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DMA^D
Direct Marketing Association



Quarterly Legislative & Regulatory Update

Direct Connect with Government Affairs

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Take DMAAction

Stay Current on Legislative and Regulatory Issues Affecting Your Business

The screenshot displays the DMA Action Center website interface. At the top left is the DMA logo (Direct Marketing Association). A navigation bar includes links for HOME, ABOUT, MEMBERSHIP, ADVOCACY & GUIDELINES, and EVENTS. A search bar is located at the top right. Below the navigation, there are several content sections:

- In the News:** A list of recent news items, including "AT&T plans consumer security service for 2012" (Reuters, May 16, 2011) and "Seismic and Salesforce.com. Learning from consumer experience" (ZDNet (blog), May 16, 2011).
- Welcome:** A video player titled "DMA Membership MORE" showing a bar chart with dollar signs.
- Take Action:** A section titled "Take Action: Direct Connect to Congress" featuring an image of the U.S. Capitol building and a call to "Become a DMA Government Affairs Member".
- Key Issues:** A list of current issues such as "Fighting Postal Rate Increases", "Keeping FTC Expansion Out of Financial Reform", "Self Regulation: Online Behavioral Advertising", "Privacy and Data Security", "Telemarketing", and "Do Not Mail".
- In the Spotlight:** Updates on legislative proposals, including "DMA: Rockefeller 'Do Not Track Online Act' is Unnecessary" and "DMA: Markey-Barton 'Do Not Track Kids Online' Proposal is 'Off Track'".
- Federal & State Legislation:** A section listing bills like "H.R. 4173: Dodd-Frank Wall Street Reform and Consumer Protection Act" and "S. 3217- Restoring American Financial".

At the bottom left of the screenshot, there is a promotional banner for "ALL FOR ONE The In-Market Summit" held from June 20-21, 2011, in New York. It lists speakers like Jim Gorgan (IBM), Tony Calasa (Crispin Porter + Bogusky), Frank Wall (Sports Illustrated), Russell Wall (Domino's Pizza), Brian Callahan (OgilvyOne Worldwide), and Tom Myer (Grey).

www.DMAAction.org

DMA Newsletters

Washington...Delivered Straight to Your Inbox





What Does Congress'
Focus on Privacy
Mean for You?



Agenda

DMA Quarterly Legislative & Regulatory Update

- The Legislative Landscape
 - Privacy
 - Data Security / Cybersecurity
- Where the Regulators Are
- Updates on Self-Regulation
- What Does it All Mean?
- Direct Connect to Government Affairs
- Q&A



Today's Speakers

Meet Team DMA



Linda Woolley
EVP, Government Affairs



Jerry Cerasale
SVP, Government Affairs



Ron Barnes
VP, State Affairs



Rachel Thomas
VP, Government Affairs



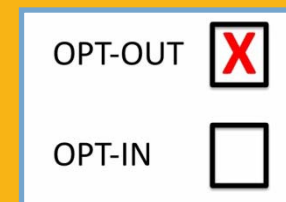
Neil O'Keefe
VP, Multichannel Segments

DMA Policy Positions

Guiding Principles for Government Affairs

- Advocating Consumer Privacy through Transparency and Choice

- Leading the “Do Not Track” Debate
- Taking a Stand on Privacy Legislation / Regulation
- Supporting Appropriate Data Security Safeguards
- Safeguarding Children’s Privacy (COPPA Review)



- Championing Self-Regulation

- Self-Regulatory Program for Online Behavioral Advertising
- Setting Ethical Standards for the Marketing Community



- Safeguarding Ethical Use of Consumer Data for Marketing Purposes

- Keeping Marketing Channels Open and Viable

- Fighting Onerous Business and Nonprofit Regulations



The Legislative Landscape: Privacy

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Congressional Focus

Legislation, Hearings and Investigations, Oh My!

Legislation...

- H.R. 611: “BEST PRACTICES Act”
- H.R. 654: “Do Not Track Me Online Act”
- S. 799: “Commercial Privacy Bill of Rights Act”
- H.R. 1528: “Consumer Privacy Protection Act”
- H.R. 1895: “Do Not Track Kids Online Act”
- S. 913: “Do Not Track Online Act”

Hearings...

- **The State of Online Consumer Privacy**
3/16 – Senate Commerce Committee
- **Protecting Mobile Privacy**
5/10 – Senate Judiciary Subcommittee
- **Consumer Privacy and Protection in the Mobile Marketplace**
5/19 – Senate Commerce Committee

Investigations...

- **iPhone/Android Location Tracking**
- **Facebook Privacy sett**

H.R. 611: “BEST PRACTICES Act”

Introduced by Representative Bobby Rush (D-IL)

- Broadly restricts the collection and transfer of consumer data online as well as offline.
- Establishes notice and opt-out consent requirements for first party data collection and use.
- Requires opt-in consent for the transfer of personal data to third parties (except in limited circumstances).
- Provides a safe harbor under which entities that comply with approved self-regulatory programs are not subject to certain requirements (i.e., can transfer data to third parties with an opt-out).
- Includes accuracy, access, and dispute resolution provisions.

H.R. 654: “Do Not Track Me Online Act”

Introduced by Representative Jackie Speier (D-CA)

- Directs the Federal Trade Commission (FTC) to develop a government-run “Do Not Track” system that would allow individuals to choose upfront to opt out of the collection, use or sale of their online activities, and require covered entities to respect the consumer’s choice.
- Gives the FTC power to take enforcement action against any company that failed to comply with the “Do Not Track” system.
- Requires notice to consumers, including names of persons with whom consumers’ online data may be shared.

S. 799: “Commercial Privacy Bill of Rights Act”

Introduced by Senators John Kerry (D-MA) and John McCain (R-AZ)

- Covers online and offline collection, use, and dissemination of personally identifiable information.
- Requires organizations to provide notice of data practices and material changes; opt-out choice for “unauthorized uses” other than certain practices conducted with notice; “robust” opt-out choice for behavioral advertising and marketing; opt-in choice for most uses of sensitive PII or prospective material policy changes; and certain access, correction and anonymization rights.
- Limits the use of service providers and other data sharing with third parties.
- Carves out first party marketing and business models where the covered entity has an “established business relationship” with an individual.
- Requires FTC-approved security measures, “privacy by design” program, and minimizing of data collection.
- Directs the FTC to establish “co-regulatory safe harbor programs” with the FTC exercising ongoing oversight and supervisory authority of such programs.
- Expands the FTC’s jurisdiction for rulemaking and enforcement over nonprofits and common carriers.

H.R. 1528: “Consumer Privacy Protection Act”

Introduced by Representatives Cliff Stearns (R-FL) and Jim Matheson (D-UT)

- Covers both online and offline data.
- Requires covered entities to provide consumers with brief privacy notices in certain instances, as well as posting longer privacy policy statements.
- Gives consumers the ability to opt out of having their data sold to non-affiliated entities absent contractual protections.
- Requires covered entities to have information security policies.
- Establishes safe harbor approved by the FTC. Safe harbor participants must establish consumer dispute resolution processes.
- Expands the FTC’s jurisdiction for rulemaking and enforcement over nonprofits and common carriers.

H.R. 1895: “Do Not Track Kids Online Act”

Introduced by Representatives Ed Markey (D-MA) and Joe Barton (R-TX)

- Requires companies to provide “eraser buttons” for parents and children to permit users to eliminate publicly available personal information content.
- Amends the Children’s Online Privacy Protection Act (“COPPA”) and creates new regulations governing information practices with respect to “minors” aged 13-18.
- Expands COPPA to apply to mobile applications and makes IP addresses a form of “personal information” regulated by COPPA.
- Applies restrictions to websites or services directed at children or minors, or that knowingly collect personal information from children and minors, giving the FTC rulemaking authority to write regulations that implement these new restrictions.
- Bans “targeted marketing” to children or minors.
- Prohibits the online collection of geo-location information from individuals younger than 18 without consent.
- Gives the FTC enforcement authority with the ability to seek civil penalties for certain violations.

S. 913: “Do Not Track Online Act”

Introduced by Senator Jay Rockefeller (D-WV)

- Applies to providers of online services, including providers of mobile application and services.
- Grants the FTC authority to issue regulations pertaining to the collection and use of personal information obtained from the tracking of an individual’s online activity.
- Imposes obligation to permit individuals to choose whether their personal information may be collected, and if an individual chooses not to be tracked, to provide a mechanism to enforce such choice.
- Expands FTC jurisdiction to include nonprofits and common carriers.

In the States

Do Not Track

California – SB 761

Provisions

- Directs the AG to adopt regulations to provide a consumer opt out for the online collection or use personal information
- Requires disclosure about collection, use and storage practices
- Requires consumer access to collected information
- Prohibits selling, sharing or transferring personal information

Status

- Heard in Senate Judiciary Committee on May 3
- Passed on a 3-2 party line vote
- Referred to Senate Appropriations Committee. Put on Suspense File due to significant costs associated with implementing the bill (Delays further action if not advanced prior to June 3).

In the States

Do Not Track

Massachusetts – HB 2705

Provisions

- Requires a consumer opt out for “online preference marketing”
- Requires consumer opt in for use of certain types of sensitive information (i.e. medical, financial, sexual orientation) for “online preference marketing”
- Prescribes consumer consent mechanisms for merging of non-personally identifiable and personally identifiable information
- Requires consumer access to PII. Provides some exemptions and allows for a fee.
- Limits retention of non-PII by third-party ad networks to no more than 24 months

Status

- Introduced and referred to the Joint Committee on Consumer Protection and Professional Licensure
- Hearing scheduled for May 24

In the States

Do Not Track

New York – A4809

Provisions

- Prohibits collection of personally identifiable information for the purposes of behavioral advertising
- Requires an opt out for the collection of non-personally identifiable information that will be used for behavioral advertising
- Requires publishers and ad networks to disclose collection and use practices

Status

- Introduced and referred to the Assembly Consumer Affairs and Protection Committee
- No hearing scheduled

The Legislative Landscape: Data Security / Cybersecurity

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Data Security / Cybersecurity

You Can't Have Privacy Without Data Security

Legislation

- **H.R. 1707: DATA Act**

Introduced by Rep. Bobby Rush (D-IL)
(Was H.R. 2221 in 111th Congress)

- **Representative Mary Bono Mack expected to introduce data breach legislation**

Hearings

- **Threat of Data Theft to American Consumers**

5/4 – House E&C Manufacturing Subcommittee

Regulatory Action

- **White House Cybersecurity Proposal**
Released 5/13

- **Department of Commerce Cybersecurity Green Paper**
Expected to be released in June

White House Cybersecurity Proposal

Data Breach Provision

- Borrows heavily from S. 495 (110th Congress), S. 139 (111th Congress), H.R. 2221 (110th Congress), and S. 3742 (110th Congress) in defining the data covered; exemptions for financial fraud programs and national security and law enforcement purposes; content and means of notification.
- Contains a risk-based “safe harbor” (narrower than Leahy and Feinstein bills)
- Excuses entities from notification only if a risk assessment shows no “reasonable” risk of harm to individuals, rather than the “significant” risk.
- Contains an outside limit of 60 days for notice to be provided.
- Gives FTC (not DOJ) authority to enforce notification rules and to receive results of risk assessments in when no “reasonable” risk of harm exists to require notification. Names DHS as the first point of contact for law enforcement notifications.
- State preemption “supersedes” state laws, but permits states to require notifications to include information on state-specific resources for consumers.
- Does not preempt federal law (exempts entities covered by existing federal notification requirements for health data).

Where The Regulators Are

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Where The Regulators Are

Privacy and Data Security Remain High on their Agendas

Federal Trade Commission (FTC)

- **Privacy Preliminary Staff Report**

December 2010

- **Final Privacy Commission Report**

Expected Later this Year

Department of Commerce (DOC)

- **Privacy White Paper**

Internet Policy Task Force
December 2010

- **Final Privacy Green Paper**

Expected Later this Year

- **Cybersecurity White Paper**

Expected in June 2011

What's New In Self-Regulation?

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Self-Regulation in Privacy and Data Security

Privacy and Data Security Remain High on their Agendas

Self-Regulatory Program for Online Behavioral Advertising

www.AboutAds.info

- Hundreds of companies using Advertising Option Icon in billions of ad impressions every month.
- 70 Companies listed in the AboutAds Consumer Opt-Out Page (and dozens more in the pipeline)

DMA Guidelines for Ethical Business Practice

www.DMAResponsibility.org

- Social Media
- Commitment to Consumer Choice
- Advance Consent / Negative Option

The Bottom Line...

...Self-Regulation is Working.

Direct Connect to Government Affairs

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We Invite You to Work with Us in These Ways...

Stay “Politically Direct” with GA News Suite

- Direct from Washington
- Politically Direct
- Washington Representatives “Telebriefings”

Join a Policy Coalition

- Digital Privacy
- Kids Privacy
- State Legislation
- Internet Alliance

Take DMAAction!

- Write to Congress at DMAAction.org
- DMA Congressional “Meet and Greets”
- DMA in DC





Questions?



Thank You!

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