

Statement of Pam Horan  
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before the  
House Energy and Commerce  
Subcommittee on Commerce, Manufacturing and Trade

Balancing Privacy and Innovation: Does the President's Proposal Tip the Scale?

March 29, 2012

Madame Chairwoman, Ranking Member Butterfield and Distinguished Members of the Subcommittee, thank you for this opportunity to speak with you today.

The Online Publishers Association (OPA) is a trade association that represents the digital content business and its unique role in the future of media. Our members include many of the Internet's most respected online publishing brands reaching an unduplicated audience of 220.4 million unique visitors or 100% reach of the U.S. online population monthly (comScore Media Metrix, December 2011).

OPA members include many of the nation's leading online media companies such as The New York Times, Washington Post Digital, Time Inc., Disney Interactive Media Group, Forbes.com, CBS Interactive and Discovery Communications to name a few. OPA members are the public face of the Internet with well-established track records of integrity and quality. Many of our members serve a critical role in a functioning democracy – the gathering and distribution of news and information.

## **Consumer Trust**

OPA members have long understood the need to respect and protect consumer privacy. These trusted brands hold a direct, first party relationship with their consumers and therefore, must maintain confidence in their brands to attract the large audiences necessary to be competitive. With millions of alternative websites just a click away, consumers have a multitude of options and can easily obtain their news, information and entertainment elsewhere if they don't trust a site's privacy practices.

The Federal Trade Commission (FTC) again recognized this unique first party relationship in the report it released this past Monday, March 26, 2012, "Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers." The report noted that consumers hold different expectations of privacy with respect to information collected in the context of a direct first-party relationship with a website publisher than they do with respect to information collected by third parties in the online ecosystem.

In turn, the FTC recognizes that, as first parties, publishers provide an enhanced consumer experience including site optimization and personalization and the delivery of more relevant content through the collection of data.

## **Self Regulatory Programs Underway**

In an effort to further improve consumer trust online, the OPA has worked closely with our colleagues in the Digital Advertising Alliance (DAA) to create a self-regulatory regime to provide transparency and choice for consumers. Self-regulatory models, such as the one developed by the DAA, can quickly and

efficiently adapt to changing landscapes and new business practices thereby offering the most effective privacy protection for consumers.

Under the DAA program, consumers can opt-out of being served behaviorally-targeted advertisements. In addition, data that is collected cannot be used to determine a consumer's eligibility for employment, credit standing, healthcare treatment and insurance. Also, under the DAA program, all entities on the Internet are responsible for their own actions. This important provision ensures that everyone in the ecosystem that collects and uses data is accountable. This is the most effective way for us to regulate our industry.

The DAA program has shown promising results since it was officially launched in the fall of 2011. The opt-out program is easy to identify with the power "i" icon, easy to understand and easy to use. The power "i" icon appears in nearly 1 trillion ads per month. All of the top 15 ad networks are in compliance. As more and more consumers become aware of the power "i" icon and the choices available to them, we are confident that the self-regulatory model will prove to be highly effective in addressing the privacy concerns of consumers. Online privacy is different for every individual and the DAA's self-regulatory program accommodates those individual choices with ease.

### **White House Consumer Privacy Bill of Rights**

On February 23, 2012, the White House released a report entitled "Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy." Within the report, the Administration advocates seven core principles, collectively called the Consumer Privacy Bill of Rights. They are as follows:

- *Individual Control*: Consumers have a right to exercise control over what personal data companies collect from them and how they use it.
- *Transparency*: Consumers have a right to easily understandable and accessible information about privacy and security practices.
- *Respect for Context*: Consumers have a right to expect that companies will collect, use and disclose personal data in ways that are consistent with the context in which consumers provide the data.
- *Security*: Consumers have a right to secure and responsible handling of personal data.
- *Access and Accuracy*: Consumers have a right to access and correct personal data in usable formats, in a manner that is appropriate to the sensitivity of the data and the risk of adverse consequences to consumers if the data is inaccurate.
- *Focused Collection*: Consumers have a right to reasonable limits on the personal data that companies collect and retain.
- *Accountability*: Consumers have a right to have personal data handled by companies with appropriate measures in place to assure they adhere to the Consumer Privacy Bill of Rights.

The OPA would like to highlight two principles that are particularly encouraging to publishers.

The “Respect for Context” principle emphasizes the critical role that context plays in shaping consumer expectations and the need for companies collecting consumer data to honor those expectations:

*“Generally speaking, companies should limit personal data uses to fulfilling purposes that are consistent with the context in which consumers disclose personal data.”* This principle supports the OPA position

that first party data collection practices fall within consumer expectations and consumers trust first parties to collect and use their data appropriately. The report concludes that “companies may infer consent to use personal data to conduct marketing in the context of most first-party relationships, given the familiarity of this activity in digital and in-person commerce, the visibility of this kind of marketing, the presence of an easily identifiable party to contact to provide feedback, and consumers’ opportunity to end their relationship with a company if they are dissatisfied with it.” In addition, the report suggests that companies should be able to infer consumer consent to collect personal data for a range of purposes “that are common, even if they may not be well known,” such as analytics, fraud prevention, compliance with legal obligations and the protection of intellectual property.

For example, a user might visit CNET.com, a leading source of tech product reviews, to research 3D televisions. As the user is reading a review of Sony’s newest 3D television, CNET might show a list of similar products viewed by others who also read this review. Consumers expect and want publishers to offer additional content that may be valuable, ultimately enhancing their website experience.

In addition, consumers expect that first parties will collect and use information to optimize and subsidize online advertising. Last year, our members invested over \$750 million in the production and creation of high-quality digital content. Ultimately, the future of the online publishing industry will depend on our ability to continue to compete successfully in the online advertising marketplace. To remain competitive, publishers must continue to have the flexibility to develop innovative and effective advertising services for advertisers while also continuing to attract large Web audiences to our digital properties. Given the infancy of the industry and the economic challenges facing the publishing business, it is important to continue to allow publishers to monetize their investment, especially when their efforts meet with consumer expectations.

The “Access and Accuracy” principle recognizes that a consumer’s right to access the data a company holds could have First Amendment implications. As OPA pointed out in its comments to the Department of Commerce in January 2011, “any choice or consent requirement...should clearly exclude the collection of information for newsgathering, political commentary and other forms of editorial expression that are protected as core speech.” OPA members play a critical role in gathering and distributing news and information, a role that is key to a functioning democracy. As such we are pleased the report notes that “individuals and members of the press exercising their free speech rights may well speak about other individuals and include personal information in their speech” and therefore concludes that “[t]he Access and Accuracy principle should . . . be interpreted with full respect for First Amendment values, especially for non-commercial speakers and individuals exercising freedom of the press.”

Despite these positives, however, the OPA must note concerns with other portions of the Consumer Privacy Bill of Rights.

The report urges consumer-facing companies, such as publishers, to disclose not only their own data collection and use practices but also those of their business partners and service providers. Publishers are actively working to monitor, track and limit the data collection activities of third parties on their websites in order to protect their customers. However, based on the complex nature of the Internet today, the number of partners and service providers changes frequently and dynamically, making this a daunting task. The obligation to disclose practices of other parties implies that publishers would be responsible for violations by these other parties which would be an unworkable model. We believe that,

as in the case of the DAA's self-regulatory program, each entity should be held responsible for its own actions.

The Access and Accuracy principle "recognizes that the use of inaccurate personal data may lead to a range of harms." Accordingly, the report urges companies that collect consumer data to "provide consumers with reasonable access to personal data that they collect or maintain about them, as well as the appropriate means and opportunity to correct inaccurate data or request its deletion or use limitation." The burden imposed by this obligation is amplified by the report also requiring that whatever mechanisms companies create to allow consumers to review and correct data "should not create additional privacy or security risks." Allowing all consumers to access whatever data companies have about them, while ensuring that those who access the data are the very consumers (and only the very consumers) to which the data pertain, presents significant technical challenges and could actually increase risk to consumers.

In summary, while we appreciate many elements of the Administration's proposal, as we have noted, there are aspects which are of concern. Ultimately, we believe industry's self-regulatory program can more quickly and effectively deliver privacy protections for consumers than a legislative or regulatory approach.

## **Conclusion**

Thank you for the opportunity to present the perspective of online publishers. We appreciate the Committee's leadership role on consumer privacy issues and we look forward to continuing to work with you.