

Leo Burnett

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Secretary  
Federal Trade Commission  
Room H-159  
600 Pennsylvania Ave., N.W.  
Washington, D.C., 20580

**Re: U.S. Perspectives on Consumer Protection in the  
Global Electronic Marketplace -- Comment, P994312**

**Introduction**

Leo Burnett Company, Inc. welcomes the opportunity to offer our perspectives to the Federal Trade Commission (FTC) on Consumer Protection in the Global Electronic Marketplace. The Leo Burnett Company is one of the world's leading advertising agencies. We are responsible for creating the advertising for our client companies which market some of the most widely recognized brands and services in the world. Combined billings for Leo Burnett Company's U.S. and international operations were \$6.81 billion in 1998. Headquartered in Chicago, Leo Burnett Company has 85 full-service offices in 75 markets throughout the world. Leo Burnett Company employs approximately 8,500 people via a global network encompassing nearly 200 operating units.

**The Balance Between Consumer Protection & the Private Sector:**

We would like to suggest at the outset, that the FTC look to the principles set forth in the U.S. "Framework for Global Electronic Commerce":

- The private sector should lead;
- Governments should avoid undue restrictions on electronic commerce;
- Where governmental involvement is needed, its aim should be to support and enforce a predictable, minimalist, consistent and simple legal environment for commerce;
- Governments should recognize the unique qualities of the Internet; and
- Electronic Commerce over the Internet should be facilitated on a global basis.

We believe these principles are a valuable guide and starting point with which the FTC should consider during their consultation process regarding consumer protection in the global electronic marketplace.



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Leo Burnett Company believes that electronic commerce can only thrive if the rights of consumers are balanced with those of industry and the private sector. Both benefit from the free flow of information that electronic commerce fosters and facilitates.

We believe that this broad free flow of information across international borders must be maintained and supported for the global marketplace to continue to grow and expand. Consumer choice increases exponentially with each new website offering new products and services. We encourage the FTC and other government regulatory bodies to ensure that regulations which restrict the ability of the private sector to market their products through the Internet, be promulgated only when necessary, and be implemented in a manner that minimizes trade distortions.

#### **What is Electronic Commerce?**

We also caution the FTC to move slowly in this area, because in reality, a thorough understanding of just what electronic commerce is does not yet exist. To quote the example often used by the U.S. Council for International Business, "is it the equivalent of a U.S. citizen going to Harrods in London and purchasing an item or is it the equivalent of Harrods opening a store in the U.S. to sell to Americans. Depending on which situation accurately characterizes electronic commerce will dictate resolution of many of the consumer protection issues."

We do know that electronic commerce is global in nature and therefore encourage the FTC look beyond U.S. perspectives and borders during this consultancy process.

The private sector does have a vested interest in consumer protection. The private sector can only **benefit** from ensuring that their advertising is accurate, truthful, and substantiated. Consumers are only loyal to brands and marketers that they respect and trust, and all commercial transactions, no matter the medium, are alike in that regard. Thus, effective consumer protection is crucial to ensure consumer trust in electronic commerce.

#### **Jurisdiction & Conflicts of Law -- Look to the Country-of-Origin**

The conflict of law issue has become an important topic of discussion and polarity. Such jurisdictional issues are not new to international law and trade, yet they require more focus in the electronic commerce environment, particularly in regards to advertising and commercial communications.

The Leo Burnett Company is very concerned about conflicting laws regarding advertising in various countries throughout the world. We strongly support the "country-of-origin" principle to determine the controlling law for advertising, and believe this principle best facilitates global electronic commerce and international trade. We encourage the FTC and other government bodies to remember that the Internet is an invitational medium, not an intrusive one. Consumers only seek out information about products and services that they find meaningful. This places much of the control in the hands of the consumer. The consumer must also take some responsibility for commercial transactions they enter, whether it's at the corner store or on an Internet Website.

Cross-border advertising in traditional media is often problematic due to legislative roadblocks that exist in varying countries. On-line advertising by nature is cross-border advertising, and thus presents even more complex issues and potential roadblocks. Recognition of the "country-of-origin" principle as the controlling law for all Internet commercial communications and electronic commerce helps alleviate nationalistic legislative and regulatory roadblocks and trade barriers. Advertising cannot and will not survive the burden of compliance with multiple jurisdictional laws if the "country-of-origin" principle is not embraced as the jurisdictional basis for cross-border advertising.

Compliance with the laws of many different countries would impose tremendous costs on our business and be prohibitively expensive for any small or medium sized business. Advertising messages soon would become ineffective and invisible should compliance with multiple jurisdictions (and the presumed multitude of disclosures) be required for each individual advertisement. Such burdensome regulation could lead to a decrease in advertising and competition, which would result in less consumer information about products and services they want and need. Electronic commerce should promote more market competition and consumer choice, not less.

#### **Self-Regulation Does Work**

Most jurisdictions have consumer laws, policies and practices that limit fraudulent, misleading and unfair commercial conduct, and many countries have established systems of industry self-regulation. Both help build consumer confidence.

Advertising self-regulation exists at the international, regional and national levels. At the international level, the International Chamber of Commerce (ICC) has several codes of practice, including the International Code of Advertising

Practice, the International Code of Sales Promotion, and the ICC International Code of Practice on Direct Marketing. Many countries without self-regulatory systems in place often look to the ICC for their expertise in setting standards for advertising self-regulation. This is particularly true for countries in Central and Eastern Europe.

National laws and advertising self-regulatory systems vary from country to country. These various laws and systems take into account the different customs, mores and traditions inherent in the culture of each country. The United States has the Federal Trade Commission (and the Food & Drug Administration in some cases), as well as the National Advertising Division of the Better Business Bureau and the Children's Advertising Review Unit.

Self-regulatory organizations around the world all have the same goal: advertising should be lawful and truthful. Our goal is to protect consumers, to build upon existing laws and existing self-regulation. We want to reinforce what works, not to evade the law, but to apply simple recourse, along the lines of the European Advertising Standards Alliance (EASA). The EASA was created in Brussels in 1992, and brought together the advertising self-regulatory bodies from throughout Europe. Its goal is to promote and support advertising self-regulation in Europe, to coordinate the handling of cross-border complaints, and to provide information and research on advertising self-regulation. The EASA is a well-respected organization, and its supervision of cross-border advertising complaints is very effective. The system works, and the complaints that have brought to the attention of EASA have been resolved effectively.

In Latin America, the Interamerican Society for Freedom of Commercial Speech (SILEC) is an association that was founded in Caracas, Venezuela in 1992. SILEC is dedicated to the promotion of existing advertising self-regulation, the creation of self-regulation where it does not exist, and the defense of the freedom of commercial speech throughout the Americas. SILEC's membership is comprised of national chapters, which include advertising industry trade associations, advertisers, advertising agencies and the media throughout Latin America. Each national chapter must adopt "a code of ethics, which will provide advertising with a framework of standards of truthfulness, honesty, integrity, responsibility and good taste".

#### **Self-Regulation and the Country-of-Origin**

There is even movement in the advertising industry to create a global cross-border alliance or mechanism to provide a system for local authorities and

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national self-regulatory bodies to “reach” the offender. Who better than the self-regulatory organization or law enforcement body of the “country-of-origin” because it is the local law, the one where the offender resides, that should apply. There may be exceptions in contractual purchases where the laws of both jurisdictions may apply, but these situations already exist today.

International conflict-of-law doctrine continually decides which law to apply in conflict situations. Why do we need to “reinvent” the wheel? Reliance upon existing transactional precedents allows for consumer protection. **Reliance upon the country-of-origin principle for advertising purposes establishes a consumer baseline of expectation for advertising claims, and discourages the Internet from being a ‘free way’ for deception.**

The Leo Burnett Company encourages the Federal Trade Commission to enforce its laws in cyberspace, and to protect U.S. consumers from fraudulent marketers here and abroad. Yet – to enable the Internet to grow and develop as the communication super medium it is; we encourage the FTC, and other regulatory bodies in the U.S. and abroad, to support country-of-origin as the controlling law for advertising.

### **International Perspectives**

What do various regulators say about electronic commerce, industry self-regulation and the country-of-origin principle? To quote the U.S. Secretary of Commerce Bill Daley (from the U.S. Department of Commerce Website),

The Clinton Administration recognizes that electronic commerce is a process that is driven by the private sector and that the government should take a contractual rather than regulatory approach to addressing issues requiring policy or legal redress.

To quote from the “Proposal for a European Parliament and Council Directive on Certain Legal Aspects of Electronic Commerce in the Internal Market (11/98)”,

It is therefore necessary to improve the level of mutual confidence between national authorities by clarifying the application of the principle of free movement of services. This principle (articles 59 and 60 of the EC Treaty) tends towards control in the country where the provider is established...

Not only does the European Directive promote the principle of “country-of-origin”, it also states that commercial communications (advertising) are essential

for financing of information society services. The Directive also promotes industry self-regulation as an alternative to legal and regulatory intervention.

To quote the White House,

Today, we are drawing up the blueprints for a new economic age -- blueprints not for starting big institutions but rather for freeing small entrepreneurs. We have the honor of designing the architecture for a global electronic marketplace, a marketplace that includes all nations, a marketplace with stable laws, strong protection for consumers, serious incentives for competition, and includes all people and nations.

President Bill Clinton  
November 30, 1998

To quote from the International Chamber of Commerce (ICC) Website,

The ICC believes that advertising and marketing on the Internet, World Wide Web, and online services should reflect the highest standards of ethical conduct as laid down in the ICC International Code of Advertising Practice and other relevant ICC self-regulatory Codes.

The global character and technological properties of the new media have created a unique business environment... Responsible advertisers and marketers (which, in this new context, will mean any person or company posting an electronic commercial message) should recognize that it is in their own interest to observe self-disciplinary guidelines specifically adapted for electronic or interactive advertising and marketing. Advertisers and marketers should strive to create an electronic environment, which all the world's consumers can fully trust.

The Leo Burnett Company endorses all of these positions – and we are committed to helping the advertising industry enhance the ability of the self-regulatory organizations to communicate around the world – so there truly would be no corner too dark for a deceptive advertiser to hide.

**Conclusion: The Evolution of E-Commerce**

Estimates certainly vary, yet the OECD (Organization for Economic Cooperation and Development) conference held in Ottawa in October of 1998 reported that E-commerce is expected to soar from about \$32 billion this year to one trillion dollars in 2002. As consumers become more comfortable with security measures offered through legitimate websites, there is no doubt that electronic commerce use will soar.

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Vice President Gore has stated,

Trade and commerce on the Internet are doubling and tripling every year. In just a few years, the Internet will be generating hundreds of billions of dollars in sales of goods and services. If we establish an environment in which electronic commerce can flourish, then every computer can be a window open to every business, large and small, everywhere in the world.

Leo Burnett Company encourages the FTC to review the Joint Statement released in conjunction with the EU-U.S. Summit in Washington, DC on December 5, 1997. Some of the key guidelines outlined in that statement highlight the importance of industry self-regulation, and that unnecessary existing legal and regulatory barriers should be eliminated and the emergence of new ones be prevented. The statement defines the role of government to promote a pro-competitive environment in which electronic commerce can flourish and ensure adequate protection of public interest objectives, including consumer protection.

Leo Burnett Company encourages the Federal Trade Commission to carefully consider our comments on consumer protection in the global electronic marketplace, particularly in regards to the "country-of-origin" principle and industry self-regulation.

Respectfully submitted,



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