

April 11, 2008

Ms. Jessica Rich
c/o Secretary
Federal Trade Commission
Room H-135 (Annex N)
600 Pennsylvania Ave. NW
Washington, DC 20580

Email: BehavioralMarketingPrinciples@ftc.gov

Dear Ms. Rich,

On behalf of Yahoo!, I submit our comments on the FTC staff's proposed self-regulatory principles for online behavioral advertising.

About Yahoo! and yahoo.com

Yahoo! Inc. is a leading global Internet brand and one of the most trafficked Internet destinations worldwide. Yahoo! is focused on powering its communities of users, advertisers, publishers, and developers by creating indispensable experiences built on trust. Yahoo! is headquartered in Sunnyvale, California. As one of the pioneers of the Internet advertising model, Yahoo! is well qualified to comment on developments in this area, as well as on the leadership efforts it has taken in developing an effective self-regulatory model.

Yahoo! Responds to User Demand for Relevancy

From the day Jerry Yang and David Filo founded Yahoo! as a searchable directory of popular websites, Yahoo! has been focused on cutting through the clutter and bringing consumers content that best matches their interests. This compelling principle

has guided us over the past few years during which there has been a rapid transformation in the types of products and services consumers are demanding on the Internet. Consumers have and continue to respond strongly to Internet products and services that are customized to their interests.¹

Yahoo! also incorporates this customization in the advertising we offer. We want our users to receive ads that are relevant to them – ads they value. Ads valued by our users are inherently valuable to our advertisers as well, thus enabling a vibrant ecosystem that allows Yahoo! to develop and offer more content and services to our users for free due to advertising. We fully embrace this model and its manifold benefits to our users.

Relevancy Built on Responsibility and Trust

However, at Yahoo! we measure our success *equally* on the loyalty of our users and our ability to implement advanced technology to achieve the most relevant and customized online experience in the industry. Our customized advertising is always matched by our core commitment to the relationship of trust we have built with our consumers. That commitment includes transparent and comprehensive policies about how we use information to enhance their online experience. It also includes industry leadership in the development of self-regulatory models, education, and meaningful user protections as we carry out our business.

¹ This is demonstrated by the strong popularity of our customized products such as MyYahoo!, Yahoo! Finance, Yahoo! News, Yahoo! Music, and so on.

Through our relationship of trust, we respond to the needs of our consumers, combining their desires for ever more relevant services with their interest in protecting their personal information.

- Yahoo! does not share personally identifiable information with advertisers or publishers without consent from users.
- Yahoo! gives consumers choice, allowing them to opt-out of targeted advertising served by Yahoo! off the Yahoo! network.
- Yahoo! has participated in the efforts to create the newly announced NAI self-regulatory code of conduct, and Yahoo! will not create advertising segments designed to target children, target based on certain medical and health conditions, nor certain personal life information as outlined in those principles..
- Yahoo! is agreeing to the newly announced NAI self-regulatory code of conduct, pledging we will not create advertising segments designed to target children, and we will not target based on certain medical and health conditions, nor on certain personal life information as outlined in those principles.²
- And, Yahoo! will be undertaking a significant education campaign to help users understand how Yahoo! customizes their advertising to match their interests.

As Yahoo! indicated when it presented before the Federal Trade Commission at the November 1-2 eBehavioral Advertising Town Hall, we have moved beyond advertising on our leading network of sites in the Yahoo.com domain, and have invested in newer advertising business models including: 1) direct partnerships to serve advertising on sites

² http://www.networkadvertising.org/networks/NAI_Principles_2008_Draft_for_Public.pdf

like eBay, Comcast, Forbes and a large consortium of newspapers; 2) network advertising through Blue Lithium; and 3) a leading advertising exchange in Right Media. These investments further our commitment to finding the right solutions as we explore additional benefits and efficiencies for all participants in the Internet advertising ecosystem – consumers, publishers, advertisers, and technologists. And as we address the challenges presented by these newer models and the principles proposed by the FTC, we always keep in mind these two fundamental principles: 1) customers demand relevancy and 2) relevancy should be provided responsibly with trust.

Benefits of Online Advertising

Yahoo! strongly agrees with the FTC that behavioral advertising “provides benefits to consumers in the form of free Web content and personalized ads that many consumers value.” The advertising model has made Internet content and services available to millions of people in the United States and around the world³ – for free. The business model of relying on advertising revenue to fund websites has meant that vast amounts of information on the Internet has been fully accessible to people of all ages and income levels. The trend over the past few years, exemplified by recent steps by AOL, the New York Times⁴ and the Wall Street Journal websites, has been to tear down economic barriers to content – possible only because the primary source of revenue for most content providers’ online operations is an advertising rather than a subscription model.

³ There are 185 million Internet users in the US alone, according to comScore Media Metrix data for February, 2008: <http://www.comscore.com/press/data.asp>.

⁴ The New York Times’ article on its transition to an ad-based model notes that “projections for growth [of our] paid subscriber base were low, compared to the growth of online advertising.” See <http://www.nytimes.com/2007/09/18/business/media/18times.html>

The benefits do not end with a rich diversity of content. Consumers also experience enhancements as they receive customized content, services and advertising that save them time and money. For instance, many have become used to websites storing our information while giving us easy “one-click” access from anywhere an Internet connection can be established. Many users frequently use recommendations for new products and services they trust – some from advertising sources. And the exponential growth of social networking sites⁵ demonstrates a clear interest in customizing the online experience. Everyday information such as weather information, local news, mail alerts, stock alerts, and offers for products or services they are interested in is provided through customization techniques. Most of these technologies have been the result of investments by companies funded by their online advertising revenues.

Advertising directly supports the creation of Yahoo!’s industry leading services. Yahoo! maintains the #1 or #2 site in 19 categories including finance, sports, news, personalized home page, mail, shopping, travel, etc.⁶ Many of these products are multi-award winners and are updated with new features and functions regularly. Other services to our users such as anti-spyware software, unlimited mail storage and generous photo and video storage are also provided for free because of the advertising model.

Advertising also supports a diversity of voices on the Internet. Bloggers or families who want to occasionally post content are generally subsidized by the advertising business model through free or reduced-cost hosting, and also through the

⁵ According to web analytics firm Compete, the number of Facebook users doubled between March of 2007 and March of 2008. MySpace and Facebook have a combined audience of nearly 100 million.

⁶ comScore World Metrix, February 2008

ability to have text, graphical and even video ads appear on the site. This ability to make money while sharing views increases the number of viewpoints that can be taken in public debates⁷, and surely enriches our public conversation as a nation and as a global society.

Yet another benefit is the rise of small businesses that have been able to gain a foothold on the Internet with very low barriers to entry. These small businesses are able to make a profit in part because new tools are available to carry advertising on their sites, giving them another source of revenue. And the type of advertising is relevant here. These small businesses can sell advertising on a wider range of topics when the advertising can be tailored to user interests, even if the site is primarily about a different topic. For instance: A “Do it Yourself” site can move beyond advertising for building supplies to advertising for autos, flowers, or travel. It is relevant for the user too, who would prefer to see fewer ads on a page or less repeat ads, which is only possible when advertisers have enough information to provide smarter ads.

Given the wide range of benefits to society to consumers, bloggers, small businesses, and even advertisers who can more efficiently find the right audience for their messages and offers, it is important to give due weight to these benefits when exploring self-regulatory principles.

⁷ The number of blogs doubles roughly every six months. Technorati, a blog aggregator, tracks more than 70 million blogs and adds 120,000 blogs to its index each day: <http://technorati.com/weblog/blogosphere/>.

Benefits of the Self-Regulatory Model

Yahoo! supports the FTC's recognition that evolving self-regulation can produce results benefiting the consumer as well as other stakeholders in the online advertising ecosystem. A clear benefit of industry self-regulation is the near immediate impact on the marketplace. Responsible companies can adopt and implement self-regulatory codes quickly and they can be nimbly changed when new challenges emerge. By their nature, regulation and legislation are much less flexible and political pressures often make change elusive. Finally, self-regulation results in a competition among marketplace participants who seek higher trust with their consumers to demonstrate leadership beyond legal requirements.

The FTC is right to point out that times have changed since privacy policies were first introduced, and Yahoo! is proud to be part of several broad industry dialogues on self-regulation such as those conducted through the Network Advertising Initiative (NAI), the Interactive Advertising Bureau (IAB), the Direct Marketing Association (DMA), and working groups facilitated by the Center for Democracy and Technology (CDT). The membership of these organization represent a very significant portion of the entire online advertising industry, as well as the subset involved in customized advertising. In fact, according to emarketer⁸, more than 95% of the online ad market is served by the companies now involved in the NAI industry dialogue alone. The IAB member companies represent 86% of online advertising as a whole, and the DMA represents over 3600 companies. This should give added assurance that a self-regulatory model can dramatically change the marketplace. In addition to our membership in these

⁸ http://www.emarketer.com/Article.aspx?id=1006157&src=article1_home

organizations, and others such as Truste, Yahoo! is committed to actively participating in the efforts to create a revised self-regulatory code of conduct announced this week by the NAI.⁹ These standards should further enhance the advertising practices of third party advertising networks.

Yahoo!'s Privacy Policy Leadership

In early 1998, Yahoo! became one of the very first companies in the U.S. to create a privacy policy. This put us on record making public claims about our use of personally identifiable information that could be challenged by the FTC under a Section 5 “unfair or deceptive” claim. It was, and is, no small thing to make such claims. Our users have a clear attestation as to how data will be used.

As the Web has changed, so has the design of our policy and the ease with which people can access and use it. In 2002 Yahoo! took an industry leading position when it switched over to a layered “Privacy Center” model. While there is one governing privacy policy, a user can easily get more information about the privacy practices of the specific Yahoo! properties he or she uses most (e.g. Yahoo! Mail, Yahoo! Finance or Yahoo! Personals.) With over 90 properties on our site, this is an important improvement in navigation for our users. This model also allows Yahoo! to educate our users about emerging topics such as “cookies,” “IP addresses,” and “Web beacons.” Yahoo! policy is to include a privacy policy link at the bottom of every page created for our network so that consumers can easily access this important information.

⁹ http://www.networkadvertising.org/networks/NAI_Principles_2008_Draft_for_Public.pdf

Yahoo! provides Transparency and Consumer Control Beyond Industry Practices

One of the key principles the FTC raised is that of transparency and consumer control. In addition to the transparency provided in our privacy policy, Yahoo! has taken the FTC's call to action to identify new methods of transparency to heart. As Yahoo! has entered into newer business models including the delivery of advertising off of our branded network of sites, we have explored and researched ways to bring more transparency and choice to these new environments.

Ad Choice

For instance, where we have a contractual relationship with a site to serve third party ads, we have experimented with several forms of notice and choice. Yahoo! works with eBay to implement the AdChoice program, which allows users to click on a text prompt adjacent to the "ADVERTISEMENT" label above or below the ad. An example of this process is included in Appendix A. This brings consumers to a landing page where information is provided about the kind of advertising they may see, which could include advertising that has been shown to them based on information held by eBay or Yahoo!. The user is then given the opportunity to opt-out of targeting based on such information – either on eBay or on Yahoo! (or both). This user friendly model goes well beyond any industry standard for transparency to users. However, this model is still experimental – and although Yahoo! is testing different models for delivery of contextual notices, it is still unclear how users will react to them. For instance, users may believe that notice given contextually around an ad is actually part of the ad. Industry education on this issue will help bolster consumer awareness of a new notice paradigm.

Footer Notice

Yahoo! is also implementing a footer notice (i.e. at the bottom of the page) with some partners such as Forbes.com. In this model, notice of ad serving is outside of the privacy policy, but in an area where users typically scroll to seek privacy policy information. Even though this experimental model is beyond the requirements of any industry practice, it may not scale well when multiple providers serve advertisements on a site.

Yahoo!'s Practices on Transparency and Consumer Control

Where Yahoo! acts as an ad server but does not have a specific relationship with the publisher that allows for notices directly on the publisher's page, we meet or exceed industry practices, such as the newly announced Network Advertising Initiative (NAI) standards.¹⁰ NAI standards require the site to acknowledge the presence of third party networks on their site in the privacy policy, and further require the publisher site and the third party network website to include an opt-out of advertising based on behavior

¹⁰ The architecture of the Internet poses challenges in developing an appropriate notice regime. There are a number of potential entities involved with customized advertising, some of which have no relationship with the website visitor or each other. When consumers visit websites, the operator of the website (or "publisher") is the only entity they deal with directly. The publisher may have an agreement with a third party advertising network ("network") to place ads on the site. In turn, the network has agreements with advertisers and/or advertising agencies (collectively "advertisers") that are responsible for providing the content of the ads. Complicating things further, in some cases there may be technology intermediaries between the parties handling technical communications issues. This multiplicity of parties raises the question of who should provide notice and how can choice be effectuated. The publisher may be able to provide notice, but the publisher has limited knowledge and control over what information is collected and how it is used. Where a technology company is in the middle, but is not the publishing site nor the advertiser, there is no "real estate" or place that can be negotiated to display a contextual notice informing the user of the company's presence and collection of data.

collected over multiple sites. Yahoo! and Blue Lithium each offer an opt-out through our websites and the NAI site.

Yahoo! also adheres to the IAB's recently announced principles¹¹, the DMA's longstanding principles¹², and works with several organizations such as the CDT that bring multiple parties together to further debate and make progress through industry dialogue.¹³

Yahoo! Campaign to Educate our Users

The FTC notes in its principles that it held the November 2007 eBehavioral Town Hall to "convey the importance of launching a continuing dialogue and debate about key issues." Yahoo! agrees wholeheartedly, and is today announcing that we will be engaging our users in dialogue through a large-scale education campaign on our network. Because we touch such a large swath of online users¹⁴, we believe that Yahoo! has a significant opportunity to help our users understand more fully what is happening with customized advertising, as well as the choices they have with respect to the services we offer in this area. We have attached, in Appendix B, some information about the specific ads we are developing for this effort.

¹¹ http://www.iab.net/iab_products_and_industry_services/1421/1443

¹² <http://www.the-dma.org/guidelines/EthicsGuidelines.pdf>

¹³ The CDT has convened numerous working sessions attended by consumer advocates, technology companies, and advertising industry players since the eBehavioral Targeting Conference in November, 2007. Documents produced for and as a result of these sessions have been made public. See http://www.cdt.org/privacy/pet/Privacy_Controls_IPWG.pdf and http://www.cdt.org/privacy/20080324_info_compendium.pdf.

¹⁴ Yahoo! reaches 59% of all internet users, according to February 2008 statistics from comScore World Metrix: <http://www.comscore.com/press/data.asp>

In general, users will be encouraged to learn more about the ads they are receiving and their privacy. The information they will receive when they click through for more information will include an explanation of how customization works, how they can participate in the NAI opt-out, and a link to our privacy policy where they can find more comprehensive information.

Yahoo! plans to launch this public service announcement soon, and will run a large scale campaign with an animated and engaging ad designed to catch users' attention. The monthly impressions associated with this ad are quite significant, such that if we show this ad for a full year, it will have been displayed well over a billion and a half times. We will also go beyond banner ads, including footer links to this PSA on our sign-in screen so that all of our registered users will have access to more information every time they sign in to Yahoo!. Yahoo! deeply values the relationship we have with our users, so we intend to take action to help our users understand what is happening with data Yahoo! holds.

These efforts demonstrate that Yahoo! is exploring new, creative, consumer-friendly features with regard to transparency and choice for our users.

Yahoo! and Reasonable Security and Limited Data Retention

Yahoo! is also in agreement with an FTC principle regarding reasonable security for the collection and storage of consumer data for customized advertising.

Yahoo! and Security

Yahoo! takes security seriously and works continually to protect user information and help address the industry-wide issue of security. We have a dedicated team of expert engineers for whom security is top-of-mind and we also help developers create secure services through a variety of methods including security reviews as part of the engineering process, and developer education, infrastructure and tools.

A clear tenet of reasonable security as practiced in the marketplace and enforced by the FTC to date is that such protections should be “based on the sensitivity of the data, the nature of a company’s business operations, the types of risks a company faces, and the reasonable protections available to a company.” This recognizes the spectrum of security needs based on the sensitivity of the data at issue.

Yahoo! Limits on Search Data Retention

Yahoo! has taken a leadership position with respect to search data retention. Last summer, Yahoo! announced a new search data retention policy: all search log data will be anonymized within 13 months (12 months of retention plus 1 month for review and analysis) from the moment when the data is collected, except where: (i) users request to keep the information for a longer period or (ii) where Yahoo! is required to retain the information to comply with legal obligations (for example, for tax purposes or in connection with ongoing litigation). Yahoo! also committed to build a personal information filter that will attempt to scrub certain personally identifiable data from search logs queries.

We strongly believe the 13 month policy is the appropriate retention period to meet our commitment to our users' privacy while preserving our ability to continue to perform many fundamental and critical functions such as: security; fraud detection and prevention; service improvements and user experience enhancement; and to fulfill our obligations with respect to financial processing (tracking, audits, account adjustments, etc.).

Overall, our significant efforts in this area, as well as the announcements by several of our competitors indicating similar data retention, anonymization and deletion policies, indicate there is tremendous competitive pressure in the market to deal with such data appropriately. Self-regulation and competition among the significant players in this space is strong.

Yahoo! Prohibitions and Choices Regarding Sensitive Data

The FTC rightly kicks off a broad-based discussion of a self-regulatory principle regarding sensitive data. This is a challenging area given that privacy regulation and industry practice has traditionally focused on personally identifiable information – information that is likely to lead to identity theft or other direct harm to a consumer. However, Yahoo! joined the NAI to heed the call to think more broadly for the purposes of industry self-regulation.

Prohibitions

In the principles announced yesterday,¹⁵ NAI members including Yahoo! and Blue Lithium pledged not to create online behavioral advertising segments on their advertising networks for children under the age of 13, about certain medical and health conditions (including HIV/AIDS status, sexually related conditions, psychiatric conditions, cancer status, and abortion related), and about certain personal life information (including sexual behavior/orientation/identity and criminal victim status).

Opt-in Choices

In addition, Yahoo! and Blue Lithium pledge to use the guidance given in the recently announced principles when using restricted (utilizing non-personally identifiable information) and sensitive (utilizing personally-identifiable information) consumer segments on their advertising networks. This will provide additional consumer opt-in choices. These are significant marketplace developments spurred in part by the FTC's request for comments on its principles.

Yahoo! and Secondary Use

Yahoo! is very clear that we collect user information to customize advertising and content in our services. We do not believe this is the kind of secondary use the FTC is concerned about in its proposed principles. Yahoo! does not sell personally identifiable information to third parties, which would prohibit the potentially harmful scenarios some have mentioned in the press. However, it is important to note use of the information is necessary to provide the many benefits of customization of both content and advertising.

¹⁵ http://www.networkadvertising.org/networks/NAI_Principles_2008_Draft_for_Public.pdf

Conclusion – A Pattern of Industry Leadership

As the FTC further explores self-regulatory principles, we believe the Yahoo! story demonstrates a clear pattern of industry leadership in the areas of transparency, choice, data security, search data retention, and responsible treatment of data that could be sensitive to consumers. The new self-regulatory code of conduct we pledge to adhere to, the numerous examples of Yahoo! practice that go well beyond any industry standard, and our launch of a significant education campaign and dialogue with our users show that we are serious about providing relevance, but in a way that clearly demonstrates our responsibility in the marketplace. At Yahoo!, customization is what consumers are responding to online and it is a pillar of everything we do. We believe that by bringing content and advertising to users that is relevant and tailored to their interests, Yahoo! provides a best-in-class, personal experience that consumers demand – all fueled by trust.

To maintain the integrity of the online advertising marketplace as a whole, Yahoo! has been working hard with others in the industry to develop policies and actions that will allow the Internet advertising model to thrive while continuing to protect the privacy of our users. Because more than 95% of the online ad market is served by the companies now involved in the NAI industry dialogue, 86% of online advertising is represented by IAB companies, and the DMA companies includes over 3600 member companies, the work we have been doing to create guiding principles will have an immediate and lasting impact on the market. The dynamism of the Internet has required companies to experiment with a variety of options to best educate our consumers and

protect their privacy, but Yahoo! is confident that we will reach the right result. Yahoo! will continue to work with the FTC, consumers, non-governmental organizations, and our industry colleagues in the months and years to come. Thank you for the opportunity to share our views.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Hantman', with a large, sweeping flourish at the end.

David Hantman
Vice President, Global Public Policy
Yahoo!, Inc.
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Attachments