

BEFORE THE

SENATE COMMITTEE ON COMMERCE, SCIENCE & TRANSPORTATION

HEARING ON

THE NEED FOR PRIVACY PROTECTIONS: IS INDUSTRY SELF-REGULATION ADEQUATE?

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TESTIMONY OF

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ON BEHALF OF THE

DIGITAL ADVERTISING ALLIANCE

Chairman Rockefeller, Ranking Member Hutchison, and Members of the Committee,
good morning and thank you for the opportunity to speak at this important hearing.

My name is Bob Liodice. I am President and Chief Executive Officer of the Association of National Advertisers (“ANA”). Founded in 1910, ANA's membership includes 457 companies with 10,000 brands that collectively spend over \$250 billion every year in marketing communications and advertising. ANA strives to communicate marketing best practices; lead industry initiatives; influence industry practices; manage industry affairs; and advance, promote, and protect all advertisers and marketers. Today, I am pleased to testify on behalf of the Digital Advertising Alliance (“DAA”) and to report to the Committee on the substantial progress of our Self-Regulatory Program.

The DAA is a non-profit organization of leading companies and trade associations including the Association of National Advertisers (ANA), the American Association of Advertising Agencies (4A’s), The Direct Marketing Association (DMA), the Interactive Advertising Bureau (IAB), the American Advertising Federation (AAF) and the Network Advertising Initiative (NAI). The DAA was formed to administer and promote the Self-Regulatory Principles for online data collection. The ANA has played a leading role in these efforts since their inception.

My testimony today will describe how the online advertising industry has successfully worked to give consumers transparency about online data collection practices and to create easy, uniform, and effective tools for consumers to control online data collection. DAA participating companies recognize that consumers may have different preferences about online advertising and

data collection in general, and want to build consumer trust in the online experience by ensuring that consumers have meaningful choices about how data is collected and used.

The DAA appreciates the Committee's interest in exploring how consumer privacy concerns should be balanced with consumers' desire for innovative products and services. We believe that industry self-regulation, coupled with consumer education, is the best way to strike this balance. Our standards support both privacy and innovation by enabling consumers to make intentional choices about online data collection and use. Industry self-regulation is flexible and can adapt to rapid changes in technology and consumer expectations, whereas legislation and government regulation, particularly in such a rapidly-developing area, can stifle innovation. The business community has a strong incentive to enforce self-regulation against participating companies and I will be explaining how accountability is built into our Self-Regulatory Program.

I. Benefits of Online Advertising

The Internet is a tremendous engine of economic growth. It has become the focus and a symbol of the United States' famed innovation, ingenuity, inventiveness, and entrepreneurial spirit, as well as the venture funding that flows from these enormously productive and positive efforts. Simply put: the Internet economy and the interactive advertising industry create jobs. A 2009 study found that more than three million Americans are employed due to the advertising-supported Internet, contributing an estimated \$300 billion, or approximately 2%, to our country's

GDP.¹ There is employment generated by this Internet activity in every single congressional district.²

Advertising fuels the Internet economic engine. The support provided by online advertising is substantial and growing despite the difficult economic times we are presently facing. In 2011, Internet advertising revenues reached a new high of \$31 billion, an impressive 22% higher than 2010's full-year number.³

Because of this advertising support, consumers can access a wealth of online resources at low or no cost. Revenues from online advertising facilitate e-commerce and subsidize the cost of content and services that consumers value, such as online newspapers, blogs, social networking sites, mobile applications, email, and phone services. These advertising-supported resources have transformed our daily lives.

Interest-based advertising is an essential form of online advertising. As the Committee knows, interest-based advertising, also called online behavioral advertising ("OBA"), is delivered based on consumer preferences or interests as inferred from data about Internet activities. Consumers are likely to find interest-based advertisements more relevant to them, and advertisers are more likely to attract consumers that want their products and services. Websites also benefit because interest-based advertising garners better responses, allowing websites to

¹ Hamilton Consultants, Inc. with Professors John Deighton and John Quelch, *Economic Value of the Advertising-Supported Internet Ecosystem*, at 4 (June 10, 2009), available at <http://www.iab.net/media/file/Economic-Value-Report.pdf>.

² *Id.* at 53.

³ Interactive Advertising Bureau Press Release, "Internet Ad Revenues Hit \$31 Billion in 2011, Historic High Up 22% Over 2010 Record-Breaking Numbers" (April 18, 2012) (reporting results of PricewaterhouseCoopers study).

earn more revenue – and support more content and services – with fewer advertisements.

Advertisers have demonstrated that they believe that interest-based advertising is particularly effective by paying higher rates for such ads.

Interest-based advertising is especially vital for small businesses because it is efficient. Smaller advertisers can stretch their marketing budgets to reach consumers who may be interested in their offerings. Smaller website publishers that cannot afford to employ sales personnel to sell their advertising space, and may be less attractive to large brand-name advertising campaigns, can increase their revenue by featuring advertising that is more relevant to their users. In turn, advertising-supported resources help other small businesses to grow. Small businesses can use free or low-cost online tools, such as travel booking, long-distance calling, and networking services, to help them run their companies.

Recent research highlights the importance of interest-based advertising. In a recent congressional hearing on “Internet Privacy: The Impact and Burden of EU Regulation,” Professor Catherine Tucker of the MIT Sloan School of Management testified about the effect on advertising performance of the European Union’s e-Privacy Directive, which limits the ability of companies to collect and use behavioral data to deliver relevant advertising. Professor Tucker’s research study found that the e-Privacy Directive was associated with a 65% drop in advertising performance, measured as the percent of people expressing interest in purchasing an advertised product. The study also found that the adverse effect of such regulation was greatest for websites with content that did not relate obviously to any commercial product, such as general

news websites. We believe that by creating a worldwide marketplace of relevant and timely advertising, competition and innovation are also enhanced.

In general, the data used for interest-based advertising is not personally identifiable, except when consumers choose to provide personally identifiable information. Nevertheless, the industry recognizes and respects that some consumers may prefer not to receive such advertising or to have data collected about their Web browsing even on an anonymous basis. I will be updating the Committee on our industry's tremendous efforts to make sure that consumers have transparency about online data collection and can exercise control over their preferences – including opting out, if they so desire.

II. Browser-Based Choice Mechanisms

Over the last three and a half years, the DAA has worked with a broad set of stakeholders with significant input from businesses, consumers, and policy makers to develop a program governing the responsible collection and use of Web viewing data. The DAA has championed a balanced approach that both accommodates consumers' privacy expectations and supports the ability of companies to deliver services and continue innovating. This balance is essential to allow consumers to continue to enjoy the diverse range of Web sites and services subsidized by relevant advertising. Recognizing that DAA members must also provide consumers with appropriate transparency and choices, industry has spearheaded the self-regulatory process with the support of leading companies.

The DAA's work led to an event in February at the White House where the Chairman of the Federal Trade Commission, the Secretary of Commerce and White House officials publicly praised the DAA's cross-industry initiative. The White House recognized our Self-Regulatory Program as "an example of the value of industry leadership as a critical part of privacy protection going forward."⁴ At that event, the DAA committed to honor browser settings that enable the use of data to continue to benefit consumers and the economy, while at the same time providing consumers with the ability to make their own choices about the collection and use of Web browsing data.

However, a recent technology announcement from Microsoft includes requirements that are inconsistent with the consensus achieved over the appropriate standards for collecting and using Web viewing data. The DAA is concerned that this unilateral decision by one browser maker may ultimately significantly narrow the scope of consumer choices, undercut thriving business models, and reduce the availability and diversity of the Internet products and services that millions of American consumers currently enjoy and use at no charge. The resulting marketplace confusion will not benefit consumers, and will profoundly adversely impact the broad array of advertising-supported services they currently widely use. In fact, as we will now detail, it is only the DAA program that provides a comprehensive set of interest-based privacy choices to consumers, greater consumer education and information, enforcement activities, and true consumer empowerment in the area of OBA privacy.

⁴ Speech by Danny Weitzner, *We Can't Wait: Obama Administration Calls for A Consumer Privacy Bill of Rights for the Digital Age* (February 23, 2012), available at <http://www.whitehouse.gov/blog/2012/02/23/we-can-t-wait-obama-administration-calls-consumer-privacy-bill-rights-digital-age> (last visited March 16, 2012).

III. Industry Self-Regulation of Online Data Practices

A. Implementation Update on DAA's Self-Regulatory Principles

The DAA's Self-Regulatory Program for online data collection amply demonstrates the merits of industry self-regulation. The DAA, as noted, is comprised of the six leading advertising and marketing trade associations: the ANA, the 4A's, the DMA, the IAB, the AAF and the NAI. Collectively, these trades represent more than 5,000 U.S. corporations across the full spectrum of businesses that have shaped and participate in today's media landscape.

Our trade associations, along with leading companies, released the Self-Regulatory Principles for Online Behavioral Advertising ("OBA Principles")⁵ in July 2009. The OBA Principles are a set of consumer-friendly standards that apply across the entire online advertising ecosystem. They address all of the key elements called for by the Federal Trade Commission in its 2009 Staff Report on interest-based advertising,⁶ namely: (1) consumer education, (2) enhanced notice of data practices, (3) innovative choice mechanisms, (4) data security, (5) sensitive data protection, (6) consent for retroactive material policy changes, and (7) enforcement. 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. Together, these Principles aim to increase consumers' trust and confidence in how

⁵ DAA Self-Regulatory Principles for Online Behavioral Advertising (July 2009), available at <http://www.aboutads.info/resource/download/seven-principles-07-01-09.pdf>.

⁶ Federal Trade Commission Staff Report, *Self-Regulatory Principles for Online Behavioral Advertising* (February 2009), available at <http://www.ftc.gov/os/2009/02/P085400behavadreport.pdf>.

information is gathered from them online and how it is used to deliver advertisements based on their interests. Let me briefly review how the Principles work from a consumer's perspective:

- First, an advertisement covered by the Principles is identified with the distinctive Advertising Option Icon (“Icon”) (Attachment 1), which appears in the advertisement right where the consumer will notice it. Launched in 2010, this Icon is now a familiar sight across the Internet as a means for uniformly providing consumers with transparency and control.
- Clicking the Icon brings up a brief statement about online behavioral advertising, with a link to more information and opt-out choices.
- Interested consumers can click this link to visit AboutAds.info, an industry-sponsored website that provides consumer education and, most importantly, consumer choice. Through this mechanism, a consumer can learn, in real time, which participating companies are currently tailoring advertising to their browser.
- Consumers can elect to opt out from all participating companies through a prominent, single-click button or select individually the companies they want to tailor advertising to their browser. This approach empowers consumers, if they wish, to make an informed and intentional choice to stop collection of information that will provide them with relevant tailored advertising.

Over the past year, the DAA has achieved several significant milestones in its implementation of the Self-Regulatory Program:

- The Icon is being served in over one trillion ad impressions per month.
- We estimate that the DAA program now covers over 90% of the online behavioral advertising being delivered, based on the participation of the top 15 U.S. ad networks.
- More than 100 companies are providing choice to consumers via the DAA's universal choice mechanism.
- More than one million consumer opt outs have been registered under the DAA Principles since January 2011.
- Participation in the Program has quadrupled over the last year. Hundreds of companies are licensed to use the Icon (including leading global advertisers like American Express, AT&T, Disney, General Motors and Kraft Foods). Not only is the DAA working directly with large publishers, it has also forged innovative partnerships to enable small business publishers to display the Icon on their web sites for free.
- The DAA's AboutAds website (www.aboutads.info) provides consumers with information about online advertising and provides an easy-to-use opt out mechanism. There have been over 8 million page views at AboutAds.info since its inception in the fall of 2010, and traffic to the website has increased in recent months as the Icon is more widely adopted.

- In November 2011, the CBBB announced its first enforcement cases. In June 2012, the CBBB announced another round of enforcement cases.
- In December 2011, the DAA began to offer tools that enable persistent consumer opt outs in Chrome and Firefox browsers. The DAA released a persistency tool for users of Internet Explorer in March 2012. These tools respond to concerns that consumers could unintentionally change their opt-out preferences by erasing cookies from their browsers.
- In January 2012, the DAA launched an education campaign to inform consumers about interest-based advertising and how to take greater control of their online privacy. This multi-phase online campaign, designed by McCann Erickson Worldwide, includes banner advertising that directs consumers to the DAA's Icon and links to a new, informational website, www.youradchoices.com, which features three educational videos and a user-friendly consumer choice mechanism. The website has already had over 7.6 million visitors since its launch. With an average of more than a million visitors each month, this is a very promising start. To continue driving traffic to this website, the DAA has already secured over 3 billion donated ad impressions from companies participating in the Program.

B. Evolution of the Self-Regulatory Principles

Alongside these implementation efforts, the Self-Regulatory Principles have continued to evolve in response to emerging policy issues. In November 2011, the DAA extended the OBA Principles significantly with the release of the Self-Regulatory Principles for Multi-Site Data

(“MSD Principles”). The MSD Principles establish comprehensive self-regulatory standards governing the collection and use of “multi-site data,” defined as data collected from a particular computer or device regarding Web viewing over time and across non-affiliated Websites. This principle applies control beyond opting consumers out of receiving targeted ads, and empowers consumers to control the collection and use of Web viewing data for other purposes.

The MSD Principles strike an appropriate balance by targeting specific concerns while maintaining the flow of information for legitimate uses. For instance, some policymakers have raised concerns that data collected for advertising purposes could be used as a basis for employment, credit, health care treatment, or insurance eligibility decisions. In fact, these are hypothetical concerns that do not reflect actual business practices. Nevertheless, industry has stepped forward to address these concerns by expanding our guidelines via the MSD Principles to clarify and ensure that such practices are prohibited and will never occur. This prohibition will help to ensure that consumers’ browsing histories will not be used against them when applying for a mortgage, job, or insurance, or when seeking health care.

The DAA’s record of success demonstrates why industry self-regulation is so successful. The business community is in the best position to craft standards, like the MSD Principles, that respond to specific, articulated concerns while allowing beneficial uses of data to continue. As recognized by the Federal Trade Commission, limitations on collection, often misleadingly referred to as “Do Not Track”, should not be a flat restriction on all collection of all data in all contexts.⁷ We agree. We designed the MSD Principles to provide consumers with control with

⁷ FTC Report at 53, available at <http://www.ftc.gov/os/2012/03/120326privacyreport.pdf>.

respect to their Web viewing data while preserving commonly-recognized uses of data, including for operational purposes such as fraud prevention, intellectual property protection, compliance with law, authentication and verification purposes, billing, and product or service fulfillment. The MSD Principles also permit the use of data that has gone or will within a reasonable period of time from collection go through a de-identification process, or that is used for market research or product development. This approach helps ensure the continued flow of data that is vital to the workings of the Internet and to the consumer online experience.

Data collected pursuant to the exceptions listed above provides a grand array of consumer benefits. Data supports robust consumer safety mechanisms, ranging from fraud detection in financial services to prevention of online threats. In addition, the use of data leads to continued innovation, which has the potential to offer consumers untold benefits. For example, data can be leveraged to provide web-enabled smart grid services that enable consumers to obtain actionable information that saves them money and lowers energy consumption. The MSD Principles also allow companies to use data for market research and product development, so that we can keep building tomorrow's Internet. Market research and product development actively rely on consumer data, not to market directly back to consumers, but to gain broad insight about consumers' collective preferences and needs so that businesses can better serve their customers.

We expect that the DAA Self-Regulatory Program will continue to adapt over time to respond to changes in technology and consumer concerns. Currently, the DAA has convened a subcommittee of its Principles and Communications Advisory Committee that is working to extend the Principles to the mobile ecosystem. This effort has already made significant progress

with the active participation of stakeholders representing all major elements of the mobile ecosystem.

C. Commitment to Accountability

For the past 40 years, the advertising industry has distinguished itself through its self-regulatory system for independent oversight of compliance and public reporting of enforcement actions. In keeping with this tradition, a key feature of the DAA Self-Regulatory Program is accountability. All of our Self-Regulatory Principles are backed by the robust enforcement programs administered by the Council of Better Business Bureaus (“CBBB”) and the DMA.

The CBBB accountability program builds on the successful track records of the National Advertising Division, operating since 1971; the Children’s Advertising Review Unit, operating since 1974; and the Electronic Retailing Self-Regulation Program, operating since 2004. These programs feature public reporting of decisions and referral to government agencies, often to the Federal Trade Commission, of any uncorrected non-compliance. They have extremely high voluntary compliance rates. In fact, over 90 percent of companies voluntarily adopt the recommendations of these programs. Those that do not or choose not to participate are referred to the appropriate government agency for further review.

The CBBB administers its Interest-Based Advertising Accountability Program under the Advertising Self-Regulatory Council’s (“ASRC”) self-regulatory procedures. Like other ASRC programs, the CBBB Accountability Program generates cases through monitoring, consumer complaints and review of news stories and technical reports from academics and advocacy

groups. The CBBB Accountability Program receives weekly reports on technical monitoring of various compliance requirements of the Principles. The CBBB Accountability Program's technical staff analyzes this data, independently performs further research and, where there is a potential compliance issue, initiates formal inquiries.

The CBBB's Accountability Program has brought over a dozen cases since November 2011, and has the enviable track record of 100 percent industry compliance. The CBBB Accountability Program has focused its inquiries on the key concepts of transparency and choice under the DAA's Self-Regulatory Principles. In its initial round of cases, the Accountability Program investigated whether companies were correctly and reliably providing consumers with an effective choice mechanism. Cases involved defective links to opt-out mechanisms and opt outs that failed to meet the OBA Principles' five-year minimum opt-out period.

The CBBB Accountability Program's recent decisions provided companies with guidance on a range of important compliance issues involving the DAA's Transparency and Consumer Control Principles. For example, in a case in which a newly-established company was unaware of the Principles and therefore out of compliance, the CBBB Accountability Program made clear that the Principles cover the entire advertising ecosystem and that all companies are expected to comply with these requirements.

The DMA's enforcement program likewise builds on a long history of proactive and robust self-regulatory oversight. The DMA's longstanding *Guidelines for Ethical Business Practice* ("Guidelines") set out comprehensive standards for marketing practices, which all

DMA members must follow as a condition of membership. The DAA Self-Regulatory Principles are incorporated into these Guidelines.

The DMA's Committee on Ethical Business Practice examines practices that may violate DMA Guidelines. To date, the DMA Guidelines have been applied to hundreds of marketing cases on a variety of issues such as deception, unfair business practices, personal information protection, and online behavioral advertising. In order to educate marketing professionals on acceptable marketing 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 Guidelines and how they are implemented.

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 for direct marketers. 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 are reviewed against the Guidelines and Committee members determine how to proceed. If a potential violation is found to exist, the company will be contacted and 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 member company does not cooperate and the Committee believes there are ongoing guidelines violations, the Committee 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, the case is referred to federal and/or state law enforcement authorities for their review.

The CBBB and DMA programs illustrate how effectively self-regulation is working and its many benefits, including its ability to evolve to meet new challenges.

D. Benefits of Industry Self-Regulation

The DAA's commitment to self-regulation has put us at the forefront of new consumer protection initiatives. The DAA believes that self-regulation is the appropriate approach for addressing the interplay of online privacy and online advertising practices. We appreciate the positive recognition of the White House and the Federal Trade Commission for our efforts. We believe that our approach has been successful in addressing consumer concerns while ensuring that the U.S. Internet economy remains vibrant. Self-regulation provides industry with a nimble way of responding to new challenges presented by the evolving Internet ecosystem. For our information-driven economy to thrive and continue as an engine of job creation, self-regulation led by industry codes of conduct is the ideal way to balance privacy and innovation.

Based on the DAA's commitment to advancing industry self-regulation, we are concerned about some of the proposals put forward by the Administration and the Federal Trade

Commission in their respective consumer data privacy frameworks.⁸ In particular, both the Administration and the Federal Trade Commission have called for comprehensive legislation in the area of consumer data privacy. The DAA does not believe that such new legislation is needed at this time. There has been no demonstration that legislation is necessary, nor has there been any evaluation of the likely impact that legislation would have on this leading area of American job creation. The DAA is concerned that laws and regulations are inflexible and can quickly become outdated in the face of extraordinarily rapidly-evolving technologies. When this occurs, legislation thwarts innovation and hinders economic growth.

Formal rules can also serve as a disincentive to the marketplace to innovate in the area of privacy. Companies are increasingly offering consumers new privacy features and tools such as sophisticated preference managers, persistent opt outs, universal choice mechanisms, and shortened data retention policies. These developments demonstrate that companies are responsive to consumers and that companies are focusing on privacy as a means to distinguish themselves in the marketplace. The DAA believes that this impressive competition and innovation should be encouraged. New laws or rules could impede future developments or discourage companies from continuing to compete over privacy features. We believe that the DAA program, which industry has already invested millions of dollars to develop, is clearly one of the most successful and fastest-developing self-regulatory systems in U.S. history and should be allowed to continue to flourish without unneeded governmental intervention or legislation at this time.

⁸ The White House, *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy* (February 2012); Federal Trade Commission, *Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers* (March 2012).

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Thank you again for inviting me to testify before the Committee. I look forward to answering any questions the Committee may have.

Attachment 1: Advertising Option Icon

