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A Submission to

Senate Standing Committee on Environment,
Communications and the Arts

Inquiry into

The adequacy of protections for the privacy of Australians
online

on behalf of

Australian Association of National Advertisers

Submitted by: Scott McClellan
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On behalf of the advertising, marketing and media members of the Australian Association of National Advertisers (AANA) this submission responds to the inquiry in to the adequacy of protections for the privacy of Australians online.

AANA, the peak body for over 80 years, represents the common interests and obligations of companies across all business sectors involved in the advertising, marketing and media industry. AANA also serves to protect the rights of consumers in ensuring advertising and marketing communication is conducted responsibly, through its development and administration of industry codes and the self-regulatory system.

Advertising and marketing plays a fundamental economic role in society. It is the driver of consumer choice and, by promoting competition, helps consumers get better value for money. It enables innovation to be brought to market and stimulates economic growth and jobs. It provides substantial funding to support media and a variety of media content. The advertising, marketing, and media industry contributes in excess of \$30 billion to the Australian economy annually.

AANA wishes to highlight that advertisers and marketers in Australia recognise their role and obligations for social responsibility, including respecting the privacy of consumers and the public generally. AANA strongly supports and drives effective self-regulatory initiatives that enable advertisers to respond to market and social challenges.

AANA believes that both the advertisers and the media are proactively responding to Australian and international community and government concerns regarding online privacy, by adopting and implementing better practice and self-regulatory measures to meet community expectations. This is important given the speed of the evolution and revolution of the online and digital environment and the acknowledged difficulties of implementing, and maintaining, adequate legislative protections.

Self-Regulation

Since the establishment of AANA's self-regulatory framework in 1997, the issue of privacy has been a key matter that AANA and its members have been proactively addressing.

AANA introduced the *Advertising & Marketing Communications to Children Code* effective 2007, revised after extensive consultation in May 2008, and which requires (clause 2.14):

Privacy

If an Advertising or Marketing Communication indicates that personal information in relation to a Child will be collected, or if as a result of an Advertising and Marketing Communication, personal information of a Child will or is likely to be collected, then the Advertising or Marketing Communication must include a statement that the Child must obtain parental consent prior to engaging in any activity that will result in the disclosure of such personal information.

In 2009, and with a particular focus on children, AANA published the *Practice Guide: Managing Images of Children and Young People*¹. The guide applies to the use of images in all media; however, it is particularly relevant to online media. The guide, promoted internationally as a world's first, assists advertisers and marketers to ensure that practices and procedures enable the protection of children and young people involved in the industry. In particular, it recognises the balance between:

- the right to privacy and protection from exploitation or abuse;
- the right to freedom of expression and involvement in the media, including advertising and marketing; and
- the right to not be unduly restrained because of the improper actions of others.

The matter of online privacy has been the subject of intense activity internationally, both in government policy and industry self-regulatory terms. AANA was pleased in 2009 to contribute to the development of a World Federation of Advertisers initiative on online behavioural advertising. The *Global Principles for Self-Regulation in Online Behavioral Advertising*² provides a framework for online advertisers and marketers to ensure that advertising and marketing practices protect the privacy of consumers. It also recognises that all principles may not be able to be fully achieved at this point in time but does direct the evolution of technological and commercial solutions to those ends. It also provides assurance to the public, and governments, that industry is working towards aims that include protection of privacy and the ability of advertisers to better meet the needs of consumers.

AANA promotes the above WFA principles to members and industry stakeholders in Australia. Industry is actively responding to the WFA framework. AANA also raises awareness of a range of other international initiatives that provide guidance to industry and education to the public about online and social advertising. Examples include:

- AAAA, ANA, BBB, DMA, IAB - *Self-Regulatory Principles for Online Behavioural Advertising*
<http://www.iab.net/media/file/ven-principles-07-01-09.pdf>
- IAB (US) - *Social Advertising Best Practices*
http://www.iab.net/iab_products_and_industry_services/508676/801817/socialads
- IAB (UK) - *Good Practice Principles for Online Behavioural Advertising*
<http://www.iabuk.net/en/1/iableadsbehaviouraladvertisinggoodpractice030309.mxs>
- *Your online choices a guide to online behavioural advertising.*
www.youronlinechoices.co.uk

Privacy is also an issue that will be raised in the review of the AANA *Code of Ethics*. The *Code of Ethics* provides the overarching set of principles to which all advertising and marketing

¹ <http://www.aana.com.au/MediaReleasePracticeGuideManagingImagesofChildrenandYoungPeople.htm>

² http://www.wfanet.org/documents/5/WFA_Global_Principles_Behavioural_Advertising.pdf

communications, across the diversity of media and channels, should comply. This code is also an important component of other (sector specific) industry self-regulatory codes and initiatives. The aim of the current review of the objectives and content of the *Code of Ethics* is to update and where necessary develop the *Code of Ethics* to ensure that it continues to meet all stakeholders' requirements and expectations. The review, including public consultation, will commence in July 2010 and be finalized by December 2010.

AANA believes that self-regulation, which includes a range of initiatives such as codes of practice and best practice guidance documents, provide a flexible mechanism to meet the challenges of ever evolving advertising and marketing practices, media environment as well as consumer expectations. The marketing environment is experiencing a 'revolution' in that advertisers are no longer exclusively driving consumer demand. There is a growing movement towards consumer driven marketing. This will require a response by business in marketing practices including compliance with privacy principles and the impact of these on consumer expectations regarding their involvement in the market.

AANA welcomes government recognition for the role of self-regulation in the online environment. In February 2010 at the inaugural AANA Congress, in his address, the Minister for Broadband Communications and the Digital Economy, Senator the Hon Stephen Conroy, acknowledged the AANA's role as peak industry body and emphasised the importance of industry self-regulation, particularly in a rapidly and ever evolving digital media environment. Senator Conroy reiterated this sentiment in June 2010:

In relation to the [AANA] codes, I am pleased that the AANA has moved to ensure that the codes do cover internet advertising and websites and I urge the AANA to work with relevant bodies, and online publishers like Google and others, to ensure that self-regulation is as effective in the online space as it is in the traditional media.

If the industry wants to avoid the imposition of government regulation in this space it must get behind the AANA and self-regulate online advertising as actively and effectively as it does all other forms of advertising.³

AANA advises that we are actively moving to ensure effective self-regulation in the online advertising environment.

Regulation

A number of privacy related legislative provisions apply to advertisers and marketers including the *Privacy Act 1988* and *Spam Act 2003*.

AANA acknowledges a number of existing government initiatives that work towards addressing privacy online as well as recent relevant Australian government reviews and inquiries to which this industry sector has responded and which AANA recommends informs the considerations of

³ <http://www.aana.com.au/MinistercallsonadvertiserstosupportAANAinonlineadvertisingselfregulation.htm>

this inquiry. AANA suggests that the following⁴, in addition to self-regulatory developments, will sufficiently address the matter of privacy protection in the advertising, marketing and media sectors:

- The current review of privacy legislation, including the released exposure draft of the Australian Privacy Principles. The Australian Privacy Principles will apply in the online environment as well as provide new and additional protections.
- Privacy in the online environment has already been the subject of consideration under a review conducted by the Australian Law Reform Commission (ALRC). The Australian Government's response (first stage) to the ALRC inquiry into the effectiveness of the *Privacy Act 1988* provides a 'road map' for a range of initiatives to effect change, including online.
- Existing government initiatives on cyber-safety and cyber-security and the recent Joint Select Committee on Cyber-Safety Inquiry.

AANA commends consideration of this submission and would be pleased to speak to this submission to assist the Committee's further deliberations on these complex matters that are the concern of all in the Australian community.

End.

⁴ AANA acknowledges the inquiry/review outcomes are subject to parliamentary processes and the forthcoming election.