HOUSE DOCKET, NO. 3165 FILED ON: 1/21/2011

HOUSE . . . . . No. 2705

The Commonwealth of Massachusetts

PRESENTED BY:

William M. Straus

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to online advertising.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
William M. Straus	*10th Bristol*

HOUSE DOCKET, NO. 3165 FILED ON: 1/21/2011

HOUSE . . . . . No. 2705

By Mr. Straus of Mattapoisett, a petition (accompanied by bill, House, No. 2705) of William M. Straus for legislation to further regulate advertising on the Internet. Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *313* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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:

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

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

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

(B) The term "non-personally identifiable information" means information collected or logged by a third party advertising network that cannot be used, by itself, to contact, identify or locate a particular person. Non-personally identifiable information is typically compiled from

10 click stream information compiled as a browser moves among different websites serviced by a
11 particular third party advertising network, but may also include other information collected
12 directly by the third party advertising network or provided by third parties (so long as that
13 information is not personally identifiable to the third party advertising network).

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

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

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

26 (F) The term "third party ad delivery and reporting" means (1) providing an
27 advertisement to a third party website; (2) statistical reporting in connection with the activity on
28 a third party website; (3) tracking the number of advertisements served on a particular day to a
29 particular third party website; and (4) any other activity related to the delivery of advertisements
30 on a third party website and that involves the collection or logging of personally or non-

31 personally identifiable information about individual visits by a consumer or web browser on the
32 third party website.

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

36 Section 3. Notice

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

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

47 (2) If the third party advertising network engages in online preference marketing, such
48 notice shall also include clear descriptions of the following: (a) profiling activities undertaken by
49 the third party advertising network, including all the types of personally and non-personally
50 identifiable information that may be used for online preference marketing; and (b) procedures for
51 opting-out of such data use, as required by Section 4(A) of this Act (including a description of

52 the circumstances that would make it necessary for a consumer to renew the opt-out, such as
53 when a consumer changes computers, changes browsers, or deletes relevant cookies).

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

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

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

70 (B) A third party advertising network, when entering into a contract with a publisher for
71 third party ad delivery and reporting services, shall require that the publisher post a privacy
72 policy that clearly and conspicuously discloses the publisher's use of a third party advertising

73 network and the type(s) of information that may be collected by the third party advertising
74 network.

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

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

81 Section 4. Consumer Choice

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

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

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

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

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

106 Section 5. Security

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

110 (B) Third party advertising networks that collect both non-personally identifiable
111 information through ad delivery and reporting activities and personally identifiable information
112 directly from consumers or from third parties, shall implement reasonable technical and
113 procedural protections to prevent the merger of personally identifiable information and non-

114 personally identifiable information in the absence of (a) the consent of the consumer as required
115 by Section 4(C) of this Act, or (b) a requirement of law.

116 Section 6. Consumer Access

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

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

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

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

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

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

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

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

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

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

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

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

142 Section 7. Duration

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

147 Section 8. Enforcement

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

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

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

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