IAB Legislative and Regulatory Affairs Update

August 2010

**Senate Rejects House FTC Expansion Language** – On June 24th the Senate rejected the House’s attempt to include FTC expansion authority to the financial services regulatory reform package. The FTC was seeking APA rulemaking authority (Administrative Procedure Act), which would have allowed the Commission to issue new rules using an expedited rulemaking process, with a very limited public feedback period. See the IAB’s coalition letter opposing these provisions - http://www.iab.net/media/file/DC1DOCS1-%23376951-v1-Copy_of_Associations%5C%27s_Letter_on_HR4173.pdf.

The rejection by the Senate of the House language is a major victory for industry, although it remains possible that the Senate Commerce Committee will take-up FTC expansion as a standalone measure later this year.

**Rush Introduces Privacy Legislation** – On July 19th Representative Bobby Rush (D-IL), Chairman of the House Energy and Commerce Committee’s Subcommittee on Commerce, Trade and Consumer Protection, introduced H.R. 5777, the “Building Effective Strategies To Promote Responsibility Accountability Choice Transparency Innovation Consumer Expectations and Safeguards Act” or the “BEST PRACTICES Act.” The bill expands on many provisions included in Representative Boucher’s (D-VA) discussion draft released in May 2010, but also includes substantive differences.

Similar to Representative Boucher’s discussion draft, H.R. 5777 would place restrictions on the collection and transfer of consumer data online and offline, and would establish notice and opt-out consent requirements for first party data collection and use. H.R. 5777 would also essentially require opt-in consent for the transfer of personal data to third parties except in limited circumstances. However, unlike the Boucher discussion draft, H.R. 5777 would create a safe harbor for companies that comply with an approved self-regulatory program. For a more detailed analysis of the bill visit our website at http://www.iab.net/media/file/DC1DOCS1-401855-v1-Summary_of_Rushs_HR_5777.pdf.

On July 22nd Representative Rush held a hearing to examine H.R. 5777 and the Boucher discussion draft. Mike Zaneis, IAB’s VP of Public Policy, was a witness at the hearing on behalf of the interactive advertising industry. (Testimony here: http://www.iab.net/insights_research/public_policy/1296039). The hearing also included witnesses from the FTC, PIRG, CDT, NYU, Intel and the U.S. Chamber of Commerce. The hearing featured much discussion of the industry’s efforts in self-regulation.

**Senate Commerce Holds Privacy Hearing** – On July 27th the Senate Commerce, Science and Transportation Committee held a full Committee hearing on consumer online privacy. Witnesses
included: Chairman Leibowitz, FTC; Chairman Genachowski, FCC; Dr. Guy Tribble, Apple; Bret Taylor, Facebook; Dr. Alma Whitten, Google; Jim Harper, Cato Institute; Dorothy Atwood, AT&T; and Professor Joe Turow, Annenberg School of Communications, University of Pennsylvania. In his testimony, Chairman Leibowitz was very supportive of industry’s self-regulatory efforts, noting that progress by industry was “very promising.” However, he also noted the possibility of a “Do Not Track” registry, similar to the FTC’s “Do Not Call” list. While no specific details were offered, the Chairman did mention that the FTC was interested in pursuing the feasibility of such a registry and intended to examine the issue as part of their forthcoming report following the Privacy Roundtable series. Industry witnesses largely focused on the increased tools and options consumers have to control their privacy settings across a variety of platforms.

In the weeks following the hearing, Senator Pryor released discussion legislation entitled the “Do Not Track Act of 2010.” The legislation has not been formally introduced, and the Senator has indicated that he is looking for feedback from industry before proceeding.

**IAB Submits Comments On COPPA Rule Review** – On July 12th the IAB submitted comments on the FTC’s proposed changes to COPPA. In the comments, IAB stressed that industry has an excellent track record in promoting self-regulatory initiatives in the children’s advertising space (CARU) and that any proposed changes to the current COPPA review should be approached cautiously. Specifically, the IAB highlighted that COPPA should only cover information that is personally identifiable (i.e. not persistent IP addresses), COPPA should maintain an “actual knowledge” standard, and COPPA should not be expanded to include teenagers.

**IAB Hosts Second Annual Long Tail Alliance Fly-In** – On June 14th and 15th the IAB hosted its Second Annual Long Tail Alliance Fly-In. Over 46 small publishers representing 14 states were on hand to meet with over 45 Congressional offices to tell their personal stories about how the advertising-supported internet is empowering small business growth in America. Small publishers were able to meet with Congress and their staff to voice their concerns about the various legislative proposals that would impact their business models. This year’s Fly-In also included a full day of training sessions, strategic planning panels and roundtable discussions created specifically to address the business interests of small publishers.

**IAB Public Policy Meeting Hosts FTC and Key Boucher Staff** – On May 11th the Public Policy Council met in Washington, D.C. to discuss the FTC COPPA review process and Congressman Boucher’s (D-VA) privacy discussion draft bill. Mamie Kresses, a Senior Attorney at the FTC, provided an overview on issues the FTC will be considering as it reviews COPPA, including: the definition of “personal information”, enhanced parental consent options, as well as whether or not COPPA should cover teenagers. The IAB responded to these concerns in its July 12th FTC filing.

Amy Levine, Counsel to the House Subcommittee on Communications, Technology and the Internet, provided an overview of Congressman Boucher’s draft discussion bill. As currently drafted, the bill would require express consent for disclosure of covered information to third parties, as well as requiring an option to opt-out of data collection and use by first parties. The bill contains a very broad definition of “covered information,” defining covered information to include IP addresses as well as cookies. The bill also imposes limitations on the use of sensitive information that relates to an

www.iab.net
individual’s race or ethnicity, religious beliefs, sexual orientation, medical records, financial information and geolocation information. IAB submitted written comments to the proposal on June 4th - http://www.iab.net/public_policy/boucher_bill.

Given the recent introduction of the Rush legislation covering online privacy, it remains to be seen if the Boucher discussion draft will move forward as a standalone bill or if provisions of the discussion draft will become merged into the Rush legislation.

**Self-Regulation Update** – IAB and its coalition partners continue to be hard at work implementing the Self-Regulatory Principles for Online Behavioral Advertising. On April 14th IAB and the NAI released the CLEAR Ad Notice Technical Specifications, a set of common technical standards enabling enhanced notice in online ads. These technical specifications will allow advertisers and ad networks to begin offering a clickable icon in or near online ads that directs users to additional information about online behavioral advertising and choices about such ads. IAB is also working on developing a Creative Specifications Document, which will provide advertisers and ad networks with the necessary creative specifications for incorporating the icon. This Creative Specifications Document should be ready by mid-Fall.

IAB also continues to work with our Coalition partners to stand-up a strong third-party accountability program. The BBB was chosen to administer the program, and has been working with various software vendors to develop a program that implements the Principles. BBB is expected to make an announcement soon regarding which vendor was chosen to develop a program.

**IAB Hosts Legal Affairs Council Meeting in Santa Clara** – On June 24th the IAB Legal Affairs Council hosted its annual West Coast meeting at the Santa Clara Law School of Law in California. The topic, “Regulating Data Collection, Online and Offline,” featured a roundtable discussion concerning Congressman Boucher’s discussion draft bill on online privacy. Panelists included Mike Zaneis of the IAB, Ken Levin of Edmunds.com, Quinn Jalil of Epsilon, Jason Ryning of Microsoft, and Eric Goldman of the Santa Clara School of Law. Panelists discussed what impact certain provisions of the discussion draft could have on publishers, ad networks and offline marketers. Participants were eligible for one hour of California CLE credit.

**Senate Commerce Holds Children’s Online Safety Hearing** – On July 15th the Senate Commerce, Science and Transportation Committee held a Consumer Protection, Product Safety, and Insurance Subcommittee hearing on protecting youths in an online world. Witnesses included: Jessica Rich, FTC; Hemanshu Nigam, NewsCorp, SSP Blue, and Online Safety and Technology Working Group; Jeff McIntyre, Children Now; Michelle Collins, National Center for Missing and Exploited Children; and K. Dane Snowden, CTIA–The Wireless Association. Discussion centered on possible approaches to the problems of online bullying, predators, and sharing personal information. Chairman Rockefeller criticized industry efforts on child safety as slow and inadequate and mentioned the necessity of aggressive intervention, including on inappropriate advertising to children. The FTC representative declared a need for greater transparency, warnings, and enforcement. Industry witnesses emphasized their commitment to children’s safety and support for educational programs on these issues, called for a flexible approach to any policy solutions, and noted options for safety and education that are already in place both on and offline.