

BEFORE THE

SENATE COMMITTEE ON COMMERCE, SCIENCE & TRANSPORTATION

HEARING ON

A STATUS UPDATE ON THE DEVELOPMENT OF VOLUNTARY DO-NOT-TRACK STANDARDS

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TESTIMONY OF

LUIGI MASTRIA, CIPP, CISSP

MANAGING DIRECTOR

DIGITAL ADVERTISING ALLIANCE

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

My name is Lou Mastria. I am Managing 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.

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. The DAA was formed to administer and promote these responsible comprehensive Self-Regulatory Principles for online data collection and use.

In response to the Chairman’s request for a status update on steps industry stakeholders have taken to fulfill their commitment to honor Do-Not-Track requests from consumers.¹ Since the fall of 2010, the DAA and its participants have been providing uniform choice to consumers. The DAA Program provides consumers with a one-button choice mechanism to stop the collection and use of web viewing data. This choice mechanism, which is consistent with the recommendations of the Federal Trade Commission (“FTC”) is being implemented: (1) to universally apply to all parties that collect web viewing data across nonaffiliated sites over time; (2) to be easy to find, understand, and use; (3) to make consumers’ choices persistent; (4) to be effective and enforceable; and (5) to apply beyond simply opting out of receiving interest-based tailored ads.² Furthermore, our program and choice tools share and meet the goals of the Chairman’s legislation – providing individuals with a simple and easy means to indicate their

¹ Hearing Notice: A Status Update on the Development of Voluntary Do-Not-Track Standards, *available at* http://www.commerce.senate.gov/public/index.cfm?p=Hearings&ContentRecord_id=1cf8fb1a-fb0b-4bf1-958b-1ea3c443a73c.

² “FTC Report: Protecting Consumer Privacy in a, Era of Rapid Change - Recommendations for Businesses and Policymakers”, at 53 *available at* <http://www.ftc.gov/os/2012/03/120326privacyreport.pdf>.

preference about the collection of such online viewing data. Unfortunately, some browser manufacturers have frustrated the DAA desire to extend the DAA program and tools to a browser setting. Nonetheless, the DAA and its participants today provide meaningful and effective consumer choice tools to consumers that with the click of one button provides consumers with the exact choice that a browser setting could provide. The DAA is the only system that provides an end to end system that captures all data viewing behavior, provides enhanced transparency in the form of an icon, and strong and credible enforcement to ensure compliance. The DAA stands committed to work with the Committee, these browsers and all organizations that are willing to join our efforts to provide meaningful choice while continuing to provide consumers with the Internet offerings that they cherish.

My testimony today will describe the commitment made by the DAA to extend its effective choice mechanisms to include browser-based signals, the threat to the Internet ecosystem posed by the actions of two browser manufacturers, and how the online advertising industry continues to successfully work to give consumers transparency and easy, uniform, and effective tools to control online data collection. Companies recognize that consumers have different preferences about online advertising and data collection and want to continue 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 co-exist with consumers' desire for innovative products and services. Industry self-regulation coupled with consumer education effectively achieves this outcome. The DAA standards empower consumers to make choices about online data collection and use. Self-regulation is the appropriate approach because it 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, reduce competition, and add unnecessary costs.³ The business community has a strong incentive to ensure broad, industry

³ See: http://cetucker.scripts.mit.edu/docs/law_summary_2011.pdf. In a 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

wide compliance with its self-regulatory principles and achieves this goal through the accountability that is built into our Self-Regulatory Program.

I. DAA's Commitment to Honor Browser-Based Opt-Out Mechanisms

For more than two years, the DAA has been offering an effective, one-button choice mechanism that empowers consumers to stop the collection of web viewing data for by third parties participating in the program. On February 23, 2012, at a White House event announcing President Obama's framework for privacy in the 21st Century, the Chairman of the Federal Trade Commission, the Secretary of Commerce, and White House officials publicly praised and endorsed the DAA's cross-industry initiative. In the words of one White House official, the DAA is "an example of the value of industry leadership as a critical part of privacy protection going forward."⁴ At this event, the DAA committed to developing a process to honor browser settings while providing consumers with the ability to make choices about the collection and use of web browsing data.

A. DAA Commitment to Honor a Users' Choices Through Browser-Based Tools

At the February 2012 White House event, the DAA committed to recognize browser-based header signals as a means of exercising the choices provided under the Self-Regulatory Principles. Specifically, at the event, the DAA read the following commitment reached with the DOC, FTC, and White House:

The DAA standard and corresponding enforcement of the standard will be applied where a consumer:

- (1) has been provided language that describes to consumers the effect of exercising such choice including that some data may still be collected and

effect of such regulation was greatest for websites with content that did not relate obviously to any commercial product, such as general news websites. Professor Tucker cautions: "on the basis of this evidence, it is reasonable to say that privacy regulation could have sizable effects for the advertising-supported internet." Professor Tucker advises that "policymaking in the area of privacy regulation needs to be careful and fulfill the twin aims of protecting consumer privacy and ensuring that the advertising-supported internet continues to thrive."

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).

(2) has affirmatively chosen to exercise a uniform choice with the browser based tool.

The DAA standard will not apply in instances where (1) and (2) do not occur or where any entity or software or technology provider other than the user exercises such a choice.⁵

This framework is tied to an industry-consensus standard known as the *Self-Regulatory Principles for Multi-Site Data* that govern the collection and all uses of web viewing, including interest-based advertising.⁶ The framework also recognizes that consumers should be educated as to the effect of their choice, in particular they should be aware that if they exercise their choice: (1) they will still receive advertising but that ads may not be relevant to their interest; (2) consistent with the Self-Regulatory Principles, web viewing data may still be collected for narrow purposes including operational and system management purposes, fraud prevention and security, content delivery, market research, and product development; and (3) that data is vital to workings of the Internet ecosystem, and limiting collection can result in a reduced online experience.

The DAA committed to this standard because it provides consumer transparency, control, and education concerning the scope and effect of their choice while ensuring that a broad range of companies can continue to deliver products and services today and to innovate for tomorrow's marketplace.

B. Browsers' Subsequent Actions

Following the February 2012 White House event, the DAA set out to work toward implementing browser-based choice by the end of last year. The DAA efforts were short-circuited due to decisions by Microsoft and Mozilla. In particular, contrary to the agreement at the White House which Mozilla and Microsoft supported, they unilaterally chose to implement browser-based header signals, that they call "do not track" signals, in a way inconsistent with the DAA commitment announced with the FTC, Department of Commerce, and White House.

⁵ DAA Position on Browser Based Choice Mechanism, *available at* https://www.aboutads.info/resource/download/DAA_Commitment.pdf.

⁶ DAA Self-Regulatory Principles for Multi-Site Data (November 2011), *available at* <http://www.aboutads.info/resource/download/Multi-Site-Data-Principles.pdf>.

Microsoft released its new version of Internet Explorer 10 (“IE10”) with a “do not track” tool turned “on” as a default setting in direct conflict with the commitment they supported at the White House that a user – and not the browser manufacturer – choose to exercise the choice mechanism in the browser setting. Machine-driven signals with the default on set by Microsoft do not represent user choice. The existing Microsoft system further compounds this problem by making it difficult in its settings for consumers to change the mandated default “on” setting. The DAA believes that a choice that prohibits data collection and use should not be made for the consumer by a browser or any other party. Allowing browser manufacturers to determine these choices for users limits the information and experience received by consumers, and consumers’ ability to enjoy the ad supported Internet provided by DAA participants and hundreds of thousands of other websites that consumers value. Most importantly, honoring the approach that Microsoft has elected to put in its browser was not part of the public commitment at the White House.

Mozilla has implemented what it refers to as a “do not track” tool in the current Firefox release also without following the White House agreement, for example by not describing for consumer the impact of their choice and creating inaccurate consumer expectations. Mozilla’s interface permits users to check a box to “Tell websites I do not want to be tracked.” Nothing more is provided to users; for example, consumers are not told that, by exercising such choice some data may still be collected. This implementation conflicts with the workable standard developed through industry consensus in 2012 and does not provide consumers with clear information about the effect of their choices.

The process for implementing the DAA’s commitment has been further delayed by the Worldwide Web Consortium (“W3C”), a technical standard-setting organization for web technologies, and its failure to reach any consensus after nearly two years of dialogue. Because the W3C is ill-equipped to address such public policy matters, its involvement has further complicated and protracted efforts to reach consensus on a standard and implementation for choice offered in the browser settings. This process is still ongoing and the DAA continues to participate in this forum.

C. DAA Offers a Universal Choice Mechanism

These browser implementations conflict with the DAA commitment, and are inconsistent with Chairman Rockefeller’s “Do Not Track Online Act” (S. 418). The Chairman’s bill calls for a standard by which “an individual can simply and easily indicate whether the individual prefers to have personal information collected.”⁷ This bill identifies the type of data subject to the tool and the effect of choice. The above-described browser implementations contain no standard for the types of data subject to the choice mechanism or the effect of exercising a choice. Without a standard governing when a browser-header signal is activated and what it means, a website or other entity receiving this signal will not know how to implement it. As a result, the signal could be ignored or, worse, treated differently by different signal recipients resulting in the consumer receiving no effect from the choice or receiving uneven results. This could cause confusion for consumers instead of comfort and security.

In contrast, we believe that the DAA’s current implementation is consistent with the Chairman’s bill and the recommendations set forth by the FTC. The DAA Principles, our Self-Regulatory Program, and our consumer choice tool enforced by credible accountability programs are the only mechanisms in the marketplace today that provide consumers with clear transparency, choice, and understanding about how their data will and will not be used. Through more than 1 trillion ad impressions served each month with the DAA’s Advertising Option Icon (“DAA Icon”), consumers can access the DAA’s universal, easy-to-use choice mechanism via www.aboutads.info/choices and www.youradchoices.com/control.aspx. This choice tool provides consumers with a single button to exercise choice against participating companies, either as a group or individually. When a consumer exercises choice – whether against all participants or a few – the affected participants stop collecting and using web viewing data from the user’s browser for interest-based advertising. Since the program’s launch in 2010, more than 23.5 million consumers have visited the DAA sites to learn about their advertising data choices, and, last year alone, more than a million consumers have taken action via DAA to exercise their choice about how advertisers will use their data.

⁷ S. 418, “Do Not Track Online Act, 113th Congress.

II. Mozilla's Technology Blocking Tool Could Harm Consumers and the Internet

In an act that is sure to further undercut consumer choice committed to at the White House and that will break critical Internet functionality, in February 2013, Mozilla announced that it will block cookies set by third parties in the upcoming release of its Firefox browser. Mozilla's decision to block technologies by certain types of companies will have a significant adverse impact on the Internet by reducing competition and diminishing the consumer's online experience.

A. Third Party Cookies are Vital to the Internet Ecosystem

Today's Internet is built around the technology of "cookies". Cookies are small text files that websites use to store information in order to make it easier for users to utilize and access web pages efficiently. For example, a website might use cookies to keep track of items a user has placed in a virtual "shopping cart." This well-established and very transparent technology enables the delivery of rich content, products, relevant advertising, and security and fraud prevention services. Recently, Mozilla has decided to selectively deny access to this technology, in effect picking winners and losers in the Internet ecosystem. The Internet, however, does not discriminate against technology based on its source. Affiliated companies operating differently branded domains could find their cookies blocked as third parties across these different domains. This blocking approach would also hurt a company's measures to provide security measures. Companies often implement security measures through third party domains or even their own differently branded domains. Mozilla would thwart these security efforts by preventing companies from setting cookies for security purposes in these multiple domains. This change harms not only third parties, but all companies that rely on integrated services, particularly the large number of small publishers that rely on service providers to operate and monetize their sites.

The Internet is a complex ecosystem comprised of a diverse set of actors including web publishers, content providers, ad networks, analytics firms, security and fraud prevention providers, exchanges, advertisers, plugin providers, and many other actors. These entities work seamlessly together to provide content and services to the benefit of consumers. Cookies set by third parties play a vital role in this ecosystem by facilitating consumer demand for content and

services. Cookies are also vital to interest-based advertising (“IBA”). IBA provides consumers with a more relevant online experience by providing information about products and services that more likely relevant to their. Blocking third-party cookies will prevent third parties from fulfilling these roles, in turn disrupting consumer services, lessening online relevancy and security, and destroying many Internet business models.

B. Blocking Third Party Cookies Will Restrict Consumers’ Access to Content and Services

Today, hundreds of thousands of publishers deliver mainstream and niche content for free or at low cost. Web publishers rely on third parties to help select, provide, and display relevant content to visitors to their publisher sites. On any given website, content such as news feeds, weather tools, social plugins, or emergency response and safety information (*e.g.*, Amber alerts) are often provided by a third party integrated into the publisher’s site for a seamless appearance and experience for the user. Third parties also enhance content quality, providing information relevant to the browser user’s interests, and securing the user’s safety when browsing or shopping on a site. All of these essential services are typically delivered through cookie technology. Mozilla’s denial of the use of cookies would prevent third parties from providing these services resulting in blocked access to content, and a slower, less optimized, and less safe consumer experience online. In order to receive the Internet that works effectively and gives consumers the services they are used to receiving, it will be time for consumers to change their browser.

Mozilla’s cookie-blocking approach will lead U.S. consumers down a path where a few large companies can control the amount and diversity of content made available online. Not that long ago, television was comprised of three networks that selected and delivered all programming to consumers. Through advances in technology and infrastructure, consumers may now access a rich diversity of television content. The Internet delivers an even more stunning array of content because of the low barriers to entry. Consumers value these choices, and should not have their online experience be forced back into a 1970’s television construct where a few control the content that consumers can access. In short, Mozilla’s actions could significantly hurt the Internet, consumer experience and choice to have robust content offerings.

C. Blocking Cookies Disadvantages Small Businesses

Advertising fuels the Internet economic engine. The support provided by online advertising is substantial and growing despite the difficult economic times we are facing. The online advertising industry is a beacon for innovation and job creation. In 2012, Internet advertising revenues reached a new high of \$36.6 billion, an impressive 15% higher than 2011's full-year number.⁸ Because of this advertising support, small and medium-size publishers can provide consumers with access to a wealth of online resources at low or no cost. Revenue from online advertising facilitates e-commerce and subsidizes the cost of content and services that consumers value, such as online newspapers, weather, Do-It-Yourself websites, blogs, social networking sites, mobile applications, email, and phone services. According to a recent poll by Zogby Analytics, 92 percent of Americans think free content like news, weather and blogs is important to the overall value of the Internet.⁹

This model delights consumers and creates jobs across America, fostering a competitive marketplace that drives down prices for consumers and costs for businesses. 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. A 2009 study found that more than three million Americans in every U.S. state are employed due to the advertising-supported Internet, contributing an estimated \$300 billion, or approximately 2%, to our country's GDP.¹⁰ There is employment generated by this Internet activity in every single congressional district in every state across the United States.¹¹

Recently, more than 700 small publishers signed an open letter to Mozilla requesting that it reconsider its decision to block third-party cookies.¹² These small publishers rely on third

⁸ Interactive Advertising Bureau Press Release, "Internet Ad Revenues Again Hit Record-Breaking Double-Digit Annual Growth, Reaching Nearly \$37 Billion, a 15% Increase Over 2011's Landmark Numbers" (April 16, 2013) (reporting results of PricewaterhouseCoopers study).

⁹ Interactive Survey of U.S. Adults commissioned by the DAA (April 2013), available at http://www.aboutads.info/resource/image/Poll/Zogby_DAA_Poll.pdf.

¹⁰ 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>.

¹¹ *Id.* at 53.

¹² Open Letter to Mozilla, available at http://www.iab.net/mozilla_petition/.

party cookies for content delivery as well as the delivery of advertising that subsidizes their provision of online services, products, and content through their websites. Small-business website publishers that cannot afford to employ advertising personnel to sell their advertising space, and may not even be on the radar of large brand-name advertising campaigns, can increase their revenue by featuring advertising that is more relevant to their users. This is commonly done through third-party platforms, often offered on a self-serve basis, that allow publishers to add advertising to their sites efficiently and easily. 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.

III. DAA Approach Is Successful

The DAA is a broad-based self-regulatory program established by the leading advertising and marketing industry associations. The program is led by the 4As, AAF, ANA, DMA, IAB, and the NAI. The DAA program unites these major trade associations representing thousands of online companies across the full spectrum of advertising services (including web publishers, advertisers, third-party ad networks, and exchanges). The DAA program is based on seven core Self-Regulatory Principles: education, transparency, consumer control, data security, controls with respect to material changes to policies and practices, heightened safeguards for sensitive data, and accountability. The DAA offers several interrelated mechanisms to deliver consumers enhanced transparency and a ubiquitous and easy-to-use choice mechanism as described below.

A. Consumer Disclosure through the Advertising Option Icon

The DAA program has developed a universal icon to give consumers transparency and control for 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 allows consumers to choose whether to continue to allow this type of advertising.

The icon is served over *one trillion times each month* on or next to Internet display ads on websites covered by the program. The DAA reached this milestone within a short 18 months

from program launch. This achievement represents an unprecedented level of industry cooperation and adoption.

B. Consumer Control

At the *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 114 different third-party advertisers participating in the program. We estimate that the DAA program coverage is approaching 100 percent participation of the interest based ads being delivered. 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 icon-based disclosures on or around ads, but from other forms of website disclosure. The site also contains other educational and informational materials about the DAA program and its participants. Since program launch, there have been more than 16 million page views of our choice portal. More than a year ago, the DAA also introduced a suite of browser plug-ins to help ensure the persistency of these choices.

In 2012, more than *5.2 million unique users* accessed the resources provided at *www.aboutads.info*. Of those visitors, *nearly one million unique users* have exercised choice using the integrated opt out mechanism provided at that site; nearly two million unique visitors have opted out since the program launch. Many users visit the website, learn about their choices, and ultimately choose not to opt out. We believe that 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 with 40 percent of Americans prefer to get all their ads directed to their interests.¹³

¹³ 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 deeply committed to consumer education. In 2012, the DAA launched a dedicated educational site at *www.YourAdChoices.com*. The site provides easy-to-understand messaging and informative videos explaining the choices available to consumers, the meaning of the Advertising Option icon, and the benefits they derive from online advertising.

In 2012, companies participating in the DAA program voluntarily donated more than four billion impressions to support an educational campaign for *www.YourAdChoices.com*. Since the campaign launch in late January 2012, more than *13.5 million unique users* have visited the site, an average of about one million visitors each month. This site also provides access to the DAA's user choice mechanism. The combination of the educational campaign and the ubiquitous availability of the Advertising Option Icon have significantly increased consumer usage of the DAA program tools. Indeed, the 5.2 million unique visitors to *www.aboutads.info* in 2012 are *more than three times* the 2011 figure.

D. Commitment to 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 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 compliance program includes pre-certification reviews, ongoing technical monitoring of member companies' opt-out scripts, annual compliance reviews, mechanisms for accepting and investigating complaints alleging non-compliance, and annual reporting. 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.¹⁴

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 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 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.

¹⁴ NAI 2012 Compliance Report, *available at* http://www.networkadvertising.org/2012_NAI_Compliance_Report.pdf.

The CBBB's Accountability Program has brought 19 cases since November 2011, and has a 100 percent track record of voluntary industry compliance with its recommendations. 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. In other cases, the Accountability Program has demonstrated the flexibility of self-regulation by applying the Principles to diverse technologies and to evolving business models.

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 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 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 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 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.

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

Industry self-regulation is especially appropriate for the technology sector because it is nimble. The DAA Self-Regulatory Program is adapting over time and we expect this evolution to continue with changes in the marketplace driven by technological advancements and evolving consumer preferences. Currently, the DAA is finalizing new implementation guidance responding to the fact that companies operate across a variety of channels including mobile. The guidance will explain 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 will clarify that the previously-issued Self-Regulatory Principles apply to the mobile web environment. In addition, the guidance will explain how the Transparency and Consumer Control Principles apply to “Cross-App” data – data collected from a device across non-affiliated applications over time. The DAA will build on the success of its existing web-based uniform choice mechanism by working with DAA stakeholders to develop and implement, or otherwise specify, a companion choice mechanism for Cross-App Data. This new tool will offer consumers an unprecedented level of control over third-party data collection across applications on a device.

The guidance will also ensure Transparency and Consumer Control for both Precise Location Data and Personal Directory Data, the term encompassing calendar, address book, phone and text logs, or photo and video data created by a consumer that is stored on or accessed through a device. Any entity engaged in the collection and use of Cross-App Data, Precise Location Data, or Personal Directory Data will be subject to the DAA accountability mechanisms. As discussed above, these robust accountability mechanisms can, and do, review an entity’s practices regardless of whether that company has announced its adherence to the DAA Self-Regulatory Principles.

F. 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 responsible data collection and use practices. We appreciate the positive recognition of the White House and the Federal Trade Commission for our efforts. 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. The DAA is also a global leader in self-regulation. The DAA Program has been implemented in close to 30

countries including throughout Europe soon to be launched elsewhere. The success means a standard consumer experience and universal standards for business operating around the world.

We believe that our commitment to and success in advancing industry self-regulation obviates the need for new legislation. We remain 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 and can impede a competitive marketplace that offers a full range of choice to consumers. We believe, however, as we have noted that our DAA program furthers the goals of the legislation introduced by Chairman Rockefeller, while allowing for the more rapid and flexible response to marketplace developments that are so pronounce in the Internet and new media environment.

The DAA has championed a balanced approach to consumer control 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 receive and enjoy the diverse range of websites and services subsidized by relevant advertising.

Industry has invested tens of millions of dollars to develop the DAA program, which is one of the most successful and fastest-developing consumer choice systems in the world.

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