

June 29, 2011

The Honorable John D. Rockefeller IV
Chairman
Committee on Commerce, Science,
and Transportation
United States Senate
Washington, DC 20510

The Honorable Kay Bailey Hutchison
Ranking Member
Committee on Commerce, Science,
and Transportation
United States Senate
Washington, DC 20510

Dear Chairman Rockefeller and Ranking Member Hutchison:

The undersigned trade associations and business groups representing hundreds of thousands of U.S. companies from a wide variety of industry segments strongly urges caution as you examine whether changes are necessary to existing U.S. privacy law. We continue to believe that self-regulation and best business practices that are technology-neutral serve as the preferred framework for enhancing innovation, investment, and competition, while—at the same time—protecting consumers’ privacy.

I. The Benefits of Data Collection and Use to the U.S. Economy

All sectors of the U.S. economy—including financial services, manufacturing, and many more—collect and use data to spur sales and job growth, enhance productivity, enable cost-savings, improve efficiency, and protect consumers. Information is used in many beneficial ways in our economy and by our society, including: fair and efficient consumer credit allocation; local and national background employment screenings and national security clearances; fraud prevention in the private-sector and in government; the collection of child support payments; and assistance to law enforcement on matters ranging from locating missing and exploited children to preventing money laundering and terrorist financing.

Businesses depend more than ever on having beneficial and trusted relationships with their customers. Better data allows businesses to deliver more relevant and targeted products and services to their existing and prospective customers. The efficient use of data allows manufacturers to reduce the cost of product development and assembly costs by up to 50 percent, and decrease the amount of required working capital by up to seven percent.¹ Retailers utilize information for inventory control and planning, fraud prevention, marketing, and deciding where new stores should be located. The power of data helps retailers boost their profit margins by as much as 60 percent.²

Today, the Internet makes it possible for companies of all shapes and sizes to communicate with employees, existing customers, potential customers, and business partners

¹ McKinsey Global Institute, *Big Data – The Next Frontier for Innovation, Competition, and Productivity*, at 8, May 2011, available at: http://www.mckinsey.com/mgi/publications/big_data/pdfs/MGI_big_data_full_report.pdf. (McKinsey Report).

² *Id.* at 2.

around the world. The Internet, accounting for \$300 billion in economic activity and over three million U.S. jobs, is clearly a key economic engine in our economy.³ U.S. retail e-commerce sales totaled \$165.4 billion in 2010, a 14.8 percent increase over 2009.⁴ Frequently, online content is provided at little or no cost to consumers, and revenues are instead generated through advertising. Internet advertising revenues in the United States totaled \$7.3 billion in the first quarter of 2011, representing the highest first-quarter revenue ever for the online advertising industry and a 23 percent increase over the same period in 2010.⁵ By 2015 companies are expected to spend up to \$17 billion to create and manage mobile applications related to specific products, and \$38 billion in revenue are expected to be generated from consumers purchasing mobile applications for download to their smartphones and tablets.⁶

II. Self-Regulation and Best Practices Serve as Preferred Method for Safeguarding Consumer Privacy

Recognizing the importance of maintaining consumer trust in order to grow their businesses, American companies have long engaged in self-regulation to ensure that consumer privacy is protected while still allowing innovation to grow and expand our economy. Effective self-regulatory programs governing marketing and advertising have been created and implemented by many respected associations and organizations. For example, the American Advertising Federation (AAF), the American Association of Advertising Agencies (4A's), the Association of National Advertisers (ANA), the Direct Marketing Association (DMA), the Interactive Advertising Bureau (IAB), the Network Advertising Initiative (NAI), TRUSTe, the Council of Better Business Bureaus, Inc., the National Advertising Review Council (NARC), the Association for Competitive Technology, CTIA—The Wireless Association, and the Mobile Marketing Association (MMA) have been involved in the promotion of self-regulatory programs. Additionally, organizations are bound by their own privacy policies.

In the absence of any identified problem, self-regulation and best business practices continue to be the most appropriate framework for protecting consumers' privacy online while enabling innovation, investment, and competition. Self-regulatory models are a particularly effective method of protecting consumer privacy on the Internet because the regulatory process is often incapable of responding rapidly to technological changes.

³ John Deighton et al., *Economic Value of the Advertising-Supported Internet Ecosystem*, June 10, 2009, at 3-4, available at <http://www.iab.net/media/file/Economic-Value-Report.pdf>.

⁴ *Healthy Growth for Ecommerce as Retail Continues Shift to Web*, eMarketer Inc., Mar. 17, 2011, available at <http://www.emarketer.com/Article.aspx?R=1008284>.

⁵ Press Release, *Internet Advertising Revenues Hit \$7.3 Billion in Q1*, May 26, 2011, available at http://www.iab.net/about_the_iab/recent_press_releases/press_release_archive/press_release/pr-052611.

⁶ Nick Bilton, *Mobile App Revenue to Reach \$38 Billion by 2015, Report Predicts*, NYTimes.com, Feb. 28, 2011, available at <http://bits.blogs.nytimes.com/2011/02/28/mobile-app-revenue-to-reach-38-billion-by-2015-report-predicts/>.

III. Technology and Self-Regulation Already Offer Consumers the Type of Choice Envisioned in Recent Legislative Proposals

Recent discussion about creating a government-mandated “Do-Not-Track” list to prevent the delivery of targeted ads based on the Web sites that the consumer has visited provides an excellent example of the power and effectiveness of self-regulation. Companies must have the flexibility to respond to market developments and to meet changing customer needs, which a one-size-fits-all, government-mandated approach would be unable to provide.

Industry has already begun to provide consumers with the type of choice sought by proponents of a “Do-Not-Track” list. For example, the Digital Advertising Alliance—a consortium of trade associations representing more than 5,000 companies engaged in online advertising—launched a Self-Regulatory Program for Online Behavioral Advertising in October 2010 that allows consumers to opt-out from receiving interest-based ads across the Internet. Additionally, consumers using Internet Explorer, Safari, Firefox, or Google Chrome can choose preference settings that help control how their browser stores Internet usage information or the types of “cookies” that companies may set.

Any government restriction on the ability of companies to gain revenue from advertising would result in less free or subsidized content being made available to users and would inhibit innovative start-ups.

Debate over the use of location-based service (LBS) data provides another example of how consumer privacy can most quickly and effectively be protected through self-regulatory means. Smartphone and tablet users are increasingly downloading applications that offer LBS, such as navigation and mapping, the ability to locate nearby retailers, restaurants, and services, and the capability of always being connected to family and friends. Spending on LBS is expected to grow from \$2.2 billion in 2009 to \$12.7 billion in 2013.⁷ A recent study estimates that, over the next ten years, these services could bring \$100 million in revenue to service providers and \$700 billion in value to consumer and business end users.⁸ Moreover, LBS-data allows wireless carriers to manage their networks and enhance their coverage areas. This data also provides significant public safety benefits when, for example, a mobile user needs emergency assistance or roadside vehicle repair.

Policymakers have recently expressed concerns about the collection and usage of LBS-data by smartphones and mobile applications. However, this is a vibrant, competitive, consumer-driven market with many groups focused on enhancing or creating new self-regulatory regimes as well as user-friendly technological solutions. For example, CTIA—The Wireless Association has developed “Best Practices and Guidelines for Location-Based Services” and a “Consumer Code for Wireless Service.” The MMA has established its “Mobile Privacy

⁷ *San Jose Firm’s Technology Helps to Find Lost Cars, Pets and More*, Silicon Valley/San Jose Business Journal, <http://www.bizjournals.com/sanjose/stories/2010/01/18/smallb3.html> (citing Gartner, *Dataquest Insight: Consumer Location-Based Services, Subscribers and Revenue Forecast, 2007-2013*).

⁸ *McKinsey Report* at 85.

Guidelines.” The Association for Competitive Technology has convened a working group to develop privacy guidelines for application developers. Thus, legislation in this area is not necessary and would harm innovation, including development of the privacy-enhancing technologies that policymakers seek to foster.

IV. Data Security Legislation Would Strengthen Self-Regulation in the Privacy Area

In today’s tough economy, businesses depend more than ever on having beneficial and trusted relationships with their customers. Therefore, there is no question that protecting sensitive consumer information should be a priority for all businesses that collect and store this data, and that consumers deserve to be promptly notified if a security breach has put them at significant risk of identity theft, fraud, or other harm. Thus, while self-regulation is best suited to safeguard consumer privacy, we support the enactment of meaningful federal data security legislation that does not hinder innovation or the beneficial uses of data. To be workable and effective, any such legislation must contain carefully drafted provisions, including—but not limited to—liability, federal preemption, and impact on existing federal laws.

V. Conclusion

Companies and organizations utilize a variety of effective methods—industry best practices, self-regulation, technology, and internal privacy policies—to protect consumer privacy. As you consider the need for changes to U.S. privacy law, we look forward to discussing any concerns that you or your staff may have on this issue.

Sincerely,

American Advertising Federation
American Association of Advertising Agencies
Association for Competitive Technology
Consumer Data Industry Association
CTIA—The Wireless Association
Direct Marketing Association
Electronic Retailing Association
Interactive Advertising Bureau
National Association of Professional Background Screeners
National Business Coalition on E-Commerce and Privacy
NetChoice
Network Advertising Initiative
Performance Marketing Association
U.S. Chamber of Commerce

Cc: Members of the Senate Committee on Commerce, Science, and Transportation