



Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Protecting the Privacy of Customers of Broadband ) WC Docket No. 16-106  
and Other Telecommunications Services )

Comments of the Digital Advertising Alliance

The Digital Advertising Alliance (“DAA”) provides this comment in response to the Federal Communications Commission’s (“Commission” or “FCC”) notice of proposed rulemaking entitled *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services* (“NPRM”).<sup>1</sup> In these comments the DAA explains how its self-regulatory program provides consumers with transparency and choice regarding the collection and use of data from desktop browsers, mobile devices, and from across devices, and demonstrates how the market can flexibly and responsively address privacy issues associated with dynamic data use practices.<sup>2</sup>

The DAA’s successful implementation and administration of industry self-regulatory standards for the collection and use of data demonstrates that self-regulation is the appropriate approach to addressing complex data policy issues. Rigid government regulations, unable to adapt to the rapidly changing technological landscape, would disrupt the Internet ecosystem by chilling investment in consumer-friendly products and services.

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<sup>1</sup> Protecting the Privacy of Customers of Broadband and Other Telecommunications Services, 81 Fed. Reg. 23,359 (Apr. 20, 2016), to be codified at 47 C.F.R. part 64 (hereinafter “NPRM”).

<sup>2</sup> In November 2015, DAA released AppChoices in Spanish language. AppChoices is a tool that helps consumers control data collection and use across applications, *see* ‘Digital Advertising Alliance Launches ‘AppChoices en Español’ To Improve Access to DAA Mobile App for Spanish Speakers’, available at <https://www.aboutads.info/digital-advertising-alliance-launches-AppChoices-en-Espanol> (Nov. 9, 2015).

## **I. Background on the DAA**

The DAA is a consortium of the nation’s largest media and marketing trade associations, including the American Association of Advertising Agencies (“4A’s”), the American Advertising Federation (“AAF”), the Association of National Advertisers (“ANA”), the Direct Marketing Association (“DMA”), the Interactive Advertising Bureau (“IAB”) and the Network Advertising Initiative (“NAI”), in consultation with the Council of Better Business Bureaus (“CBBB”). Representing over 5,000 member companies, these associations have come together in an initiative manner to develop and implement self-regulation for online, mobile, and cross-device data collection.

The DAA believes that self-regulatory mechanisms and education constitute the most effective framework for protecting consumer privacy while ensuring the Internet remains a platform for innovation. For more than 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. Through self-regulatory efforts, industry will continue to quickly respond and address the evolving preferences and concerns of consumers while ensuring that the Internet can thrive, thereby benefiting consumers and the U.S. economy.

## **II. DAA Principles**

The Self-Regulatory Principles for Online Behavioral Advertising, released in 2009, implemented a self-regulatory code to foster consumer transparency and choice regarding data collection and use for online behavioral advertising. These Principles are based on the Federal Trade Commission’s recommended practices and address key areas regarding data. There are

seven basic Principles, which call for consumer 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 could be made aware of the companies they interact with while using the Internet. The Principles 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 2011, the DAA extended these Principles to cover the collection and use of Multi-Site Data collected from a particular computer or device regarding Web viewing over time and across non-affiliated Web sites to apply to uses beyond advertising. Then, in 2013, in response to the increased use of mobile devices, DAA again provided guidance on how its program addresses the collection and use of data from mobile devices, including Cross-App Data, Precise Location Data, and Personal Directory Data. For Precise Location Data, the Principles require companies to acquire user consent for the collection, use and transfer of such data and provide a means by which consumers can withdraw their consent. Most recently, in 2015, the DAA introduced guidance for the application of its transparency and choice principles to the collection and use of data across devices. Together, the 2009 Online Behavioral Advertising Principles, the 2011 Multi-Site Data Principles, and the guidance extending the Principles to the mobile environment and cross-device linking, represent an effective framework for addressing issues surrounding the collection and use of consumer data online. This technology neutral and channel agnostic framework is capable of balancing consumers' interests in transparency, control, and access to innovative products and services in the marketplace.

Pursuant to the DAA’s framework, companies have been able to responsibly collect and use consumer data. Under this regime, companies are required to inform consumers about their data collection and use practices, and offer consumers control regarding the collection and use of Multi-Site and Cross-App Data for DAA covered purposes. The centerpiece of the DAA program is the Advertising Option Icon, a universal symbol deployed within or near behavioral advertisements or on Web sites and mobile applications where data is collected or used for DAA covered purposes. The Icon appears more than a trillion times per month globally as part of Internet ads and elsewhere. By clicking on the Icon, consumers are able to link to a clear disclosure regarding the participating company’s data collection and use practices, as well as a universal and easy-to-use mechanism to opt out of further data collection and use. This industry-wide advancement brings consumer transparency outside of the privacy policy.

### **III. DAA Enforcement**

From its inception, the DAA has been committed to vigorous enforcement of its Self-Regulatory Principles through industry-run accountability. The DAA Principles apply to all entities engaged in practices covered by the code. The Accountability Programs enforce against companies irrespective of formal adoption of, or participation in, the DAA program. This comprehensive and vigorous enforcement helps DAA-compliant businesses by promoting consumer trust.

Primary enforcement of the DAA Principles is carried out through two independent “Accountability Programs,” which are operated by the CBBB and the DMA. The Accountability Programs, and their robust and independent enforcement, are one of the cornerstones of the DAA. These programs help ensure accountability in two ways: first, by affirmatively monitoring the marketplace and identifying companies and practices that appear out of compliance; and

second, by receiving consumer complaints and acting upon this information via investigation of the companies identified.

If the accountability programs determine that a company has failed to meet its obligations under the Principles, the programs will work to bring the company into compliance. The Accountability Programs have a proven track record of helping companies come into compliance; however, for uncorrected violations, the Accountability Programs can report these cases to the appropriate government agencies.

The CBBB's accountability program has issued more than sixty public actions, compliance warnings, and various other compliance and enforcement related materials.<sup>3</sup> The DMA has a similarly robust history of enforcement of the DAA Principles, drawing from its experience over many decades of enforcing the DMA Guidelines on Ethical Business Practice within the entire direct marketing industry.<sup>4</sup> The DMA releases an Annual Ethics and Compliance Report summarizing the consumer complaints and actions taken by the DMA each year related to the DAA program.<sup>5</sup>

The DAA's approach to enforcement strikes the right balance for consumers who wish to preserve the innovation and dynamism of the Internet economy while also ensuring meaningful accountability for all industry participants. Subjecting data flows and the Internet ecosystem generally to government enforcement would risk losing the benefits that consumers seek and enjoy from the ad-supported Internet.

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<sup>3</sup> Accountability Program Decisions, Dispositions, Closures, and Guidance, Advert. Self-Regulatory Council, <http://www.asrcreviews.org/accountability-program-decisions/> (last visited May 25, 2016).

<sup>4</sup> DMA, Guidelines for Ethical Business Practice (2014), [http://thedma.org/wp-content/uploads/DMA\\_Guidelines\\_January\\_2014.pdf](http://thedma.org/wp-content/uploads/DMA_Guidelines_January_2014.pdf).

<sup>5</sup> DMA, Annual Ethics Compliance Report (2016), <http://thedma.org/wp-content/uploads/DMA-2016-Ethics-Compliance-Report.pdf>.

#### IV. Self-Regulation is the Proper Framework for Innovation

The DAA helps implement core privacy principles for consumers identified by the FCC while preserving the frictionless innovation, market entry, and economic growth that serve as the hallmarks of the open Internet.<sup>6</sup> The DAA program accomplishes this task through a flexible program that adjusts and expands to cover new data practices as they emerge.<sup>7</sup> The FTC deliberated extensively over the appropriate regime for regulating online data practices and ultimately determined that self-regulation is the most sensible approach.<sup>8</sup> The DAA approach, which reflects the framework proposed by the FTC, avoids a rigid regulatory structure that would be unable to evolve with developments in the digital economy, stifle the innovation and growth of the ad-supported Internet, and deny consumers the benefits they have come to expect. A recent Zogby poll commissioned by DAA found that consumers prefer an ad-supported Internet over one that would require paying for content.<sup>9</sup> Moreover, 75% of consumers reported that they would reduce their Internet use “a great deal” if they had to pay for content.<sup>10</sup> The opt-in regime proposed by the FCC would reduce ad value and undermine the ad-supported Internet, thus frustrating further broadband adoption and investment in this medium.

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<sup>6</sup> NPRM at ¶ 5.

<sup>7</sup> The NAI Code of Conduct requires similar notice and choice with respect to Interest-Based Advertising.

<sup>8</sup> Federal Trade Commission, *Self-Regulatory Principles for Online Behavioral Advertising: Behavioral Advertising Tracking Targeting, & Technology*, 11 (Feb. 2009), <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-staff-report-self-regulatory-principles-online-behavioral-advertising/p085400behavadreport.pdf> (“Staff supported self-regulation because it provides the necessary flexibility to address evolving online business models.”).

<sup>9</sup> DAA, *Zogby Poll: Americans Say Free, Ad-Supported Online Services Worth \$1,200/Year; 85% Prefer Ad-Supported Internet to Paid*, PR Newswire (May 11, 2016 8:30 AM), <http://www.prnewswire.com/news-releases/zogby-poll--americans-say-free-ad-supported-online-services-worth-1200year-85-prefer-ad-supported-internet-to-paid-300266602.html>.

<sup>10</sup> *Id.*

Consumers have demonstrated their understanding of and preference for new applications, platforms, communications protocols, and media, and in doing so embrace the inherent data exchanges that fuel these services and drive further innovation. The DAA’s ongoing ability to address new technologies and practices as they arise allows the market to provide a self-regulatory approach that has proven successful for consumers and industry alike.

The DAA’s rapid and ongoing adaptation of the Principles to evolving areas of the Internet ecosystem 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 the high technology marketplace.

## **V. Conclusion**

The DAA was developed to respond to new data practices, is backed by robust independent enforcement mechanisms, and continues to evolve to address innovation in the marketplace. As the Commission considers its involvement in this area, it should examine closely the DAA’s successful implementation of a program that allows industry to continue to innovate around new data sources and provide consumers with the products and services they desire in a way that is backed by robust transparency and control mechanisms.

The success of the DAA program shows that the marketplace is capable of developing a set of rules that provide low cost, advertising supported content to consumers, with transparency and control around how data is collected and used, and without the chilling effect that government regulation would place on existing entities and new entrants to the ecosystem.

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The DAA appreciates the opportunity to comment on this proceeding and looks forward to continuing to work with the Commission on this matter. Please contact Stuart Ingis at [SIngis@Venable.com](mailto:SIngis@Venable.com) with any questions.

Sincerely,

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cc: Lou Mastria, DAA