



June 14, 2010

National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW
Room 4725
Washington, DC 20230

Re: Docket No. 100402174-0175-01

Dear Sir/Madam,

The Marketing Research Association (MRA) hereby submits these comments in response to the Department's Notice of Inquiry, "Information Privacy and Innovation in the Internet Economy"¹, in support of the survey and opinion research profession.

Respectfully,

LaToya Rembert-Lang
General Counsel
MRA

¹ 75 Fed. Reg. 21226 (April 23, 2010).

**Before the
United States Department of Commerce
Office of the Secretary
National Telecommunications and Information Administration
International Trade Administration
National Institute of Standards and Technology**

In the Matter of:)
)
Information Privacy and Innovation in)
the Internet Economy) **Docket No. 100402174-0175-01**
)
)

COMMENTS OF THE MARKETING RESEARCH ASSOCIATION (MRA)

LaToya D. Rembert-Lang
General Counsel
Marketing Research Association
1111 16th Street, NW Suite 120
Washington, DC 20036
(202) 775-5171

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INTRODUCTION AND SUMMARY

The Marketing Research Association (MRA) hereby submits comments in response to the Notice of Inquiry seeking comment on the impact of current privacy laws on the pace of innovation in the information economy. Specifically, MRA comments on the scope of current privacy laws and its implications for the survey and opinion research profession.

MRA, a non-profit national membership association, is the leading and largest association of the survey and opinion research profession. MRA promotes, advocates and protects the integrity of the research profession and strives to improve research participation and quality. The research profession is a multi-billion dollar worldwide industry, comprised of pollsters and government, public opinion, academic and goods and services researchers, whose companies and organizations range from large multinational corporations to small or even one-person businesses.

Survey and opinion research is the scientific process of gathering, measuring and analyzing public opinion and behavior.² On behalf of their clients -- including the government (the world's largest purchaser), media, political campaigns, and commercial and non-profit entities -- researchers design studies and collect and analyze data from a small but statistically-balanced sample of the public. Researchers seek to determine the public's opinion regarding products, services, issues, candidates and other topics. Such information is used to develop new products, improve services, and inform policy.

² MRA has developed the following definition of survey and opinion research, in consultation with the research profession: "Bona Fide Survey and Opinion Research" means the collection and analysis of data regarding opinions, needs, awareness, knowledge, views, experiences and behaviors of a population, through the development and administration of surveys, interviews, focus groups, polls, observation, or other research methodologies, in which no sales, promotional or marketing efforts are involved and through which there is no attempt to influence a participant's attitudes or behavior.

III. THE DEPARTMENT SHOULD SUPPORT A PRIVACY STANDARD OF SELF-REGULATION

A. The Survey and Opinion Research Profession Incorporates a Standard of Self-Regulation

Privacy is a key component of the survey and opinion research profession. The survey and opinion research profession is unlike most businesses that collect data in support of their businesses or in order to make their businesses work. The collection and analysis of data is the business of the survey and opinion research profession. Therefore, privacy is the cornerstone of the survey and opinion research profession.

Research information is not normally looked at by individual answers. Instead, each person's answers are combined with those of many others reported as a group to the client who requested the survey. Moreover, most research companies destroy individual data records at the end of the study, and names and contact information of participants are separated from the answers if additional tabulation of the results is conducted. Again, all of the personally identifiable records are usually destroyed after the study is completed or the validation check has been made, and all of a respondent's personally identifiable information is kept strictly confidential. Legitimate survey and opinion researchers never divulge the identity, personal information or individual answers of a research participant unless specifically granted permission to do so by the participant.

Due to the nature of the survey and opinion research process, confidentiality is the bedrock of the research and the resultant industry codes and guidelines, like the MRA Code of Marketing Research Standards³. Members of MRA are stringently bound by their ethical obligation to protect the privacy and confidentiality of research participants

³ *MRA Expanded Code of Market Research*, available at <http://www.mra-net.org/resources/documents/CodeMRStandards.pdf>.

and their data and maintain thorough practices to obtain consent prior to sharing any personally identifiable information. MRA members uphold to the Federal Trade Commission's Fair Information Practice Principles⁴ and have numerous best practices on the handling of personal information.

The Department should support the approaches taken by MRA and the survey and opinion research profession and recommend model guidelines that promote self-regulation of privacy and confidentiality. Standards should be implemented that support the notion of protecting the privacy and confidentiality of consumers, but also maintain that the specifics of protecting consumers should be determined according to the individual endeavors of each business in a self-regulated framework. The standards should particularly focus on the incorporation of codes and guidelines, formal complaint procedures, best practices and the application of the Fair Information Practice Principles.

IV. THE DEPARTMENT SHOULD ENDORSE FEDERAL PRIVACY LAWS THAT PRE-EMPT STATE LAW

A. A Segmented Privacy Law Framework Imposes Compliance Burdens on Survey and Opinion Research

The multitude of various federal and state privacy laws creates a fragmented privacy framework that makes compliance difficult for survey and opinion researchers. Current privacy laws create different obligations and challenges, and sometimes conflicting standards. The burden of compliance with multiple privacy laws with different obligations is a serious challenge for a profession whose business is data. The survey and opinion research profession is composed of a broad spectrum of various

⁴ Federal Trade Commission, Fair Information Practice Principles, available at <http://www.ftc.gov/reports/privacy3/fairinfo.shtm>. These principles include: Notice/Awareness, Choice/Consent, Access/Participation and Integrity/Security.

entities which are often small businesses and often engage in multi-state and international survey research activities. Due to the broad nature of privacy laws on the state and federal level, survey and opinion researchers are often forced to create different research models based on the location where the research is conducted. As a result, there is a time burden imposed on completing a research study and an extensive cost burden for maintaining standards for compliance practices and procedures for every law and regulation.

The Department should endorse federal privacy laws that pre-empt the numerous privacy laws on the state level. The federal privacy framework should be based on the overarching needs of protecting the privacy and personal information of consumers that has been often incorporated in state laws, but develop a means whereby conflicting standards are overruled in a comprehensive federal privacy law that promotes a uniform standard for privacy enforcement.

B. The Department Should Not Endorse a Federal Privacy Law Framework Based on the European Union

Although the Department should endorse the creation of federal privacy laws, the framework should not follow the model of the European Union.⁵ The framework should be based on the needs of businesses and consumers within the United States and their respective perceptions of and needs for privacy. Privacy should balance the needs of consumers with the ability to share information in order to conduct business.

The Department, however, should establish a privacy law framework that harmonizes international laws, particularly with respect to the EU Data Directive. This

⁵ See Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31 *et seq.*).

framework should reflect the desires of businesses dealing in the EU environment, but also incorporate practices that allow the free flow of information to continue. The framework should support the notion of safeguarding personal information, yet safeguarding should be based on the level of sensitivity of the information.

CONCLUSION

The survey and opinion research professional supports the endeavors of the Department in creating a model privacy law framework. For the reasons illuminated in this comment, MRA respectfully requests that any proposed legislation or regulatory activity be reflective to balance the needs of consumers and businesses as any direct law or regulation will have serious implications for the survey and opinion research profession. Thank you for providing the survey and opinion research profession the opportunity to share our perspectives in this matter. We look forward to working with the Department to create a privacy law framework that incorporates the business needs of the survey and opinion research profession.

Respectfully Submitted,



LaToya D. Rembert-Lang
MRA
1111 16th Street, Suite 120
Washington, D.C. 20036
(202) 775-5171