



April 11, 2008

Office of the Secretary
Federal Trade Commission
Room H-135 (Annex N)
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Washington, DC 20580
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Attn: Peder Magee, Bureau of Consumer Protection

FTC Staff Proposed Online Behavioral Advertising Principles:
Comments of AOL, LLC

AOL LLC (“AOL”) is a leading global advertising-supported Web company, with the most comprehensive display advertising network in the U.S., a substantial worldwide audience, and a suite of popular Web brands and products. AOL has supported the Federal Trade Commission’s efforts to help crystallize emerging best practices across the online industry, and to enhance consumer awareness of these practices. AOL appreciates the opportunity to submit comments in response to the Proposed Self-Regulatory Principles on behavioral advertising outlined by FTC staff.

As a provider of online services and advertising, AOL and its subsidiary companies participate actively in a variety of industry associations, including the Network Advertising Initiative and the Internet Advertising Bureau. These associations are submitting specific comments on the FTC staff proposed principles, which AOL supports. Rather than reiterate the substance of some of these comments, AOL believes it may be beneficial to the self-regulatory dialogue to submit practical examples of the initiatives that we as a company have undertaken to address privacy issues in online behavioral advertising. AOL’s experience, we believe, helps demonstrate the continued benefit of a flexible self-regulatory regime that can be readily adapted to evolving consumer expectations for the specific online services they use, as well as to the particular advertising technologies used to support such services.

Background

Throughout its history, AOL has been a leading advocate of a self-regulatory approach to online privacy. AOL was one of the first companies to adopt a privacy

policy, and it has remained in the forefront of the public policy debate concerning privacy issues. This year TRUSTe and the Ponemon Institute again named AOL one of the most trusted companies for privacy based on an annual survey of U.S. consumers.¹

AOL offers a diverse variety of online services. For advertisers, AOL offers access to the broadest display advertising network in the U.S. through our Platform A group.² For consumers, AOL provides a broad variety of Web properties and services, including the AOL portal, MapQuest, AIM (the leading messaging service in the U.S.), and the AOL Internet subscription service. AOL also offers international users versions of its portal services in over a dozen countries worldwide.

In order to enhance consumer privacy and trust across these diverse online services, AOL has sought to apply its core privacy values in a way that recognizes the profound differences in the underlying consumer experiences and technologies. AOL's portal-based services, such as AOL.com, rely on individual authentication and are designed to offer the consumer as customized and relevant an experience as possible. AOL offers authenticated users of these services a variety of privacy preferences. By contrast, AOL's cookie-based advertising network services – such as Ad.com and TACODA – operate across a wide variety of Internet publisher and Web sites, but are also deliberately designed to avoid the personal identification of users who view the advertisements served within these networks. Here too users are provided notice and choice, but in a manner that is specifically adapted to the underlying network and cookie-based architecture. The provision of a consumer opt out to cookie-based targeting addresses consumer privacy expectations relating to the specific types of data sharing and data use involved in network advertising.

Because of these differences in consumer experience and underlying technology, AOL and its subsidiary companies have supported self-regulatory initiatives by a variety of industry organizations, including most recently by the Network Advertising Initiative and Interactive Advertising Bureau.³ AOL supports these initiatives, which adapt the core privacy values of consumer notice and choice to the varied business models of their

¹ See “TRUSTe and Ponemon Institute Name Hewlett-Packard, Intuit and AOL the Top Three Most Trusted Companies of 2007 for Privacy,” available at http://www.truste.org/about/press_release/01_30_08.php.

² Platform A consists of Advertising.com, which operates the largest third-party display networks; behavioral targeting leader TACODA; Third Screen Media, which operates one of the largest mobile media networks; market leading video ad serving platform Lightningcast; Quigo, which offers advertisers the ability to target ads based on the content of Web pages; and ADTECH's global ad serving platform.

³ See Network Advertising Initiatives, “Draft NAI Principles 2008,” available at http://www.networkadvertising.org/networks/principles_comments.asp (April 10, 2008); IAB Privacy Principles (February 2008), available at http://www.iab.net/iab_products_and_industry_services/1421/1443/1464.

member companies. Given how important online advertising is in supporting the incredible array of Internet services offered to consumers, AOL believes it vitally important that these different self-regulatory initiatives continue to be expanded. Additionally, we believe that the following specific examples help illustrate how practical approaches can be developed.

1. New Approaches To Consumer Notice And Choice

A. *Consumer Education About Advertising Networks*

AOL believes that Web sites operators should disclose their operative practices for data collection and use in a way that is meaningful to consumers. However, it remains a challenge for Web site operators to combine the granularity requested by technologists, the legal accuracy and comprehensiveness demanded by regulators, and the ease of use needed by an ordinary user who may quickly glance at privacy information while checking the weather online or accessing e-mail. The trend towards increasingly technical detail in policies about cookies, web beacons, IP addresses and log files has increased transparency for technologists – but has likely done so at the expense of the casual web surfer who may be seeking only a few high-level key points to inform a decision on whether to continue a data exchange with a Web site.

Although we already provide extensive disclosures in privacy policies for our portal-based services, including those that permit network advertising, AOL is now experimenting with the use of cartoons and video as an additional means of communication designed to reach the widest possible audience and quickly engage user interest. AOL is planning an ad campaign that will link users to a short flash animation video intended to educate users about the basics principles of cookie-based network advertising. See Appendix A (flash video available at <http://corp.aol.com/o/mr-penguin/>). The video segment features an interactive penguin, and directly links users to an additional informational Web page (<http://corp.aol.com/privacy-and-consumer-choice>) that offers accessible information about the privacy policies of AOL's advertising companies, as well as a link to an opt-out for behavioral targeting by advertising networks.

AOL's campaign is an attempt to provide our users with an additional means of explaining the privacy issues relating to online ad serving, and is intended to reach to an audience that may benefit from an approach that is quicker and easier to understand. A flash animation approach is but one of a variety of means by which AOL – and industry generally – might provide privacy information to consumers. Some users may prefer a detailed and lengthy privacy notice, or summary information. Others may prefer cartoons or blog information. Still others may prefer online videos or other approaches only now being considered. The challenge for regulators, privacy advocates, and industry is to acknowledge that the consumer audience is diverse, and to be creative in finding

engaging and effective ways of providing privacy information about varying online advertising practices and technologies.⁴

This educational effort is consistent with recent internal research AOL, which found a wide variety of perspectives among consumers on their preferred means of obtaining privacy information. The survey attempted to measure awareness of behavioral advertising and to determine the most important types of information that a Web site might provide about such advertising. The survey found that a significant number of consumers are interested in getting privacy information in a variety of formats, and that younger users are slightly more willing to watch videos or review cartoons and diagrams to get privacy information. See Appendix C (Key Findings of AOL 2008 Consumer Survey). Moreover, consumers appear to be less interested in technical information about behavioral targeting and the general policy issues relating to these practices. Instead, consumers appear to be more interested in learning specifically about whether personally identifiable or sensitive information is being used for behavioral targeting, and whether an opt-out is being provided to the sharing of their data across Web sites.

AOL believes these survey results show that in the context of network advertising, existing industry self-regulatory efforts are appropriately focused on the issues of greatest interest to consumers. At the same time, the survey also illustrates how innovative approaches to privacy education, which could supplement already robust disclosures in short- and long-form privacy policies, may be highly effective in addressing FTC staff's observations about the desirability of greater consumer transparency. Clearly, further research may be necessary to understand consumers' evolving attitudes towards notice and choice in the context of the specific types of online behavioral advertising they receive, and the specific advertising technologies used to provide such advertising.

B. Possible Best Practices for Cookie-Based Network Advertising

As these educational initiatives demonstrate, AOL believes that meaningful notice and choice is the appropriate standard for our cookie-based network advertising businesses. AOL's ad network businesses subscribe to the Network Advertising Initiative (NAI) principles, which provide that when users receive targeted ads based upon their browsing activities across a network of Web sites that shares information

⁴ AOL's efforts in connection with its penguin campaign build on an earlier initiative by AOL's TACODA subsidiary to enhance consumer awareness about behaviorally-targeted advertising. TACODA has implemented a program to deliver millions of public service banners across AOL and TACODA's advertising networks, beyond the notice and choice mechanisms already contained in privacy policies for sites participating in the TACODA network. These public service messages provide consumers with additional means to learn about how data is collected and used by advertising networks, as well as about their choices to opt-out of targeting based upon such data. See Appendix B.

about this browsing activity, the participating web sites must disclose this practice and provide an opt-out to such data use.⁵ In our network advertising businesses, AOL contractually requires publishers who provide such data for network targeting make these disclosures. Similarly, in its separate capacity as a publisher and Web portal operator, AOL itself makes such disclosures on its web sites that allow network advertising.⁶

As the parent company of Netscape, the “inventor” of the cookie, AOL believes that there are additional best practices that could be adopted by operators of cookie-based advertising networks. The following measures could help consumers more easily elicit information about the practices associated with cookies set on a Web site by a party other than the Web site operator:

- Any company that primarily interacts with consumers via secondary browser requests, such as an ad network, could use its home page to provide consumers with more easy-to-find information (in addition to corporate information for prospective business partners). Although a privacy link at the bottom of the page may be appropriate for consumers visiting a Web site in order to view content or check email, users visiting the Web site of an ad network provider are more likely to be seeking privacy or opt-out information. Such links could be provided more prominently. On the home page for TACODA, for example, an opt-out link to network advertising cookies is prominently displayed. Similarly, for AOL’s Advertising.com, the link to privacy information and cookie opt-out is placed at the top, rather than the bottom, of the page.
- Consumers should be able to obtain cookie-related privacy information from Web servers associated with secondary domains whose principal purpose is to set cookies as a result of a user’s Web request. This could enable a consumer examining a cookie on their computer to discover the privacy practices of the server or company setting the cookie by visiting the domain address. See, for example, <http://atwola.com/> (which advises users on how to obtain privacy

⁵ It is important to note that display advertising networks, such as AOL’s Advertising.com, can deliver improved advertisements on Web publisher sites based on information unrelated to users’ online behavior across its network of sites (such as the optimization of an ad placement based upon its popularity on particular types of publisher sites).

⁶ Just as within the third party advertising business model, there are a substantial variety of advertising practices that exist among Web site publishers (often called “first party” advertisers). For example, a substantial portion the advertising on AOL properties is selected based on non-behavioral factors, such as the context and content in which the advertising is delivered, or the general audience demographics of a particular content area. As with “offline” media such as television and magazines, this reflects the market reality that some advertisers may be more interested in reaching users only when they are engaged with particular types of content (e.g. a sponsorship of Sessions@AOL music artist performance).

information about ad serving and the uses of cookies and other technologies at www.aol.com)

In addition to enhanced transparency for cookie-related technologies, AOL has also been evaluating the potential for improvements to the cookie opt-out process. Numerous studies have noted the significant number of consumers who delete their cookies on a frequent basis.⁷ The deletion of cookies carries the potential to reverse a consumer's previously expressed – and also cookie-based – preference not to receive network advertising. In order to help better preserve consumer choices, AOL's TACODA's unit has implemented a Web cache technique to preserve a consumer's opt-out choice even if they delete their browser cookies. This experiment helps demonstrate the privacy-enhancing potential of technology.

Best practices such as these are, of course, specifically adapted to the particular technology used to gather advertising-related information – specifically, cookie-based targeting in advertising network. While they cannot provide a “one-size-fits-all” solution to the issues of notice and choice across the broad spectrum of internet advertising business models and technologies, they do illustrate the potential for innovative approaches adapted within a particular market sector.

2. Data retention

Different businesses within AOL collect data from consumers for different purposes, some of which relate primarily to the delivery of a product or service rather than any advertising purpose. For example, a personalized news service on the aol.com portal (MyAOL) might need to gather and learn from a consumer's express content preferences over an extended period, in order to provide the most relevant news content and advertisements related to such content. By contrast, the insight that a consumer may belong to the segment of Web users interested in buying a new car -- as inferred from that user's visit to an auto site and captured by an advertising network to a cookie on a non-personally identifiable basis -- may have a shorter period of relevancy, and therefore of business need.

AOL recognizes that there are certain data types of potentially sensitive product-related data to which limited retention is a best practice. A good example is data gathered on a de-identified basis from search engines for use in product development and fraud prevention. AOL has publicly stated that in connection with the data gathered by its own search services, it applies a policy of retaining this search data for no more than 13 months. Other companies in the search industry have implemented similar retention policies.⁸

⁷ See, e.g., Comscore, “Cookie-Based Counting Overstates Size of Web Site Audiences” available at <http://www.comscore.com/press/release.asp?press=1389>.

⁸ See Center for Democracy & Technology, “Search Privacy Practices: A Work in Progress,” available at <http://www.cdt.org/privacy/20070808searchprivacy.pdf>.

Similarly, for the cookie-related technologies used in both its advertising networks and product offerings, AOL is attempting to limit the common practice by developers of allowing cookies to default to the thirty-year maximum lifespan established by the relevant technical specifications. AOL has adopted an internal best practice for its developers of setting a maximum two-year lifespan for such cookies. Here, as in other contexts, we have sought to actively manage the underlying architecture to proactively address privacy concerns, rather than allow technical defaults to govern.

At the same time, with respect to data retention, it is important to acknowledge that there is unlikely to any single standard that adequately balances the needs of product providers, business auditors, consumer privacy and law enforcement. The current controversy over the privacy requirements relating to IP addresses has the potential to further complicate this problem. IP addresses are generally not used by advertising networks or web sites for state management purposes. Rather, they are most often used to send requested content to a particular user's browser; to discern general geographic regions that the user may be located in; for audit-related purposes (i.e., proving ad delivery for advertisers); and for fraud detection purposes. While there has been an increase in the number of users whose connectivity providers assign them static IP addresses for their home use, Web sites remain heavily reliant on cookies for state management. A recent study indicates the typical home PC averages 10.5 IP addressees assigned to their computer in the course of a month.⁹

Because of their dependence on cookie-based architectures, advertising networks and web sites are generally incapable of identifying a user behind an IP address. We recognize, however, the privacy considerations that some regulators have raised in connection with IP retention in certain instances. AOL is aware of these concerns, and is evaluating its current practices with respect to the retention of such data.

3. Sensitive Data And Advertising

AOL believes that there are valid concerns relating to the use of certain categories of sensitive data in connection with cookie-based network advertising. We have already implemented internal policies to address those concerns, and have also actively supported the development of the NAI's new "Guidelines on Restricted and Sensitive Consumer Segments."¹⁰ Consumers have a legitimate expectation that data that is non-personal, but

⁹ See Comscore, "The Impact of Cookie Deletion on the Accuracy of Site-Server and Ad-Server Metrics", available at http://www.comscore.com/request/cookie_deletion.asp. Moreover, mobile technologies are presently heavily dependent on dynamically-assigned IP addresses, further complicating the question of whether an IP address can be considered information that is personal to an individual or unique to a particular device. See "What Is IPv6," available at <http://whatismyipaddress.com/staticpages/index.php/what-is-IPv6>

¹⁰ See 2008 Draft NAI Principles, Addendum A, available at http://www.networkadvertising.org/networks/principles_comments.asp.

that may be considered sensitive, should not be used to create a segment for behavioral targeting relating to that sensitive condition without their permission.

In addition to greater clarity about the uses of sensitive data, we believe that consumers would benefit from more transparency about how their online data is used to create segments in the first place. In coming months, AOL plans to provide additional public information about the underlying mechanics of cookie-based ad delivery. More generally, we believe that greater clarity in this and other areas of online advertising will benefit consumers and advertisers alike.

Conclusion

AOL appreciates the considerable time and effort that FTC staff have invested to facilitate comment and discussion of enhanced self-regulatory approaches for behavioral advertising. As FTC staff continues its review of best practices across a wide spectrum of business models and technologies, we hope that there will continue to be a focus on practical approaches that help achieve our common objective of enhanced consumer trust in the online advertising medium.

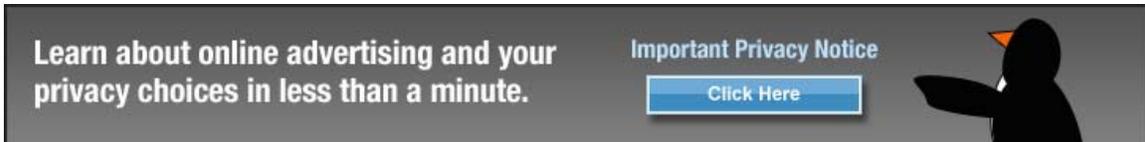
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Appendix A:

Educational campaign banners



Appendix A (cont'd)

Educational campaign landing page:

AOL | myAOL | Mail | Make AOL Your Homepage

AOL

Privacy and Consumer Choice

At the privacy policy links listed to the right, you can read much more about how AOL and its ad-serving divisions use information. Many of these policies include choices about how information can be used.

You can also follow the penguin to reach the Network Advertising Initiative site, a central location for information about Internet advertising and the choices available to you.



NAI
Network Advertising Initiative

[Opt Out](#)

AOL believes that providing relevant advertising improves your online experience, but must be done in a trustworthy manner.

For more information on online advertising and important privacy and safety information, please visit:

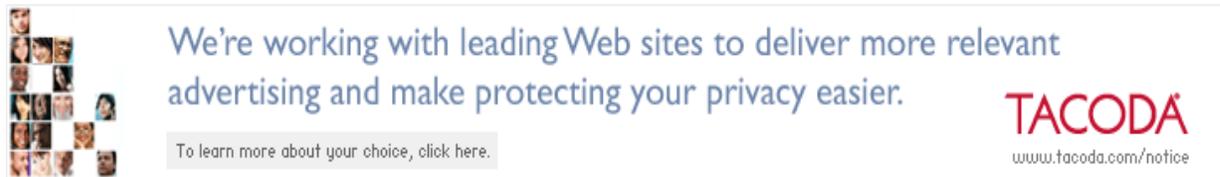
[PrivacyGourmet.com](#)

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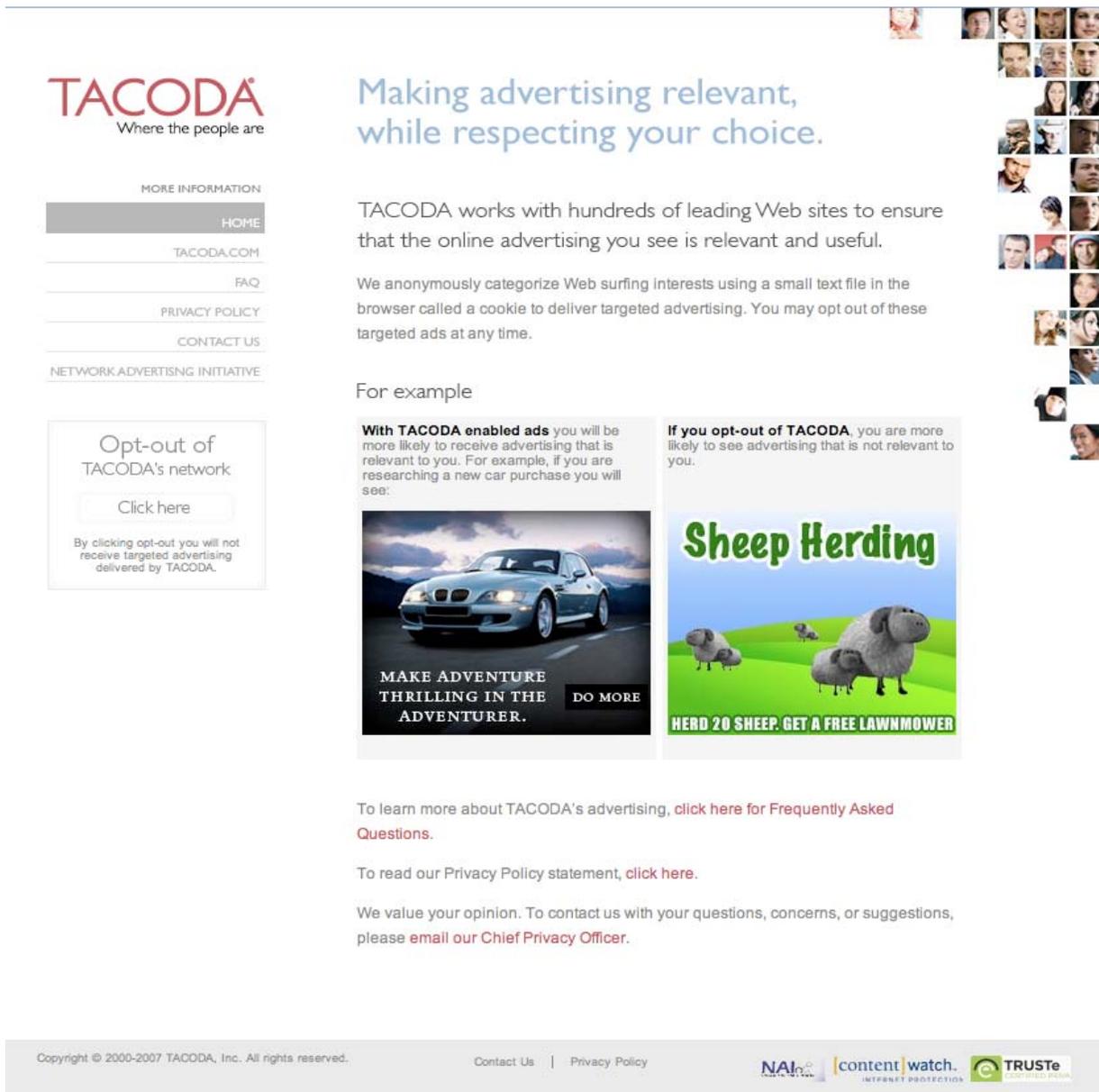
Appendix B:

Sample educational banner



The banner features a grid of small portraits on the left. The main text reads: "We're working with leading Web sites to deliver more relevant advertising and make protecting your privacy easier." Below this is a button that says "To learn more about your choice, click here." The TACODA logo is on the right, with the URL "www.tacoda.com/notice" underneath.

Educational campaign landing page:



The landing page has a navigation menu on the left with links for HOME, TACODA.COM, FAQ, PRIVACY POLICY, CONTACT US, and NETWORK ADVERTISING INITIATIVE. The main heading is "Making advertising relevant, while respecting your choice." The text explains that TACODA works with hundreds of leading Web sites to ensure relevant advertising. It also states that users can opt out of targeted ads at any time. An "Opt-out of TACODA's network" box contains a "Click here" button and a disclaimer. Two example ads are shown: one for a BMW car ("MAKE ADVENTURE THRILLING IN THE ADVENTURER. DO MORE") and one for a lawnmower ("Sheep Herding. HERD 20 SHEEP. GET A FREE LAWNMOWER"). The page concludes with links for frequently asked questions, privacy policy, and contact information. The footer includes copyright information and logos for NAI, content watch, and TRUSTe.

Appendix C:

Key Findings of 2008 AOL Consumer Survey on Behavioral Advertising

During the last week of January 2008, AOL conducted a survey of 1081 consumers (50% AOL users & 50% non-AOL users) to measure awareness of behavioral advertising and to determine the most important types of information that can be provided about such advertising. The demographics were 33% each of ages 18-34, 35-54, and 55+, evenly split between male and female.

AOL's research examined possible means for additional consumer education and notification about privacy. In particular, the survey examined the specific types of consumer privacy concerns, and how various consumers would like to be informed about privacy and their choices.¹¹

The survey results underscore that "the consumer perspective" is not monolithic. Rather, there is wide spectrum, not only in the depth of consumer understanding about privacy issues generally and behavioral targeting specifically: there is also considerable variety among consumers in terms of a willingness to pursue additional privacy information; their willingness or likelihood of exercising an opt out; and the manner in which they would prefer to learn about privacy issues.

AOL's research indicates that consumer attitudes are still evolving, and may depend on nature of the particular site or service that they use. Thus, it continues to be critical for companies to experiment with varying modes of communication and privacy options in order to provide the best user experience.

Specific Data Highlights:

1. High Baseline Awareness of Privacy Policies: Half of respondents claim to have read a privacy policy, and even larger numbers of users find privacy policies useful (79%) and easy to understand (62%). However, among those who have read a privacy policy, 57% said the policy contained too much legalese or jargon, and 58% said the policy takes too long to read. Only 42% of respondents said that they would stop what they are doing online to learn more about behavioral targeting, and even then only for a brief glance.

2. Additional Mechanisms for Privacy Education: Some consumers prefer that Web sites use a variety of means to inform them about privacy. They are interested in additional means of notice and education about behavioral advertising beyond privacy

¹¹ In contrast to recent surveys by TRUSTe and Harris/Westin, AOL's survey did not ask about consumer attitudes regarding behavioral targeting generally. Compare "TRUSTe Report Reveals Consumer Awareness and Attitudes About Behavioral Targeting," available at http://www.truste.org/about/press_release/03_26_08.php; Harris/Westin Survey "Online Users, Behavioral Marketing and Privacy" (March 2008).

policy disclosures. For example, 82% of respondents said they would like to see information about how a site uses behavioral advertising data in the form of “A paragraph describing behavioral advertising”, and 80% would like to see “a diagram of how behavioral advertising works.” Younger consumers in particular were slightly more likely to prefer video, diagram, or cartoon information.

3. Propensity to Seek Out Privacy Information: Overall, younger users in our survey appeared more likely to seek out privacy information, and more likely already to be knowledgeable about privacy issues. Younger people (less than age 35) are slightly more knowledgeable about behavioral advertising than those age 35+. The initial data suggest that younger people are possibly less likely to opt-out of behavioral advertising because of their greater awareness and understanding, but this area requires additional research.

4. Specific Consumer Preferences for Privacy Information : Users appear to be less interested in technical issues relating to behavioral targeting, or general policy issues related to these practices. Rather, consumers appear to be more interested in learning specifically about whether personally identifiable or sensitive information is being used for behavioral targeting, and whether an opt-out is being provided to the sharing of their data across Web sites.¹² Users identified the following as the most important piece of information that might be provided:

- Whether behavioral targeting includes a person’s name or is anonymous (44%)
- The sensitivity of the data collected (42%)
- The ability for the consumer to opt out of sharing their data across websites (36%).

¹² These results are consistent with the hypothesis tested in the Harris/Westin study, which attempted to measure changes in user behavior based upon the adoption of four privacy safeguards: a) an explanation about how the site will use behavioral information to customize content or ads, b) offering some choices about tailored content and advertising, c) reasonable security measures, and d) a promise not to share PII from online activities with other companies without user consent.