

Written Questions of Senator Jeff Flake
U.S. Senate Committee on the Judiciary
Subcommittee on Privacy, Technology and the Law
The Location Privacy Protection Act of 2014
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1. *In your testimony, you stated that the Digital Advertising Alliance (DAA)'s self-regulatory program is backed by enforcement mechanisms. How is this program enforced?*

a. *What penalties, sanctions, or other actions are performed to bring companies into compliance with the guidelines?*

A key feature of the DAA Self-Regulatory Program is accountability. The DAA's Self-Regulatory Principles ("Principles") are backed by two robust enforcement programs administered by the Council of Better Business Bureaus ("CBBB") under the policy guidance of the Advertising Self-Regulatory Council (ASRC), and by the Direct Marketing Association (DMA) under its *Guidelines for Ethical Business Practice* (collectively, "Accountability Programs"). Accountability under the DAA Principles applies to all companies operating in the advertising ecosystem, not merely "participants" in the DAA Program.

Since this hearing, new enforcement actions were announced. The DAA has, to date, brought 37 publicly announced compliance actions involving brand-name companies and lesser-known names, and the actions have addressed well-known technologies and emerging technologies. These actions have addressed traditional online display advertising, as well as social media. These results demonstrate robust accountability that is responsive and can quickly adapt to emerging business and technology models in the marketplace.

The goal of the DAA Accountability Programs is to identify instances of noncompliance by companies and help those companies come into compliance and build consumer trust through good advertising practices online. While the Accountability Programs do not seek to be punitive, the DAA believes that strong, independent enforcement is essential to successful self-regulation, and therefore, reserves the right to publicly report on instances of noncompliance and report uncorrected violations to the appropriate government agencies.

The CBBB Accountability Program builds on the successful track records of several other ASRC programs that have been in place for decades. These programs feature independent monitoring and public reporting of decisions. They have extremely high voluntary compliance rates. Those companies that fail to comply or refuse to participate in the self-regulatory enforcement process are referred publicly to the appropriate government agency for further review.

The CBBB administers its Interest-Based Advertising Accountability Program under the ASRC self-regulatory policy guidance and procedures. Because of the highly complex, technical and interdependent nature of interest-based advertising, the Accountability Program receives a

weekly privacy dashboard report based on independent data about companies' compliance with various requirements of the Principles. The Accountability Program's technical staff analyzes these data and examines whether there may be a violation of the Principles warranting formal inquiry. The Program also finds potential cases through its own staff monitoring and investigation, by analysis of consumer complaints and reviews of news stories and technical reports from academics and advocacy groups.

Where there is a potential compliance issue, the CBBB initiates formal inquiries and works to ensure the company understands the Principles and voluntarily implements the requirements of the Principles. At the end of the process, the CBBB Accountability Program issues a public decision, which details the nature of the inquiry, the Accountability Program's conclusions, any recommendations for correction, and includes a statement from the company in question regarding its implementation of the recommendations. A press release is also issued.

The DMA's longstanding *Guidelines for Ethical Business Practice* ("Guidelines") set out comprehensive standards for marketing practices, which all DMA members must follow as a condition of membership. The DAA Self-Regulatory Principles are incorporated into these *Guidelines*.

The DMA's Ethics Operating Committee ("Committee") examines practices that may violate the *Guidelines*. To date, the *Guidelines* have been applied to hundreds of marketing cases on a variety of issues such as deception, unfair business practices, personal information protection, and online behavioral advertising. The Committee works with both member and non-member companies to gain voluntary cooperation in adhering to the guidelines and to increase good business practices for direct marketers. The Committee receives matters from consumers; member companies; non-members; or, sometimes, consumer protection agencies. Complaints are reviewed against the *Guidelines* and if a potential violation is found to exist, the company is advised on how it can come into full compliance.

Most companies work with the Committee to cease or change the questioned practice. If a member company does not cooperate and the Committee believes there are ongoing *Guidelines* violations, the Committee can recommend that action be taken by the DMA Board of Directors and can make case results public. Board action could include censure, suspension or expulsion from membership, and the Board may also make its actions public. If a non-member or a member company does not cooperate and the Committee believes violations of law may also have occurred, the case is publicly announced and may be referred to federal and/or state law enforcement authorities for review.

The CBBB and DMA programs demonstrate the success of self-regulation and its many benefits, including the ability for the regulatory apparatus to evolve to meet new challenges.

- 2. *What tools and/or programs does the DAA offer to consumers to provide transparency and control to consumers regarding the data collection?***
 - a. *Do consumers use these tools, and how do they impact the growth of the Internet economy?***

The DAA Program provides consumers with enhanced transparency around data practices and choice with respect to collection and use of their Internet viewing data while preserving the ability of companies to responsibly deliver services and continue innovating. This approach allows consumers to enjoy the incredibly diverse range of Web sites by preserving the responsible data flows that support these offerings and that fuel our nation's economy.

The DAA Program fosters this approach by providing tools and mechanisms that enable transparency, consumer control, and accountability (as detailed in response to question 1 above).

Transparency. DAA has developed a universal icon ("DAA Icon") deployed by companies that gives consumers transparency and control with respect to interest-based ads. The icon provides consumers with actionable notice that information about their online interests is being gathered to customize the Web ads they see. Clicking the DAA Icon also takes consumers to a centralized choice tool that enables consumers to opt out of this type of advertising by participating companies. The icon is served globally more than *one trillion times each month* on or next to Internet display ads, Web sites, and other digital properties and tools covered by the program. In April 2014, the DAA issued technical specifications that provide companies guidance for providing this transparency tool in mobile web and application environments. This will provide companies and consumers with a consistent, reliable user experience across the multiple screens on which they interact. This will also provide companies a consumer-friendly way to provide enhanced notice and choice outside of the privacy policy.

Furthermore, the DAA Principles call for consumer education. The DAA commissioned a professionally developed advertising campaign to help consumers learn about interest-based advertising and the choices they have with respect to data collection and use. This effort successfully delivered easy to understand videos and messaging to help millions of consumers understand the power at their hands.

Consumer Control. The DAA Program makes available a centralized choice mechanism that unites the opt-out mechanisms provided by more than 115 different third-party advertisers participating in the program. The choice mechanism website offers consumers a "one-click" option to request opt-outs from all participants or allows a user to make choices about opting-out of interest-based advertising from specific companies. Consumers are directed to AboutAds.info not only from DAA Icon-based disclosures on or around ads, but from other forms of website disclosure. In 2012, the DAA also introduced a suite of browser plug-ins to help ensure the persistence of these choices so that consumer preferences are not lost should consumers elect to delete their browser cookies.

Since the DAA Program launch, there have been more than 30 million unique visitors to the DAA program Web sites. *Over three million unique users* have exercised choice using the integrated opt-out mechanism provided at AboutAds.info. Most users visit DAA Program Web sites, learn about their choices, and ultimately choose not to opt-out, showing that once consumers understand how interest-based advertising works, many prefer to receive relevant ads over irrelevant ads. The DAA expects to release versions of this successful consumer choice tool

for mobile environments later this year. These tools will provide consumers control over data collected in mobile web as well as data collected through applications.

Location Data. Of particular relevance to the hearing, the DAA imposes stringent requirements for the collection and use of precise location data for commercial purposes. The DAA program requires consent prior to collection and the provision of an easy to use tool to withdraw such consent. We have required privacy-friendly tools including notice in the download process, notice at first install or other similar measures to ensure that companies are transparent in a consistent manner about data collection and that consumers can make informed choices. To help ensure that both the transparency mechanisms we require are used and that consumer choices are honored, we rely on our accountability programs.

The impact of these tools on the growth of the Internet economy is profound. By offering consumers transparency and control in a way that preserves interest-based advertising, these tools help foster innovation and create jobs. As described in my written testimony, the data-driven marketing economy constitutes a significant share of our GDP, and continues to grow each year.