure full compliance with ethical and best practices as well as professional development.

We recognize that when consumer data is adequately protected and used responsibly, it benefits consumers, businesses, and the economy. A recent study undertaken by Professors John Deighton of Harvard Business School and Peter Johnson of Columbia University indicates that the data-driven marketing economy provided \$156 billion in revenue to the U.S. economy in 2012 alone, and fueled more than 675,000 jobs across the country.² The study further illustrated that the real value of data is in its exchange across the data-driven marketing economy: 70 percent of the value of the data-driven marketing economy – \$110 billion in revenue and 478,000 jobs – depends on the ability of firms to exchange data across the data-driven marketing economy.³

While mobile marketing has already delivered untold benefits to consumers in recent years, the technology is still in its infancy. As mobile use in this country continues to grow

¹ FTC Spring Privacy Series: Mobile Device Tracking (February 19, 2014), available at <http://www.ftc.gov/news-events/events-calendar/2014/02/spring-privacy-series-mobile-device-tracking>.

² Deighton, John and Johnson, Peter, *The Value of Data: Consequences for Insight, Innovation & Efficiency in the U.S. Economy*, 7 (2013), available at <http://ddminstitute.thedma.org/#valueofdata> (hereinafter “The Value of Data”).

³ *Id.*

exponentially, our nation's innovators and entrepreneurs have yet to realize the full value that mobile marketing will have for consumers and for our economy. Protecting those benefits that consumers already enjoy and those that have yet to be achieved should be our top priority. The DMA cautions against regulations that could stifle innovation in this nascent marketplace, arbitrarily pick technological winners and losers, and restrain overall growth. To best address important issues that arise in mobile marketing, such as the concerns with consumer privacy, the DMA supports the development of industry best practices and self-regulatory principles. Along with consumer education, this approach offers an effective but flexible model for addressing important issues alongside innovation.

I. Mobile Marketing Technology Benefits Consumers

Consumers already are receiving benefits from mobile marketing technology and stand to gain countless more through the growth and innovation in the mobile marketing technology space. Developments in mobile marketing technology have enabled consumers to transform their mobile phones into powerful tools for education, shopping, gaming, socializing, and many other functions. The technology allows consumers to customize their content, resulting in a more personalized and meaningful experience, and for businesses to optimize in-store and digital shopping experiences. Mobile marketing technology and data analytics have helped improve the in-store experience for shoppers through better in-store displays and by improving consumers' check out experience. This technology and practices enable marketers to provide more relevant products, services and advertisements to consumers. Advances in mobile marketing technology have also helped businesses improve their products and services, conduct market research, invest in product development, and improve security for customers.

These functions and activities that mobile marketing technology facilitates grow the economy and promote strong job growth. As more consumers engage mobile technology, they expect businesses to be able to seamlessly migrate to the mobile space and deliver goods and services through mobile devices. Mobile marketing technology provides the tools for businesses to exceed these expectations by delivering better value and more relevant results than before. The DMA cautions against imposing restrictions based on speculative harms that could unduly burden competition for in-store and digital commerce.

II. Self-Regulation is the Appropriate Approach for Emerging Technology and Practices

Mobile marketing is a new and bright horizon for consumers and businesses to engage with each other in a more productive and beneficial way than ever before. The DMA recognizes that mobile marketing technology raises new engagement considerations including providing appropriate transparency, consumer control, and security. However, the DMA believes that the touchstone of privacy concerns is consumer harm. Consumer value and innovation should not be unduly burdened based on a speculative harm. Absent evidence of concrete harm to consumers, the approach to privacy protection must protect the culture of innovation, preserve existing and future consumer benefits, and reflect evolving consumer privacy preferences and expectations. Industry should be encouraged to develop clear but flexible principles that are enforced through self-regulation, allowing for adaptation to new technologies and encouraging innovation and promoting economic growth.

The DMA believes that technology-neutral self-regulation and consumer education is the best approach to responding to concerns associated with emerging technology and practices. The DMA, working with its members, implements and enforces a set of best practices known as the Guidelines for Ethical Business Practice (“DMA Guidelines”). The DMA Guidelines, which have been in place for more than four decades and are a condition of membership in the DMA, provide DMA member companies with standards for responsible marketing practices by explaining how companies should provide transparency, choices, and other protections to consumers. The DMA regularly updates its guidelines to adapt to new technologies and marketing practices, and in 2009 unanimously approved a core set of guidelines for responsible and effective mobile marketing practices, recently adding to these practices in its 2014 guidelines.

The DMA has a long history of proactive and robust enforcement. The *DMA Guidelines* have been applied to hundreds of direct marketing cases concerning deception, unfair business practices, personal information protection, and other ethics issues. The DMA enforces compliance with the *DMA Guidelines* upon both DMA member and nonmember organizations across the data driven economy, including the mobile marketing space. In addition, companies that represent to the public that they are DMA members but fail to comply with the *DMA Guidelines* may be liable for deceptive advertising under Section 5 of the FTC Act and comparable state laws.

IV. Conclusion

We are witnessing a mobile marketing industry that is still in its infancy. The benefits that already have inured to consumers and to businesses in recent years only present a small sample of the potential that this industry has to offer. At this early stage, regulators should encourage marketplace incentives and industry self-regulation to address issues related to privacy rather than prescribing regulations. This approach will sustain consumers’ benefits from the technology, encourage innovation, and promote economic growth, while also addressing important privacy considerations.

Sincerely,

Peggy Hudson
Senior Vice President, Government Affairs
Direct Marketing Association, Inc.
1615 L Street NW, Suite 1100
Washington, DC 20036

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