



[Submitted by email: privacynoi2010@ntia.doc.gov]

January 28, 2011

U.S. Department of Commerce
1401 Constitution Avenue, NW, Room 4725
Washington, DC 20230

Re: Comments of Catalog Choice on Commercial Data Privacy and Innovation in the Internet Economy: A Dynamic Policy Framework, Docket No. 101214614-0614-01, RIN 0660-XA22

Dear Internet Policy Task Force:

Thank you for accepting comment upon "Commercial Data Privacy and Innovation in the Internet Economy: A Dynamic Policy Framework." (Referred to as the Green Paper) I submit the following comments:

Introduction

Our comments on the Green Paper are prefaced by an introduction and overview of our organization. Catalog Choice is a non-profit, registered 510(c)(3) organization based in Berkeley, California. The mission of Catalog Choice is to help people reduce unwanted mail, save natural resources, and protect their privacy and personal information. Catalog Choice has developed an easy-to-use service, available online at www.catalogchoice.org, that allows consumers to opt out of receiving direct advertising mail and request that their personal information not be sold or traded with other companies such as data brokers. The service also allows companies engaged in direct mail and data services to configure their brands presence on Catalog Choice and obtain their suppression file in a bulk, machine-readable format.

Catalog Choice, funded primarily by member donations and grants from numerous foundations,¹ launched its service in October 2007. Catalog Choice has provided consumers with a free standardized way to implement their privacy choices, by compiling all of the data that consumers need and simplifying the processes by which they can implement those choices. The streamlined opt-out process for consumers is combined with a free process for companies to retrieve brand-specific suppression requests, integrate the requests into their direct marketing business processes and provide confirmations or requests for additional information to the user. Since there is no requirement for companies to use the Catalog Choice system to retrieve opt-out requests,

¹ These organizations include the Overbrook Foundation, the Merck Family Fund, Kendeda Fund, Goldman Fund, Weeden Foundation, Mead Foundation, and Johnson Family Foundation.



we have also developed productivity tools that the consumer can use to send their opt-out directly to the company per the terms of the company's privacy policy. When sending the opt-out request via email or through a web form, our system creates a unique email address for each request. This allows the consumer to protect the privacy of their personal email and allows our system to track any response from the company and record the information in the consumer's secure account.

Since our launch in October 2007, Catalog Choice has processed more than 18 million consumer opt-out requests from approximately 1.3 million households. Over half of the requests are accessed in a machine-readable format by 650 companies that use our free company service. The balance are sent via email or input by consumers into web forms. It has been roughly estimated that 20% of all the opt-out requests generated on a daily basis for multi-channel merchants are submitted through Catalog Choice.

In October 2007, the service included 500 brands and was focused primarily on multi-channel merchants that send catalogs in the mail. In response to overwhelming demand from Catalog Choice members, the service has expanded to cover privacy preferences for a broader array of companies, including telephone directories (yellow pages), non-profit corporations, coupon aggregators, letter-size direct mail from telecommunications financial services and other industries, and data brokers.

Enhancing Transparency to Better Inform Choices

On page 31 of the Green Paper, The Internet Policy Task Force properly frames the issues surrounding the implementation of the notice and choice model today.

“consumers’ privacy rights depend on their ability to understand and act on each individual company’s privacy policy.”

The rapid growth and success of Catalog Choice reflects the value which ordinary consumers place on choice and control with regard to their privacy preference, as well as unique problems associated with managing choice regarding the use of your name and address. While consumers in the online world may rely on spam filters, pop-up blockers, and other technological means to avoid unsolicited advertisements, they must expend time and energy sorting and disposing of unwanted, unsolicited mail. In 2009, American households received approximately 85 billion pieces of advertising mail.² Sorting through unwanted mail has been estimated to consume eight months of the average consumer's life.³

²See United States Postal Office, *Household Diary Study: Mail Use and Attitudes in FY 2009*, p. 121 Table A3-5, available at <http://www.usps.com/householddiary/welcome.htm>. This figure includes catalogs, magazines, flyers, postcards, catalogs sent inside an envelope, and advertising inserts included in non-advertising mail. *Id.*

³Sovern, *Opting In*, *supra* note 2, at 1054-55.



The annual cost of dealing with unsolicited mail and telephone advertising has been estimated by some as potentially approaching \$50 billion.⁴ This estimate, substantial as it is, understates the problem because it does not include other less tangible costs to consumers such as feeling a loss of control over one's personal information and frustration with unresponsive companies.⁵

Many, but not all, companies publish privacy policies that include instructions for how to opt out of receiving future direct mail advertising and information sharing. For years, the direct mail industry has supported a "Notice and Choice" policy similar to the Fair Information Practice Principles, where preferences concerning the receipt of direct mail and information sharing are governed by opt-out choice principles.⁶ An opt-out system shifts the burden of governing preferences from the business to the consumer. Under an opt-out system, consumers bear the burden of determining how their information will be used and with whom it will be shared.

The sheer volume of direct mail that American households receive, however, makes it virtually impossible for consumers to personally implement their privacy preferences for each company with which the consumer has a relationship and the hundreds of others that are soliciting their business for the first time. It has been estimated that if U.S. Internet users read word-for-word the privacy policy of each new website they visited, every user would spend 244 hours per year, or 40 minutes per day in the endeavor.⁷ The total amount of time that U.S. Internet users would lose by reading the privacy policies for each website visited is valued at \$781 billion in opportunity costs.⁸ Even skimming privacy policies to find answers to specific questions is time intensive and has been shown to take a median time of 18-26 minutes.⁹

⁴Kenneth C. Laudon, *Markets and Privacy*, 39 COMM. OF THE ACM 92, 103 (1996).

⁵*Id.* at 98-99.

⁶See e.g. The Direct Marketing Association ("DMA"), *Guidelines to Ethical Business Practice* ("DMA Guidelines"), p. 14, Art. 31 ("A marketer should provide existing and prospective customers with notice of an opportunity to modify or eliminate direct marketing communications to be received from that company . . . The notice should: appear in every marketing offer and be easy for the consumer to find, read, understand, and act upon." (Last revised 2007), available at <http://www.dmaresponsibility.org/guidelines/>; see also The Direct Marketing Association, *Commitment to Consumer Choice* ("DMA CCC"), reaffirming the same notice and choice requirements (Published in 2007, available at <http://www.dmacc.org/>).

⁷ *Id.* at 563.

⁸ *Id.* at 564.

⁹ *Id.* at 555.



Not only is it costly for consumers to determine how their information will be used, the process of opting out of direct mail is not standardized and can take a variety of forms. Even if consumers do take the time to read company privacy policies, they still must take the time to research the opt-out process for each individual company, take all necessary steps to communicate their opt-out requests, and place their faith in companies to honor their requests.

For these reasons, over one million American households have embraced Catalog Choice as their agent and preferred tool for communicating their privacy preference. The Catalog Choice staff spends the necessary time to read company privacy policies and determine the best approach one should use to communicate their privacy preference.

Our research shows that it takes a worker between five to seven minutes to find a specific company on the Internet and identify the email address or web form that must be used to submit an opt-out choice. In fact, we train our staff to read privacy policies from the bottom up since we find one is more likely to find opt-out choice instructions at the end of the privacy. Only a few companies¹⁰ provide a link in the footer of their website that immediately directs a consumer to the company's preference page. Several others have developed contact preference pages that are described in their privacy policy.

Instead of requiring consumers to conduct the research and go to the website of every company that they want to communicate their privacy preference with, the Catalog Choice member can leverage the background research and productivity tools that we provide. To begin the opt-out process, consumers create a Catalog Choice account through the organization's free Standard Service.¹¹ Catalog Choice verifies consumer accounts by requesting that consumers confirm receipt of a registration email.¹² The Terms of Service on Catalog Choice's website explicitly state that Catalog Choice will act as an agent for its members.¹³ Consumers themselves make title-specific opt-out requests for direct mailers because they have a customer relationship with the mailer or are in receipt of the company's mailing. In these cases, Catalog Choice merely facilitates

10 See Catalogue Preference in the page footer at Crate & Barrel at <http://www.crateandbarrel.com> and Contact Preference in the page footer at UncommonGoods at <http://www.uncommongoods.com>

11 Catalog Choice also offers offline support to those users who prefer to express their preferences in that manner. This comment, however, will focus on the online system because that is the method preferred by the majority of Catalog Choice's members.

12 This is similar to the email verification process used when people list their phone numbers in the Do Not Call Registry, see <https://www.donotcall.gov/register/reg.aspx>, where only a phone number and email address are required to register a phone number.

13 Under Cal. Civ. Code § 2319, an agent has the authority to "do everything necessary or proper and usual, in the ordinary course of business, for effecting the purpose of his agency." An act by the agent designed to carry out the purpose of the agency is considered the act of the principle. See e.g. In re Guardianship of Muriel K., 251 Wis.2d 10 (Wis. 2002).



the process and passes the requests on to the selected companies. The consumer retains the right at all times to revoke the request or terminate the relationship with Catalog Choice.

Upon logging into Catalog Choice, consumers select the companies to which they would like to send opt-out requests. Catalog Choice has reviewed the privacy policies and opt-out policies of over three thousand companies, and provides consumers with links to each company's privacy policy and information about how to contact the company's customer service. Consumers decide whether to make the request through Catalog Choice or draft their own request, or whether to send the request at all. Thus, to make an opt-out request, in most cases a consumer need only select the company, select her name and address from a dropdown list, enter her customer number and source code if available and submit (1) her request to be removed from that company's mailing list and (2) her request that her name and address not be shared with other companies. From company search to confirmation, this process takes between 10 and 15 seconds, a significant timesaving over the "do it yourself" alternative.

In addition to the significant timesavings, consumers choose to use their Catalog Choice account to submit privacy preference requests so that they can:

- Protect their private email address when making a name/address suppression request.
- Monitoring the status of their request and automatically obtaining an alert if more information is required to complete the opt-out request.
- Submit additional opt-out requests under alternative name/address combinations
- Submit a complaint to the company if their request is not honored within 90 days.
- Authorize Catalog Choice to submit a complaint to the FTC Consumer Sentinel Network if their complaint is not addressed within 30 days.

In addition to enabling choice in an efficient manner, we strive to better understand the motivations driving consumers to make opt-out choices. As a result, we ask every consumer member to indicate the primary reason for making the name/address opt-out choices for the specific company at the time they submit their request. As the chart on the following page shows, we have over 8 million responses to this question.

Approximately 39% of the consumers are making the choice because they have no interest in the company's products. Since we have simplified the feedback loop between the consumer and the company, companies can save valuable marketing resource by no longer marketing to these individuals. Approximately 38% of the opt-outs are made to "help the environment" and 15% are made because the person prefers to go online for the products or services. This implies that the consumer is making a marketing channel



choice and may continue to purchase products or services from the given brand. As a benefit to companies that utilize the company account to access their data in bulk, we provide the same data for each of their brands.

Distribution of reason responses:
Excluding the default response, the following represents the distribution of the remaining 8,062,950 responses:

15%	→ Prefer going online for these products or services	(1,234,979)
39%	→ No interest in this company's products or services	(3,119,005)
38%	→ I want to help the environment	(3,096,339)
1%	→ Duplicate delivery	(86,212)
2%	→ Addressed to person not at residence or deceased	(153,305)
3%	→ I receive too much of this marketing material	(268,144)
1%	→ Other	(104,966)

If the Internet Policy Task Force would like to learn more about consumer views on the benefit of a centralized preference portal, visit our Facebook Fan page at <http://www.facebook.com/catalogchoice> or our blog at <http://blog.catalogchoice.org>.

Voluntary Code of Conduct

Catalog Choice has forged a balanced relationship between the privacy needs of citizens and a voluntary code of conduct by companies. Most of the 3,100 companies listed in Catalog Choice do an excellent job at honoring consumer choice. Over 650 companies have established secure accounts with Catalog Choice and have assigned staff that regularly accesses their brand-specific suppression file.

Since there are no sectoral laws such as CAN-SPAM or Do Not Call Rule that address name/address suppression, it was essential for Catalog Choice to work with industry to develop a mutually agreeable code of conduct to guide the implementation of suppression requests. For the better part of 2008, Catalog Choice worked in collaboration with the American Catalog Mailers Association (ACMA) and representatives from Crate & Barrel, Williams Sonoma, LL Bean and others to develop the license agreement that governs the relationship between Catalog Choice and over 650 of the nation's largest multi-channel merchants.¹⁴ The on-going successful operation of our service is a demonstration of self-regulation in action.

One of the integral components of our system is our ability to audit compliance and hold

¹⁴ <http://blog.catalogchoice.org/2008/09/27/dm-news-mail-crowd-rallies-for-choice/> and <http://blog.catalogchoice.org/2008/09/25/american-catalog-mailers-association-endorses-catalog-choice/>



companies accountable to honor opt-out choices. Our audit model is based on a crowd sourcing system in which we monitor the volume of repeat opt-out requests and complaints submitted by members on a brand basis. The benefit of our audit model is that it applies to all companies in our system, not just member companies.

In an effort to allow companies to make honoring choice a competitive advantage rather than simply a cost of doing business, Catalog Choice has developed a certification program referred to as Respected Choice Certification. The Respected Choice Certification program requires participation in the Catalog Choice company program, includes an audit of the company's name/address suppression practices, an on-going audit of their compliance with opt-out requests and a recognizable label that can be placed on their website and marketing material. The Respected Choice Certification label will provide the "enhanced notice" that rapidly communicates consumer choice mechanisms on or near order forms and marketing material.



As the Internet Task Force moves forward to refine the Green Paper, we encourage the Task Force to take into account all of the communication channels that are utilized. As the Task Force looks for successful "voluntary code of conduct" programs that have demonstrated success with consumers and industry, we welcome the opportunity to provide more detail on how Catalog Choice is making choice work for consumers and businesses.

Respectfully submitted,

/s

Chuck Teller
Executive Director
Catalog Choice