

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

Carl Szabo, Policy Counsel
1401 K St NW, Suite 502
Washington, DC 20005
202-420-7485
www.netchoice.org



Joanne McNabb
Director of Privacy Education and Policy
California Office of the Attorney General
1300 I Street
Sacramento, CA 95814

January 8, 2014

Re: Comments on Tracking Transparency Best Practices Document

We thank the California Attorney General’s Office of Privacy Education and Policy for the opportunity to provide comments on the “Tracking Transparency Best Practices Draft.”

As explained below, we are extremely concerned that the “Tracking Transparency Best Practices” document is confusing, misleading, and puts legally compliant businesses at risk of new lawsuits.

“Best Practices” Document Creates Confusion

AB 370 is clear on its face as to its requirements. This is not surprising, since the AG’s office, privacy advocates, and our industry worked together on the language of the bill. So, adding these “best practices” on top of AB 370 clouds an otherwise clear law. If the AG’s office still believes that more clarity is required, then the “best practices” document should go through a formal rulemaking process. (Cal. Gov’t Code section 11340, *et seq.*)

Compliance with “Best Practices” Document May Be Deceptive

Businesses compliant with these “best practices” still face legal action for deceptive practices, since there is not yet a technical standard for a “Do Not Track” browser request. Businesses asserting that they honor a Do Not Track browser request may not actually do so in all cases for all browsers. This creates a new risk of being sued for deceptive trade practices – just for following these guidelines.

Encourages New Civil Suits

California provides its plaintiff’s bar a private right of action with statutory damages. These guidelines encourage the plaintiff’s bar to bring new suits against businesses struggling to achieve compliance with AB 370. This is because these “best practices” have the same effect as rulemaking. They create a standard for what constitutes compliance in California and could prompt a rash of lawsuits.

Help Small Businesses Comply with the Existing Law Before Creating New Requirements

Many small businesses are unaware of their new legal obligations under AB 370. Rather than generate more confusing changes to privacy policies, we ask the AG’s office to instead help industry achieve compliance with law as written, and enforce against bad actors that flagrantly ignore the law.

Sincerely,

Carl Szabo
Policy Counsel, NetChoice

NetChoice is a coalition of e-Commerce businesses. Learn more about NetChoice at www.netchoice.org