

August 15, 2014

Office of the Secretary
Federal Trade Commission
Room H-113 (Annex X)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Submitted Via <https://ftcpublic.commentworks.com/ftc/bigdataworkshop/>

Re: “Big Data: A Tool for Inclusion or Exclusion?” Workshop, Project No. P145406

Dear Secretary Clark:

The Interactive Advertising Bureau (“IAB”) provides these comments in advance of the Federal Trade Commission’s (“FTC,” or “Commission”) public workshop scheduled for September 15, 2014, entitled “Big Data: A Tool for Inclusion or Exclusion?” to explore the use of “big data” and its impact on American consumers, including low income and underserved consumers. The IAB is pleased to have this opportunity to provide information to the Commission to inform its work on big data and consumer privacy.

Founded in 1996 and headquartered in New York City, the IAB (www.iab.net) represents over 600 leading companies that actively engage in and support the sale of interactive advertising, including leading search engines and online publishers. Collectively, our members are responsible for selling over 86% of online advertising in the United States. The IAB educates policymakers, consumers, marketers, agencies, media companies and the wider business community about the value of interactive advertising. Working with its member companies, the IAB evaluates and recommends standards and practices and fields critical research on interactive advertising.

The IAB is committed to the continued growth of the interactive advertising ecosystem in tandem with ethical and consumer-friendly advertising practices. To that end, the IAB is one of the leading trade associations that released cross-industry self-regulatory privacy principles for the collection of web viewing data.¹ Launched in 2009, these Self-Regulatory Principles are administered by the Digital Advertising Alliance (“DAA”), have been widely implemented across the online advertising industry, and are vigorously enforced through longstanding and effective industry self-regulatory accountability programs. The Self-Regulatory Principles are reflected in IAB’s Code of Conduct for its members.

¹ Press Release: *Key Trade Groups Release Comprehensive Privacy Principles for Use and Collection of Behavioral Data in Online Advertising*, July 2, 2009, available at http://www.iab.net/about_the_iab/recent_press_releases/press_release_archive/press_release/pr-070209.

SUMMARY

The stated purpose of the FTC's workshop is to "further explore the use of 'big data' and its impact on American consumers, including low income and underserved consumers."² The Commission's description of the workshop notes that data driven innovation has led to "tremendous benefits" in the areas of medicine, education, transportation, manufacturing, and advertising.³ The FTC has identified five questions to be explored at the workshop:

- How are organizations using big data to categorize consumers?
- What benefits do consumers gain from these practices? Do these practices raise consumer protection concerns?
- What benefits do organizations gain from these practices? What are the social and economic impacts, both positive and negative, from the use of big data to categorize consumers?
- How do existing laws apply to such practices? Are there gaps in the legal framework?
- Are companies appropriately assessing the impact of big data practices on low income and underserved populations? Should additional measures be considered?

The IAB's comments below in response to these questions can be summarized as follows:

- The IAB supports collection and sharing of data, because such practices fuel innovation, provide tremendous benefits to consumers, companies, and our economy, and help to secure our nation's current competitive position globally.
- To that end, the IAB believes the current U.S. regulatory approach strikes the right balance by addressing the potential for concrete harms in specific areas, while otherwise enabling the free flow of data and fostering innovation in customer-friendly advertising. This sector-specific approach is complemented by robust self-regulatory enforcement efforts by industry. There have not been any new privacy issues presented by big data that cannot successfully be addressed under this existing approach.
- Accordingly, there is no need for new consumer privacy legislation or regulation.

Each of these themes is discussed below in more detail below.

COMMENTS

- **The collection, use, and sharing of big data create many benefits for both consumers and organizations.**

² FTC Conference Description, available at <http://www.ftc.gov/news-events/events-calendar/2014/09/big-data-tool-inclusion-or-exclusion>.

³ *Id.*

As both the FTC and the President’s working group on big data have recognized, the collection, use, and sharing of data have fueled economic growth and provided tremendous benefits for consumers and businesses alike.⁴ Big data, in particular, has unleashed exciting new innovations that increase consumer welfare in a myriad of ways. Consumers have only begun to benefit from big data’s contributions to the development of new products and services and to job creation in a wide range of industry sectors.

Advertising and marketing uses of data, in particular, are hugely beneficial to consumers individually and to the economy as a whole. In the online advertising context, companies collect data for numerous operational purposes including ad delivery, ad reporting, site rendering, accounting, and network efficiencies and optimization, and site or application customization. These operations are necessary for a seamless cross-channel experience and a functioning digital economy.

In addition to these operational activities, companies in the online ad ecosystem use both small and big data to help them deliver more relevant and timely advertising messages. This data typically consists of Web viewing behaviors, which may be combined with offline data insights and used to predict the likely interests and needs of consumers. While this data may be “big” in the sense of including many different data types and data points, generally it is not sensitive. Interest-based advertising benefits consumers, and particularly consumers with limited financial resources, by providing them with more information to “comparison shop” and otherwise navigate the marketplace, and by providing access to products and special offers that are more likely to be desirable to consumers. Advertising empowers consumers, including low-income and underserved consumers, by providing them with more information and choices.

Although other business models exist, such as “pay walls,” advertising has become the prevailing model for bringing online resources to the market across both Web and mobile applications. Because of advertising support, consumers can access a wealth of online resources at low or no cost. The decrease in the cost of online content and services made possible by advertising can have a particularly important effect on underprivileged individuals who might not be able to afford such resources otherwise. These ad-supported services for everything from business to entertainment have transformed our daily lives, and new innovation is continuing at a rapid pace.

Moreover, the data revolution has profoundly impacted citizen awareness by enabling the public release of information previously held by the government or otherwise made inaccessible to the public. Data also helps political and public interest information to reach interested consumers, which has transformed political advertising and public affairs reporting, as well as supporting a vibrant ecosystem of online information sources. These developments contribute to a more informed, active, and engaged citizenry.

⁴ Executive Office of the President, “Big Data: Seizing Opportunities, Preserving Values” 37-38, 39-41 (May 2014); Federal Trade Commission, “Protecting Consumer Privacy in an Era of Rapid Change” 2 (Mar. 2012), available at <http://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-report-protecting-consumer-privacy-era-rapid-change-recommendations/120326privacyreport.pdf>.

From an economic standpoint, big data is central to the success of America's thriving technology industry, and is a growing feature of other industries as well. A September 2012 study entitled *Economic Value of the Advertising-Supported Internet Ecosystem*, which was conducted for IAB by Harvard Business School Professor John Deighton, found that the ad-supported digital industry directly employs 2 million Americans, and indirectly employs a further 3.1 million in other sectors. These figures resulted from strong job growth during a period when U.S. civilian employment had remained flat overall.

Data, and particularly responsible data sharing, is a boon to small companies. The Internet has allowed small publishers and businesses – the “long tail” of the online ecosystem – to thrive by lowering barriers to market entry and enabling them to reach niche audiences. This has supported the explosion of diverse online resources that consumers embrace.

- **The IAB believes the current U.S. regulatory approach strikes the right balance, and that big data issues can be successfully addressed under current privacy frameworks.**

Because of the importance of big data for consumers and the economy, as well as the rapid pace of big data innovation, it is essential for the government to exercise caution when considering regulation of data practices. The FTC anticipates that the workshop will address how existing laws apply to big data practices, and whether there are gaps in the legal frameworks.⁵ The IAB believes that there has been no demonstration that big data presents new concerns that cannot be addressed through the existing frameworks and regulatory approach.

The U.S. approach to regulating data practices is primarily “sector-specific.” Targeted laws have been enacted (and continue to be considered by Congress) in areas where unauthorized or inappropriate use of data could cause concrete harms to consumers. These laws include the Gramm-Leach-Bliley Act, the Fair Credit Reporting Act, and the Health Insurance Portability and Accountability Act. These laws are rooted in the longstanding Fair Information Practice Principles, and focus on preventing identifiable harms to consumers that could occur through misuse of certain types of information. The FTC and state attorneys general also exercise their authorities under statutes prohibiting unfair or deceptive acts or practices to address privacy and data security issues.

Existing consumer protection laws are complemented by robust, enforceable industry self-regulatory programs. The White House, in its recent report on big data, recognized that the online advertising industry, with the data services industry, both have “significant histories using large datasets within long-established regulatory frameworks.”⁶ As one example of this type of program, the IAB, with other prominent trade associations, has led a successful effort to develop and implement the DAA Self-Regulatory Program governing the collection, use, and sharing of online data. The DAA Self-Regulatory Program applies to certain data collected online, and would include data that rises to the level of “big data.” This program is enforced through accountability mechanisms run by the Direct Marketing Association and the Council of Better

⁵ FTC Conference Description, available at <http://www.ftc.gov/news-events/events-calendar/2014/09/big-data-tool-inclusion-or-exclusion>.

⁶ Executive Office of the President, “Big Data: Seizing Opportunities, Preserving Values” 40 (May 2014).

Business Bureaus. Industry stakeholders continue to adapt this self-regulatory program to respond to evolving technologies. Most recently, in 2013, the DAA issued guidance to inform companies about how the Self-Regulatory Principles apply to certain data practices in the mobile and other environments. There are numerous other self-regulatory programs that exist to guide privacy practices in relevant industries.

Both sector-specific laws and industry self-regulation in the United States generally follow the framework of the Fair Information Practice Principles (FIPPs). The IAB believes that the FIPPs framework, in particular the notice and consumer control elements, has proven both flexible and enduring as implemented in the United States through law and self-regulation. The existing framework has provided meaningful protections for consumers while also allowing innovation to flourish.

In the IAB's view, it has not been demonstrated that big data presents new concerns that cannot be addressed through the existing frameworks and regulatory approach. With respect to advertising specifically, the practice of obtaining (or predicting) information about consumers' interests and providing tailored offers is longstanding. While this business model has now migrated online and draws on increasingly powerful technological resources, the data practices involved have not fundamentally changed and there is no new risk of harm to consumers. Furthermore, big data is playing an important role in helping security and privacy experts develop new tools to protect consumers' privacy and increase security. By analyzing large sets of data, security experts are finding new ways to detect anomalies in their networks and prevent data theft.

- **Accordingly, there is no need for new “one size fits all” consumer privacy legislation or regulation.**

The IAB, as discussed above, believes that existing privacy frameworks, as implemented through the current combination of sector-specific laws and robust self-regulation, are sufficient to address privacy issues raised by big data. Accordingly, there is no need for new consumer privacy legislation or regulation. It is particularly important to refrain from imposing “one size fits all” restrictions across industries and data practices. Legislation and regulation are, by nature, inflexible and prescriptive. Imposing new mandates that apply across industries would strike a severe blow to U.S. innovation and competitiveness. The adoption of monolithic restrictions would threaten both the economic benefits and consumer satisfaction that come from beneficial data uses.

In particular, the IAB is concerned that policymakers should not seek to establish prescriptive requirements for when or how consumer notice and control should be provided. While the IAB is committed to promoting consumer transparency and control related to data practices, specific legislative or regulatory mandates in this area would thwart innovation and ultimately disadvantage consumers by reducing companies' ability to communicate effectively with their customers. For example, the explosive growth of the “Internet of Things” sector illustrates how quickly prescriptive notice and control requirements can become obsolete and meaningless as technology evolves at a rapid pace. Notice and control issues can be most effectively addressed through industry self-regulation, which can more easily adapt and respond to changes in technology and consumer expectations.

The DAA's Self-Regulatory Program provides an example of how industry self-regulation can drive the adoption of groundbreaking new mechanisms for consumer notice and control, while maintaining sufficient flexibility for businesses to communicate with their customers. The DAA's Self-Regulatory Principles are implemented through an icon that is delivered as a part of relevant online advertising and provides easy access to an online consumer control mechanism. This approach has been praised by officials at the White House and FTC.⁷ A new DAA solution for mobile notice and control, expected to launch later this year, demonstrates how industry solutions can adapt nimbly over time as technology evolves. The IAB supports efforts to improve transparency and consumer control through self-regulation.

The IAB further believes that additional broad restrictions on data collection, storage or sharing would be harmful to consumers and the economy. To date, privacy statutes have focused on regulating areas where data misuse presents a significant risk of concrete, identifiable harms to consumers. The DAA Self-Regulatory Principles similarly prohibit the use of "Multi-Site Data" for employment eligibility, credit eligibility, health care treatment eligibility, or insurance eligibility or underwriting.⁸ Although such practices were not occurring in the marketplace, the DAA issued these prohibitions out of an abundance of caution to ensure that such practices would not occur.

Aside from areas where a risk of concrete harm was identified, the government generally has refrained from regulating data for advertising and marketing purposes, because the only risk that consumers face from inaccurate advertising data is irrelevant marketing offers. Where concerns have been raised about misuse of marketing data, industry has responded through self-regulation. As a result of this harm-based approach, the free flow of data, including flows across industry sectors, has fueled tremendous consumer benefits such as more relevant and affordable content on the Internet, and promises to drive additional rapid innovation beneficial to consumers in the future. Consumers will not benefit from restrictions that cut off the flow of advertising and marketing data in response to vague or theoretical privacy concerns.

The FTC notes that the big data workshop will examine "whether big data may be used to categorize consumers in ways that may affect them unfairly, or even unlawfully."⁹ While the IAB condemns unlawful discrimination, the IAB believes that the existing legal and self-regulatory frameworks are sufficient to address discrimination that might be linked to data use, as well as other forms of discrimination. Notably, there is no evidence of a pervasive problem with discriminatory practices among companies that adhere to these self-regulatory frameworks. The IAB does not perceive a need for additional legislation or mandates to address discrimination concerns related specifically to big data. In particular, it would not be helpful to adopt new restrictions on automated decision-making or to require impact assessments for big data analytics. It is also important to note that market segmentation for advertising and

⁷ Digital Advertising Alliance, FTC's Jessica Rich Applauds DAA's Newly Previewed Mobile Choice Tools (July 2014), retrieved from <http://www.digitaladvertisingalliance.org/blog.aspx?id=07-04-2014>; Kaye, K. "Ad Industry Joins FTC, White House in Do Not Track for Browsers," (Feb. 2012) retrieved from <http://www.clickz.com/clickz/news/2154461/industry-joins-ftc-white-house-track-browsers>.

⁸ Digital Advertising Alliance, "Self-Regulatory Principles for Multi-Site Data" 4-5 (Nov. 2011), available at <http://www.aboutads.info/resource/download/Multi-Site-Data-Principles.pdf>.

⁹ FTC Conference Description, available at <http://www.ftc.gov/news-events/events-calendar/2014/09/big-data-tool-inclusion-or-exclusion>.

marketing purposes does not equate to discrimination and that, to the extent that marketing data could be misused for discriminatory activities, this would be addressed by existing law. Market segmentation is a fundamental concept in public and private sector strategy that is employed to help increase marketing efficiency. It would be a mistake to restrain beneficial data practices, such as advertising practices, based on largely theoretical concerns about discrimination.

Finally, the IAB submits that the government should remain technology-neutral in its efforts to advance consumer privacy. It is important that the government should not “pick winners and losers” among the various technologies that may, depending on circumstances, enhance consumer privacy protections. The advancement of such technologies should be determined by the market. In particular, the promotion of specific technologies through legislation or regulation would not be appropriate and could actually stymie future innovation.

As policymakers confront the technological breakthroughs that are driving the collection, storage, analysis, and use of large data sets, the IAB believes the appropriate path forward is clear: industry self-regulation should remain harm-based and is generally the preferred approach to addressing privacy concerns associated with data collection and use. Industry’s successful DAA Self-Regulatory Program for the collection and use of Web viewing and mobile data demonstrates how self-regulation can effectively tackle new data practices as they arise, by applying the FIPPs framework in creative ways to new situations. The IAB private accountability mechanisms can play a useful and important role in effectuating self-regulation. However, their role should focus on enforcing standards that have been established through cooperative processes that include industry stakeholders.

CONCLUSION

The IAB appreciates the opportunity to provide these comments to the FTC in advance of its workshop on big data. As discussed above, the responsible use of big data provides many benefits for consumers and businesses. The IAB urges the Commission to support the current and successful approach of addressing privacy questions through targeted legislation coupled with industry self-regulation, avoiding new restrictions on the free flow of data. Enacting new legislative or regulatory mandates that would restrain the big data revolution would be going in the wrong direction. Rather than moving toward a prescriptive model of privacy regulation, which has limited companies’ ability to innovate in other countries, the FTC should continue its fruitful dialogue with industry and support for self-regulatory frameworks.

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If you have any questions or would wish further clarification on any of our comments, please do not hesitate to contact me at mike@iab.net.

Respectfully submitted,

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