

July 17, 2018

Submitted Via Email: iipp2018@ntia.doc.gov

National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue N.W., Room 4725
Attn: Fiona Alexander
Washington, DC 20230

RE: Request for Comment on “International Internet Policy Priorities”

Dear Associate Administrator Alexander:

The undersigned trade associations collectively represent thousands of companies, from small businesses to household brands, which engage in responsible data collection and use that benefits consumers and the economy. We provide these comments in response to the National Telecommunications and Information Administration’s (“NTIA”) request for public comment on “International Internet Policy Priorities” published on June 5, 2018.¹ We and our members believe that the free flow of information throughout the global Internet ecosystem is the fuel that drives economic growth, and that barriers to that flow of information harm consumers and the global economy. It is important to collect, use, and transfer information on the Internet in a responsible manner, and we believe that self-regulatory models, coupled with well-reasoned sectoral laws focused on concrete consumer harm, represents the best way to ensure that consumers’ privacy and security are respected, while also encouraging innovation and growth in the Internet-enabled economy.

We support NTIA’s “top priority” of promoting the Internet-enabled economy, and we believe the current approach to privacy in the United States is the primary model for addressing complex data issues. A combination of sectorial laws targeting concrete, specific harms, and self-regulatory codes of conduct has made the United States the global Internet leader, creating a thriving economy, employing millions of Americans, and providing countless consumer benefits.

We urge NTIA to continue to advocate for limiting any barrier to the responsible collection and use of information on the Internet that are imposed by foreign jurisdictions. NTIA should promote the adoption of a model of smartly calibrated laws, supplemented and supported by self-regulatory programs, to govern that activity, not onerous and restrictive local laws that serve to break the well-functioning Internet our members and consumers around the world rely on with no countervailing benefit.

¹ International internet Policy Priorities, 83 Fed. Reg. 108, 26036-26038 (June. 5, 2018).

I. The Data-Driven and Ad-Supported Online Ecosystem Benefits Consumers and Fuels Economic Growth

The free flow of data online fuels the economic engine of the Internet. For decades, online data-driven advertising has powered the growth of the Internet by delivering innovative tools and services for consumers and businesses to connect and communicate. Online advertising supports and subsidizes the content and services consumers expect and rely on, including video, news, music, and more. Data-driven advertising allows consumers to access these resources at little or no cost to them.

As a result of this advertising-based model, the Internet-economy in the United States has been able to grow and deliver widespread consumer and economic benefits. According to a March 2017 study entitled *Economic Value of the Advertising-Supported Internet Ecosystem* conducted for the Interactive Advertising Bureau (“IAB”) by Harvard Business School Professor John Deighton, found that in 2016 the U.S. ad-supported Internet created 10.4 million jobs.² Calculating against those figures, the interactive marketing industry contributed \$1.121 trillion to the U.S. economy in 2016, which is double 2012 figure, and accounts for 6% of U.S. gross domestic product.³ The study, designed to provide a comprehensive review of the entire Internet economy and answer questions about its size, what comprises it, and the economic and social benefits Americans derive from it, revealed key findings that analyze the economic importance, as well as the social benefits, of the Internet. These benefits require data to be unencumbered by onerous local regulations that limit the ability of companies to continue to create innovative new companies and services.

Consumers have embraced the ad-supported model of the Internet and use it to create value in all areas of life, whether through e-commerce, free access to valuable content, or the ability to exercise their right to free speech and expression across the globe. They are increasingly aware that the data collected about their interactions and behavior on the web, and in mobile applications, is then used to create an enhanced and tailored experience. Importantly, research demonstrates that consumers are generally not reluctant to participate online due to data-driven advertising and marketing practices. To the contrary, in a Zogby survey commissioned by the Digital Advertising Alliance (“DAA”), consumers assigned the value of the ad-supported services, like news, weather, video content, and social media they desire and use to be \$99.77 per month, or \$1,197 a year.⁴ A large majority of surveyed consumers, 85%, stated they like the ad-supported model, and 75% indicated that they would greatly decrease their engagement with the Internet if a different model were to take its place.⁵

Advertising and marketing uses of data are hugely beneficial to consumers individually and to the economy as a whole. In the digital advertising context, companies collect data for numerous operational purposes including ad delivery, ad reporting, site rendering, accounting,

² John Deighton, *Economic Value of the Advertising-Supported Internet Ecosystem* (2017) <https://www.iab.com/wp-content/uploads/2017/03/Economic-Value-Study-2017-FINAL2.pdf>.

³ *Id.*

⁴ Zogby Analytics, *Public Opinion Survey on Value of the Ad-Supported Internet* (May 2016) http://www.aboutads.info/resource/image/Poll/Zogby_DAA_Poll.pdf.

⁵ *Id.*

fraud prevention, network efficiencies and optimization, and site or application customization. These operations are necessary for a seamless cross-channel, cross-device experience, and a functioning digital economy. Any impediment to this responsible collection, use, or transfer of data imposed by a foreign government harms that experience and limits consumer access to these services based on where they live. That type of fractured and disjointed experience is anathema to how consumers want to experience the Internet, and no one jurisdiction should unilaterally destroy that well-structured ecosystem.

II. A Combination of Calibrated National Laws and Self-Regulation is the Appropriate Method for Addressing the Dynamic Internet Ecosystem and Emerging Technology

The current U.S. legal framework provides ample protections for consumers by focusing on particular areas where the nature of the data, if misused or misappropriated, could cause discernible harm to consumers. For example, the Health Information Portability and Accountability Act (“HIPAA”) regulates certain health data; the Fair Credit Reporting Act (“FCRA”) regulates the use of consumer data for eligibility purposes; the Children’s Online Privacy Protection Act (“COPPA”) addresses personal information collected online from children; and the Gramm–Leach–Bliley Act (“GLBA”) focuses on consumers’ financial privacy. This harm-based approach to regulation allows the private sector to continue to use data responsibly, including to enable the delivery of more relevant advertising and marketing. These sectoral laws are supplemented by industry self-regulatory codes of conduct. This combination has proven to be a successful means of advancing innovation, delivering valuable and relevant content and services to consumers, while also protecting consumers and providing them transparency and control over their data choices. This system is also aligned with consumers’ expectations, who recognize varying degrees of data sensitivity.

Consumers continue to show that they value and rely on the products and services made available by online advertising and the free flow of information across borders. NTIA should work to ensure that no one jurisdiction can interfere with that ecosystem absent a strong justification or to prevent a concrete and identifiable harm. We have long supported robust industry self-regulation as the appropriate method for identifying and addressing the complex policy issues within the Internet ecosystem, in combination with a sectoral approach on the national level to address those areas where real harm may come to a consumer.

For example, we worked together with our members to form the DAA as a self-regulatory program that addresses intricate policy issues involving the collection, use, and transfer of web viewing and application use data for advertising and other applicable uses. It is self-regulatory systems created by a cross-section of industry participants, such as the DAA, that provide the appropriate framework for developing responses to novel issues that confront international data flows.

The DAA’s Self-Regulatory Program reflects the initial 2009 recommendations by the Federal Trade Commission (“FTC”) for self-regulation in the online behavioral advertising (“OBA”) space, and has evolved over the last nine years as new advertising technologies and

practices emerged, such as the rise in the use of mobile apps and cross-device linking.⁶ The FTC’s original recommendations recognized the need for flexibility to accommodate new technologies, while continuing to provide for privacy-protective practices. Specifically, “[s]taff supported self-regulation because it provides the necessary flexibility to address evolving online business models,” and the DAA Principles takes the lead in this approach.⁷ We consider the DAA’s focus on providing consumers with meaningful transparency and control over the collection, use, and transfer of data to be the model for how various stakeholders in the Internet ecosystem can come together to think about consumer privacy and create flexible and workable solutions.

We also recognize that strong, independent enforcement is the key to any self-regulatory program. Compliance with the DAA Principles is monitored and enforced by two accountability programs.⁸ The Council of Better Business Bureaus’ program has brought more than 85 public enforcement actions, and issued several compliance warnings, which dealt with desktop, mobile, native advertising, non-cookie based data collection technologies, cross-device linking, and video advertising.⁹ The breadth of the accountability program’s actions show the responsive nature and enforceability of the DAA’s program.

Since the release of the initial self-regulatory principles in 2009, the program has seen participation grow to encompass hundreds of leading companies and thousands of brands, and over 80 million visitors have interacted with the DAA’s properties. The centerpiece of the DAA program is the YourAdChoices Icon, a universal symbol deployed within or near advertisements delivered through DAA covered practices, or on Web sites and mobile applications where data is collected or used for DAA covered purposes. In a study performed in 2016, more than three in five consumers (61%) recognized and understood what the YourAdChoices Icon represents.¹⁰ The YourAdChoices Icon appears more than a trillion times per month worldwide as part of ads on the Internet. By clicking on the Icon, consumers are brought to a clear disclosure regarding the participating company’s data collection and use practices, as well as an easy-to-use mechanism to opt out of further data collection and use for OBA.

⁶ The term “online behavioral advertising” means the collection of web viewing and application use data from a particular computer or device across non-affiliated Web sites and mobile apps over time in order to predict user preferences or interests to deliver advertising to that computer or device based on the preferences or interests inferred from that web viewing and application use behavior. Digital Advertising Alliance, *Self-Regulatory Principles for Online Behavioral Advertising* 10-11 (Jul. 2009) <http://www.aboutads.info/resource/download/seven-principles-07-01-09.pdf>; Digital Advertising Alliance, *Application of Self-Regulatory Principles to the Mobile Environment* (July 2013) http://www.aboutads.info/DAA_Mobile_Guidance.pdf; Digital Advertising Alliance, *Application of the DAA Principles of Transparency and Control to Data Used Across Devices* (Nov. 2015) http://www.aboutads.info/sites/default/files/DAA_Cross-Device_Guidance-Final.pdf.

⁷ Federal Trade Commission, *Self-Regulatory Principles for Online Behavioral Advertising: Behavioral Advertising Tracking Targeting, & Technology*, 11 (Feb. 2009) (hereinafter *FTC Report*) <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-staff-report-self-regulatory-principles-online-behavioral-advertising/p085400behavadreport.pdf>.

⁸ See Council of Better Business Bureaus, *Accountability Program Decisions, Dispositions, Closures, and Guidance* (2018), <http://www.asrcreviews.org/accountability-program-decisions/>; Data & Marketing Association, *Ethics & Compliance* (2018) <https://thedma.org/accountability/ethics-and-compliance/>.

⁹ *Id.*

¹⁰ Digital Advertising Alliance, *Consumers' recognition of the AdChoices Icon -- and understanding of how it gives choice for ads based on their interests -- continues to rise* (Sep. 29, 2016) <https://digitaladvertisingalliance.org/blog/icon-you-see-yeah-you-know-me-0>.

The successful approach taken by the DAA led to a February 2012 event at the White House where the then-Chairman of the FTC, the then-Secretary of Commerce, and other Administration officials publicly praised the DAA. The White House recognized the DAA as “an example of the value of industry leadership as a critical part of privacy protection going forward.”¹¹ The DAA also garnered kudos from then-Acting FTC Chairman Maureen Ohlhausen who stated that the DAA “is one of the great success stories in the [privacy] space.”¹² In its cross-device tracking report, the FTC staff also stated, “...DAA [has] taken steps to keep up with evolving technologies and provide important guidance to [its] members and the public. [Its] work has improved the level of consumer protection in the marketplace.”¹³

These types of self-regulatory programs not only help foster the growth of the Internet economy, but can also help ensure that individuals are able to exercise their rights of expression and assembly. For example, the DAA recently issued guidance and a new icon to label certain digital political advertisements in the United States for federal and certain statewide offices.¹⁴ This guidance will bring transparency and accountability to digital express advocacy advertisements online. This transparency will help citizens learn more about who is delivering political ads to them, and allows them to exercise their right to vote and associate with political candidates based on more information than was previously available to them. In this way self-regulatory programs can not only help support responsible commercial practices, but can also be an effective tool to protect and enhance basic human rights such as freedom of speech, expression, and association.

The DAA is a proven model of self-regulation that works hand-in-hand with sectoral laws to benefit consumers, and demonstrates that industry self-regulation is best suited to respond to the Internet ecosystem rather than poorly calibrated blanket government regulation. Governments should be careful when regulating data flows on the Internet, focusing on concrete harms, and allow flexible self-regulation to supplement those regulations as the Internet ecosystem continues to rapidly change. It is this type of arrangement that NTIA can support with its international partners. Unlike jurisdiction specific regulation, such as the European Union’s General Data Protection Regulation (“GDPR”), broad-based industry led self-regulatory systems can create enforceable principles that ensure cooperation and interoperability amongst the various actors on the borderless Internet to promote growth and innovation, and support sector specific laws where they are needed.

Evidence of this fact is shown by the harm that the GDPR has already caused to the European marketplace. Prior to the GDPR’s enforcement date many U.S.-based companies left the European market instead of face crippling regulations and potential fines. For example,

¹¹ 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-waitobama-administration-calls-consumer-privacy-bill-rights-digital-age>.

¹² Katy Bachman, *FTC’s Ohlhausen Favors Privacy Self-Regulation*, Adweek (June 3, 2013), available at <http://www.adweek.com/news/technology/ftcs-ohlhausen-favors-privacy-self-regulation-150036>.

¹³ Federal Trade Commission, *Cross-Device Tracking: An FTC Staff Report*, 10 (Jan. 2017).

¹⁴ Digital Advertising Alliance, *Application of the Self-Regulatory Principles of Transparency & Accountability to Political Advertising* (May 2018) https://aboutpoliticalads.org/sites/politic/files/DAA_files/DAA_Self-Regulatory_Principles_for_Political_Advertising_May2018.pdf.

according to media reports some United States based advertising companies, consulting services, and video game developers decided to exit the market, forego potential revenue, and no longer employ their European employees instead of risk violation of the restrictive requirements of the GDPR.¹⁵ This stands in stark contrast to the United States, where our sectoral laws and strong enforcement, coupled with industry self-regulation that promotes the responsible use of data, has created the flourishing U.S.-based Internet economy. NTIA should work to ensure that other jurisdictions do not follow the European Union's lead and create further disruption to the Internet-supported economy.

III. Responses to Specific Questions

Questions: I.A. What are the challenges to the free flow of information online? I.B: Which foreign laws and policies restrict the free flow of information online? What is the impact on U.S. companies and users in general? 1.F: What role can NTIA play in helping to reduce restrictions on the free flow of information over the Internet and ensuring free expression online?

Response: One of the major challenges to the free flow of information online is a patchwork of local laws and regulations that create conflicting, and sometimes obstructive, requirements on Internet companies. The GDPR is an example of such laws, as is the recent passage of the California Consumer Privacy Act of 2018. Though not yet law, the proposed ePrivacy Regulation in the European Union would create additional, technology-specific obligations that would further restrict the free flow of information. As described above, a better approach would be to engage in industry discussions to create an international self-regulatory framework, supplemented by specific laws that are attuned to concrete harms, that properly balances the need for the free flow of information with individual rights and privacy. We believe the United States' model of transparency and choice can achieve such a goal with minimal disruption to the Internet economy. NTIA can help support such developments, and reduce restrictions on the free flow of data, by engaging with its counterparts in international meetings to explain the benefits of self-regulation, highlight how it fuels the United States' lead in the Internet economy, and why such a regime would benefit the global economy.

Question: III.B. Which international venues are the most appropriate to address questions of digital privacy? What privacy issues should NTIA prioritize in those international venues?

Response: When NTIA engages in discussions with its counterparts regarding privacy on the Internet, it should prioritize solutions that are interoperable and encourage the free flow of data across borders. Such solutions should take into account the fact that data collection, use, and transfer is the backbone of the consumer Internet, and any restrictions imposed by a government will chill the development of new and innovative technologies and services. NTIA should ensure that these discussions focus on concrete consumer harms, and not generalized ephemeral concerns. By focusing these discussions in this manner, NTIA can help create real solutions that support innovation, and avoid unfair protectionist regulations.

¹⁵ Hannah Kuchler, *Financial Times*, *US small businesses drop EU customers over new data rule* (May 24, 2018) <https://www.ft.com/content/3f079b6c-5ec8-11e8-9334-2218e7146b04>.

Question IV.A. What emerging technologies and trends should be the focus of international policy discussions? Please provide specific examples.

Response: As the DAA has proven, self-regulatory solutions are better suited to address challenges presented by emerging technologies, such as the Internet of Things, autonomous vehicles, and commercial use of drones. The DAA's evolution with the rise of mobile devices and cross-device linking, shows that self-regulation has the ability to recognize and respond to new trends in the digital ecosystem in a way that governments cannot. Promoting the development of vibrant self-regulatory programs that can monitor the Internet ecosystem, identify emerging trends, and determine how best to apply self-regulatory principles to those technologies in a manner that increases consumer trust and protects innovative new technologies should be NTIA's goal during global Internet policy discussions. Through this self-regulatory process, industry can also support governments to craft sensible legislation when there is a demonstrated need for a national standard, legislation that takes the self-regulatory codes of conduct into account, to support economic growth and consumers alike.

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We appreciate the opportunity to submit these comments, and we look forward to working with the NTIA on this issue. If you have questions, please contact Stu Ingis at 202.344.4613 or Michael Signorelli at 202.344.8050.

Respectfully submitted,

American Advertising Federation
American Association of Advertising Agencies
Association of National Advertisers
Interactive Advertising Bureau
Network Advertising Initiative

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CC: Rob Hartwell, Venable LLP