

BEFORE THE

U.S. SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON PRIVACY, TECHNOLOGY AND THE LAW

HEARING ON

THE LOCATION PRIVACY PROTECTION ACT OF 2014

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TESTIMONY OF

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Chairman Franken, Ranking Member Flake, and Members of the Subcommittee, good afternoon and thank you for the opportunity to speak at this important hearing.

My name is Lou Mastria. I am Executive Director of the Digital Advertising Alliance (“DAA”) and I am pleased to report to the Committee on industry’s success in providing consumers with transparency and choice online with respect to data collection and use and the substantial progress of our Self-Regulatory Program in extending these consumer friendly standards to mobile environments.

The DAA is a non-profit organization founded by the leading advertising and marketing trade associations including the Association of National Advertisers (“ANA”), the American Association of Advertising Agencies (“4As”), the Direct Marketing Association (“DMA”), the Interactive Advertising Bureau (“IAB”), the American Advertising Federation (“AAF”), and the Network Advertising Initiative (“NAI”), in consultation with the Council of Better Business Bureaus (“CBBB”). These organizations came together in 2008 to start developing the Self-Regulatory Principles for Online Behavioral Advertising, which were extended in 2011 beyond advertising to cover the collection and use of Multi-Site Data across non-Affiliate sites over time, and then again extended in July 2013 to provide guidance for data collection in mobile environments. The DAA was formed to administer and promote these responsible and comprehensive Self-Regulatory Principles for online data collection and use.

We believe the DAA is a model example of how interested stakeholders can collaborate across the ecosystem to provide meaningful and pragmatic solutions to complex privacy issues, especially in areas as highly dynamic and evolving as mobile advertising. In my testimony, I will describe the benefits of digital advertising and self-regulation and how the industry, through

the DAA, provides consumer-friendly privacy standards in a way that also ensures the continued vibrancy of the Internet and our nation's place as the global leader in the data-driven economy.

I. Benefits of Digital 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 private-sector venture funding and the advertising support that follows. Simply put: the Internet economy and the interactive advertising industry create jobs. A 2012 study found that the Internet economy supports the employment of more than five million Americans, contributing an estimated \$530 billion, or approximately 3%, to our country's GDP.¹ There is Internet employment in every single state.² Another recent study, commissioned by DMA's Data-Driven Marketing Institute ("DDMI") and conducted independently by Professors John Deighton of Harvard Business School and Peter Johnson of Columbia University, and entitled "The Value of Data: Consequences for Insight, Innovation & Efficiency in the U.S. Economy" ("Value of Data"), quantifies the value data has to our economy. The Value of Data study found that the Data-Driven Market Economy ("DDME") added \$156 billion in revenue to the U.S. economy and fueled more than 675,000 jobs in 2012 alone. The study also found that an additional 1,038,000 jobs owe part of their existence to these DDME jobs. The study estimated that 70% of the value of the DDME – \$110 billion in revenue and 475,000 jobs nationwide – depends on the ability of firms to share data across the DDME.

Advertising fuels this powerful Internet economic engine. The support provided by online advertising is substantial. In 2013, Internet advertising revenues reached a new high of

¹ Professor John Deighton, Harvard Business School, *Economic Value of the Advertising-Supported Internet Ecosystem*, at 81 (September 2012), available at http://www.iab.net/media/file/iab_Report_September-24-2012_4clr_v1.pdf (last visited May 12, 2014).

² *Id.* at 66.

\$43 billion, an impressive 17% higher than 2012's full-year number.³ Innovation and growth in mobile has helped lead the way in the ad-supported ecosystem's positive impact on the American and global economies. Mobile advertising in the United States totaled \$7.1 billion during FY 2013, a 110% increase from the prior year total of \$3.4 billion, with strong growth taking place across formats, including search, display, and messaging. Mobile now accounts for 17% of total digital ad revenue.

Because of advertising, consumers can access a wealth of online and mobile resources at low or no cost. Revenue from online and mobile advertising enables e-commerce and subsidizes the cost of content and services that consumers value, such as digital 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 and mobile advertising. 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. 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 long-distance calling, and networking services, to help them run their companies.

³ Interactive Advertising Bureau 2013 Internet Advertising Report (April 2014) (reporting results of PricewaterhouseCoopers study), available at <http://www.iab.net/AdRevenueReport> (last visited on May 12, 2014).

II. 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 privacy and online and mobile advertising practices. 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, which is particularly important for nascent markets like mobile. 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.⁴ 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. 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.

Laws and regulations 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

⁴ 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).

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.

III. The DAA

As the DAA was convened, its goal was to provide greater transparency and control to consumers with respect to their Web viewing data while preserving these incredible benefits to consumers and our economy. Since 2008, 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. This work led to the development of the groundbreaking *Self-Regulatory Principles for Online Behavioral Advertising* (“Principles”), released in 2009, and the *Self-Regulatory Principles for Multi-Site Data* (“MSD Principles”), released in 2011. DAA evolved again to provide guidance with release of the *Application of Self-Regulatory Principles to Environments* (“Mobile Guidance”) in 2013.

The DAA approach provides consumers choice with respect to collection and use of their Internet viewing data while preserving the ability of companies to responsibly deliver services and continue innovating. This approach allows consumers to enjoy the incredibly diverse range of Web sites by preserving the responsible data flows that support these offerings and that fuel

our nation's economy. The DAA approach also provides heightened safeguards for the collection and use of sensitive data.

The successful approach taken by the DAA led to an event in February 2012 at the White House where the Chairman of the Federal Trade Commission ("FTC"), 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."⁵ Since the White House event, the DAA's further work in releasing the MSD Principles and Mobile Guidance has garnered additional praise, including from FTC Commissioner Ohlhausen who has stated that the DAA "is one of the great success stories in the [privacy] space."⁶

The DAA Principles apply broadly to the diverse set of actors that work interdependently to deliver relevant advertising intended to enrich the consumer digital experience, and to foster consumer-friendly privacy standards that are to be applied throughout the ecosystem. The Principles were developed over a year-long period in which broad consensus was reached among the key constituencies of the Internet community. These Principles call for (1) enhanced notice outside of the privacy policy so that consumers can be made aware of the companies they interact with while using the Internet, (2) the provision of choice mechanisms, (3) education, and (4) strong enforcement mechanisms. Together, these Principles increase consumers' trust and confidence in how information is gathered online and in mobile environments and how it is used to deliver advertisements based on their interests. The Principles also restrict the collection of

⁵ 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 June 3, 2014).

⁶ Katy Bachman, *FTC's Ohlhausen Favors Privacy Self-Regulation* (June 3, 2013), available at <http://www.adweek.com/news/technology/ftcs-ohlhausen-favors-privacy-self-regulation-150036> (last visited June 3, 2014).

sensitive data and the use of all data for specified eligibility purposes including employment; credit; healthcare treatment; and insurance and underwriting and pricing. These same safeguards are also part of the Mobile Guidance.

A. Consumer Disclosure through the DAA Icon

The DAA program has developed a universal icon to give consumers transparency and control with respect to interest-based ads. The icon provides consumers with notice that information about their online interests is being gathered to customize the Web ads they see. Clicking the icon also takes consumers to a centralized choice tool that enables consumers to opt out of this type of advertising by participating companies.

The icon is served globally more than *one trillion times each month* on or next to Internet display ads, websites, and other digital properties and tools covered by the program. This achievement represents an unprecedented level of industry cooperation and adoption. The DAA is building products to provide the same level of transparency in the mobile environment.

B. Consumer Control

At DAA's *www.aboutads.info* website and accessible from the companion *www.YourAdChoices.com* educational website, the DAA program makes available a choice mechanism that unites the opt-out mechanisms provided by more than 115 different third-party ad technology companies participating in the program. The choice mechanism offers consumers a "one-click" option to request opt outs from all participants or allows a user to make choices about specific companies. Consumers are directed to *aboutads.info* not only from DAA icon-based disclosures on or around ads, but from other forms of website disclosure. In 2012, the DAA also introduced a suite of browser plug-ins to help ensure the persistency of these choices.

Since program launch, there have been more than 30 million unique visitors to the DAA program Web sites. *Over three million unique users* have exercised choice using the integrated opt-out mechanism provided at AboutAds.info. Many users visit DAA program Web sites, learn about their choices, and ultimately choose not to opt out. This shows that once consumers understand how online advertising works, many prefer to receive relevant ads over irrelevant ads. Research supports this proposition. A recent poll of U.S. consumers shows that 68 percent of Americans prefer to get at least some Internet ads directed at their interests and 40 percent of Americans prefer to get all their ads directed to their interests.⁷

C. Consumer Education

The DAA is also committed to consumer education. The DAA launched a dedicated educational site at *www.YourAdChoices.com* to provide easy-to-understand messaging and informative videos explaining the choices available to consumers, the meaning of the DAA icon, and the benefits they derive from online advertising. Companies participating in the DAA program have donated voluntarily more than four billion impressions to support an educational campaign for *www.YourAdChoices.com*. More than *15 million unique users* have visited this site. This site also provides access to the DAA's user choice mechanism. The combination of the educational campaign and the ubiquitous availability of the DAA icon have significantly increased consumer usage of the DAA program tools.

D. Accountability

For the past 40 years, the advertising industry has distinguished itself through its self-regulatory systems 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

⁷ Interactive Survey of U.S. Adults commissioned by the DAA (April 2013), *available at* <http://www.aboutads.info/DAA-Zogby-Poll>.

independent accountability. All of the DAA's Self-Regulatory Principles are backed by the robust enforcement programs administered by the Council of Better Business Bureaus ("CBBB") under the policy guidance of the Advertising Self-Regulatory Council (ASRC), and by the DMA under its Guidelines for Ethical Business Practice. A more detailed description of how these programs work is included in Appendix I.

E. Application of Self-Regulatory Principles to the Mobile Environment

The DAA Self-Regulatory Program has adapted over time and we expect this evolution to continue with changes in the marketplace driven by technological advancements and evolving consumer preferences. In July 2013, the DAA issued new implementation guidance addressing certain operations across a variety of channels including mobile (the "Mobile Guidance"). This guidance brings the same consumer privacy safeguards operating in the online environment to mobile web and mobile applications. The Mobile Guidance explains how the Self-Regulatory Principles apply to certain data practices that may occur on mobile or other devices.

Stakeholders representing all major elements of the mobile ecosystem participated in the development of this guidance. The guidance describes how the Self-Regulatory Principles apply to the mobile web environment and to the application environment, including to what the DAA calls "Cross-App" data – data collected from a device across non-Affiliated applications over time. In April 2014, the DAA issued detailed guidance for displaying the DAA icon in mobile environments. The DAA has now turned its work with DAA stakeholders to develop and implement a companion transparency and choice mechanism for Cross-App Data. In the coming months, the DAA will release a new choice tool that will offer consumers an unprecedented level of control over data collection across applications on a device. DAA expects this choice mechanism to be operational in 2014. Once available, the DAA will announce to covered

companies that this guidance is effective and enforceable. Any entity engaged in the collection and use of Cross-App Data after the effective date established by the DAA will be subject to the DAA accountability mechanisms for engaging in practices that do not adhere to the Self-Regulatory Principles.

F. Precise Location Data

The DAA program requires companies to adhere to stringent requirements for location data gathered in mobile environments. These requirements include consent for collection and the provision of enhanced transparency.

The Mobile Guidance squarely addresses control over Precise Location Data – data obtained from a device about the physical location of that device that is sufficiently precise to locate a specific individual or device – requiring entities collecting such data to obtain consumers’ consent, or obtain reasonable assurances that the app developer or owner has obtained consent to the third party’s data collection, use, and transfer. In addition, the DAA program requires companies to provide an easy-to-use tool to withdraw consent at any time.

The Mobile Guidance further calls for entities to provide clear, meaningful, and prominent notice regarding their collection and use of Precise Location Data. An app provider – also known as a First Party – must include in the notice the fact that Precise Location Data is transferred to or collected by a Third Party and instructions for accessing and using a consent tool. Third Parties must include these same disclosures, as well as the uses of Precise Location Data, such as whether it will be transferred to a non-Affiliate, and must display the notice on their web sites or the applications from or through which they collect Precise Location Data.

First Parties are called upon to provide enhanced notice – outside of the privacy policy – of Third Parties’ collection and use of Precise Location Data from or through a First Party’s

application. This enhanced notice must be made (a) as part of the downloading process; (b) at the time that the app is first opened; or (c) at the time the data is collected. First Parties must also provide a link to their disclosures through the enhanced notice process as well as in the application's settings or privacy policy.

III. Conclusion

The DAA has championed consumer control that both accommodates consumers' privacy preferences and supports companies' ability to continue innovating and responsibly delivering the products and services desired by consumers. We appreciate the opportunity to be here today.

I am pleased to answer any questions that you may have.

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APPENDIX I: ACCOUNTABILITY PROGRAMS

The CBBB Accountability Program builds on the successful track records of the other ASRC programs: 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 independent monitoring; public reporting of decisions; and referral to government agencies, often to the FTC, 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 companies that fail to comply or refuse to participate in the self-regulatory enforcement process are referred publicly to the appropriate government agency for further review.

The CBBB administers its Interest-Based Advertising Accountability Program under the ASRC self-regulatory policy guidance and procedures. Because of the highly complex, technical and interdependent nature of interest-based advertising, the Accountability Program receives a weekly privacy dashboard report based on independent data about more than 250 companies’ compliance with various requirements of the Principles. The Accountability Program’s technical staff analyzes these data and independently performs further research to determine whether there may be a violation of the Principles warranting formal inquiry. Like other ASRC programs administered by the CBBB, the CBBB Accountability Program also finds potential cases through its own staff monitoring and investigation, by analysis of consumer complaints and reviews of news stories and technical reports from academics and advocacy groups. Where there is a potential compliance issue, the CBBB initiates formal inquiries and works to ensure the company understands the Principles and voluntarily implements the requirements of the Principles. At the end of the process, the CBBB Accountability Program issues a public decision, which details the

nature of the inquiry, the Accountability Program's conclusions, any recommendations for correction, and includes a statement from the company in question regarding its implementation of the recommendations. A press release is also issued.

The CBBB's Accountability Program has brought 33 cases since November 2011. 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 transparency that was deficient or otherwise lacking.

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 the DMA Guidelines and how they are implemented.

The Committee on Ethical Business Practice 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 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 Committee 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 and the Committee believes violations of law may also have occurred, the case is referred to federal and/or state law enforcement authorities for review.

The CBBB and DMA programs demonstrate the success of self-regulation and its many benefits, including the ability for the regulatory apparatus to evolve to meet new challenges. Importantly, accountability under the Principles applies to all members of the advertising ecosystem, not merely “members” of the various organizations.