Preserving Innovation
in a Consumer-Focused Advertising Marketplace

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Advertising has always played a key role in driving innovation in content markets, from video to the Internet. The steady growth of high-speed Internet service and online transactions in this country suggests that broadband usage and e-commerce have not been significantly hampered by consumer concerns over the privacy issues associated with online advertising. But for consumers to continue to reap the benefits of advertiser-supported content, applications and services, the advertising marketplace itself must continue to evolve. As production costs go up to meet modern requirements, as consumers demand higher quality content and storytelling, and as journalistic integrity requires more resources devoted to more stories, business models in content distribution must continue to evolve. For American consumers to get what they want, and for American industry to continue to lead the world, continued innovation and an open marketplace are essential.

Broadband service providers like Time Warner Cable ("TWC") are well-positioned to provide information, entertainment, news and technology products and services in competition with established players. The successful history of hybrid advertising-subscription business model innovation in video markets by cable operators is powerful evidence of the virtues of innovation and competition by new entrants into content distribution. Competition can provide significant benefits to existing and new web content publishers and consumers by fostering more innovation, offering websites more choices to enhance advertising revenue streams, lowering costs to end users, and expanding the volume and diversity of information available to consumers on the web.

But this much is clear: to support new entry and continued innovation in Internet-enabled advertising, online privacy rules need to be competitively neutral. The potential benefits of more competition in the provision of advanced advertising-based services to publishers and websites would be jeopardized by a privacy policy regime in which regulation varies depending upon the type of technology or business model being employed. Despite its record growth over the past decade, the online advertising "business" is still in its early stages, and the rapid pace of technological change and innovation means that the business may look very different five years from now than it does today. Privacy rules for the constantly evolving online marketplace need to align "flexibility for innovators along with privacy protection."[1/] Rules that are responsive to consumer needs will not freeze in place today's business models. Sensible rules will not inhibit innovation by privileging or disfavoring any particular set of competitors or technologies.

I. ONLINE ADVERTISING BENEFITS CONSUMERS

Advertising has emerged as a key driver of what may be the most salient and appealing feature of the Internet for consumers: the incredible array of content, services and applications available to online users at little or no cost.[2/] Today the vast majority of websites and Internet content is available without subscription fees.[3/] Websites and Internet content available without

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1/ *See* Department of Commerce, Information Privacy and Innovation in the Internet Economy, 78 FR 21226 (Apr. 23, 2010) ("NTIA Notice").

2/ *See* Thomas M. Leonard and Paul H. Rubin, "In Defense of Data, Information and the Costs of Privacy," Technology Policy Institute, May 2009, at 23 (Leonard and Rubin, "In Defense of Data") ("The $24 billion Internet advertising industry supports many other services provided to consumers at no charge. They include customized pages from firms like Yahoo! with information of direct interest to the particular individual, and also free email services from many providers. The major Internet advertising firms cooperate with operators of lower volume websites to provide customized advertising, and the revenues from this advertising enable many firms to remain in business and support their websites. Moreover, some bloggers earn sufficient revenues from advertising that they can devote more time to blogging. Table 2 lists some of the services available.")

3/ *See* Comments of the Network Advertising Initiative, Privacy Roundtables - Project No. P095416, at 2 (filed Nov. 6, 2009) ("NAI FTC Comments") ("The great majority of [] Web sites and services are provided to consumers free of charge. Instead of requiring visitors to register and pay a subscription fee, the operators of Web content and service subsidize their offerings with various types of advertising."); *see also* Comments of Direct Marketing Association, Inc., Responding to the Privacy Roundtables - Project No. P095416, at 4-5 (filed April 14, 2010) ("DMA FTC Comments"); Comments of Interactive Advertising Bureau, Privacy Roundtables - Project No. P095416, at 2 (filed April 14, 2010) a separate subscription fee typically rely upon advertising revenue for their survival. Internet advertising facilitates the ability of these providers to continue to furnish their services on a non-subscription basis. Many websites do not have analogous offline outlets for their content, and are thereby dependent upon a robust advertising revenue stream in order continue to offer their content without charge. Likewise, niche websites with small, albeit loyal, followings also benefit from the desire and ability of companies to tailor ads for specialized demographics and online user segments that may be particularly interested in their products.[4/] Such tailored advertising is by no means novel or unique to the online world. Advertisers using traditional media and marketers undertaking offline promotional campaigns have employed targeting techniques – based upon geography, demographics, interests and preferences, and purchasing patterns – for decades.   In the online world, however, targeted advertising both responds to, and helps to preserve and promote, the rich diversity of the Internet.

The Federal Communications Commission's recently-released National Broadband Plan expressly acknowledged the link between online advertising and the Internet features and capabilities that are most popular with consumers:

> Whole new categories of Internet applications and services, including search, social networks, blogs, and user-generated content sites, have emerged and continue to operate in part because of the potential value of targeted online advertising.[5/]

("IAB FTC Comments") ("The revenue generated by online advertising supports the creation and entry of new businesses, communication channels, . . . and free or low-cost services and products").

[4/] *Privacy Polls v. Real-World Trade-Offs*, Berin Szoka, *Progress Snapshot*, Vol. 5, Issue 10, at 6-7 (November 2009) ("the vast majority of websites, and especially non-commercial websites, would produce little ad revenue if advertisers could only guess at the likely interests of visitors based on the keywords on that site"); *see also* Comments of Computer and Communications Industry Association, Exploring Privacy: A Roundtable Series - Project No. P095416, at 5 (filed Nov. 6, 2009) ("CCIA FTC Comments") (noting that online targeted advertising provides more relevant ads and lower barriers to entry and more opportunities for small businesses and entrepreneurs).

[5/] *Connecting America: The National Broadband Plan*, Federal Communications Commission, at 53.

Online advertising not only benefits consumers by underwriting the content, services and applications they enjoy on the Internet, but it also helps them by providing ads and information that are more relevant to their interests and preferences. Instead of a barrage of commercial information aimed at an undifferentiated mass audience, subscribers receive more information about goods and services that better reflect their interests. Such targeted advertising does not foster an increase in the number of ads provided to online users; but it does increase the number of ads that may be pertinent to those users.[6/]

Targeted advertising techniques can also limit the number of times a user sees the same ad, allow a user to receive a promotion related to their website search (*e.g.*, if booking airline tickets, the user can receive a promotion for airfare sales), as well as remember a user's opt-out preference for certain behaviorally-related advertising.[7/] Accordingly, online targeted advertising has become an overwhelmingly popular method for advertising because of its effectiveness,[8/] and its popularity is growing.[9/] It is estimated that advertisers will spend nearly $1 billion this year on targeted advertising, up from $705 million last year.[10/]

6/ *See* Leonard and Rubin, "In Defense of Data," at 14 ("As advertising becomes more targeted, recipients avoid the nuisance and inefficiency of being confronted with ads that are of no interest—in the marketing jargon, 'consumer-borne marketing costs.' . . . Both advertisers and consumers gain from advertisers having access to information to reduce these nuisance costs. As a result, consumers receive fewer irrelevant messages, and advertisers deliver more messages that are actually read")(citations omitted).

7/ *See* NAI FTC Comments at 6-7; *see also* CCIA FTC Comments at 5 (listing the benefits of online targeted advertising).

8/ Howard Beales, *The Value of Behavioral Targeting*, at 3, filed by the Network Advertising Initiative, Comment Project No. P095416, at 21 (Apr. 8, 2010) ("Beales Study") ("Behavioral targeting has become an attractive model for advertisers because of its effectiveness. In 2008, Collective Media reported that in a survey of 500 advertisers and agencies, nearly 69 percent used some form of [behavioral targeting].").

9/ Beales Study at 21 ("Industry research service E-marketer reports that spending on behaviorally targeted online advertising reached $775 million in 2008. E-Marketer also projects that by 2012, spending on behavioral advertising in the U.S. will approach $ 4.4 billion, or nearly 9 percent of total ad spending (up from 2 percent in 2006)."); *see also* comScore, *Americans Received 1 Trillion Display Ads in Q1 2010 as Online Advertising Market Rebounds from 2009 Recession*, Press Release (May 13, 2010)

FTC Chairman Jon Leibowitz recently observed that targeted online ads are typically "good for consumers, who don't have to waste their time slogging through pitches for products they would never buy; good for advertisers, who efficiently reach their customers; and good for the Internet, where online advertising helps support the free content everyone enjoys and expects."[11/] Thus, regulators looking at privacy rules need to ensure they preserve and promote not just the benefits of online advertising but the benefits of innovation for consumers and the Internet. Importantly, an open marketplace for online advertising is essential to this end.

Because the "Internet economy is dependent on consumer participation, consumers must be able to trust that their personal information is protected online and security maintained."[12/] As shown by the tremendous growth in online commerce over the last decade, consumers' actual behavior in the marketplace suggests that online advertising has so far effectively protected those interests.[13/] This should not come as a surprise. The bedrock foundation of TWC's business, for

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("U.S. Internet users received a record 1.1 trillion display ads during the first quarter, marking a 15-percent increase versus year ago."); *at* http://www.comscore.com/Press_Events/Press_Releases/2010/5/Americans_Received_1_Trillion_Display_Ads_in_Q1_2010_as_Online_Advertising_Market_Rebounds_from_2009_Recession; *2010 Advertising Outlook Improving for All Media Categorie*s (Apr. 16, 2010) (reporting on a study which found that "[o]nline paid search advertising is expected to increase 16.8 percent" and also noting that an industry group found that "a record $6.3 billion was spent on online advertising in the last quarter of 2009. ") *at* http://news.suite101.com/article.cfm/2010-advertising-outlook-improving-for-all-media-categories-a226580

10/ "The FTC Takes on Targeted Web Ads," *Business Week,* August 2, 2009.

11/ "Leibowitz: FTC Not Interested in Regulating Behavioral Ads," *Multichannel News*, May 12, 2010.

12/ NTIA Notice at 21227.

13/ *See id.* ("Between 1999 and 2007, the United States economy enjoyed an increase of over 500 percent in business-to-consumer online commerce. . . . During 2008, industry analysts estimate that sales of the top 100 online retailers grew 14.3 percent. In contrast, the U.S. Census Bureau estimates a 0.9 percent decrease in total retail sales over that time period. . . . Analysts expect this impressive growth to continue in 2010, projecting $2.4 billion in mobile commerce."); *see also* Comments of Interactive Advertising Bureau, NBP Public Notice #29, GN Docket Nos. 09-47, 09-51, and 09-137 (filed Jan. 22, 2010) ("IAB FCC Comments") (noting a recent stuffy which found that "e-commerce and online advertising contribute $300 billion each year to the U.S. economy and employ 3.1 million Americans").

example, is the company's relationship with its subscribers. No company can succeed in today's highly competitive marketplace unless it wins and retains the trust of its customers. TWC's customers rely upon the company to serve as a trusted medium for accessing and delivering content and services that reflect their personal tastes and preferences. Thus, in the "current competitive online ecosystem," companies have an inherent incentive "to maintain pro-consumer practices in order to retain customers, credibility and brand recognition."[14/]

Those built-in, consumer-driven incentives to safeguard and secure online users' personal information have been buttressed by a number of robust self-regulatory regimes aimed at ensuring that online consumers are given notice and choice with respect to the handling of their personal information by companies involved in online business advertising.[15/] Browser controls and other privacy-protection applications and capabilities provide online users with a burgeoning array of tools with which to safeguard their personal information.[16/] Further, targeted advertising does not depend on obtaining information about identified individuals, since revenue models in the industry are predicated upon anonymized, aggregate information.[17/] Accordingly, before

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14/ CCIA FTC Comments at 3.

15/ Leading industry groups such as the Direct Marketing Association, the Network Advertising Initiative, and a joint effort involving the American Association of Advertising Agencies, the Association of National Advertisers, the Direct Marketing Association, the Interactive Advertising Bureau, and the Better Business Bureau condition membership in their respective group upon compliance with self-regulation guidelines, and sanction members who fail to comply.

16/ *See e.g.*, Leonard and Rubin, "In Defense of Data," at 21 ("Users of Internet Explorer and Firefox can easily delete Google's tracking cookie, which is essential for tying together separate personal data streams. In addition, several free browser extensions and utilities can clear the cookie or require Google to provide a new one at the start of each browsing session. Web proxies and anonymizing applications like Tor easily conceal user IP addresses . . ."); *Targeted Online Advertising: What's the Harm & Where Are We Heading?, Berin Szoka & Adam Thierer, Progress on Point*, The Progress & Freedom Foundation, Vol. 16, Issue 2, at 7 (June 2009) ("almost 42 million people (roughly half million every week) have downloaded the Adblock Plus add-on for the Firefox web browser, which lets users block online ads entirely").

17/ *See* Leonard and Rubin, "In Defense of Data," at 25 ("The major categories of online advertising that rely on user behavior—search advertising, display ads, and email advertising—use that information anonymously. The process of targeting messages based on an understanding of users' interests, derived endorsing intervention, regulators should thoroughly assess the efficacy of both the existing industry self-regulatory regimes (along with the FTC's principles) and the privacy protection tools available to consumers.[18/]

The point of regulation typically is to respond to a market failure by forcing companies to behave in ways they otherwise would not in order to alleviate consumer harm that can only be addressed through imposition of a regulatory constraint.[19/] In the online marketplace, there is little, if any, empirical evidence that consumers are being harmed by existing advertising practices.[20/] Further, to the extent that there are anecdotal incidences of harm, proponents of regulation have yet to show that built-in market incentives – reinforced by industry self-regulation regimes in order to rein in "bad actors" – are insufficient to address and remedy those situations.[21/] Given the well-documented benefits of online advertising for consumers and the

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from information collected about their activities on the Internet, is entirely automated. [Each ad-serving] determination . . . is made by various computers connecting with each other. Moreover, the unit of commerce in the online advertising market is typically 1000 impressions or click-throughs, not any individual").

18/ "Privacy Concerns Limit Online Ads," *New York Times*, April 30, 2010 ("The advertising industry has a powerful self-interest in forcefully addressing privacy fears. . . .The self-regulatory drive is more than just a marketing campaign to fend off regulation. The industry is making real investments in technology. Start-ups are focused on the privacy market").

19/ Leonard and Rubin, "In Defense of Data," at 49-50 ("Regulation should be undertaken only if a market is not functioning properly. Market failure here would mean that consumers' preferences concerning privacy are not being accurately transmitted and responded to in the market place. Good public policy requires that proposals for additional regulation be based on a showing that consumers are being harmed and that new regulation would alleviate those harms in a way that the benefits are greater than the costs.").

20/ Regulators should take particular care to distinguish and address separately consumer concerns regarding data security from privacy concerns. *See* Leonard and Rubin, "In Defense of Data" at 44 ("It is also important to distinguish between consumer preferences for 'security' and for 'privacy,' which are not the same thing. People may be comfortable with the intended uses of data collected by search engines, for example. Search engines want to show relevant results and ads. Having more information helps them do this. . . . People are worried, however, about unintended uses of information such as identity theft, blackmail, extortion, embarrassment, etc. Their biggest privacy concern appears to be theft of a credit card number. Credit card theft is more of a security issue than a privacy issue.").

21/ *See* Leonard and Rubin, "In Defense of Data," at 3 ("The competitive online market structure suggests that firms do have incentives to satisfy their customers' privacy preferences and that consumers'

Internet – and the potential adverse effects associated with burdening the marketplace with restrictive regulation that will make targeted online advertising more difficult and more expensive[22/] – regulatory intervention is not appropriate absent a showing of a demonstrable market failure that can be alleviated by rules that yield more benefits than costs. A recent study highlights this point, concluding that European privacy regulations reduced the efficacy of online advertising by 65%.[23/] In particular, the results were more pronounced for websites that had general content and for advertising with less expensive features (*e.g.*, lacking video content). Thus, even "moderate" regulation reduces the efficacy of *existing* advertising offerings and does so in a way that disfavors certain businesses over others, *viz.* niche websites and better funded advertisers.

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behavior in the market reflects their preferences. Numerous privacy tools on the market enable individualization of privacy settings. Recent episodes involving AOL and Facebook, who were punished for violating privacy expectations of their customers, illustrate the costs to firms of deviating from acceptable practices.")

22/ *See e.g.* "Privacy Concerns Limit Online Ads," *New York Times*, April 30, 2010 ("Privacy issues have prompted marketers to use online behavioral advertising — based on tracking a user's Web browsing habits — 75 percent less than they would otherwise, according to a report by the Ponemon Institute, a privacy research group. Privacy fears are definitely having an economic impact," said Larry Ponemon, chairman of the privacy and security research group. . . .The markets are holding back, Mr. Ponemon says, because of the uncertain legal and regulatory environment"). *See also* Leonard and Rubin, "In Defense of Data," at 3 ("More privacy implies less information available for producing benefits for consumers. Privacy advocates have provided little detail on the benefits of more privacy and have typically ignored the costs or tradeoffs associated with increasing privacy (i.e., reducing information). Their analysis suggests they believe that privacy is a 'free lunch' consumers can obtain more of without giving up anything else"); Comments of Direct Marketing Association, Inc., Responding to the Privacy Roundtables - Project No. P095416, at 5 (filed April 14, 2010) ("Unnecessary restrictions on online advertising could reduce the relevance of commercial messages to consumers. Moreover, if online advertising becomes less effective, it will impede companies' ability to provide ad-supported content and services to the public . . . [thus] hinder[ing] innovation").

23/ Avi Goldfarb and Catherine E. Tucker, "Privacy Regulation and Online Advertising," available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1600259, accessed Sept. 9, 2010.

II. PRIVACY POLICY SHOULD PROTECT INNOVATION AND COMPETITIVE ENTRY INTO THE ADVERTISING MARKETPLACE

To the extent that policymakers conclude that some intervention may be necessary, any policies adopted should promote competitive entry and the development of innovative online behavioral advertising services, not favor existing business models. Online advertising is still a nascent marketplace, and the landscape of the business could change significantly as a result of technological advances and entry from new competitors. Today's "cookie-based" model of collecting and cataloguing online user information could be supplemented or displaced by new technologies, new entrants and alternative methods of data collection that could provide new competition, enhance consumer welfare and effectively safeguard personal information. Rules tailored to existing market participants, however, could inadvertently create entry barriers for new players, thereby stifling innovation and hampering the emergence of competition. Vigilance is particularly warranted to ensure that government privacy policies are competitively neutral, and do not disfavor new entrants or privilege current business models via disparate regulation. Such an outcome would be particularly disadvantageous for consumers and competition, since the online advertising market already showing signs of concentration that could adversely affect its evolution.

Indeed, despite growing demand for online advertising among advertisers and Web content publishers, the marketplace is still dominated by a few key players. The top 10 players account for two-thirds of total US online advertising revenue and Google, Yahoo and Microsoft control nearly 50% of online advertising revenue.[24/] When measured according to the percentage of online ads actually being served, Google's ascendancy in the market is even more pronounced. Estimates are that Google's DoubleClick and AdSense are responsible for nearly

[24/] Source: Barclays Capital, 2009 YE Estimates, Total U.S. Online Advertising Revenue.

57% of all online ad server calls.[25/] The next closest competitor is Yahoo, which serves almost 10% of all ads.[26/]

Google's position leverages its popularity with online users, dominance in search, [27/] and ever-expanding network of relationships with advertising networks and Web sites to assemble a large volume of robust profiles of online users.[28/] Online audiences are highly fragmented, so this is not an easy position to assail.[29/] But ISPs have the potential to enhance competition in the online advertising market in many ways, by introducing alternatives to the "cookie-based" business models prevalent online today. And cable ISP involvement in online advertising could provide web content publishers with cross-platform ad campaign opportunities in video and other offline media that cannot be offered by most online ad networks. Through business model innovation, ISPs have the ability to introduce competition to the advertising marketplace. Additional options such as this could, in turn benefit both competition and consumer welfare by providing Web content providers with more revenue and more leverage than they may enjoy in their current arrangements with online ad networks.[30/]

25/ "Google Leads in Ad-Serving Share," *Advertising Age*, December 18, 2008.

26/ *Id.*

27/ *See* Search Neutrality.org, *Foundem's Google Story* (Aug. 18, 2009), *at* http://www.searchneutrality.org/foundem-google-story (estimating Google's market share in search in the U.S. at 72%).

28/ *See* Adam Raff, *Search, but You May Not Find*, N.Y. TIMES, Op-Ed, (Dec. 27, 2009) ("Google's dominance of both search and search advertising gives it overwhelming control. Google's revenues exceeded $21 billion last year, but this pales next to the hundreds of billions of dollars of other companies' revenues that Google controls indirectly through its search results and sponsored links.").

29/ *See* January 2010, comScore, Inc.; http://www.comscore.com/ (noting that consumers visit a trillion web pages and more than 180 million registered websites). *See* Yukari Kane and Emily Steel, *Apple's Ad Service Off to Bumpy Start*, WALL ST. J., August 16, 2010, *available at* http://online.wsj.com/article/SB10001424052748703321004575427892781417642.html?mod=googlenews_wsj (reporting on slow penetration of competition to Google/AdMob combination).

30/ *Cf.* "What Search Needs is Healthy Competition," *TechNews World*, January 10, 2009, http://www.technewsworld.com/story/65770.html?wlc=1274806053 ("Increased competition in the online ad space would no doubt be beneficial for advertisers. . . . These 'benefits' for customers would

Innovation, competition and choice in the marketplace are key drivers of continued growth in online content. And there is no question that as the demand for online content continues to grow the need for innovation in business models to support and pay for that content and the jobs required to create and support it will be intense. A privacy policy framework that discriminates among competitors, business models, or technology would freeze competition and entry and benefit only today's dominant players. Disparate privacy regulation that varies according to an entity's business model, technology, or status in the marketplace could deter new entry and artificially distort the evolution of the online advertising business in particular and the information economy in general. Accordingly, regulators should carefully assess the benefits of competitive entry into the marketplace in conjunction with its consideration of how the "U.S. privacy framework affects business innovation, accountability and compliance related to the use of personal information" and its impact on "new business models."[31/]

Privacy regulation should not become a means by which some online advertising business models obtain advantages over others. For example, some privacy groups and industry interests have suggested that ISPs should be subject to stricter privacy rules than other entities involved in such practices; including calling for ISPs alone to be subject to "opt-in" consent and defining consent in a way to make it intrusive and inconvenient for users to give it. Studies suggest that online behavioral advertising participation rates by online users could be as low as

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come in the form of lower ad prices, a race to develop better ad serving technologies, and possibly a better integration of online and offline advertising"); "For Online Ads, Less May Be More Competition," *Computeworld*, July 29, 2009 (Noting "the unusual nature of the online ad business, particularly for search advertising. Google is so dominant in this world that 'competition' may not be the word for what Microsoft and Yahoo are able to offer today"). *See also* "Microsoft-Yahoo Deal Might Create More Competition," *New York Times*, February, 2, 2008 (More competition in online advertising "might force Google to lower the cut of revenue it takes from media companies when it places ads on their sites").

[31/] NTIA Notice at 21230.

10% or as high as 90% depending upon the default option.[32/] Thus, singling out ISPs for heightened and disparate notice and consent requirements as required by more inflexible "opt-in" policies could significantly undermine the ability of ISPs to provide meaningful competition to Google, Yahoo and others. In the meantime, there is no justification for imposing heightened notice and consent requirements on ISPs alone, since they have not been extensively involved in online behavioral advertising, and therefore are not the cause of whatever practices policy-makers may decide justify regulation.

New privacy policies or regulation should not artificially favor one business model or technology over others.[33/] It makes no difference to an Internet user, for example, whether a targeted automobile advertisement is based upon personal information data collected by website or an ISP, or whether the ad is delivered by Google or a network provider. But it obviously makes a big difference to the automobile manufacturer (and the website publisher) to have more advertising networks competing for their business. Disparate regulatory treatment of entities involved in online advertising would impede competitive entry and hinder the "flexibility needed to foster innovation."[34/]

Rules that vary depending upon the type of entity, business model or technology being employed in connection with online advertising are also likely to foster considerable confusion and exacerbate privacy concerns. For example, a consumer whose ISP is subject to heightened notice-and-consent requirements regarding the use of his or her personal information may be

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32/ *See* Leonard and Rubin, "In Defense of Data," at 45-46 (noting studies showing participation rate variations of 20% to 90% and 5% to 85% depending upon whether opt-in or opt-out is the default option).

33/ Progress Snapshot 5.19 at 5 ("Policymakers should take care not to ban such technologies or cripple such business models (e.g., through requiring opt-in), which may rely on more sophisticated forms for targeting such as the use of packet inspection data.").

34/ NTIA Notice at 21227.

surprised and upset to learn that another entity involved in online advertising (*e.g.* an advertising network or website) is able to collect and use that same data without the consumer's affirmative consent because that entity is subject to a less stringent standard. An online user's privacy rights should not vary based upon the identity of the entity collecting data, analyzing the information, or delivering the advertisement. To the extent regulation is deemed necessary, consumers would be better served by a single standard of meaningful consent applied uniformly to all entities engaged in online behavioral advertising.

CONCLUSION

The benefits of innovation in online advertising are widespread and continuing to evolve. Innovation and competition among existing players in the online environment has resulted in dramatic benefits to consumers and given us the Internet we know and love today. But responding to legitimate concerns about protecting privacy in the online environment should not be an excuse to lock in existing market leaders or business models. Consumers have benefited greatly from marketplace innovation and competition so far. They should continue to reap the benefits of innovation and competition in the evolving marketplace. To truly "fix" problems with privacy requires that we harness competition as well as responding to real consumer concerns. Thus, any new privacy regulatory regime has to make room for innovation, new business models, competitive entry, and continued evolution of the marketplace so as to provide the most benefit to the most consumers.