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Special Inaugural Edition

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Venable's Privacy & Data Security Practice Wins 2009  
Chambers USA Award for Excellence



Venable Attorneys Emilio  
Cividanes and Stuart Ingis

On Thursday, June 11, 2009, Venable's Privacy and Data Security Practice won the 2009 *Chambers USA* Award for Excellence for making the largest impact in the practice of privacy law over the previous year. *Chambers* selected Venable as the recipient of this award from more than 20 leading privacy and data security practices. *Chambers* is renowned globally for its annual rankings of leading lawyers and practice groups, and is among the most-used legal guides by in-house counsel.

Venable Serves as Counsel to Cross-Industry Effort to Develop Self-Regulatory Principles for Online Behavioral Advertising

Venable attorneys facilitated a major collaborative effort among leading advertising and marketing trade associations representing the entire marketing-media ecosystem to develop self-regulatory principles for online behavioral advertising. These principles were designed to enhance consumers' trust and confidence in how online information is gathered and used to deliver interest-based advertising. Full Text Attached.

Introducing the Banner @d

For many years, we have been bringing you coverage of developments in privacy, e-commerce, advertising, marketing, and information services law and policy through *the Download*. Given the increased focus by Congress and regulators on Internet advertising, we have decided to launch an additional newsletter under a new banner to address policy developments in Internet advertising and marketing law.

In this inaugural *Banner @d*, we cover the Self-Regulatory Principles for Online Behavioral Advertising, which were released on July 2, 2009.

We hope you find the newsletter to be an informative resource and we look forward to providing you with policy developments in future editions of the *Banner @d*.

Venable LLP

# Self-Regulatory Principles for Online Behavioral Advertising



*Leading the Marketing Community*



JULY 2009

DEVELOPED BY: American Association of Advertising Agencies  
Association of National Advertisers  
Council of Better Business Bureaus  
Direct Marketing Association  
Interactive Advertising Bureau

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# Self-Regulatory Principles for Online Behavioral Advertising

## SUMMARY

### **OVERVIEW**

The cross-industry Self-Regulatory Program for Online Behavioral Advertising was developed by leading industry associations to apply consumer-friendly standards to online behavioral advertising across the Internet. Online behavioral advertising increasingly supports the convenient access to content, services, and applications over the Internet that consumers have come to expect at no cost to them.

The Self-Regulatory Program consists of seven Principles. These Principles, described below, correspond with the “Self-Regulatory Principles for Online Behavioral Advertising” proposed by the Federal Trade Commission in February 2009, and also address public education and industry accountability issues raised by the Commission.

### **SCOPE AND APPLICATION**

The Principles are intended to apply broadly to the diverse set of actors that work interdependently to deliver relevant advertising intended to enrich the consumer online experience. Many of the entities and practices to which they apply are covered by self-regulatory principles for the first time in this area.

The Principles apply to online behavioral advertising, defined as the collection of data online from a particular computer or device regarding Web viewing behaviors over time and across non-affiliate Web sites for the purpose of using such data to predict user preferences or interests to deliver advertising to that computer or device based on the preferences or interests inferred from such Web viewing behaviors. The Principles do not apply to a Web site's collection of viewing behavior solely for its own uses. Contextual advertising also is not covered by the Principles as it delivers advertisements based on the content of a Web page, a search query, or a user's contemporaneous behavior on the Web site.

## THE PRINCIPLES

**The Education Principle** calls for entities to participate in efforts to educate consumers and businesses about online behavioral advertising. It is expected that there will exist a robust industry-developed Web site(s) that provide consumers with educational material about online behavioral advertising. Additionally, it will result in numerous online impressions educating the public about how online behavioral advertising works and the choices that are available to consumers.

**The Transparency Principle** requires the deployment of multiple mechanisms for clearly disclosing and informing consumers about data collection and use practices associated with online behavioral advertising. This Principle applies to entities collecting and using data for online behavioral advertising and to the Web sites from which such data is being collected and used by third parties. Compliance with this Principle will result in new links and disclosures on the Web page or advertisement where online behavioral advertising occurs.

**The Consumer Control Principle** provides for mechanisms that will enable users of Web sites at which data is collected for online behavioral advertising purposes the ability to choose whether data is collected and used or transferred to a non-affiliate for such purposes. The choice will be provided by the third party entities collecting and using data for online behavioral advertising and the mechanism will be found either at their own Web sites or at industry-developed Web sites. The new links and disclosures on the Web pages or advertisements will direct consumers to these mechanisms.

The Transparency and Consumer Control Principles have separate provisions for “service providers” engaged in online behavioral advertising. Under these Principles, service providers must provide additional notice regarding the online behavioral advertising that occurs by use of their services, obtain the consent of users before engaging in online behavioral advertising, and take steps to de-identify the data used for such purposes. Internet access service providers and providers of desktop applications software such as Web browser “tool bars” are examples of service providers under these Principles.

**The Data Security Principle** requires entities to provide reasonable security for, and limited retention of, data collected and used for online behavioral advertising purposes.

**The Material Changes Principle** directs entities to obtain consent before applying any change to their online behavioral advertising data collection and use policy that is less restrictive to data collected prior to such material change.

**The Sensitive Data Principle** recognizes that certain data collected and used for online behavioral advertising purposes merits different treatment. The Principles apply heightened protection for children's data by applying the protective measures set forth in the Children's Online Privacy Protection Act. Similarly, this Principle requires consent for the collection of financial account numbers, Social Security numbers, pharmaceutical prescriptions, or medical records about a specific individual for online behavioral advertising purposes.

**The Accountability Principle** calls upon entities representing the wide range of actors in the online behavioral advertising ecosystem to develop and implement policies and programs to further adherence to these Principles. It is intended that these programs will help ensure that all entities engaged in online behavioral advertising bring their activities into compliance with these Principles. The Direct Marketing Association, which has more than 3,500 members, has indicated that it will integrate the Principles into its long-standing effective self-regulatory program. The Council of Better Business Bureaus, with a long history of successful accountability programs, has indicated that it is developing a new program around these Principles.

The Accountability Principle calls for programs to have mechanisms by which they can police entities engaged in online behavioral advertising and help bring these entities into compliance. Programs will also publicly report instances of uncorrected violations to the appropriate government agencies.

## **IMPLEMENTATION OF THE TRANSPARENCY AND CONSUMER CONTROL PRINCIPLES**

For consumers, the most visible effects of the Self-Regulatory Program will result from implementation of the Transparency and Consumer Control Principles by entities that collect Web viewing data for online behavioral advertising purposes and by the Web sites on which such data is collected and used. The “enhanced notice” approach required by the Transparency Principle will offer consumers the ability to exercise choice regarding the collection and use of data for online behavioral advertising through one of several avenues. Links to consumer notices will be clear, prominent, and conveniently located. This enhanced notice will be provided at the Web sites from which data is collected. Such enhanced notice will be provided at the time of such collection and use, through common wording and a link/icon that consumers will come to recognize. The opportunity for Web site users to exercise choices about whether Web viewing data can be collected and used for online behavioral advertising will never be more than a few clicks away from such standardized wording and link/icon.

To implement enhanced notice, an entity that collects and uses data for online behavioral advertising purposes will provide at least two mechanisms for consumer notice. First, an entity will provide consumer notice on its own Web site. Second, an entity will provide consumer notice at the time that data is collected and used for online behavioral advertising. One option for providing this second form of notice is for an entity to attach a uniform link/icon and wording to each advertisement that it serves. Clicking on this link/icon will provide a disclosure from the entity in the form of an expanded text scroll, a disclosure window, or a separate Web page. In this notice, the entity will both disclose its online behavioral advertising practices and provide a mechanism for exercising choice regarding such practices.

In addition, Web sites on which such data is collected and used for online behavioral advertising will place the prominent wording and link/icon on the Web page where data is collected and used for online behavioral advertising. (Where the link/icon is provided in the advertisements by the entity collecting the data, a separate Web site notice is not required.) Clicking on this link/icon will take consumers to the Web site's disclosure regarding online behavioral advertising. The disclosure provided by the Web site must include either (1) a list of entities that collect data on that Web site for online behavioral advertising purposes, with links to each entity's online consumer notice and choice, or (2) a link to an industry-developed Web site that will contain mechanisms for choosing whether each participating entity may collect and use data for online behavioral advertising purposes.

In short, consumer choice and enhanced notice will be available through new links located in advertisements themselves or on the Web page where data is collected for online behavioral advertising.

## Self-Regulatory Principles for Online Behavioral Advertising

# PRINCIPLES

Today's advertising-supported Internet offers consumers across the globe quick, convenient, and free access to an unparalleled range of communication and information resources. As the Internet has evolved, and in response to calls for more robust and effective self-regulation of online behavioral advertising practices that increasingly support the provision of Internet content, representatives of a wide range of the participants in the Internet advertising ecosystem together developed the Principles set forth herein to better foster transparency, knowledge, and choice for consumers. These Principles are intended to apply consumer-friendly standards to Online Behavioral Advertising, the collection of data online from a particular computer or device regarding Web viewing behaviors over time and across non-affiliate Web sites for the purpose of using such data to deliver advertising to that computer or device based on the preferences or interests inferred from such Web viewing behaviors.

The Principles apply across the Internet, which is comprised of a diverse set of participants that work interdependently to provide seamless delivery of relevant advertising intended to enrich the consumer online experience. This ecosystem includes advertisers, advertising agencies, Web publishers, Internet access service providers, providers of desktop application software such as Web toolbars and Internet Web browsers, and online advertising networks. Search offerings and search engines also fall within the scope of these Principles when such offerings include an Online Behavioral

Advertising component. Thus, when search data is part of data collected over time and across sites for Online Behavioral Advertising, it falls within the scope of the Principles including the applicable transparency and choice provisions. This inclusive approach has the dual benefits of providing for continued delivery of advertising that is relevant for individual consumers and useful for advertisers, while at the same time protecting information and giving consumers a greater degree of understanding about and control over the collection and use of the data used to deliver relevant advertising to them.

These Principles apply to an extensive and diverse set of entities and practices, many of which are covered by self-regulatory principles for the first time in this area. While the Principles are intended to apply broadly across the wide range of entities in the ecosystem, they also take into consideration the different roles that companies may play in different contexts within the ecosystem, and address their respective data practices accordingly. In many cases, an individual company may function in more than one capacity within the ecosystem. For example, a company can be a Web publisher in its provision of content or retail products on its Web site, can be an advertiser through advertisements on non-affiliate Web sites, can serve as an Internet access service provider, can offer desktop application software such as a toolbar, and can also function in certain circumstances as an ad network. A company's actions would be governed by the respective Principle related to the particular role or roles the company fulfills in the ecosystem in collecting and using data for Online Behavioral Advertising purposes.

This document begins with the definitions of terms used in the Principles, and then sets forth Principles for improved transparency and choice with respect to data collected and used to deliver Online Behavioral Advertising. This document should be read in conjunction with the Commentary, which discusses and provides authoritative interpretations of the Principles.

# Definitions

## A. AD DELIVERY

Ad Delivery is the delivery of online advertisements or advertising-related services using Ad Reporting data. Ad Delivery does not include the collection and use of Ad Reporting data when such data is used to deliver advertisements to a computer or device based on the preferences or interests inferred from information collected over time and across non-Affiliate sites because this type of collection and use is covered by the definition of Online Behavioral Advertising.

## B. AD REPORTING

Ad Reporting is the logging of page views on a Web site(s) or the collection or use of other information about a browser, operating system, domain name, date and time of the viewing of the Web page or advertisement, and related information for purposes including but not limited to:

- Statistical reporting in connection with the activity on a Web site(s);
- Web analytics and analysis; and
- Logging the number and type of advertisements served on a particular Web site(s).

## C. AFFILIATE

An Affiliate is an entity that Controls, is Controlled by, or is under common Control with, another entity.

#### D. CONSENT

Consent means an individual's action in response to a clear, meaningful and prominent notice regarding the collection and use of data for Online Behavioral Advertising purposes.

#### E. CONTROL

Control of an entity means that one entity (1) is under significant common ownership or operational control of the other entity, or (2) has the power to exercise a controlling influence over the management or policies of the other entity. In addition, for an entity to be under the Control of another entity and thus be treated as a First Party under these Principles, the entity must adhere to Online Behavioral Advertising policies that are not materially inconsistent with the other entity's policies.

#### F. FIRST PARTY

A First Party is the entity that is the owner of the Web site or has Control over the Web site with which the consumer interacts and its Affiliates.

#### G. ONLINE BEHAVIORAL ADVERTISING

Online Behavioral Advertising means the collection of data from a particular computer or device regarding Web viewing behaviors over time and across non-Affiliate Web sites for the purpose of using such data to predict user preferences or interests to deliver advertising to that computer or device based on the prefer-

ences or interests inferred from such Web viewing behaviors. Online Behavioral Advertising does not include the activities of First Parties, Ad Delivery or Ad Reporting, or contextual advertising (i.e. advertising based on the content of the Web page being visited, a consumer's current visit to a Web page, or a search query).

#### H. PERSONALLY IDENTIFIABLE INFORMATION ("PII")

Personally Identifiable Information is information about a specific individual including name, address, telephone number, and email address-- when used to identify a particular individual.

#### I. SERVICE PROVIDER

An entity is a Service Provider to the extent that it collects and uses data from all or substantially all URLs traversed by a web browser across Web sites for Online Behavioral Advertising in the course of the entity's activities as a provider of Internet access service, a toolbar, an Internet browser, or comparable desktop application or client software and not for its other applications and activities.

#### J. THIRD PARTY

An entity is a Third Party to the extent that it engages in Online Behavioral Advertising on a non-Affiliate's Web site.

# Principles

## I. EDUCATION

Entities should participate in efforts to educate individuals and businesses about Online Behavioral Advertising, including the actors in the ecosystem, how data may be collected, and how consumer choice and control may be exercised.

## II. TRANSPARENCY

### A. THIRD PARTY AND SERVICE PROVIDER NOTICE

1. THIRD PARTY AND SERVICE PROVIDER PRIVACY NOTICE – Third Parties and Service Providers should give clear, meaningful, and prominent notice on their own Web sites that describes their Online Behavioral Advertising data collection and use practices. Such notice should include clear descriptions of the following:
  - (a) The types of data collected online, including any PII for Online Behavioral Advertising purposes;
  - (b) The uses of such data, including whether the data will be transferred to a non-Affiliate for Online Behavioral Advertising purposes;
  - (c) An easy to use mechanism for exercising choice with respect to the collection and use of the data for Online Behavioral Advertising purposes or to the transfer of such data to a non-Affiliate for such purpose; and
  - (d) The fact that the entity adheres to these Principles.

2. **THIRD PARTY ENHANCED NOTICE TO CONSUMERS** – In addition to providing notice as described in (1), Third parties should provide enhanced notice as set forth below in (a) or (b):

(a) *Third Party Advertisement Notice* – Third Parties should provide notice of the collection of data through a clear, meaningful, and prominent link to a disclosure described in II.A.(1):

(i) In or around the advertisement delivered on the Web page where data is collected; or

(ii) On the Web page where the data is collected if there is an arrangement with the First Party for the provision of such notice.

(b) *Third Party Participation in Industry-Developed Web Site(s)* – Third Parties should be individually listed either:

(i) On an industry-developed Web site(s) linked from the disclosure described in II.B; or

(ii) If agreed to by the First Party, in the disclosure on the Web page where data is collected for Online Behavioral Advertising purposes as described in II.B.

#### **B. WEB SITE NOTICE OF THIRD PARTY ONLINE BEHAVIORAL ADVERTISING**

When data is collected from or used on a Web site for Online Behavioral Advertising purposes by Third Parties, the operator of the Web site should include a clear, meaningful, and prominent link on the Web page where data is collected or used for such purposes that links to a disclosure that either

points to the industry-developed Web site(s) or individually lists such Third Parties. A Web site does not need to include such a link in instances where the Third Party provides notice as described in II.A.(2)(a). A Web site should also indicate adherence to these Principles in its notice.

### **III. CONSUMER CONTROL**

#### **A. THIRD PARTY CHOICE FOR BEHAVIORAL ADVERTISING**

A Third Party should provide consumers with the ability to exercise choice with respect to the collection and use of data for Online Behavioral Advertising purposes or the transfer of such data to a non-Affiliate for such purpose. Such choice should be available from the notice described in II.A.(2)(a); from the industry-developed Web page(s) as set forth in II.A.2.(b)(i); or from the Third Party's disclosure linked to from the page where the Third Party is individually listed as set forth in II.A.2.(b)(ii).

#### **B. SERVICE PROVIDER CONSENT FOR BEHAVIORAL ADVERTISING**

1. **CONSENT TO COLLECTION AND USE** – Service Providers should not collect and use data for Online Behavioral Advertising purposes without Consent.
2. **WITHDRAWING CONSENT** – Service Providers that have obtained Consent for collection and use of such data for Online Behavioral Advertising purposes should provide an easy to use means to withdraw Consent to the collection and use of that data for Online Behavioral Advertising.

## **IV. DATA SECURITY**

### **A. SAFEGUARDS**

Entities should maintain appropriate physical, electronic, and administrative safeguards to protect the data collected and used for Online Behavioral Advertising purposes.

### **B. DATA RETENTION**

Entities should retain data that is collected and used for Online Behavioral Advertising only as long as necessary to fulfill a legitimate business need, or as required by law.

### **C. SERVICE PROVIDER TREATMENT OF ONLINE BEHAVIORAL ADVERTISING DATA**

Service Providers should take all of the following steps regarding data collected and used for Online Behavioral Advertising purposes:

1. Alter, anonymize, or randomize (e.g., through “hashing” or substantial redaction) any PII or unique identifier in order to prevent the data from being reconstructed into its original form in the ordinary course of business.
2. Disclose in the notice set forth in II.A.1 the circumstances in which data that is collected and used for Online Behavioral Advertising is subject to such a process.
3. Take reasonable steps to protect the non-identifiable nature of data if it is distributed to non-Affiliates including not disclosing the algorithm or other mechanism used for anonymizing or randomiz-

ing the data, and obtaining satisfactory written assurance that such entities will not attempt to re-construct the data and will use or disclose the anonymized data only for purposes of Online Behavioral Advertising or other uses as specified to users. This assurance is considered met if a non-Affiliate does not have any independent right to use the data for its own purposes under a written contract.

4. Take reasonable steps to ensure that any non-Affiliate that receives anonymized data will itself ensure that any further non-Affiliate entities to which such data is disclosed agree to restrictions and conditions set forth in this subsection. This obligation is also considered met if a non-Affiliate does not have any independent right to use the data for its own purposes under a written contract.

## **V. MATERIAL CHANGES TO EXISTING ONLINE BEHAVIORAL ADVERTISING POLICIES AND PRACTICES**

Entities should obtain Consent before applying any material change to their Online Behavioral Advertising data collection and use policies and practices prior to such material change. A change that results in less collection or use of data would not be “material” for purposes of this Principle.

## **VI. SENSITIVE DATA**

### **A. CHILDREN**

Entities should not collect “personal information”, as defined in the Children’s Online Privacy Protection Act (“COPPA”), from children they have

actual knowledge are under the age of 13 or from sites directed to children under the age of 13 for Online Behavioral Advertising, or engage in Online Behavioral Advertising directed to children they have actual knowledge are under the age of 13 except as compliant with the COPPA.

#### **B. HEALTH AND FINANCIAL DATA**

Entities should not collect and use financial account numbers, Social Security numbers, pharmaceutical prescriptions, or medical records about a specific individual for Online Behavioral Advertising without Consent.

### **VII. ACCOUNTABILITY**

#### **A. APPLICABILITY**

These Principles are self-regulatory in nature and entities engaged in Online Behavioral Advertising are within the scope of the accountability programs.

#### **B. OPERATION**

Accountability programs on Online Behavioral Advertising shall have in place processes that do the following:

1. **MONITORING** – Programs will systematically or randomly monitor the Internet for compliance with the Principles. Programs will maintain a process for taking complaints from the public, from competitors, and from government agencies concerning possible non-compliance with the Principles.

2. **TRANSPARENCY AND REPORTING** – Program findings of non-compliance (in particular those that are not corrected), the reasons for those findings, and any actions taken with respect to instances of non-compliance, will be publicly reported by the programs.
3. **COMPLIANCE** – When an entity engaged in Online Behavioral Advertising is informed by a program regarding its non-compliance with the Principles, the entity should take steps to bring its activities into compliance with the Principles. The programs will send the public reports of uncorrected violations (set forth in (2)) to the appropriate government agencies.

### **C. RELATIONSHIP AMONG ACCOUNTABILITY PROGRAMS**

1. Administrators of the programs should discuss coordination on accountability to help ensure efficiencies so that entities engaged in Online Behavioral Advertising are not unreasonably subject to multiple enforcement mechanisms regarding their possible non-compliance with the Principles and consumers have simple mechanisms to complain about possible non-compliance with the Principles.
2. Accountability programs should be linked to industry-developed Web site(s) and decisions made public as described in VII.B.2. should either be posted or a link to them should be available from such site(s).

# Self-Regulatory Principles for Online Behavioral Advertising

## COMMENTARY

### SCOPE & PURPOSE

Today's advertising-supported Internet offers consumers across the globe quick, convenient, and free access to an unparalleled range of communication and information resources. As the Internet has evolved, and in response to calls for more robust and effective self-regulation of behavioral advertising practices that increasingly support the provision of Internet content, representatives of a wide range of the participants in the Internet advertising ecosystem together developed the Principles set forth herein to better foster transparency, knowledge, and choice for consumers. These Principles are intended to apply consumer-friendly standards to Online Behavioral Advertising, the collection of data online from a particular computer or device regarding Web viewing behaviors over time and across non-affiliated Web sites for the purpose of using such data to deliver advertising to that computer or device based on the preferences or interests inferred from such Web viewing behavior.

The Principles apply across the entire Internet, which is comprised of a diverse set of participants that work interdependently to provide seamless delivery of relevant advertising intended to enrich the consumer online experience. This ecosystem includes advertisers, advertising agencies, Web publishers, Internet access services providers, providers of desktop application software such as Web toolbars and Internet Web browsers, and online advertising networks. Search offerings and search engines also fall within the scope of these Principles when such offerings include an Online Behavioral

Advertising component. Thus, when search data is part of data collected over time and across sites for Online Behavioral Advertising, it falls within the scope of the Principles including the applicable transparency and choice provisions. This inclusive approach has the dual benefits of providing for continued delivery of advertising that is relevant for individual consumers and useful for advertisers, while at the same time protecting information and giving consumers a greater degree of understanding about and control over the collection and use of the data used to deliver relevant advertising to them.

These Principles apply to an extensive and diverse set of entities and practices, many of which are covered by self-regulatory principles for the first time in this area. While the Principles are intended to apply broadly across the wide range of entities in the ecosystem, they also take into consideration the different roles that companies may play in different contexts within the ecosystem, and address their respective data practices accordingly. In many cases, an individual company may function in more than one capacity within the ecosystem. For example, a company can be a Web publisher in its provision of content or retail products on its Web site, can be an advertiser through advertisements on non-affiliate Web sites, can serve as an Internet access service provider, can offer desktop application software such as a toolbar, and can also function in certain circumstances as an ad network. A company's actions would be governed by the respective principle related to the particular role or roles the company fulfills in the ecosystem in collecting and using data for Online Behavioral Advertising purposes.

This document, which provides authoritative interpretations of the Principles, begins with the definition of terms used in the Principles, and then sets forth the seven Principles. As explained further below, the Principles apply differing standards to the activities of the Web site (i.e., the First Party), Third Parties and Service Providers.

## Definitions

This part contains definitions for terms used in these guidelines. Among the terms defined are:

**“AD DELIVERY”** – The term Ad Delivery means the delivery of online advertisements or advertising-related services using Ad Reporting Data. Ad Delivery does not include the collection and use of Ad Reporting data when such data is used to deliver advertisements to a computer or device based on the preferences or interests inferred from information collected over time and across non-Affiliate sites because this type of collection and use is covered by the definition of Online Behavioral Advertising.

An entity would be engaged in Ad Delivery for its provision of ad serving technologies where the entity is merely providing the underlying technology that is used by another entity that is engaged in Online Behavioral Advertising and is, therefore, not actually engaged in the collection or use of data for Online Behavioral Advertising. Such Ad Delivery is not covered by the definition of Online Behavioral Advertising and is thus outside of the requirements in the Principles. Such services are outside of the definition of Online Behavioral Advertising because the responsibility for complying with the Principles lies with the entity that is actually engaged in Online Behavioral Advertising.

**“AFFILIATE” AND “CONTROL”** – These terms set an objective test to separate related First Party entities from Third Parties and others. An Affiliate is defined as an entity that Controls, is Controlled by, or is under common Control with, another entity. The definition of Control sets out two alternative tests, which reflect a commonly understood definition of a single entity. The first alternative looks to whether one entity is

under significant common ownership with the other entity. The second alternative looks to whether one entity has the power to exercise a controlling influence over the management or policies of the other. In addition, each entity must be subject to Online Behavioral Advertising policies that are not materially inconsistent with the other entity's Online Behavioral Advertising policies. The combination of Control and governance by similar Online Behavioral Advertising policies renders the two entities Affiliates of each other.

The tests for Control are unrelated to brand names. As a result, different brands, if they otherwise meet one of the tests for Control, would be treated as Affiliates rather than Third Parties.

The starting point for whether two or more affiliated consumer-facing Web sites constitute a First Party under the Principles is whether the Web sites are the same company. The use of the term Affiliate is intended to allow affiliated companies that are in the same corporate family to share information within that family as if they are the same company, thereby benefitting from their collective assets. The treatment of Affiliates is not intended to create a means for companies that are in reality unrelated in corporate structure (and, therefore, that consumers would never expect would be sharing information,) to avoid providing the choice required under these Principles. In many cases companies can readily be transparent either in branding on the Web sites or through clarity in the privacy notices of their particular Affiliates. Assuming an entity otherwise meets the standard set forth in the definition of Control, such practices would clearly satisfy and permit inclusion in the definition of Affiliate. However, such branding on a Web site or inclusion in a privacy notice is not required under the Principles as in some instances the complexity of corporate affiliates driven by corporate legal principles pose practical operational challenges.

“**CONSENT**” – The term Consent means an individual’s action in response to a clear, meaningful and prominent notice regarding the collection and use of data for Online Behavioral Advertising purposes.

“**ONLINE BEHAVIORAL ADVERTISING**” AND “**FIRST PARTY**” – Online Behavioral Advertising means the collection of data from a particular computer or device regarding Web viewing behaviors over time and across non-Affiliate Web sites for the purpose of using such data to predict user preferences or interests to deliver advertising to that computer or device based on the preferences or interests inferred from such Web viewing behaviors. The term Online Behavioral Advertising, as defined in the Principles, does not include the activities of First Parties, Ad Delivery or Ad Reporting, or contextual advertising (i.e. advertising based on the content of the Web page being visited, a consumer’s current visit to a Web page, or a search query).

Agents and other entities that perform business operations of First Parties are treated as if they stand in the shoes of First Parties under these Principles and thus, their activities are not included in Online Behavioral Advertising. Similarly, this traditional legal construct of agents would apply to Third Parties and Service Providers and their agents and other entities that perform business operations of Third Parties and Service Providers. If the agent is taking on the responsibility for the Third Party or Service Provider, either the agent or that entity would have to satisfy the obligations under these Principles. Thus, an entity cannot escape its obligations by outsourcing its responsibilities to an agent.

For purposes of the Principles, a First Party is the owner of a Web site or the Web site of an Affiliate at which data is collected regarding Web viewing behaviors (by the First Party on behalf of itself, its Affiliates and/or its advertising partners).

In addition, in certain situations where it is clear that the consumer is interacting with a portion of a Web site that is not an advertisement and is being operated by a different entity than the owner of the Web site, the different entity would not be a Third Party for purposes of the Principles, because the consumer would reasonably understand the nature of the direct interaction with that entity. The situation where this occurs most frequently today is where an entity through a “widget” or “video player” enables content on a Web site and it is clear that such content is not an advertisement and that portion of the Web site is provided by the other entity and not the First Party Web site. The other entity (e.g., the “widget” or “video player”) is directly interacting with the consumer and, from the consumer’s perspective, acting as a First Party. Thus, it is unnecessary to apply to these activities the Principles governing data collection and use by Third Parties with which the consumer is not directly interacting.

Contextual advertising, or advertising based on a consumer’s current visit to a Web page or search query, is also outside the scope of Online Behavioral Advertising. The activities of search engines fall within the scope of Online Behavioral Advertising to the extent that they include collection of data regarding Web viewing behaviors over time and across non-Affiliate Web sites in order to deliver advertising to that computer or device based on the preferences or interests inferred from such Web viewing behaviors.

All references to data collection and use in the Principles are for data collected online and used for Online Behavioral Advertising purposes. Data collected and used for other purposes falls outside of the definition of Online Behavioral Advertising and these Principles.

“PERSONALLY IDENTIFIABLE INFORMATION” (“PII”) – PII includes the following information about a specific individual: name, address, telephone number, and email address – when used to identify a particular individual. For the limited purposes for which PII is used in these Principles and Commentary, a functional definition of PII is used that is intended to apply to the various business models most directly involved in Online Behavioral Advertising.

PII is a term used primarily in two areas in the Principles and Commentary. First, PII is used in the Transparency principle so that consumers are informed specifically about the collection and use of PII for Online Behavioral Advertising purposes. Second, PII is used in this Commentary to describe a specific example of a “material” change that would require Consent from the consumer under Principle V.

Data is not considered PII under the Principles if the data is not used in an identifiable manner. For example, in situations where an IP address is not linked with other PII, the IP address itself would not in most instances be PII for purposes of these Principles. In instances where an IP address is in fact linked to an individual in its collection and use, in most instances the IP address would be PII for purposes of these Principles. A similar analysis would apply for other persistent identifiers such as a customer number held in a cookie or processor serial number. When such identifier is in fact coupled with an individual identifier within the definition of PII, such as first and last name, such information would be PII for purposes of the Principles. When such data is not coupled with an individual identifier within the PII definition, the data would not be PII.

The definition of PII is included in the Principles for the reasons described above. Inclusion of the definition should not be viewed as limiting the scope of the Principles. Generally speaking, the Principles apply to online data regardless of whether or not the data referenced in the requirements is PII. Thus, for example, the choice requirements apply to all data collected online for Online Behavioral Advertising purposes, not just to PII.

**“SERVICE PROVIDER”** – This term and the provisions associated with it are a critical part of these Principles insofar as they apply similar standards for Online Behavioral Advertising purposes to various entities engaged in comprehensive data collection activities regarding user Web browsing activities. A Service Provider is defined as an entity to the extent that it collects and uses data from all or substantially all URLs traversed by a web browser across Web sites for Online Behavioral Advertising in the course of its activities as a provider of Internet access service, a toolbar, an Internet browser, or comparable desktop application or client software and not for its other applications and activities. For example, an Internet access service provider or Web browser tool bar plug-in that provide a service that, when used, captures all or substantially all of the customer’s Web browsing activities would both be Service Providers. Ad networks, advertisers or other Third Parties are not Service Providers under these Principles because they have a relationship, either directly or indirectly, with the Web site with which the consumer is communicating, or because they do not collect and use data from all or substantially all URLs traversed by a Web browser across Web sites.

All aspects of the entire business of an entity that qualifies as a Service Provider for a particular service are not subject to the Service Provider requirements. Rather, the particular service and information collected in an entity’s capacity as a Service Provider falls within the Service Provider definition for Online Behavioral Advertising

and therefore is subject to the requirements. The term Service Provider and the guidelines applicable to Service Providers do not apply to the practices of advertisers, ad networks, or of Third Parties which, when engaged in Online Behavioral Advertising, are not within the definition of Service Provider, but rather are covered under other guidelines in these Principles. For example, if an entity's tool bar application falls within the Service Provider definition, that entity would have to obtain Consent for the collection and use of data obtained through using the toolbar. The entity would not, however, have to obtain Consent for its other applications such as its ad network services or other Third Party activities, which would be subject to the Third Party or Web site obligations under the Principles. In such scenarios, Third Party activities would be subject to the Transparency and Choice Principles applicable to Third Parties. Likewise, First Party activities would not be subject to the consumer Transparency or Consent provisions of the Principles applicable to Service Providers.

**"THIRD PARTY"** – A Third Party is defined as an entity that engages in Online Behavioral Advertising at a non-Affiliate's Web site. This term recognizes that at the center of these Principles are the entities that collect and use data for Online Behavioral Advertising purposes.

In some instances, entities that are Affiliates under the Principles may also be Third Parties and subject to the respective Third Party obligations including, without limitation, transparency and providing choice for Online Behavioral Advertising. For example, if a Web portal and an ad network are under common ownership and the Web portal collects and uses data from non-Affiliate Web sites for delivery of ads, or the Web portal collects and uses data on Web sites owned by its Affiliates for delivery of advertisements on any non-Affiliate Web site, the Web portal would be a Third Party. In instances where data is being collected and used solely among Affiliates, then the Third Party obligations would not apply.

An advertiser (i.e. that entity whose product or service is being promoted in the advertisement) is a Third Party to the extent that it is collecting data over time and across non-Affiliate Web sites in order to predict consumer preferences or interests to deliver advertising online on non-Affiliate sites. Where the advertiser is instead using an ad network, Service Provider, or other entity to collect the data over time and across non-Affiliate Web sites in order to predict consumer preferences or interests to deliver its advertisement, and such entity is not providing such data to the advertiser for its independent use, the advertiser is not a Third Party and not, in such instances, subject to the Principles for such Online Behavioral Advertising. In such instances, the ad network, Service Provider or other entity's practices would be covered by the Principles. If, however, the advertiser collects or receives the data and uses the data for its own Online Behavioral Advertising purposes, the advertiser would be a Third Party and subject to the obligations on Third Parties in the Principles.

## **I. EDUCATION**

Entities should participate in efforts to educate individuals and businesses about Online Behavioral Advertising. Such efforts should also include education regarding the provisions of these Principles and consumer choices therein once operable.

Entities engaged in Online Behavioral Advertising intend in a major campaign to describe the benefits of these practices, the means of exercising choice, and the effect of such choices. Towards this goal, entities have committed advertising that is expected to exceed 500,000,000 online advertising impressions that will be dedicated to educate consumers about Online Behavioral Advertising over the next 18 months.

Industry-developed Web site(s) to provide consumers with educational materials regarding Online Behavioral Advertising and consumer choices will be developed. It is envisioned that industry education and the industry-developed Web site(s) will include items regarding consumer choices and technology tools in addition to those in the Principles, including a description of the fact that existing browser tools can be used to manage collection and use of data used for Online Behavioral Advertising.

## II. TRANSPARENCY

This section of the Principles sets forth guidelines appropriate for disclosure and transparency of data collection and use practices for Online Behavioral Advertising. The Principles are informed by the *FTC Staff Report: Self-regulatory Principles for Online Behavioral Advertising*, dated February 2009, which provided guidance regarding the collection and use of data for Online Behavioral Advertising purposes. These Principles do not encompass practices not considered to be “behavioral advertising,” or similar practices that do not raise the heightened concerns caused by the collection of data over time and across non-Affiliate Web sites. Under these Principles, practices not considered to be Online Behavioral Advertising include contextual advertising, where an ad is based on a consumer’s current visit to a particular Web page, and First Party data collection, as long as the data is used by the party with which the consumer interacted and is not collected and used for the purpose of advertising on Web sites of non-Affiliate entities.

The principle of Transparency addresses three different types of actors involved in the Online Behavioral Advertising ecosystem. First, it requires notices by

Third Parties, which are certain entities that collect and use data from the Web sites of others. Ad networks are an example of a Third Party under these Principles. Second, it requires notices by Service Providers, which are entities that collect and use data by virtue of the services they provide to consumers with whom they have relationships and, through those service arrangements, have access to all or substantially all URLs accessed by their users. Internet access service providers and providers of desktop application software such as browsers and Web tool bars are examples of Service Providers under these Principles. Third, it requires notices by the Web sites from which data is being collected and used by Third Parties. Finally, this Principle requires that all entities indicate adherence to these Principles in their notice. This Principle can be satisfied either by wording or the logo/icon of a self-regulatory accountability program. Taken together, these mechanisms for clearly disclosing and informing the public and consumers about data collection and use practices will significantly enhance the transparency of Online Behavioral Advertising practices and address certain perceived gaps in current practices.

The Principles call for Third Parties to provide at least two different types of notices of their data collection practices in connection with Online Behavioral Advertising. They should first provide a notice on their own Web sites. This notice should be clear, meaningful, and prominent, and describe the types of data collected and their uses, as well as an easy to use mechanism for exercising choice not to permit the collection and use of the data for Online Behavioral Advertising purposes, or the transfer of the data to a non-Affiliate for such purposes. It is not intended that this Principle require distinct choice mechanisms for collection and transfer. As discussed below, there may be several ways in which Web sites and others point to or hyperlink to this notice.

Third Parties have a choice as to how they will satisfy the enhanced notice requirement. The first alternative is for a Third Party to include a link to its notice from a location in or around the advertisement on the Web page where the data is collected (in a field that is controlled by the Third Party) or from a location on the Web page where data is collected. A link to a notice is located “in” an advertisement if provided within the content of the advertisement. A link to a notice is located “around” an advertisement if provided in the area around the ad controlled by the Third Party. Similarly, a link could exist in another place on the Web page where the data is collected for Online Behavioral Advertising purposes that is “clear, meaningful, and prominent” that is controlled by the Third Party. The operator of the Web site displaying the advertisement that is delivered by a Third Party is not required to provide this link, but is permitted to cooperate with the Third Party to do so.

The second alternative is for a Third Party to have its name(s) listed either on the industry-developed Web site(s) linked from the disclosure required under II.B. or, if agreed to by the First Party, individually listed in the disclosure on the Web site where the Third Party collects data for use for Online Behavioral Advertising purposes. For a First Party to avail itself of this option, the link required under II.B must be distinct from the Web publisher’s link to its privacy policy. If the Web sites at which the Third Party collects data for use for Online Behavioral Advertising purposes do not list the Third Party by name and link to its Web site, the only means by which a Third Party can satisfy this alternative requirement would be to participate in the industry-developed Web site(s).

The Principles also call for Service Providers to provide a notice regarding the Online Behavioral Advertising that occurs by use of their services. This notice

should be clear, meaningful, and prominent, and describe the types of data collected and their uses, as well as an easy to use mechanism for exercising choice not to permit the collection and use of the data for Online Behavioral Advertising purposes. The requirement to provide clear, meaningful, and prominent notice would not be satisfied by providing notice hidden in lengthy terms and conditions.

The Principles also state that the Web sites at which Third Parties are collecting data for Online Behavioral Advertising purposes should include a new clear, meaningful, and prominent link on their Web sites when Third Parties do not provide the notice described in II.A.(2)(a). This would link from the Web page where data is collected to specific language in a disclosure. If the disclosure language is in the privacy notice, the link should go directly to the relevant section of the privacy policy where the disclosure is located and not just generally to the privacy policy. The disclosure should either list the Third Parties engaging in Online Behavioral Advertising at the Web site, or point to the industry-developed Web site(s) discussed above.

Where a Third Party includes a link to its notice from a location in or around the advertisement or on the Web page where the data is being collected for Online Behavioral Advertising purposes, the Web site has no disclosure obligations, but is permitted to include the clear, meaningful, and prominent link to the disclosure if it desires to do so. Where the Web site provides a clear, meaningful, and prominent link on the Web page where data is collected for Online Behavioral Advertising purposes that links to the disclosure that points to the industry-developed Web site(s), or individually lists the specific Third Parties that may collect data from the Web page, then the Web site has satisfied its transparency

and choice obligations under the Principles. In such instances, the Third Party notice obligation as set forth in II.A.(2)(a), while permitted, would not be required.

Similarly, the Principles recognize that given the decentralized nature of the Internet and delivery of content online that Web sites often do not have visibility into the particular Third Party engaged in Online Behavioral Advertising. For this reason, a Web site that provides the link on the Web page where the data is collected that leads to the industry-developed Web page(s) would be in compliance with the Principles and the failure of a Third Party engaged in Online Behavioral Advertising on such Web site to comply with the Principles and be listed on the industry-developed Web site(s) would be a violation of the Principles by the Third Party and not a violation by the Web site. It is intended that the Accountability programs would enforce against such Third Parties to bring them into compliance with the Principles. Likewise, where a Third Party engaged in Online Behavioral Advertising is in compliance with the Transparency and Choice Principles and is listed on the industry-developed Web site(s), failure of a Web site where data is collected for use for Online Behavioral Advertising to include the link on its Web site as required under II.B. would be a violation of the Principles by the Web site and not a violation by the Third Party.

### **III. CONSUMER CONTROL**

Part III provides the consumer with more control over the collection and use of its data for Online Behavioral Advertising purposes. This principle sets forth guidelines that will enable users of Web sites at which data is collected and used for Online Behavioral Advertising purposes the ability to choose whether data is collected and used for such purposes. This principle requires entities involved

in the collection and use of data for Online Behavioral Advertising purposes to provide users a means of controlling the collection and use of data for Online Behavioral Advertising purposes.

Principle III.A requires a Third Party to provide users of the Web site at which it collects data for use for Online Behavioral Advertising purposes the ability to choose whether data is collected and used for such purposes. In addition, the Principle provides users with choice where the data is collected for Online Behavioral Advertising purposes by the Web site about the transfer of such data to a non-Affiliate. The principle requires the Third Party to provide a choice mechanism either on its own Web site; on an industry-developed Web site; or listed individually in the disclosure of the Web site where data is being collected for Online Behavioral Advertising, if permitted by that Web site. A Third Party will satisfy the Consumer Control Principle when a consumer has been provided a link from “in or around” the advertisement on the Web page where data is collected that links to a disclosure on the Third Party’s Web page where choice is available not to have the data collected or used for such purpose. An example of a mechanism that would satisfy the choice requirement would be a mechanism that allows a user to stop the collection and use of data for Online Behavioral Advertising purposes. Choice under III.A does not require an individual’s action in response to the notification of Online Behavioral Advertising practices.

Similarly a Third Party will satisfy the choice requirement where the Third Party is listed on the industry-developed Web site(s). An industry-developed Web site that provides a choice mechanism will be particularly useful for Third Parties that do not have a link to a notice in or around the advertisement or in situations where multiple Third Parties are collecting and using data from an advertise-

ment. These Third Parties could now provide the consumer with more control by pointing to the industry-developed Web site or Web sites for different industry segments, to assist consumers in their election of how data is collected and used for Online Behavioral Advertising purposes.

Finally, in instances where the Third Party is individually listed in the disclosure of the Web site where the data is collected as set forth in II.A.2.(b)(ii), choice should be available from the Third Party(s) disclosure linked from the page where the Third Party is individually listed.

Principle III.B applies to Service Providers for those services that fall within the definition. The Principles would not apply to an entity for those other services, not within the definition of Service Provider, that they may offer as a Web site, Third Party, or otherwise. For example, when an Internet access service provider also operates a Web site, the provisions of principle II.B would not apply to the Service Provider's activities at its own Web site, but would apply to the Service Provider's activities in connection with providing Internet access services or downloading its Web browser. This principle recognizes that the privacy concerns regarding Online Behavioral Advertising are amplified when providers of services can – by virtue of the services they provide to consumers with whom they have relationships – potentially gain access to all or substantially all of their customers' Web surfing behavior.

Recognizing the central role they play, this Principle holds Service Providers to a high standard by requiring that customers take action in response to a clear, meaningful, and prominent notice regarding their Service Provider's collection and use of Web surfing data for Online Behavioral Advertising purposes. It pro-

hibits Service Providers from the collection of data through such service and use of such data for Online Behavioral Advertising purposes absent their customers' Consent for such purposes; this Principle requires an authorized user to take action assenting to the collection and use of data for Online Behavioral Advertising after having been meaningfully informed by the Service Provider of such activities. Service Providers that have obtained customer Consent to the collection and use of data for Online Behavioral Advertising purposes would also be required to provide these individuals with an ongoing means of withdrawing their Consent to such activity. The consent requirement applies to Service Providers only when acting in their capacity as providers of Internet access services, or Web tool bar, browser, or other desktop software services.

In addition, the Data Security Principle described in more detail below requires Service Providers to take steps to help de-identify the data collected and used for Online Behavioral Advertising.

#### **IV. DATA SECURITY**

Principle IV addresses data security. First, it requires all entities to maintain appropriate physical, electronic, and administrative safeguards in light of the sensitivity of the data collected and used for Online Behavioral Advertising purposes. This data security standard tracks the one that the FTC applies in its orders requiring companies to safeguard personal information. It is flexible, taking into account the size and complexity of a company, the scope of the activities, and the sensitivity of the data.

Second, this provision requires all entities to retain data collected and used for

Online Behavioral Advertising purposes for no longer than necessary to fulfill a legitimate business need, or as required by law. It is similar to the provisions in the 2002 DoubleClick agreement with state attorneys general insofar as it recognizes that data used for Online Behavioral Advertising purposes may also be used for other purposes, and that the appropriate duration for keeping data for these other purposes such as testing and auditing may be longer than for behavioral advertising purposes.

Third, this provision sets forth the steps that a Service Provider engaged in Online Behavioral Advertising should take to help preserve the de-identified status of data collected and used for such advertising that is shared with non-Affiliates, safeguard the data, and be held accountable for the use of such data.

The provision provides for a means of de-identifying data. This approach to de-identifying data is modeled on the FTC's approach to masking online identifiers to protect children under the Children's Online Privacy Protection Act ("COPPA"). For example, the FTC has stated in COPPA FAQ 45 that Web sites that "hash" or otherwise alter children's email addresses when collecting them to be stored and used to create a password reminder system are not deemed to be collecting and using personal information and, therefore, do not trigger COPPA's parental consent requirement. (Hashing is a one-way, irreversible process that protects the original data but permits ongoing indexing of the hashed values on an anonymous or de-identified basis). The rule that emerges from this is that it suffices for purposes of protecting privacy if identifiers are altered after they are collected such that they cannot be reconstructed into their original form in the ordinary course of business but the altered form remains available to be used by Web sites to recognize and distinguish among specific visitors to Web sites.

In addition, entities, when acting as Service Providers, will agree to be held accountable for their collection and use of consumer data by disclosing when consumer data collected and used for Online Behavioral Advertising purposes is subjected to a de-identification process.

Finally, an entity, when acting as a Service Provider, should take steps to safeguard the data that is distributed. One example is not disclosing to non-Affiliates the algorithm or other mechanism used for coding the data. Another example is obtaining satisfactory written assurance from the recipients of such data that: (i) they will not attempt to identify the data; (ii) they will use or disclose the data only for purposes of Online Behavioral Advertising or other approved uses such as content organization; and (iii) they will ensure that any additional entities to which they disclose the data (e.g., subcontractors) agree to the same restrictions and conditions to which they have agreed. If a non-Affiliate does not have any independent right to use the data under written contracts, the written assurances in this subsection are considered to have been satisfied.

The provisions of principle IV.C. apply to Service Providers only when acting in their capacity as providers of Internet access services, or Web tool bar, browser, or other desktop software services.

## **V. MATERIAL CHANGES TO EXISTING ONLINE BEHAVIORAL ADVERTISING POLICIES AND PRACTICES**

Part V applies to Third Parties, Web sites and Service Providers that make material changes to their Online Behavioral Advertising data collection and use practices. If such an entity plans on using, for materially different Online Behavioral Advertising purposes, data collected from individuals prior to the material

change, the Principle requires the entity to obtain Consent from the affected individuals for the materially different use. The Consent must be obtained before the entity uses the previously collected data for the materially different Online Behavioral Advertising purposes. Typically, a material change would be a more expansive collection or use of data than previously disclosed to the user. For uses where the change results in less collection or use of data, such a change would generally not be considered material and thus Consent would not be required under the Principles.

The Network Advertising Initiative Guidelines contain an illustration of the type of material change to an entity's Online Behavioral Advertising practices that requires Consent. The illustration involves the merger of PII with non-PII for Online Behavioral Advertising purposes. This typically would occur when an ad network first collects non-PII for Online Behavioral Advertising purposes, and subsequently has the opportunity to combine that data with PII, rendering all of the data PII. At the time of initial data collection, however, the consumers would have been informed that the data would be collected and used as non-PII. Now, the ad network wishes to combine the data and use it in a way not contemplated by the consumer at the time the data was collected. Under the NAI Guidelines, this practice constitutes a material change.

Timing is particularly important under this Principle. First, the Consent requirement applies regardless of whether these Principles were in effect at the time the data was initially collected. Second, the Consent must be obtained before the entity uses the previously collected data for the materially different Online Behavioral Advertising purposes.

## VI. SENSITIVE DATA

Principle VI addresses Online Behavioral Advertising involving sensitive data. The first part of this Principle describes the standards for Online Behavioral Advertising for children under the age of 13 and indicates that entities should not collect “personal information,” as defined under the Children’s Online Privacy Protection Act (“COPPA”), from children they have actual knowledge are under the age of 13 or from sites directed to children under the age of 13 for Online Behavioral Advertising, or engage in Online Behavioral Advertising directed to children they have actual knowledge are under the age of 13 except as compliant with the COPPA. COPPA requires verifiable parental consent to collection of children’s data given its sensitive nature.

In addition to the sensitive area of children, this Principle addresses certain health and financial data. The Principle calls for entities not to collect financial account numbers, Social Security numbers, pharmaceutical prescriptions, or medical records about specific individuals for Online Behavioral Advertising purposes without Consent.

This is a complex area and there may need to be additional areas that should fall into the sensitive data category. The entities participating in the development of these Principles intend to evaluate such areas if and when they may arise in the marketplace.

## VII. ACCOUNTABILITY

The Accountability Principle calls on entities participating in the development of these Principles to develop and implement policies and programs to further advance the Principles. It is intended that these programs will help ensure that all entities engaged in Online Behavioral Advertising bring their activities into compliance with these Principles. The Direct Marketing Association (“DMA”), which has more than 3,500 members, has indicated that it will integrate the Principles into its long-standing effective self-regulatory program. The National Advertising Review Council and its administrator, the Council of Better Business Bureaus (“CBBB”), with a long history of successful accountability programs have indicated that they are developing a new program around these Principles. The CBBB and DMA have been asked and agreed to work cooperatively to establish accountability mechanisms under the Principles. These organizations will develop and coordinate accountability programs with a stated goal of having programs in place at the beginning of 2010.

The Accountability Principle calls for programs to have mechanisms by which they can police entities engaged in Online Behavioral Advertising and help bring these entities into compliance. Programs will also, at a minimum, publicly report instances of non-compliance and refer entities that do not correct violations to the appropriate government agencies. The program may report instances of non-compliance that have been corrected without identifying the entity whose practices were in violation of the Principles.

It is intended that the burden of simplifying the means by which consumers can complain of instances of non-compliance with the Principles will rest with the

program(s), not consumers. Thus, administrators of programs are encouraged to discuss coordination on accountability to help achieve efficiencies. These efficiencies will help ensure that consumers have simple mechanisms to complain about possible non-compliance with the Principles, and that entities engaged in Online Behavioral Advertising are not unreasonably subject to multiple enforcement mechanisms regarding their possible non-compliance with the Principles.

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