

**BEFORE THE**

**U.S. SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS**

**HEARING ON**

**ONLINE ADVERTISING AND HIDDEN HAZARDS TO CONSUMER SECURITY AND DATA PRIVACY**

**MAY 15, 2014**

**TESTIMONY OF**

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Chairman Levin, Ranking Member McCain, and Members of the Subcommittee, good morning 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 the substantial progress of our Self-Regulatory Program that is providing consumers transparency and choice.

The DAA is a non-profit organization led 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.

The DAA is a model example of how interested stakeholders can collaborate to provide flexible, market-driven solutions to complex privacy issues. In my testimony, I will describe the benefits of online advertising 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 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 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.<sup>1</sup> There is Internet employment in every single state.<sup>2</sup> 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 \$43 billion, an impressive 17% higher than 2012's full-year number.<sup>3</sup>

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<sup>1</sup> 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](http://www.iab.net/media/file/iab_Report_September-24-2012_4clr_v1.pdf) (last visited May 12, 2014).

<sup>2</sup> *Id.* at 66.

<sup>3</sup> 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).

Because of advertising, consumers can access a wealth of online resources at low or no cost. Revenue from online advertising enables e-commerce and subsidizes 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. Interest-based advertising is delivered based on consumer preferences or interests as inferred from data about online 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.

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.

## **II. 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.

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 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.

#### **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.

## **B. Consumer Control**

At DAA's *www.aboutads.info* website and accessible from the companion *www.YourAdChoices.com* website, the DAA program makes available a choice mechanism that unites the opt-out mechanisms provided by more than 115 different third-party advertisers 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.<sup>4</sup>

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<sup>4</sup> Interactive Survey of U.S. Adults commissioned by the DAA (April 2013), *available at* <http://www.aboutads.info/DAA-Zogby-Poll>.

### **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 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. In addition to the oversight provided by the CBBB and DMA compliance programs, the NAI also has a strong compliance program. The NAI's compliance program, like the CBBB and DMA programs, helps members to comply with their self-regulatory obligations, and to hold them accountable.<sup>5</sup> A more detailed description of how these programs work is included in Appendix I.

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<sup>5</sup> NAI Enforcement Page (providing Compliance Reports from 2009-2013), available at <http://www.networkadvertising.org/code-enforcement/enforcement>.

## **E. Application of Self-Regulatory Principles to Data Collected on Mobile Devices**

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 operation across a variety of channels including mobile. The 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, which DAA calls “Cross-App” data – data collected from a device across non-Affiliated applications over time. The DAA has now turned its work with DAA stakeholders to develop and implement a companion choice mechanism for Cross-App Data. This new tool will offer consumers an unprecedented level of control over data collection across applications on a device.

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.” Since the White House event, the DAA’s further work in releasing the Self-Regulatory Principles for Multi-Site Data (November 2011) and guidance on the Application of Self-Regulatory Principles to the Mobile Environment (July 2013) 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.”

### **III. Conclusion**

The DAA has championed consumer control that both accommodates consumers' privacy expectations and supports the ability of companies to responsibly deliver services desired by consumers and continue innovating. We appreciate the opportunity to be here today. We believe our successful model can continue to effectively evolve in the privacy area and can also be replicated in other areas.

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.