

**Testimony of Anne Toth, Vice President of Policy and Head of Privacy, Yahoo! Inc.**

**Before the Joint Hearing of the Subcommittee on Communications, Technology and the Internet and the Subcommittee on Commerce, Trade and Consumer Protection of the Energy and Commerce Committee of the United States House of Representatives on Behavioral Advertising: Industry Practice and Consumers' Expectations.**

June 18, 2009

**Introduction**

Chairmen Boucher and Rush, Ranking Members Stearns and Radanovich, Members of the Subcommittees, I appreciate the opportunity to appear before you today at this timely and important hearing about “Behavioral Advertising: Industry Practice and Consumers’ Expectations.” My name is Anne Toth and I am Yahoo!’s Vice President of Policy and Head of Privacy. I joined the company over eleven years ago and quickly became one of the first dedicated privacy professionals at an online company. In fact, I believe that I am the longest continually serving privacy officer in the history of the Internet. Quite simply, my job is about making sure Yahoo! earns and maintains our users’ trust each and every day.

Yahoo! was started in a Stanford University trailer back in 1994 by Jerry Yang and David Filo who were trying to help people find information that was useful and relevant to them among the clutter of the early World Wide Web. What began as a directory of popular websites, which Jerry & David managed themselves, has since grown into a globally-recognized brand that provides a wide range of innovative and useful products and services to more than 500 million users worldwide.

It is telling that our audience has grown so large and remains so loyal after all of these years. Today, the Internet offers alternatives that are just one click away and the switching costs for web-based services are virtually zero. However, people keep coming back to Yahoo!. We believe that trust and the relationship we share with our users is what keeps those users coming back. Trust has been paramount to our growth and is critical to our future success. This is why we work so hard to reinforce that trusted relationship with our users.

### **The Road to Customization**

Over the past few years, consumer behavior has fueled a tremendous amount of innovation in the kinds of products and services that are available on the Internet. Today users expect their content and services to be personally relevant, and they are seeking greater control over what they want, when they want it, and how it's delivered. Gone are the days of one-size-fits-all. Customization is the new game in town. In fact, there is a growing expectation from consumers that Yahoo! will not simply *meet* their needs but will *anticipate* those needs based on a combination of customization and the trusted relationship we have with them.

Just as our users value the personally relevant content we provide, we take a similar approach in the way we deliver advertising. Not surprisingly, consumers are more likely to “click” on advertising that speaks directly to them and their interests. For example, Yahoo! might deliver ads about travel deals if a user has recently researched vacation destinations for their summer family getaway, or ads featuring hybrid cars if a user has spent a great deal of time on Yahoo! Green or has recently browsed car reviews on Yahoo! Autos. Put simply, customized advertising helps consumers save time and energy since they are more likely to find what they are looking for when we've anticipated what they are most interested in.

The customized ads on our pages are intended to enhance our users' experience, and revenues from those ads have allowed Yahoo! and many other sites on the Internet to offer content and services that are largely free to consumers. There is an important value exchange here. Customized advertising works because users enjoy a more relevant and useful experience, advertisers are better able to reach their desired audience, and web publishers are better able to support free content and services. This model is the foundation of a vibrant ecosystem that has helped this industry flourish. Indeed, we believe that during difficult economic times, enabling consumers to access the content and services they desire for free in an advertiser-supported fashion represents an important consumer benefit.

### **Yahoo!'s Commitment to Trust and Leadership on Privacy: A Front- and Back-End Approach**

As we have said before, our business depends almost entirely on the trust of our users. At Yahoo! we have developed an approach to privacy that couples front-end transparency, meaningful choice, and user education with back-end protections for data that limit how much information and how long personal identifiers are maintained.

Let's start by talking about transparency. Yahoo! recognized very early that our users should understand what information we collect, how we collect it and how it is used, and just as importantly – how we manage and protect it. In 1998, we became one of the very first companies in the United States to develop and publish a comprehensive privacy policy, which could be found through a prominent link on our home page. In 2002, Yahoo! again led the industry by introducing a layered "Privacy Center" model on top of our existing privacy policy. This model was the result of our rapid expansion into a wide array of online services, and it

helped users readily find privacy-related information about the specific Yahoo! services they used – without requiring them to wade through information about services they did not. In 2008, we redesigned our Privacy Center to further improve navigation, provide more information on special topics, and to give special prominence to our opt-out page so users could easily find and exercise their choice to decline interest-based advertising.

Today, Yahoo! provides ready access to our privacy policy on virtually all of the pages across our family of web sites. In addition, Yahoo! has experimented with a number of ways to provide notice and transparency *outside* of standard privacy policies. For instance, Yahoo! is proud to have partnered with eBay on their AdChoice model in 2007, which explains interest-based advertising to users at the time when an ad is delivered. Through the AdChoice pages, users can learn more about customized advertising and the choices they have, as well as access Yahoo!'s opt-out. In addition to our collaboration with eBay, Yahoo! has worked with other privacy-minded partners on alternate types of enhanced privacy notices. We are also working with members of the Network Advertising Initiative and the Interactive Advertising Bureau to explore new technological means to deliver privacy notices to consumers within the context of the advertising experience itself.

Providing users with easy access to privacy policies and giving them choice is the first step toward building and maintaining a trusted relationship. The second is to have policies that put meaningful control in the hands of users. Yahoo! has worked continually over the last several years to improve our interest-based advertising opt-out. Last summer, we announced that our opt-out would apply to interest-based advertising both *on and off* of the Yahoo! network of web sites – in other words, whether we touch users as a first-party publisher or as a third-party ad

network, we want users to have a choice. Before that time we had offered an opt-out that was consistent with the NAI's self-regulatory principles that require an opt-out when serving interest-based ads in a "third-party" capacity.

While we believe that interest-based advertising provides the most compelling experience for our users, we also know that there are some users who would rather not see those kinds of ads. When we expanded our opt-out, we made the assumption that users who don't want to get interest-based ads off of Yahoo! sites probably wouldn't want to see them anywhere the Yahoo! Ad Network serves advertising. While this change went above and beyond the industry practice, it further demonstrates the lengths we are willing to go to in maintaining trust with our users.

In the interest of providing a positive consumer experience, we also assumed that consumers who chose to opt out once generally didn't want to do so again and again. Yahoo! addressed this issue by making our opt-out persistent for users who have registered for a Yahoo! account. The growing use of browser tools by users to clear cookies – the files that web sites use to provide customized services to users – has on occasion inadvertently weakened users' opt-out choices. We were concerned that users would have to set their Yahoo! opt-out every time they clear their browser cookies or use a different Internet browser. Now, these users simply have to log into their accounts and Yahoo! is able to refresh these use their opt-outs on that browser, also making these users' opt-outs easily portable. When an opted-out user logs in from home or from work, Yahoo! automatically copies over their opt-out on every computer they use, so that they don't have to download a plug-in for every browser and every device they might use to access the Internet.

Of course, our privacy protection is only effective if our users know about it. Therefore, the final aspect of the “front end” of privacy protection is user education. We want to ensure that even those users who do not seek out privacy policies understand the services we offer and the options they have. Beginning last spring, we ran an extensive user education campaign that explained Yahoo!’s approach to privacy, our customization services, as well as the tools we provide such as our opt-out. Over the course of the last year, these ads were shown on average over 200 million times per month and they are still running today. Research has shown that users are becoming more accustomed to “targeted advertising” and more aware of it. In a recent survey 72 percent of participants said they preferred to be served targeted advertisements from brands they know and trust over irrelevant, intrusive advertisements.<sup>1</sup> Technology can be intimidating for some, so we think that being transparent about privacy benefits all users.

All of our front-end steps – transparency, meaningful choice, and user education – are complemented by back-end protections as well. We focus on security as well as data retention as core aspects of protecting back-end privacy. We work continuously to protect user information with a dedicated team of engineers for whom security is top-of-mind. We assist all of our developers so that they build security into our products and services. In addition, we are also proud to have recently announced the industry’s leading data retention policy – one that is more privacy-protective than our competitors’ policies both in terms of scope of data covered and in terms of time the web log data is held in identifiable form. Even if a user takes no steps to engage with our notices or elects not to opt out on the front end, we still protect and manage personal data in a privacy-enhancing way on the back end.

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<sup>1</sup> TRUSTe-TNS 2009 Consumer Attitudes About Behavioral Targeting  
[http://www.truste.com/about/bt\\_overview.php](http://www.truste.com/about/bt_overview.php)

We announced our new data retention policy at the end of 2008, after a comprehensive year-long review of our data tools and systems. Under the new policy we will retain the vast majority of our web log data in identifiable form for only 90 days.<sup>2</sup> This new policy is notable because it dramatically reduces the period of time we will hold log file data in identifiable form while also vastly increasing the scope of data covered by the policy. It replaces our prior 13-month data retention commitment which covered search log data only, and expands the policy beyond search to include identifiable data associated with ad views, ad clicks, page views and page clicks – the very data informing our ad systems. There are limited exceptions to this policy – for instance, Yahoo! will retain data used to help prevent fraud and preserve security for up to six months – but only for that purpose – and we will retain data needed to meet legal obligations. These narrow exceptions enable us to de-identify more data far sooner than we did previously.

We have also made smaller incremental improvements. For example, when we made our data retention policy announcement, our intention was to de-identify IP addresses by deleting only the final “octet” or last set of numbers from the IP addresses. However, we recently decided that it would simplify our process to delete the entire IP address within that 90-day period.

We believe that our front-end/back-end approach to privacy is not just comprehensive but industry leading. Through it we build a circle of trust with our users – providing transparency,

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<sup>2</sup> Yahoo! announced its log file data retention policy in December 2008. Under this policy web log data such as page views, page clicks, ad views, ad clicks and search queries will be de-identified within 90 days. Exceptions to this policy include web log data that is used to help detect and defend against fraudulent activity and preserve system security, which may be held in identifiable form for up to 6 months, but is only used for that purpose. We may also retain web log data in identifiable form for longer periods in order to meet legal obligations. Yahoo! expects its web log data retention policy to be fully implemented on a global basis by mid-year 2010.

meaningful choice and extensive education coupled with strong security and minimum data retention.

### **Privacy Defaults Are Important: Opt In or Opt Out?**

Much attention has been paid recently to the question of whether an opt-out or an opt-in approach to user control in the area of interest-based Internet advertising is best. The answer is that it's not one or the other – it's both. Some services and models should require an opt-in approach, while, for other models, an opt-out is a more appropriate default. Yahoo! requires opt-in consent in some situations today outside the advertising context that inform our thinking on this topic. If Yahoo! hosts a promotion for an advertising partner where an online form with personally identifiable information is filled out by the user, we require users to affirmatively consent to sending their information to the partner prior to submitting the form. We also have a downloadable Yahoo! toolbar product that allows users to opt in to a research panel where their browser's clickstream data is collected by Yahoo! for research and product improvement purposes. Because this feature allows Yahoo! to see every page visited by a user across the Internet, users must opt in to activate it. Ultimately, the decision about whether to ask for opt-in consent or give users the opportunity to opt-out depends on the individual services being provided.

As the person leading a team of people charged with thinking about privacy at Yahoo! every day, I know that there is no one-size-fits-all approach to privacy. When determining whether to implement an opt-in or opt-out for a particular service it is necessary for companies to consider whether everything a user does online is collected through that service. This is especially true if this online information is connected to a users' name and address. But for most

online advertising, a good opt-out paired with transparency and responsible data retention policies is the right default setting for users. A good opt-out needs to be prominent, readily accessible, clearly conveyed, and give users options to make it persistent. Furthermore, responsible data retention minimizes the amount of time data is held in identifiable form in order to provide quality services, billing, fraud protection, and to meet legal obligations.

Most advances in online privacy protection have come as a result of industry initiative and self-regulation. Market forces drive companies like Yahoo! to bring privacy innovations to our customers quickly. As one company leads, many others follow or leapfrog by innovating in other ways. Self-regulation then raises the bar to bring the rest of industry along with commitments in the areas of notice, choice, security, and enforcement. One of the reasons self-regulatory initiatives have been successful in the online environment over the last decade is that companies have responded quickly as markets evolved, services became more and more sophisticated and interfaces changed. As Congress considers its role in helping protect consumer privacy online, Yahoo! hopes that legislators will consider an approach that enables providers to keep pace not only with technological advances but with consumer demands and expectations as well.

## **Conclusion**

At Yahoo! we are building products and services for hundreds of millions of users, and with that comes awesome responsibilities. It's not enough to simply build great products – although we are very proud of our accomplishments. What makes it all worthwhile is the longstanding relationship we share with our users. We take that responsibility very seriously and work to enhance that trusted relationship each and every day. Congress also has an important

role to play in making sure that consumers are protected as they seek out new customized products and services online. Yahoo! looks forward to working with you as you explore ways to do just that.