



April 2, 2012

Via email: privacyrfc2012@ntia.doc.gov

U.S. Department of Commerce
National Telecommunications and Information Administration
1401 Constitution Avenue, NW
Room 4725
Washington, DC 20230

Re: Multistakeholder Process to Develop Consumer Data Privacy Codes of Conduct;
Docket No. 120214135-2135-01

The Digital Advertising Alliance (“DAA”) provides these comments to the National Telecommunications and Information Administration (“NTIA”) concerning the proposed multistakeholder process to develop consumer data privacy codes of conduct. In today’s information economy, data is the key element that enables every American company, whether large or small, to establish personalized relationships with consumers that allow each individual to feel special and valued. Every marketing department has this as its goal. In the areas of advertising and marketing, consumer data flows empower individuals with valuable insights – including information about new products and services – as they navigate the marketplace. Advertising and marketing are also key drivers of economic growth, benefiting consumers by creating jobs, rewarding shareholders, financially supporting Internet and wireless infrastructure, and funding continued innovation. In the online arena, in particular, advertising supports a wealth of free and low-cost content, tools, and services for consumers.

We believe that robust industry self-regulation coupled with consumer education is the most effective way to protect consumer privacy while fostering innovation. We also believe that legislative measures are not sufficiently flexible to address the rapidly developing technological environment and would seriously impede innovation. Accordingly, we support the development and implementation of voluntary codes of conduct for consumer data privacy.

We believe the best and fastest way to develop such voluntary codes is through confidential negotiations among industry representatives. We developed the DAA standard by convening a group of companies that represented every aspect of the Internet advertising ecosystem. When discussions veered into confidential issues, we were able to parse through them in a way that would not have been possible with non-industry representatives in the room. This approach has a record of success and is most likely to lead to the very type of voluntary adherence that the Administration seeks. Despite our reservations about the prospects for success of the multistakeholder process, we are willing to participate fully and give it our best efforts.



A. Update on DAA Self-Regulatory Program

The DAA was established to administer and implement comprehensive self-regulatory principles for online data collection. At the White House privacy event held in February 2012, our efforts were recognized as “an example of the value of industry leadership as a critical part of privacy protection going forward.”¹ Below, we update the NTIA on the DAA’s recent progress. These developments illustrate how industry is effectively addressing privacy concerns with online behavioral advertising as well as other Web viewing data practices.

The development of the DAA’s self-regulatory framework was spearheaded by the leading trade associations for the advertising and marketing industries: the American Association of Advertising Agencies, American Advertising Federation, Association of National Advertisers, Direct Marketing Association (“DMA”), Interactive Advertising Bureau, and Network Advertising Initiative. These associations collectively represent more than 5,000 U.S. corporations across the full spectrum of businesses that have shaped and participate in today’s media landscape.

The trade associations named above, along with leading companies, released the Self-Regulatory Principles for Online Behavioral Advertising (“OBA Principles”) in July 2009. In November 2011, the DAA extended the OBA Principles 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,” data collected from a particular computer or device regarding Web viewing over time and across non-affiliated Websites. The MSD Principles build on the DAA’s existing implementation and accountability efforts, including the enforcement programs administered by the DMA and the Council of Better Business Bureaus (“CBBB”). A critical component to the DAA’s accountability principle is the requirement that all participants publicly state their adherence to the DAA Principles. This public representation subjects all participants to the enforcement of the Federal Trade Commission, and layers an additional level of accountability into the Program.

Since January 2011, the DAA has also achieved several significant implementation milestones:

- We believe 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.
- By the end of 2011, the DAA program had hundreds of companies licensed to use the Advertising Option Icon (“Icon”) (including leading global advertisers like American Express, AT&T, Disney, General Motors and Kraft Foods). Not only is the DAA

¹ 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).



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 Icon is being served in over 900 billion ad impressions per month.
- 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 5.1 million page views at AboutAds.info since its inception about a year ago.
- Shortly after the launch of AboutAds.info, in December 2010, there were about 4,300 page views per week, with 36% of visitors to Aboutads.info coming from the Icon. At the end of December 2011, there are more than 122,000 page views per week, and 90% of these visitors to AboutAds.info come from the Icon. This increase of more than 2800% is tied directly to the broad adoption and proliferation of the Icon. Traffic to AboutAds.info continues to increase in 2012, with over 200,000 page views per week in recent weeks.
- In November 2011, the CBBB announced its first 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.
- 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 had over 2.6 million page views since its launch. To continue driving traffic to this website, the DAA has already secured hundreds of millions of dollars in donated ad inventory space pro bono from companies participating in the Program.

B. Comments on NTIA Multistakeholder Process

As the NTIA considers how to convene the proposed multistakeholder process, the DAA suggests that the NTIA should first review existing self-regulatory efforts to identify effective programs and should then ensure that these areas are not reopened in the multistakeholder process. Duplication of existing efforts would create confusion for companies and consumers, and would undermine the business community’s incentives to participate in self-regulation. For example, given the significant progress of the DAA, and consistent with policy leaders’ positive recognition of the DAA at the White House privacy event, we believe that there is no need for



the NTIA to address substantive areas that are already covered by the DAA's comprehensive and enforceable standards.

In addition, the NTIA can identify successful self-regulatory efforts in order to learn from these examples in establishing procedures for the multistakeholder process. We believe the DAA provides a helpful model of an effective self-regulatory initiative. Specifically:

- **First, industry is in the best position to draft the proposed codes of conduct.** The DAA has developed – in record time – the most successful self-regulatory program for consumer choice in the area of online behavioral advertising. The DAA acknowledges that our work is not finished. We are now leading an effort to extend our Principles broader in the mobile ecosystem, which includes mobile Web, apps, and location data. To this end, the DAA has brought together stakeholders including wireless carriers, application and operating system providers, mobile ad networks, and key trade associations. These participants have been meeting regularly (typically weekly) over many months and have made significant progress. We would, therefore, respectfully suggest that it is not necessary for the NTIA to convene a multistakeholder process in the areas already covered by the DAA's Self-Regulatory Principles, both online and in the mobile arena.
- **The process should leave ample room for private negotiations among industry.** The Administration has proposed an open and transparent process. But unlike agency rulemakings, the decisionmakers in this process are private stakeholders. The DAA's experience has been that among private entities, especially companies in competitive market environments, negotiations are most likely to be productive – and to yield consensus – when there is room for private discussion. In the process envisioned by the Administration, companies would face an added concern about sharing proprietary information or trade secrets with advocacy groups that have a history of using such information to attack companies in courts and the media. Given these factors, we believe that the process convened by NTIA would have the best opportunity to succeed if it encourages private discussions among industry representatives and other stakeholders. By encouraging private discussions in parallel to the NTIA process, private parties could more easily build consensus on common issues that could be then be shared more broadly for consideration through the NTIA process.
- **The government should limit its role to facilitating discussion and should not take substantive positions on codes of conduct.** The Administration has committed that the multistakeholder process will be driven by stakeholder consensus and that the government will not substitute its own judgment in the process.² As the process unfolds, the NTIA should remain firm in this commitment. The DAA and other examples of

² The White House, *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy* 27 (February 2012).



successful self-regulation demonstrate that industry leadership is the best approach to meet the Administration's goal of creating codes of conduct that are workable, flexible, effective, and can be voluntarily embraced by companies.

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The DAA thanks the NTIA for requesting public comments on important aspects of the proposed process, and appreciates the opportunity to share these views. We look forward to a continued and productive dialogue with the NTIA, and to working constructively in the multistakeholder process. Any questions regarding these comments can be directed to Stuart P. Ingis, General Counsel of the DAA, at 202.344.4613.