

December 10, 2010

Via electronic filing: copyright-noi-2010@ntia.doc.gov

Internet Policy Task Force
Office of Policy Analysis and Development, NTIA
U.S. Department of Commerce, Room 4725
1401 Constitution Avenue, NW
Washington, DC 20230

Re: Comments in Response to the Notice of Inquiry on Copyright Policy, Creativity, and Innovation in the Internet Economy

Dear Internet Policy Task Force:

The Interactive Advertising Bureau (“IAB”) appreciates this opportunity to provide comments in response to the Department of Commerce’s Internet Policy Task Force’s Notice of Inquiry on copyright policy, creativity, and innovation in the Internet economy (“NOI”).¹ IAB shares the Commerce Department’s goal of ensuring that the Internet remains open for innovation, and believes that online copyright infringement can be combated while sustaining innovative uses of information and technology.²

With the incredible proliferation of content available online, consumers now more than ever are looking to trusted brands to provide them with content such as accurate and insightful news coverage and quality entertainment options. In short, not just content, but quality content is king. A recent study showed that in 2009 online readers spent an average of 42% of their time online on content sites compared to 34% in 2003, and that the actual amount of time spent on content sites has nearly doubled since 2003.³ With the exponential growth of online communication and distribution channels, the need to produce and maintain quality content has never been greater.

Founded in 1996 and headquartered in New York City, the IAB (www.iab.net) represents over 460 leading companies that actively engage in and support the sale of interactive advertising, including leading online publishers, ad networks, and ad exchanges. Collectively, our members are responsible for selling over 86% of online advertising in the United States. The IAB educates policymakers, marketers, agencies, media companies and the wider business community about the value of interactive advertising. Working with its member companies, the IAB evaluates and recommends

¹ Notice of Inquiry, Copyright Policy, Creativity, and Innovation in the Internet Economy, 75 Fed. Reg. 61419 (Oct. 5, 2010).

² See 75 Fed. Reg. at 61420.

³ See Mark Walsh, *OPA Study: Content Is Still King*, MediaPost, Sept. 17, 2009, http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=113637.

standards and practices and fields critical research on interactive advertising. The IAB is committed to promoting best practices in interactive advertising, and to that end released industry guidelines for networks and exchanges quality assurance in June 2010, which includes measures that will limit the placement of ads online on sites that contain infringing content.

We believe that our guidelines represent important progress in combating infringement and provide the guidelines (attached for your reference) as the Commerce Department examines how government policy can promote legitimate business models and discourage infringement-driven models.

I. A Government Policy Should Encourage Adoption of Effective Business Practices as Part of Its Development of the Framework for Combating Online Infringement and Promoting Legitimate Businesses

The Internet Policy Task Force has requested comments on how government policy or intellectual property laws can promote successful, legitimate business models and discourage infringement-driven models.⁴ IAB strongly supports the adoption of a government policy that incentivizes effective industry practices as an effective means for combating online infringement and promoting legitimate businesses.

Entities such as ad networks and ad exchanges are on the frontlines of e-commerce and see on a daily basis how various transactions take place online. Such entities are uniquely positioned to respond quickly to rapidly changing online technological advances with industry-led programs and guidance that can balance the need to address online infringing activities without hampering legitimate commerce.

In June 2010, the IAB released the *Networks & Exchanges Quality Assurance Guidelines* (“*Guidelines*”), which apply to ad networks and exchanges who are principals in transactions with marketers and agencies, and who voluntarily agree to be certified against the *Guidelines*.⁵ These *Guidelines* standardize the information that ad networks and ad exchanges provide to advertisers, enhance buyer control over the placement and context of advertising, and build brand safety. Significantly, the *Guidelines* include key provisions to help protect advertisers from unintentionally supporting illegal content on the Internet by running ads on sites that promote and sell such content.

IAB developed the *Networks & Exchanges Quality Assurance Guidelines* over an 18 month period with cross-industry input from stakeholders across the interactive advertising ecosystem, including among others, the Digital Committee of the Association of American Advertising Agencies (“4A’s”) and the Digital Marketing Committee of the Association of National Advertisers (“ANA”). Additionally, IAB member publishers and the Motion Picture Association of America (“MPAA”) provided feedback on the *Guidelines*. After an initial draft of the *Guidelines* was circulated in February 2010, these

⁴ 75 Fed. Reg. at 61422.

⁵ IAB, *Networks & Exchanges Quality Assurance Guidelines* (June 2010), available at <http://www.iab.net/media/file/NE-QA-Guidelines-Final-Release-0610.pdf>.

stakeholders provided comments during the ensuing two month period, after which the final document was released in June 2010. Such stakeholders have indicated that the *Guidelines* are an important step in protecting advertisers from supporting illegal content.

These *Guidelines* also include an enforcement mechanism, whereby marketers and agencies can report non-compliant certified ad networks and ad exchanges to the IAB Network & Exchanges Steering Committee (“Committee”), which may then review and adjudicate the complaints. Following a reasonable opportunity for the networks or exchanges to repudiate allegations or to remediate any alleged incidents of non-compliance, the Committee may withdraw the certifications of networks and exchanges that fail to resolve legitimate complaints. Upon such an occurrence, the Committee will remove the network or exchange from the list of current certified networks and exchanges on the IAB website.

The *Guidelines* thus include a built-in incentive for ad networks and ad exchanges to avoid non-compliant behavior (*e.g.*, making inventory available on sites with illegal infringing content) in order to preserve their certification status. The IAB believes that the *Guidelines* will raise the bar for all ad networks and ad exchanges to take steps to prevent revenue from flowing to sites that sell illegal infringing content. We believe that as the *Guidelines* are implemented in the marketplace, advertisers will come to trust those that are certified with the IAB and move their business away from other networks and exchanges that may not take steps to prevent the delivery of ads to sites with infringing or otherwise illegal content.

II. Transparency Is Key to Encouraging the Exchange of Legitimate E-Commerce

The NOI has asked how government policies can advance the goals of developing new business models to offer content online while respecting the many legitimate ways to exchange non-copyrighted information (or the fair use of copyrighted works) on the Internet.⁶ IAB believes that transparency is key to encouraging the exchange of legitimate e-commerce and that any government policy should promote transparency.

The IAB *Networks & Exchanges Quality Assurance Guidelines* establish a transparent framework with ad networks and ad exchanges by allowing for transparency of inventory sources, publisher relationships, content types, and ad placements details. The *Guidelines* also provide universally defined content categories for advertisers. Such *Guidelines* make buying easier and give increased control over where ads are placed. Importantly, marketers and agencies have greater brand safety assurances that ads will not appear next to content that they decide is inappropriate or by content that the ad network or exchange has deemed to be illegal (*e.g.*, content that unlawfully infringes on copyrights), and thus prohibited from sale. IAB believes that as ad networks and ad exchanges certify against the *Guidelines*, advertisers will choose to direct their business to those entities that they know have committed not to place their ads by content that is prohibited from sale.

⁶ 75 Fed. Reg. at 61422.

III. Significant Technologies Exist for Detecting or Preventing Online Infringement

The Commerce Department has asked what technologies are currently used to detect or prevent online infringement and how effective are these technologies.⁷ IAB member ad networks and ad exchanges currently employ a range of techniques to detect or prevent online infringement, ranging from manual to automated systems. Some use internal verification systems while others rely on third-party ad verification systems to help ensure that ads are not placed by illegal content prohibited from sale.

IAB's *Networks & Exchanges Quality Assurance Guidelines* require ad networks and ad exchanges to conduct inventory vetting in which they must tag illegal content prohibited from sale. Specifically, the *Guidelines* direct such entities to identify the following: (1) copyright infringement material (infringes on copyright, e.g., by hosting and streaming infringing copyrighted content); (2) illegal content (content related to engaging in, promoting or facilitating illegal or legally questionable activities such as drugs, bombs, and theft, and online pirating, hacking, spamming, and infecting as governed by U.S. federal law); (3) warez (P2P, torrent sites, illegal music downloads, pirated software); and (4) spyware/malware (distribute or promote spyware or malware).

The *Guidelines* intentionally do not identify any particular methodology or technology that the ad networks and ad exchanges must use to identify the illegal content prohibited from sale. By identifying the ends without dictating the means, the *Guidelines* provide an even playing field for all entities in the marketplace, regardless of their varying resources. Such built-in flexibility with the *Guidelines* also encourages ad networks and ad exchanges to innovate and develop new mechanisms for identifying illegal content prohibited from sale.

IV. Implementation of Promising Industry Self-Regulation Is Already in Progress

IAB's *Networks & Exchanges Quality Assurance Guidelines* were publically released in June 2010. The *Guidelines* provide for a six month gating period to accommodate the need for extensive training and the resources required to comply with the *Guidelines*. This gating period ends April 1, 2011, after which any ad networks and ad exchanges that have chosen to certify under the *Guidelines* will be required to be compliant. As of November 2010, 16 IAB member companies had indicated that they would self-certify and will be compliant with the *Guidelines* come April 1st.⁸

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⁷ 75 Fed. Reg. at 61422.

⁸ IAB member companies pledging to self-certify include: 24/7 Real Media; Adify; AOL/Advertising.com; AudienceScience; Burst Media; Casale Media; ContextWeb; Inc./ADSDAQ Exchange; CPX Interactive; Fox Audience Network; Google; ScanScout; Specific Media; Traffic Marketplace; Tremor Media; Yahoo!; and ValueClick Media.

The IAB thanks the Internet Policy Task Force for this opportunity to submit these comments, and looks forward to working closely with you on this important topic. Please do not hesitate to contact me at (202) 253-1466 with any questions.

Sincerely,

Michael Zaneis
Senior Vice President &
General Counsel