

February 26, 2009

The Honorable Sheldon Silver
Speaker of the House
New York General Assembly
Legislative Office Building
Albany, NY 12248

Dear Mr. Speaker:

We the undersigned coalitions, associations and companies, thank you for your attention to the important issue of online privacy. As we indicated last year, we firmly believe in protecting consumer privacy, and follow strict policies regarding the use and disclosure of information that personally identifies consumers.

Assemblyman Brodsky's legislation, AB 1393, seeks to establish a new set of quite stringent regulations regarding the collection of non-personally identifiable information, such as IP addresses, which is used in serving advertisements over the Internet. This practice is often referred to as "behavioral advertising" in that it allows online companies to serve more relevant advertisements to consumers based on websites that they have recently visited.

As an industry, we believe online behavioral advertising benefits the consumer by making possible a vast array of free content and services on the Internet including news, weather reports, entertainment videos, financial reports...the list is endless. Consumers also benefit from receiving advertisements that more accurately reflect their particular interests and needs. It is in the interests of consumers, every bit as much as advertisers, to get the right advertisement to the right person at the right time. The best way to do this is to know the customer's interests. The most privacy-sensitive way to do this is to know those interests without knowing the customer's name—which is precisely what behavioral advertising does.

Consumers currently have a number of easily accessible means for opting out of receiving behavioral advertising. Currently, the majority of these types of ads are served by advertising networks. For nearly a decade, the network advertising industry has followed a self-regulatory code administered by the Network Advertising Initiative (NAI) that governs the collection and management of this data. These principles, which empower consumers to opt out of the collection of information by ad networks, were upgraded in December of 2008, with input from consumers and privacy advocates. The NAI principles have long been supported by the Federal Trade Commission (FTC) as an effective means to educate consumers of the latest online advertising practices and to provide them with an effective means of exerting choice in this space. Furthermore, companies continue to compete in innovative ways to empower and inform consumers.

Today, consumers may easily opt out of the collection of data through ubiquitous browser tools. The newest versions of the three leading internet browsers - Internet Explorer, Firefox, and Google Chrome - all provide user friendly filtering options that block the ability of companies to collect behavioral advertising data. In addition, many associations have recently strengthened their privacy self-regulation codes to cover specifically the behavioral advertising issue.

Unfortunately, the regulations set forth in Assemblyman Brodsky's bill would go well beyond the NAI principles in ways that risk significantly harming New York's Internet publishing and advertising industries. These industries employ thousands of New Yorkers and are already facing considerable challenges due to the current economic downturn.

There are several reasons why the use of non-personally identifiable information for the purpose of online behavioral advertising should not be regulated. First and foremost, behavioral advertising does not pose a threat of harm or even inconvenience to consumers. The data collected is anonymous in nature and consumers have long been empowered with the tools to opt out of having this data collected. Since Internet companies began using this technology in the mid-1990s, we have not heard of a single instance of behavioral advertising resulting in harm to a consumer.

Lastly, Internet advertising is inherently an interstate activity. Online advertising would be unworkable if publishers and advertisers were forced to comply with a patchwork of state opt-in or opt-out laws. AB 1393 would impose an onerous and likely unconstitutional burden on Internet commerce by regulating businesses well beyond New York's borders. In practice, this bill would regulate every Internet publisher in the world if it were visited by a New York consumer.

We hope you agree that it is unwarranted to impose consumer protection regulations on a technology which does not pose a threat to consumers. Further, we ask that you recognize the importance of online publishing and advertising to the New York State economy and in turn refrain from promoting legislation that would unnecessarily hamper the ability of these industries to succeed. Again, thank you for your time and we look forward to discussing this issue with you in person, at the appropriate time in the legislative session.

Continuing to find the balance between legitimate privacy concerns and the benefits of the free flow of information is an ongoing process. We appreciate and share your ongoing concern for the welfare of Internet users.

Sincerely,

