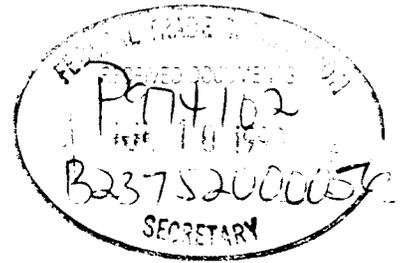


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July 10, 1998

Mr. Donald S. Clark  
Secretary  
Federal Trade Commission  
Room H-159  
Sixth Street and Pennsylvania Avenue, NW  
Washington, DC 20580

Re: Interpretation of Rules and Guides For Electronic Media - Comment, FTC File No. P974102

Dear Secretary Clark:

The American Advertising Federation appreciates the opportunity to comment on the Commission's proposed *Interpretation of Rules and Guides for Electronic Media*, published in the May 6, 1998 Federal Register. We believe this is an important issue for consumers and marketers alike, and would like to participate in any Commission workshop dealing with these issues.

The American Advertising Federation is the only national association representing all facets of the advertising industry - advertisers, agencies and the media. In addition to 140 corporate members, AAF membership includes 50,000 advertising professionals in 220 local advertising federations across the country and students on 240 college campuses.

We applaud the Commission for addressing these important issues. Appropriate guidance can only benefit consumers and businesses alike. AAF believes that the overriding principles of advertising regulation remain the same regardless of medium. Advertising must be truthful and not misleading, and disclosures must be clear and conspicuous. These principles do not change whether the medium is print, broadcast, outdoor or the Internet.

Obviously, the capabilities of each medium play a part in determining what is clear and conspicuous. A billboard will never be able to accommodate the same amount of information as a Web page. However, just as outdoor advertising should not be penalized because of its limitation, by requiring more information than can practicably be transmitted, Internet Web pages should not be penalized for their ability to include large amounts of information by imposing undue requirements.

Certainly, as a medium, the Internet has a seemingly unlimited ability to benefit consumers and marketers alike. Never before have consumers had the opportunity to gain access to such a wealth of information about available products and services. Consumers also have

the convenience of being able to access the information at their leisure spending as much or little time with it as they desire.

We believe an appropriate regulatory policy for the Internet should be based on the question of whether reasonable consumers are likely to be misled by the practices being regulated and whether the regulations are as minimally restrictive as possible.

We believe also, that it is safe to generalize that users of the Internet are knowledgeable as to the uses and limitations of the medium itself. While they may not have any special sophistication as relates to the products or services themselves, most Internet users are well versed in navigating Web pages and finding and searching for information.

AAF therefore urges the Commission to use caution in drafting or interpreting existing rules for the Internet or any new communications technologies. Because of rapid advances in computer science, any rules or guidelines too specific to a particular state of the technology may become rapidly outdated.

Given this background, a number of issues in the draft give rise to concern.

#### **“Written” or “Printed” Information**

The interpretation of “written,” “writing,” and “printed” disclosure information is simply unworkable. The guides would clarify that these terms refer to “information that is capable of being preserved in a tangible form and read” and which consumers can “preserve . . . for possible later review either by printing if on paper, saving it on disk, or by some other means.” Unfortunately, not all consumers have state of the art computers. Many do not have the capability to download information from the Internet, either to disk or paper.

Because of the very nature of a Web page, all information contained in the page is accessible to the consumer for as long as the consumer needs or wants to access it. In addition, the consumer may return to previously viewed information. The ability to print or save a disclosure, therefore, is both unnecessary and unworkable.

#### **Direct Mail**

AAF recommends that the Commission utilize an interpretation of “direct mail” to include only those communications which are individually addressed and capable of being received privately. Such a definition is analogous to direct mail received through traditional mail.

We do not believe that targeted advertising on the Internet should be treated as direct mail. While click patterns and use of search terms may allow advertisers to target consumers by interest, the advertising appears in a public forum, a Web site. In reality, such advertising is more closely analogous to billboards in a sports stadium, or flyers distributed at a music festival.

### **Unavoidable**

AAF believes that the “unavoidable” standard articulated in the draft is unreasonable and unattainable. The very nature of Web sites requires exploration by the consumer. Information is accessed by scrolling through a page, or clicking on icons to move to other pages. Even within the context of a single page of information, different consumers will have more or less information on the screen at any given time due to the technological state of their computer equipment. Given these technological realities of Web sites and consumer equipment, there is no reason that clicking an icon to reach the disclosure page cannot meet the clear and conspicuous standard.

### **“Understood” Button**

Question 19 asks whether requiring the consumer to click on an “understood” button before being allowed to continue would assure that disclosures would be noticed and understood. AAF opposes such a requirement. Such a button would do nothing to insure that a consumer actually read or understood the information offered. There is simply no way for a marketer, or the government, to force a consumer to read something he or she does not want to read. Experienced users of the Internet are accustomed to quickly scrolling through information looking for the next link.

The use of an “understood” button in conjunction with disclosures would also create a higher, and unfair, standard for Internet advertisers. Currently, there is no other medium in which the Commission requires the consumer to take such an affirmative step in order to receive more information. Simply because something can be done does not mean it should be done. And it is by no means certain that all marketers have the technological capabilities to include both an “understood” button and an effective tracking mechanism to insure that consumers do use the button.

### **Conclusion**

The Internet is still a relatively new and exciting medium. The possibilities, for marketers and consumers, are virtually endless. Because of its newness and constant advances in technology, little is known about user perceptions, habits and comprehension. AAF urges the Commission to act with all possible caution. We are not aware of any serious

problems in this area. We do see any reason to believe that overly restrictive interpretation of regulations will provide addition consumer protection. Yet such an interpretation will serve to chill marketers from utilizing the Web, to the detriment of the marketers and consumers.

Respectfully submitted,

Jeff Perlman  
Senior Vice President-Government Affairs