

HOUSE No. 313

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act Relative to Online Advertising..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 An Act Relative To Online Advertising

2 Section 1. Notwithstanding any general or special law to the contrary, there shall hereby
3 be established the Online Advertising Act.

4 Section 2. For the purposes of this act, the following terms shall have the following
5 meanings:

6 (A)The term “consumer” shall mean any natural person using or accessing a website,
7 webpage or online service that includes the display of advertisements.

8 (B) The term “non-personally identifiable information” means information collected or
9 logged by a third party advertising network that cannot be used, by itself, to contact, identify or
10 locate a particular person. Non-personally identifiable information is typically compiled from
11 click stream information compiled as a browser moves among different websites serviced by a
12 particular third party advertising network, but may also include other information collected

13 directly by the third party advertising network or provided by third parties (so long as that
14 information is not personally identifiable to the third party advertising network).

15 (C) The term “online preference marketing” means a type of third party ad delivery and
16 reporting whereby data is collected over time and across multiple web pages controlled by
17 different publishers to determine or predict consumer characteristics or preference for use in ad
18 delivery on the web. Online preference marketing may include the use of personally or non-
19 personally identifiable information. Online preference marketing excludes the use of data
20 provided by a publisher directly to a third party advertising network and used by that third party
21 advertising network for Internet advertising solely on behalf of such publisher.

22 (D) The term “personally identifiable information” means data that, by itself, can be used
23 to identify, contact or locate a person, including name, address, telephone number, or email
24 address.

25 (E) The term “publisher” means any company, individual or other group that has a
26 website, webpage or other Internet page.

27 (F) The term “third party ad delivery and reporting” means (1) providing an
28 advertisement to a third party website; (2) statistical reporting in connection with the activity on
29 a third party website; (3) tracking the number of advertisements served on a particular day to a
30 particular third party website; and (4) any other activity related to the delivery of advertisements
31 on a third party website and that involves the collection or logging of personally or non-
32 personally identifiable information about individual visits by a consumer or web browser on the
33 third party website.

34 (G) The term “third party advertising network” shall mean any company, individual or
35 other group that is collecting personally or non-personally identifiable information for the
36 purposes of third party ad delivery and reporting.

37 Section 3. Notice

38 (A) A third party advertising network shall post clear and conspicuous notice on its own
39 website about its data collection and use practices related to its third party ad delivery and
40 reporting activities.

41 (1) Such notice shall include, without limitation, clear descriptions of the following: (a)
42 what types of information are collected by the third party advertising network through its third
43 party ad delivery and reporting activities; (b) the types of additional data that may be combined
44 with data collected through third party ad delivery and reporting; (c) how personally and non-
45 personally identifiable information will be used by the third party advertising network including
46 transfer, if any, of non-aggregate data to a third party; and (d) the approximate length of time that
47 such information will be retained by the third party advertising network.

48 (2) If the third party advertising network engages in online preference marketing, such
49 notice shall also include clear descriptions of the following: (a) profiling activities undertaken by
50 the third party advertising network, including all the types of personally and non-personally
51 identifiable information that may be used for online preference marketing; and (b) procedures for
52 opting-out of such data use, as required by Section 4(A) of this Act (including a description of
53 the circumstances that would make it necessary for a consumer to renew the opt-out, such as
54 when a consumer changes computers, changes browsers, or deletes relevant cookies).

55 (3) If the third party advertising network seeks consent from consumers for the use of
56 sensitive information for the purposes of online preference marketing, as required by Section
57 4(B) of this Act, such notice shall also include a clear description of (a) the types of sensitive
58 information to be used, and (b) the procedures for revoking such consent.

59 (4) If the third party advertising network seeks consent from consumers for the merger of
60 personally identifiable information with non-personally identifiable information, as required by
61 Sections 4(C) and 4(D) of this Act, such notice shall also include a clear description of (a) the
62 types of non-personally identifiable information and personally identifiable information that may
63 be merged; and (b) the procedures for revoking such consent for any further merger on a
64 prospective basis.

65 (5) If a third party advertising network materially changes its data collection and use
66 policy, prior notice shall be posted on its website. Any such material change shall apply only to
67 information collected following the change in policy. Information collected prior to the material
68 change in policy shall continue to be governed by the policy in effect at the time the information
69 was collected, unless the consumer receives direct notice of the change and an opportunity to
70 choose not to have previously collected information governed by the new policy.

71 (B) A third party advertising network, when entering into a contract with a publisher for
72 third party ad delivery and reporting services, shall require that the publisher post a privacy
73 policy that clearly and conspicuously discloses the publisher's use of a third party advertising
74 network and the type(s) of information that may be collected by the third party advertising
75 network.

76 (1) If the third party ad delivery and reporting services include online preference
77 marketing, then the notice shall also clearly and conspicuously (a) disclose that the consumer has
78 the ability to opt-out of online preference marketing and (b) include a link to the opt-out page.

79 (2) The third party advertising network shall make every reasonable effort to ensure that
80 any publisher using its third party ad delivery and reporting services post a privacy policy on the
81 publisher's website as required by this section.

82 Section 4. Consumer Choice

83 (A) A third party advertising network that engages in online preference marketing must
84 provide a means for consumers to opt-out of online preference marketing by that third party
85 advertising network. Such means shall be accessible at a designated opt-out page on the third
86 party advertising network's website.

87 (B) Third party advertising networks shall not use information about sensitive medical or
88 financial data, sexual behavior or sexual orientation for the purposes of online preference
89 marketing without the affirmative consent of the consumer. A third party advertising network
90 that seeks such consent must also provide a means of revoking such consent on a prospective
91 basis. Such means shall be accessible at a designated location on the third party advertising
92 network's website.

93 (C) Third party advertising networks shall not merge non-personally identifiable
94 information collected through third party ad delivery and reporting activities with personally
95 identifiable information without the consumer's prior consent to such merger.

96 (1) If the merger involves non-personally identifiable information collected on a
97 prospective basis only, prominent notice and an opportunity to opt-out is required. The means of
98 opting-out must remain available at a designated location on the third party advertising
99 network's website. When a consumer exercises the opt out at a later time, after information has
100 been merged, the effect of that choice will be to revoke consent for further mergers of such
101 information on a prospective basis only.

102 (2) If the merger involves previously collected non-personally identifiable information,
103 affirmative (opt-in) consent is required. A third party advertising network that seeks such
104 consent must also provide a means of revoking consent for further mergers of such data on a
105 prospective basis. Such means shall be accessible at a designated location on the third party
106 advertising network's website.

107 Section 5. Security

108 (A) Third party advertising networks shall make reasonable efforts to protect the data
109 they collect or log as a result of third party ad delivery and reporting from loss, misuse,
110 alteration, destruction or improper access.

111 (B) Third party advertising networks that collect both non-personally identifiable
112 information through ad delivery and reporting activities and personally identifiable information
113 directly from consumers or from third parties, shall implement reasonable technical and
114 procedural protections to prevent the merger of personally identifiable information and non-
115 personally identifiable information in the absence of (a) the consent of the consumer as required
116 by Section 4(C) of this Act, or (b) a requirement of law.

117 Section 6. Consumer Access

118 (A) Third party advertising networks shall provide consumers with reasonable access to
119 personally identifiable information and other information that is directly associated with
120 personally identifiable information retained by the third party advertising network for third party
121 ad delivery and reporting uses.

122 (B) EXCEPTIONS- This section shall not require a third party advertising network to
123 provide an individual with access where:

124 (1) The consumer requesting access cannot reasonably verify his or her identity as the
125 person to whom the personally identifiable information relates;

126 (2) The rights of persons other than the consumer would be violated;

127 (3) The burden or expense of providing access would be disproportionate to the risks of
128 harm to the consumer in the case in question;

129 (4) Proprietary or confidential information, technology or business processes would be
130 revealed as a result;

131 (5) revealing the information would likely affect litigation or judicial proceeding in
132 which the third party advertising network has an interest; or

133 (6) Revealing the information would be unlawful, or would likely interfere with the
134 detection or prevention of unlawful activity.

135 (C) FEES- A third party advertising network may charge a reasonable fee for providing
136 access in accordance with paragraph (A), which shall not exceed the greater of:

137 (1) The actual cost to the third party advertising network of responding to the consumer's
138 access request, or

139 (2) The average cost to the third party advertising network of responding to access
140 requests of a similar type.

141 (D) NO RETENTION OBLIGATION.— The obligation to provide access does not, by
142 itself, create any obligation on the organization to retain personally identifiable information.

143 Section 7. Duration

144 Third party advertising networks shall keep and use non-personally identifiable
145 information collected through third party ad delivery and reporting activities for duration of a
146 maximum of twenty-four months from the time of collection, after which the non-personally
147 identifiable information has to be deleted from the third party advertising networks data storage.

148 Section 8. Enforcement

149 (A) The Attorney General may bring an action against a third party advertising network
150 that violates the provisions of this section.

151 (B) Any third party advertising network that violates this section shall be subject to a
152 statutory penalty of not more than one thousand dollars for each instance that this section is
153 violated.

154 (C) A court may increase the statutory penalty up to three times allowed by paragraph (B)
155 of this section where the third party advertising network has been found to have engaged in a
156 pattern and practice of violating the provisions of this section.

157 (D) Nothing in this section shall in any way limit rights or remedies which are otherwise
158 available under law to the Attorney General.