

**NetChoice** *Promoting Convenience, Choice, and Commerce on The Net*

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SUBMITTED ELECTRONICALLY



**NetChoice Comments for the Record for  
US House of Representatives Energy & Commerce Committee Hearing:  
*Facebook: Transparency and Use of Consumer Data***

NetChoice respectfully submits the following comments for the record regarding the US House of Representatives Energy & Commerce Committee hearing: *Facebook: Transparency and Use of Consumer Data*.

NetChoice is a trade association of leading e-commerce and online companies. We work to promote the integrity and availability of the global internet and are significantly engaged in privacy issues in the states, in Washington, and in international internet governance organizations.

Through these comments we seek to clarify the potential harm to America's businesses from aggressive laws and regulations on online platforms. For example, taking a European approach<sup>1</sup> on interest-based ads would cost American businesses \$340 billion over the next five years. Consumers would also have a worse user experience accompanied with less relevant advertising.

Likewise, limitations on large online platforms will impact the small and mid-size businesses who rely on the size and scope of these platforms to reach customers and grow their business.

**Eliminating interest-based ads by default will cost American businesses and make it harder for Americans to access content**

Calls to limit or eliminate interest-based ads by default, like the BROWSER Act,<sup>2</sup> would erase up to \$340 billion in advertising revenue from American websites over the next five years.<sup>3</sup> This means potentially less content, more ads, and/or more paywalls.

Requiring users to opt-in to interest-based advertising and studies have shown that such an opt-in regime reduces online ads' effectiveness by 65 percent. This precipitous drop in ad effectiveness means a likewise drop in revenue for American businesses and a worse user experience.

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<sup>1</sup> See, European Privacy and Electronic Communications Directive 2002/58/EC.

<sup>2</sup> Balancing the Rights of Web Surfers Equally and Responsibly Act of 2017, H. R. 2520 (May 18, 2018).

<sup>3</sup> See Analysis at <https://netchoice.org/library/loss-of-340-billion/>.

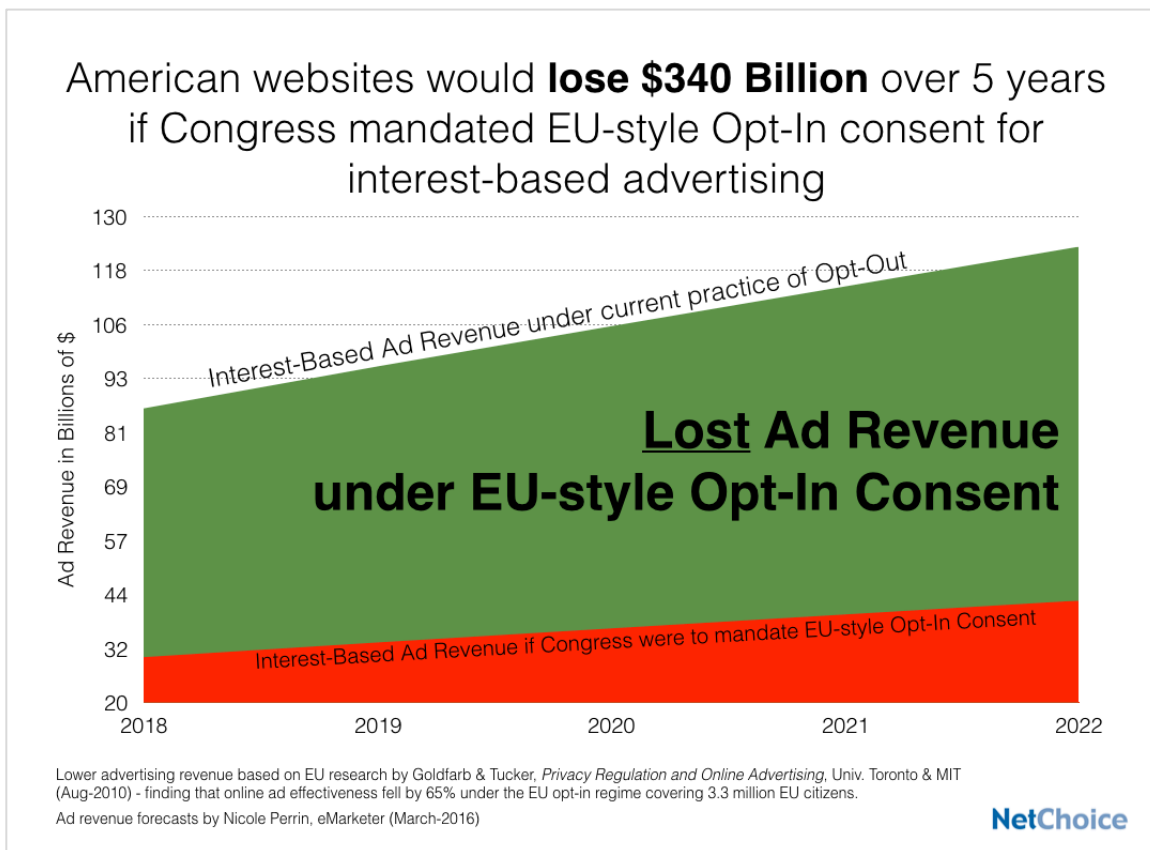
There is an old adage:

“Half the money spent on advertisements is wasted, I just don’t know which half.”

This quote represents a problem from a by-gone era where only mass-media advertisements were really possible – think TV commercials, radio spots, and newspaper ads. With these ads, the likelihood that the viewer is interested in the ad is likely low resulting in inefficient advertising expenses.

Conversely, interest-based ads enable small businesses to better spend their limited advertising dollars. Studies have shown that interest-based advertisements are 65% more effective than contextual ads.<sup>4</sup> Interest-based ads help small businesses show potential customers products they actually want and allows small businesses to use more money to grow their business and hire new employees.

Taking actions to return to the old-school advertising model will fall hard on for small businesses.



It’s not just American businesses that lose with such restrictions, but also American consumers visiting websites. Because of \$340 billion price tag for such advertising restrictions, we’ll see one or more of these consequences:

- Websites will show more ads to make up lost revenue.
- Websites will have less to spend on reporters, content, services, and innovation.
- Some websites will erect paywalls for content that users get for free today.

<sup>4</sup> Goldfarb & Tucker, *Privacy Regulation and Online Advertising*, Univ. Toronto & MIT (Aug-2010) - finding that online ad effectiveness fell by 65% under the EU opt-in regime covering 3.3 million EU citizens.

These consequences are bad for American consumers, and especially harmful for low-income households that can't afford to pay for online services.

## **America's small businesses and organizations rely on online platforms**

Erasing \$340 billion of revenue from American websites hits small businesses and small organizations the hardest, since they depend on low-cost and effective interest-based advertising to reach new customers and engage with existing ones. This connection is especially important for small and mid-size businesses who may have neither the name recognition nor the funds to afford traditional advertising.

Think back twenty years ago, when new businesses spread the word through expensive broadcast and newspaper advertising and direct mail campaigns. This was costly and not particularly effective, since advertisers were unable to effectively target viewers and households who had an interest in their products.

But online platforms have revolutionized advertising for small businesses and non-profit organizations. Using online platforms, small businesses now connect with potential customers at a fraction of the cost they would have historically paid.

National advertising used to be restricted to all but the wealthiest companies. Using online platforms, now any business of any size can advertise across the country. Of course, the larger the platform, the easier it is for America's small businesses to connect with those most likely to be interested.

A recent survey by Morning Consult<sup>5</sup> found that:

- 84% of small enterprises use at least one major digital platform to provide information to customers
- 70% of small businesses said that Facebook helps them attract new customers

There are many examples of small businesses leveraging online platforms in every part of America.

### ***All Things Real Estate in Portland, OR***

For a couple of dollars, this small business can reach their target audience with ads. The female-owned business used Facebook to increase sales by 500% in less than 10 months by connecting with likely customers.

Owner Tracey Hicks said, "Many of our customers tell us they saw our ads on Facebook or saw another realtor wearing our products and ask us for the same. If it wasn't for our Facebook ads we wouldn't be as big as we are now."

### ***CandyLipz LLC. in San Francisco, CA***

Facing declining revenue, owner Thienna Ho turned to online platforms to help her businesses. As a result, she has grown her business from three to fifteen employees in 15 months.

### ***Lost Cabin Beer Co. in Rapid City, SD***

Realizing that legacy media was cost-prohibitive and ineffective, this small beverage company leveraged online platforms to find customers and grow their business.

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<sup>5</sup> Examining the Impact of Technology on Small Businesses, *available at* [https://www.uschamber.com/sites/default/files/ctec\\_sme-rpt\\_v3.pdf](https://www.uschamber.com/sites/default/files/ctec_sme-rpt_v3.pdf)

### ***Sons & Daughters Farm and Winery in West Palm Beach, FL***

Following Hurricane Katrina, this family farm was decimated. Using online platforms, this small family business was able to reinvigorate their wine business and is now also hosting parties and weddings at their farm.

### ***Bluntzer Fruit Stand in Robstown, TX***

This business of farmers leveraged online platforms to reach customers who would never have otherwise visited their farm.

One founder said that because of online platforms, “I am never out of reach of my customers or their needs. The fruit stand may close at 6 p.m., but our customer service department is open 24/7. I think our clients really enjoy that about us.”

Platforms also help smaller enterprises to find new employees and help job-seekers to find work. Large online platforms like LinkedIn and ZipRecruiter rely on their large platforms to quickly connect employers with ideal candidates.

With over 8 million job listings and over 7 million active job seekers each month, ZipRecruiter connects 80% of employers with quality candidates within 24 hours.<sup>6</sup> Of course, the larger the platform, the easier it is for businesses and potential employees to connect.

## **Online platforms are already subject to hundreds of laws and regulations**

Today, every online platform is subject to multiple laws and regulations, including 47 state laws regarding data breaches and over a hundred state and federal privacy laws and regulations.

Take for example Section 5 of the Federal Trade Commission (“FTC”) Act, which prohibits “unfair or deceptive trade practices.”<sup>7</sup> This broad enforcement power enables the FTC to take action against online platforms that fail to honor their terms-of-service or privacy promises.<sup>8</sup> Likewise, the FTC has used its unfairness enforcement power to take action against businesses that fail to adequately protect data.<sup>9</sup>

Moreover, Section 5 of the FTC Act is enforceable by the Federal Trade Commission and by every state Attorney General under the “little Section 5” authority.

Other laws which regulate online platforms include, the Children’s Online Privacy Protection Act,<sup>10</sup> California’s Online Privacy Protection Act,<sup>11</sup> California’s Privacy Rights for California Minors in the Digital

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<sup>6</sup> See, e.g., About Us – Ziprecruiter, <https://www.ziprecruiter.com/about>.

<sup>7</sup> Federal Trade Commission Act, 15 USC §45 (“FTC Act”), “The Commission is hereby empowered and directed to prevent [use of] unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.”

<sup>8</sup> See, e.g. *In the Matter of Nomi Technologies, Inc.*, Matter No. 1323251 (Apr. 2015). The FTC found that a technical error in Nomi’s privacy policy was enough for an enforcement action even though the FTC couldn’t show a single consumer misunderstood or suffered any harm.

<sup>9</sup> See *In the Matter of ASUSTeK Computer, Inc.*, Complaint, FTC Dkt. No. C-4587 (July 18, 2016) (company’s cloud storage service, offered in connection with sale of internet routers, was allegedly insecure).

<sup>10</sup> 15 U.S.C. 6501–6505

<sup>11</sup> Calif. Bus. & Prof. Code §§ 22575-22578

World Act,<sup>12</sup> Delaware’s Online and Personal Privacy Protection,<sup>13</sup> and the Pennsylvania Deceptive or fraudulent business practices law,<sup>14</sup> to name a few.

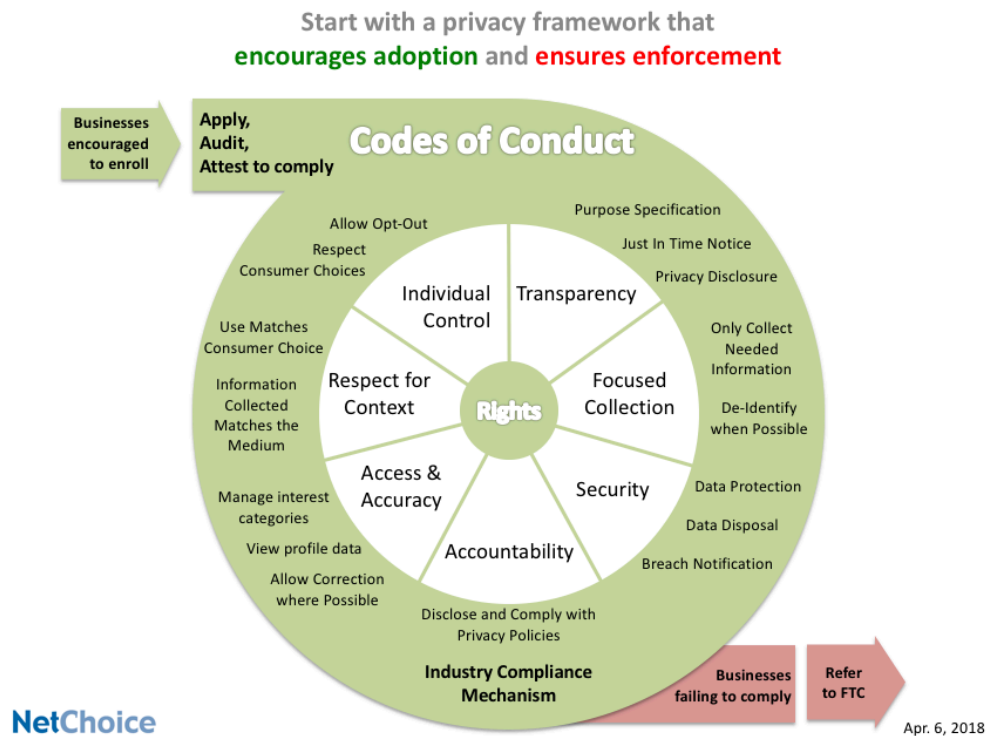
Clearly, the suggestion that “internet platforms are unregulated” is inaccurate.

## Role for Government

The role for government should be where consumers cannot adequately act to protect their privacy interests, through choices they alone can make. Government should use its powers to pursue online fraud and criminal misuse of data, not to create rules that narrowly prescribe how data should be used.

Overall, we support the notion that businesses and customers – not governments – must take the lead on data privacy. Businesses need to pursue innovation without repeatedly asking for permission from government agencies. And consumers must understand the decisions they make and must be allowed to make those decisions.

We offer this conceptual view of an industry self-regulatory framework that dynamically adapts to new technologies and services, encourages participation, and enhances compliance.



As seen in the conceptual overview, components of the Privacy Bill of Rights form the aspirational core that influences business conduct regarding data privacy. From previous work by the FTC, NAI, and IAB, we’ve established the foundational principles for the collection and use of personal information:

<sup>12</sup> Calif. Bus. & Prof. Code §§ 22580-22582

<sup>13</sup> Del. Code § 19-7-705

<sup>14</sup> 18 Pa. C.S.A. § 4107(a)(10)

individual control, transparency, respect for context, access and accuracy, focused collection, accountability, and security.

Participating companies would publicly attest to implement Codes within their business operations, including periodic compliance reviews. If a company failed to comply with the adopted Codes, the FTC and state Attorneys General could bring enforcement actions, as is currently the case when companies fail to honor their adopted privacy policies.

We thank the Committee for giving us the opportunity to present our concerns and look forward to further discussions about this important topic.

Sincerely,

Carl Szabo

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