



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

June 16, 2009

The Honorable Bobby Rush  
Chairman  
The Honorable George Radanovich  
Ranking Member  
Subcommittee on Commerce, Trade,  
and Consumer Protection  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Rick Boucher  
Chairman  
The Honorable Cliff Stearns  
Ranking Member  
Subcommittee on Communications,  
Technology, and the Internet  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515

Dear Chairmen Rush and Boucher, and Ranking Members Radanovich and Stearns:

Thank you for the opportunity to share the views of the Federal Trade Commission (“FTC” or “Commission”) regarding online behavioral advertising – the practice of collecting information about an individual’s online activities in order to serve advertisements tailored to that individual’s interests. The Commission applauds your attention to this topic and looks forward to assisting the Committee in any way we can. The Commission has actively encouraged industry to embrace new measures relating to behavioral advertising to inform and empower consumers and is monitoring developments, both in this space and more broadly, to ensure that consumers’ privacy is protected.

As you may know, the Commission has been concerned about the privacy issues related to behavioral advertising for some time. Indeed, our work in this area dates back to 1999, when the FTC held a joint public workshop with the Department of Commerce on the practice, then called “online profiling.”<sup>1</sup> A copy of the report summarizing the Commission’s efforts in this area – *FTC Staff Report: Self Regulatory Principles for Online Behavioral Advertising* (“Staff Report”) – is enclosed.<sup>2</sup>

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<sup>1</sup> FTC and Department of Commerce Workshop, *Online Profiling Public Workshop* (Nov. 8, 1999), available at <http://www.ftc.gov/bcp/workshops/profiling/index.shtm>.

<sup>2</sup> The report was published on Feb. 12, 2009 and also is available at <http://www2.ftc.gov/os/2009/02/P085400behavadreport.pdf>.

In recent years, the FTC has increased its efforts in this area. More specifically, in November 2007, the Commission held a two-day public “Town Hall” meeting that brought together various stakeholders to discuss online behavioral advertising.<sup>3</sup> As the presentations and discussions at the Town Hall made clear, the privacy issues surrounding the practice are challenging. Although behavioral advertising may provide benefits to consumers in the form of free content and a more personalized online experience, it also raises significant privacy concerns. Adding to the complexity is the fact that the business models are diverse and constantly evolving.

In November 2008, to address the privacy concerns raised by behavioral advertising, Commission staff released for public comment a set of proposed principles (the “Principles”) intended to encourage and guide industry efforts to develop guidelines governing the practice.<sup>4</sup> The Principles call for increased transparency and consumer control, reasonable security, and affirmative express consumer consent when a company collects and uses sensitive information or makes material changes to its privacy promises. In February of this year, the Commission issued the attached Staff Report analyzing the public comments received, setting forth additional guidance regarding the Principles’ scope and implementation, and discussing efforts to date by industry and consumer groups to address the privacy concerns in this area. Concluding that significant work still was needed to address these concerns, the Staff Report called upon industry to redouble its efforts to develop self-regulatory programs, and to ensure that such programs included meaningful enforcement.

Since then, a number of individual companies have taken steps to improve their practices. For example, some companies have developed new means for notifying consumers when their data is collected for behavioral advertising, new tools to allow consumers to permanently opt out of the practice,<sup>5</sup> and features allowing consumers to manage and control their online marketing profiles. Additionally, some search engines allow consumers to search the Internet anonymously, and a number of companies have reduced the amount of time they retain consumers’ data.

Trade organizations also are in the process of revising their codes of conduct, or creating new guidelines, in order to ensure that their members’ practices are consistent with the Principles. Further, one newly-created think tank composed of industry members, academics, and advocacy groups, has begun systematically to examine the best ways to provide transparency

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<sup>3</sup> FTC Town Hall, *Behavioral Advertising: Tracking, Targeting, & Technology* (Nov. 1-2, 2007), available at <http://www.ftc.gov/bcp/workshops/behavioral/index.shtml>.

<sup>4</sup> FTC Staff, *Online Behavioral Advertising: Moving the Discussion Forward to Possible Self-Regulatory Principles* (Dec. 20, 2007), available at <http://www.ftc.gov/os/2007/12/P859900stmt.pdf>.

<sup>5</sup> Such “persistent” opt-out tools are important, as they allow consumers to delete tracking cookies from their computer’s browser without also deleting the cookie that records the consumer’s decision to opt out of behavioral advertising.

and consumer control in the behavioral advertising space.

The Commission is encouraged by these developments, and will continue to monitor the marketplace to ensure that they continue. Commission staff also will continue to investigate specific practices to determine whether they violate Section 5 of the FTC Act or other laws. For example, the FTC recently announced a proposed settlement with Sears Holding Management Corporation resolving allegations that the company failed to disclose adequately that it was collecting detailed consumer data, including information about consumers' online browsing activity, through tracking software.<sup>6</sup> In addition, staff will continue to meet with companies, consumer groups, trade associations, and other stakeholders to keep pace with changes, and will look for opportunities to use the Commission's research tools to study developments in this area.

The Commission appreciates this opportunity to submit its Report to the Committee and looks forward to working with the Congress on the issues related to online behavioral advertising.

By direction of the Commission.

Donald S. Clark  
Secretary

Enclosure

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<sup>6</sup> *In the Matter of Sears Holdings Management Corp.*, FTC File No. 082-3099 (June 3, 2009 proposed consent order and complaint), *available at* <http://www2.ftc.gov/os/caselist/0823099/090604searsagreement.pdf>.