

HOUSE No. 4822

By Representative Straus of Mattapoisett and Senator Menard, joint petition of William M. Straus, Joan M. Menard and others for legislation to further regulate “online” advertising on the Internet. Economic Development and Emerging Technologies.

The Commonwealth of Massachusetts

PETITION OF:

William M. Straus	Walter F. Timilty
Joan M. Menard	Robert M. Koczera
John J. Binienda	Elizabeth A. Malia
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In the Year Two Thousand and Eight.

AN ACT RELATIVE TO ONLINE ADVERTISING.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Notwithstanding any general or special law to the
2 contrary, there shall hereby be established the Online Advertising
3 Act.

1 SECTION 2. For the purposes of this act, the following terms
2 shall have the following meanings:—

3 (A) The term “consumer” shall mean any natural person using or
4 accessing a website, webpage or online service that includes the dis-
5 play of advertisements.

6 (B) The term “non-personally identifiable information” means
7 information collected or logged by a third party advertising network
8 that cannot be used, by itself, to contact, identify or locate a partic-
9 ular person. Non-personally identifiable information is typically
10 compiled from click stream information compiled as a browser

11 moves among different websites serviced by a particular third party
12 advertising network, but may also include other information col-
13 lected directly by the third party advertising network or provided by
14 third parties (so long as that information is not personally identifi-
15 able to the third party advertising network).

16 (C) The term “online preference marketing” means a type of third
17 party ad delivery and reporting whereby data is collected over time
18 and across multiple web pages controlled by different publishers to
19 determine or predict consumer characteristics or preference for use
20 in ad delivery on the web. Online preference marketing may include
21 the use of personally or non-personally identifiable information.
22 Online preference marketing excludes the use of data provided by a
23 publisher directly to a third party advertising network and used by
24 that third party advertising network for Internet advertising solely on
25 behalf of such publisher.

26 (D) The term “personally identifiable information” means data
27 that, by itself, can be used to identify, contact or locate a person,
28 including name, address, telephone number, or email address.

29 (E) The term “publisher” means any company, individual or other
30 group that has a website, webpage or other Internet page.

31 (F) The term “third party ad delivery and reporting” means
32 (1) providing an advertisement to a third party website; (2) statistical
33 reporting in connection with the activity on a third party website;
34 (3) tracking the number of advertisements served on a particular day
35 to a particular third party website; and (4) any other activity related
36 to the delivery of advertisements on a third party website and that
37 involves the collection or logging of personally or non-personally
38 identifiable information about individual visits by a consumer or
39 web browser on the third party website.

40 (G) The term “third party advertising network” shall mean any
41 company, individual or other group that is collecting personally or
42 non-personally identifiable information for the purposes of third
43 party ad delivery and reporting.

1 SECTION 3. **Notice.**

2 (A) A third party advertising network shall post clear and con-
3 spicuous notice on its own website about its data collection and use
4 practices related to its third party ad delivery and reporting activities.

5 (1) Such notice shall include, without limitation, clear descrip-
6 tions of the following: (a) what types of information are collected
7 by the third party advertising network through its third party ad
8 delivery and reporting activities; (b) the types of additional data that
9 may be combined with data collected through third party ad delivery
10 and reporting; (c) how personally and non-personally identifiable
11 information will be used by the third party advertising network
12 including transfer, if any, of non-aggregate data to a third party; and
13 (d) the approximate length of time that such information will be
14 retained by the third party advertising network.

15 (2) If the third party advertising network engages in online prefer-
16 ence marketing, such notice shall also include clear descriptions of
17 the following: (a) profiling activities undertaken by the third party
18 advertising network, including all the types of personally and non-
19 personally identifiable information that may be used for online pref-
20 erence marketing; and (b) procedures for opting-out of such data
21 use, as required by Section 4(A) of this Act (including a description
22 of the circumstances that would make it necessary for a consumer to
23 renew the opt-out, such as when a consumer changes computers,
24 changes browsers, or deletes relevant cookies).

25 (3) If the third party advertising network seeks consent from con-
26 sumers for the use of sensitive information for the purposes of online
27 preference marketing, as required by Section 4(B) of this Act, such
28 notice shall also include a clear description of (a) the types of sensi-
29 tive information to be used, and (b) the procedures for revoking such
30 consent.

31 (4) If the third party advertising network seeks consent from con-
32 sumers for the merger of personally identifiable information with
33 non-personally identifiable information, as required by
34 Sections 4(C) and 4(D) of this Act, such notice shall also include a
35 clear description of (a) the types of non-personally identifiable infor-
36 mation and personally identifiable information that may be merged;
37 and (b) the procedures for revoking such consent for any further
38 merger on a prospective basis.

39 (5) If a third party advertising network materially changes its data
40 collection and use policy, prior notice shall be posted on its website.
41 Any such material change shall apply only to information collected
42 following the change in policy. Information collected prior to the
43 material change in policy shall continue to be governed by the policy

44 in effect at the time the information was collected, unless the con-
45 sumer receives direct notice of the change and an opportunity to
46 choose not to have previously collected information governed by the
47 new policy.

48 (B) A third party advertising network, when entering into a con-
49 tract with a publisher for third party ad delivery and reporting serv-
50 ices, shall require that the publisher post a privacy policy that clearly
51 and conspicuously discloses the publisher's use of a third party
52 advertising network and the type(s) of information that may be col-
53 lected by the third party advertising network.

54 (1) If the third party ad delivery and reporting services include
55 online preference marketing, then the notice shall also clearly and
56 conspicuously (a) disclose that the consumer has the ability to opt-
57 out of online preference marketing and (b) include a link to the opt-
58 out page.

59 (2) The third party advertising network shall make every reason-
60 able effort to ensure that any publisher using its third party ad
61 delivery and reporting services post a privacy policy on the pub-
62 lisher's website as required by this section.

1 SECTION 4. **Consumer Choice.**

2 (A) A third party advertising network that engages in online pref-
3 erence marketing must provide a means for consumers to opt-out of
4 online preference marketing by that third party advertising network.
5 Such means shall be accessible at a designated opt-out page on the
6 third party advertising network's website.

7 (B) Third party advertising networks shall not use information
8 about sensitive medical or financial data, sexual behavior or sexual
9 orientation for the purposes of online preference marketing without
10 the affirmative consent of the consumer. A third party advertising
11 network that seeks such consent must also provide a means of
12 revoking such consent on a prospective basis. Such means shall be
13 accessible at a designated location on the third party advertising net-
14 work's website.

15 (C) Third party advertising networks shall not merge non-person-
16 ally identifiable information collected through third party ad delivery
17 and reporting activities with personally identifiable information
18 without the consumer's prior consent to such merger.

19 (1) If the merger involves non-personally identifiable information
20 collected on a *prospective basis* only, prominent notice and an
21 opportunity to opt-out is required. The means of opting-out must
22 remain available at a designated location on the third party adver-
23 tising network's website. When a consumer exercises the opt out at
24 a later time, after information has been merged, the effect of that
25 choice will be to revoke consent for further mergers of such infor-
26 mation on a prospective basis only.

27 (2) If the merger involves *previously collected* non-personally
28 identifiable information, *affirmative* (opt-in) consent is required. A
29 third party advertising network that seeks such consent must also
30 provide a means of revoking consent for further mergers of such
31 data on a prospective basis. Such means shall be accessible at a des-
32 ignated location on the third party advertising network's website.

1 **SECTION 5. Security.**

2 (A) Third party advertising networks shall make reasonable
3 efforts to protect the data they collect or log as a result of third party
4 ad delivery and reporting from loss, misuse, alteration, destruction
5 or improper access.

6 (B) Third party advertising networks that collect both non-person-
7 ally identifiable information through ad delivery and reporting activ-
8 ities and personally identifiable information directly from consumers
9 or from third parties, shall implement reasonable technical and pro-
10 cedural protections to prevent the merger of personally identifiable
11 information and non-personally identifiable information in the
12 absence of (a) the consent of the consumer as required by
13 Section 4(C) of this Act, or (b) a requirement of law.

1 **SECTION 6. Consumer Access.**

2 (A) Third party advertising networks shall provide consumers
3 with reasonable access to personally identifiable information and
4 other information that is directly associated with personally identifi-
5 able information retained by the third party advertising network for
6 third party ad delivery and reporting uses.

7 (B) EXCEPTIONS— This section shall not require a third party
8 advertising network to provide an individual with access where:

9 (1) The consumer requesting access cannot reasonably verify his
10 or her identity as the person to whom the personally identifiable
11 information relates;

12 (2) The rights of persons other than the consumer would be
13 violated;

14 (3) The burden or expense of providing access would be dispro-
15 portionate to the risks of harm to the consumer in the case in
16 question;

17 (4) Proprietary or confidential information, technology or
18 business processes would be revealed as a result;

19 (5) revealing the information would likely affect litigation or
20 judicial proceeding in which the third party advertising network has
21 an interest; or

22 (6) Revealing the information would be unlawful, or would likely
23 interfere with the detection or prevention of unlawful activity.

24 (C) FEES — A third party advertising network may charge a rea-
25 sonable fee for providing access in accordance with paragraph (A),
26 which shall not exceed the greater of:

27 (1) The actual cost to the third party advertising network of
28 responding to the consumer's access request, or

29 (2) The average cost to the third party advertising network of
30 responding to access requests of a similar type.

31 (D) NO RETENTION OBLIGATION — The obligation to pro-
32 vide access does not, by itself, create any obligation on the organiza-
33 tion to retain personally identifiable information.

1 **SECTION 7. Duration.**

2 Third party advertising networks shall keep and use non-person-
3 ally identifiable information collected through third party ad delivery
4 and reporting activities for duration of a maximum of twenty-four
5 months from the time of collection, after which the non-personally
6 identifiable information has to be deleted from the third party adver-
7 tising networks data storage.

1 **SECTION 8. Enforcement.**

2 (A) The Attorney General may bring an action against a third
3 party advertising network that violates the provisions of this section.

4 (B) Any third party advertising network that violates this section
5 shall be subject to a statutory penalty of not more than one thousand
6 dollars for each instance that this section is violated.

7 (C) A court may increase the statutory penalty up to three times
8 allowed by paragraph (B) of this section where the third party adver-

9 tising network has been found to have engaged in a pattern and
10 practice of violating the provisions of this section.

11 (D) Nothing in this section shall in any way limit rights or reme-
12 dies which are otherwise available under law to the Attorney
13 General.