

Prepared Statement of Scott Meyer

CEO and Founder

Evidon, Inc.

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Introduction

Chairman Bono Mack, Ranking Member Butterfield and distinguished Members of the Subcommittee, my name is Scott Meyer, and I am the CEO and Founder of Evidon. I appreciate the opportunity to appear before you today to testify about consumer expectations regarding online behavioral advertising (“OBA”) and the important role that Evidon plays in meeting those expectations.

Let me begin by telling you about Evidon and our role in the online marketplace. Then, I will discuss what we are learning about consumers – specifically, what they understand and expect about advertising and data collection in the online environment.

Evidon Empowers Consumers in the Online Space

Evidon was founded specifically to promote transparency, consumer control, and accountability across the online advertising market and to facilitate the development of the self-regulatory program which empowers consumers in the online environment. That program, set out in the *Self-Regulatory Principles for Online Behavioral Advertising*¹ and released in July 2009, is designed to give consumers a better understanding of and greater control over interest-based, or “behavioral,” ads. A core requirement of the Principles is the display of a distinct “Advertising Option Icon” (▶) on behavioral ads and websites where data is collected.²

Evidon is committed to creating technology solutions that realize these principles.

While data collection and use activities across the online advertising ecosystem can be difficult

¹ AAAA, ET AL., SELF-REGULATORY PRINCIPLES FOR ONLINE BEHAVIORAL ADVERTISING (2009), available at <http://www.aboutads.info/resource/download/seven-principles-07-01-09.pdf>.

² The Advertising Option Icon is licensed by the Digital Advertising Alliance. More information is available at THE SELF-REGULATORY PROGRAM FOR ONLINE BEHAVIORAL ADVERTISING, <http://www.aboutads.info>.

to understand, it is our belief that dedicated focus and technology is making this transparent and allowing industry to communicate with consumers in a simple and effective manner.

Evidon plays two important roles in the self-regulatory program. First, in October 2010, after an extensive 9-month evaluation, the Digital Advertising Alliance³ chose Evidon to provide the technology powering the self-regulatory enforcement programs of the Council of Better Business Bureaus and the Direct Marketing Association.

Second, we are the leading provider of compliance services to online advertisers, advertising agencies, publishers, advertising networks, and technology providers. Our platform, called Evidon InForm, displays the Advertising Option Icon in the corner of ads and on webpages, which, when clicked, enables consumers to easily see more information about the companies involved in delivering that advertisement and to opt-out of data collection and use.⁴

Evidon has also led the market in several industry-wide initiatives, including the creation of the Open Data Partnership, which allows consumers to see what information participating companies have collected about their interests and edit that information or opt-out of collection or use. Additionally, Evidon provides a free web browser add-on called Ghostery that allows users to identify the companies tracking them on web pages they visit, and to optionally block any or all known trackers, among other features.

³ The Digital Advertising Alliance (DAA) is a cross-industry coalition of five trade associations: the American Association of Advertising Agencies (AAAA), the American Advertising Federation (AAF), the Association of National Advertisers (ANA), the Direct Marketing Association (DMA), and the Interactive Advertising Bureau (IAB). The Network Advertising Initiative (NAI) and Council of Better Business Bureaus (CBBB) work closely with the DAA.

⁴ Most companies honor opt-out of data use; many honor opt-out of data collection as well.

Evidon's InForm Platform, the Advertising Option Icon, and the Open Data Partnership Together Deliver to Consumers Increased Transparency and Control

Evidon's platform is an effective means for providing meaningful notice and choice to consumers, as contemplated by virtually every proposal addressing online privacy, including the Federal Trade Commission's ("FTC") Proposed Framework for Privacy and several bills that have been proposed addressing this issue. Information presented through the platform allows consumers to make informed and meaningful decisions about data collection and use. When consumers click on the Advertising Option Icon displayed by the platform (Slide 1 attached), they will see an overlay window with more information about the ad, including links to educational information about interest-based advertising, the advertiser's privacy policy, and opting-out of data collection or use (Slide 2 attached). One click takes consumers to an Evidon webpage where they can see which companies may have been involved in the collection or use of their data, and they can opt-out of data collection or use from those companies (Slide 3 attached). In addition, Evidon provides a reporting tool that tells companies how consumers are using the platform. This reporting also provides evidence of compliance with self-regulatory principles on a company-by-company basis.

The Evidon platform is thus comprised of three components:

- *A transparency component* that notifies a consumer viewing an ad that the advertisement was delivered using online behavioral data and identifies the data providers involved in its delivery.
- *A choice component* that provides consumers choice, namely, an easy method for consumers to opt-out of the collection or use of behavioral information on a company-by-company basis.

- A *reporting tool* that provides the advertising agency, advertiser, or network insight into consumers' interaction with the platform and evidence of compliance with self-regulatory principles.

Evidon's platform provides streamlined notice by presenting information on data collection to consumers through uncluttered and easy to understand in-ad notices and webpages. Importantly, this notice is provided when the consumer is viewing an individual advertisement or web page and is tailored to the consumer's particular experience at that time. Furthermore, the platform is easy to use: the icon is easily recognizable, the opt-out option is easy to find, and the process is uniform across browsers, and for all identified ad networks, data providers, and other service providers.⁵ Finally, as industry adoption and consumer awareness of the Advertising Option Icon increases, consumers will be able to use it as a quick indicator that a particular advertiser is compliant with the industry's self-regulatory principles. Evidon now provides notice in nearly 20 billion online ads each month, regularly reaching more than 80 million US internet users each day.

In addition to implementing the Advertising Option Icon, Evidon has led the way in creating the Open Data Partnership ("ODP"). The ODP provides a common platform, utilized by several industry-leading data collectors,⁶ that allows consumers to edit the information that ad networks have associated with their browser, rather than just opt-out of data collection or use entirely. The key feature of the ODP is an interface, called a "preference manager" that allows consumers to see, in a centralized way, what information companies have collected about their interests, and to edit that information or opt-out of collection or use (Slide 4

⁵ Evidon's platform currently gives consumers the ability to opt-out of any network that may have been involved in the collection of data for the advertisement. As of October 1st, this includes 185 different ad networks, data providers, and service providers. Evidon also has a database of more than 800 companies who place third party tracking cookies on consumers' browsers, and has classified them into OBA and non-OBA providers.

⁶ Participating companies include BlueKai, Lotame Solutions, eXelate, Bizo, 33Across, and Turn.

attached). The partnership is free of charge for participating companies, and the preference manager is easily accessible from the opt-out page that consumers can access via the Advertising Option Icon provided by Evidon's platform. The ODP went live earlier this year, and Evidon expects broad participation from reputable OBA providers moving forward.

Finally, in addition to providing our platform and supporting the ODP, Evidon also provides a free web browser add-on called Ghostery that gives consumers increased transparency and choice by allowing them to see which companies are tracking them on any web page they visit. Through Ghostery, consumers can see more information about those companies, and links to their privacy policy and opt-out page, if available. Additionally, Ghostery provides users with the option to block any or all known trackers. Finally, Ghostery also includes an optional, opt-in feature called GhostRank that collects completely anonymous information about the trackers its users encounter.⁷ Ghostery sends this information to Evidon to help us make our privacy compliance and assurance systems more robust. Specifically, GhostRank helps Ghostery identify new trackers – for identification and blocking – and monitor industry notice and choice compliance. Ghostery has been downloaded over four million times already, is growing at a rate of 140,000 downloads per month, and has been covered by numerous media outlets.⁸

⁷ The types of data GhostRank collects, and how those data are used, are fully disclosed in Ghostery's FAQ at <http://www.ghostery.com/faq>.

⁸ E.g., Riva Richmond, *Resisting the Online Tracking Programs*, N.Y. TIMES, Nov. 10, 2010, <http://www.nytimes.com/2010/11/11/technology/personaltech/11basics.html>; Wesley Fok, *Squash Web bugs with Ghostery*, GLOBE & MAIL, Aug. 10, 2009, <http://www.theglobeandmail.com/news/technology/squash-web-bugs-with-ghostery/article1246594/>; Erik Larkin, *With Ghostery Add-On for Firefox, Learn What Web Sites Learn About You*, WASH. POST, Mar. 9, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/03/05/AR2009030502997.html>.

Consumer Testing Validates the Notion that Consumers Want Greater Choice and Control

Our testing of Evidon’s platform among consumers includes both organized studies managed by third party research firms and ongoing evaluation of raw data measuring consumer interaction with our notices and control tools. Both efforts provide feedback on how we are measuring up against our goal of providing consumers with an easy and meaningful experience, and help shape the development of future products and features.

Evidon commissioned a research study by Millward Brown during Fall 2010 to learn what consumers are looking for when they engage with a privacy notice on an advertisement, and the extent to which Evidon’s platform meets these expectations. In our study, 76% of consumers who clicked on the Advertising Option Icon and interacted with Evidon notices wanted to see all companies involved in targeting the ad to them. In addition, 67% felt more positive towards brands that gave them control, including the ability to opt-out.⁹ Together, these metrics support the proposition that consumers want more than a simple “on-off” solution – they want substantive notice and control regarding the companies responsible for targeting ads and content to them. The Advertising Option Icon and Evidon’s platform give consumers these options.

In the twelve months since the launch of the Advertising Option Icon in October 2010, we have delivered over 85 billion in-ad notices to consumers through our platform. Consumers have clicked on the Advertising Option Icon over 4.5 million times in the past year. From those clicks, more than 730,000 opt-out request have been sent through our platform.¹⁰ These engagement metrics reflect an order of magnitude shift in the availability of information about

⁹ BETTER ADVERTISING & DYNAMIC LOGIC, CONSUMER INTERACTIONS WITH IN-AD NOTICE 7 (Nov. 3, 2010), http://cdn.evidon.com/misc/consumer%20impact%20of%20ad%20notice%2011_11.pdf.

¹⁰ Consumers frequently request an opt-out from more than one company. Each opt-out request for each company is counted separately, so there may be several opt-out requests counted for each consumer.

how data is used and the choices consumers are able to make. This is important. No longer is information solely presented in a generalized format, buried in privacy policies. Rather, it is now presented in a clear, specific, and comprehensible format, displayed to the consumer directly at the point of engagement.

At the same time, based on our consumer research, it seems clear that opt-out rates should not be the primary measurement of success for the self-regulatory program. Multiple studies have validated the notion that consumers prefer relevant content and advertising. There is no reason to assume that consumers, once afforded transparency and control, will react by opting-out of the system that powers customization and content creation. Ultimately, success should be measured by the degree to which access and control tools are produced in a credible fashion, and the extent to which these tools are offered to the consumer at the point of collection and use.

A common theme running through our consumer studies is that there can be no one-size-fits-all approach to consumer privacy. This insight is not surprising, as formal studies and lay observation clearly show that consumers take an individualized approach to how they value privacy trade-offs, particularly online. Pioneering privacy researcher Dr. Alan Westin observed that consumers fall into three general groups regarding their view on privacy: (1) those who prioritize privacy, are generally skeptical about organizations that ask for personal information, and will trade off consumer benefits for privacy protections where the two compete; (2) the majority of consumers,¹¹ generally pragmatic about privacy, who will weigh the intrusiveness of personal information requests against consumer benefits they will receive

¹¹ Humphrey Taylor, *Most People Are "Privacy Pragmatists" Who, While Concerned about Privacy, Will Sometimes Trade It Off for Other Benefits*, HARRIS INTERACTIVE (Mar. 19, 2003), <http://www.harrisinteractive.com/vault/Harris-Interactive-Poll-Research-Most-People-Are-Privacy-Pragmatists-Who-While-Conc-2003-03.pdf>.

and generally want to be able to decide for themselves where privacy is concerned; and (3) those who are unconcerned about privacy, generally trustful of organizations that request personal information and are most willing to trade privacy for consumer benefits. To be successful, access and control tools should be developed with all of these groups – and in particular the majority privacy pragmatists – in mind.

Individualized privacy preferences can also be seen today in consumers' interactions with online services, in particular social media. Consumers have demonstrated that they fall along a broad line between those who want to share everything with the world, and those who want tight controls over with whom they share information. Indeed, the implementation of more granular and comprehensible privacy controls has even become an element of competition among social networks, as the growth of Google+, with its "Circles" feature, has shown. To be effective in today's online world, therefore, consumer privacy controls should also be granular, understandable, and allow consumers to express their individualized privacy interests.

One-Size-Fits-All Solutions such as "Do Not Track" Ignore Consumers' Preference for Greater Transparency, Choice, and Control

In an attempt to provide consumers with more effective privacy controls, one-size-fits-all proposals such as "Do Not Track" have gained traction, primarily due to their supposed simplicity. Indeed, during the current Congress, several Members have put forward various Do Not Track proposals as have various interest groups. I certainly understand the appeal of Do Not Track, particularly given the popularity and success of the FTC's Do Not Call list to control telemarketers. Nevertheless, based on our consumer research, we have considerable doubt that a blanket Do Not Track mandate is well-suited to address consumers' varying

privacy expectations and needs. Can it possibly do so in a way that fulfills the expectations of its name? And, as many have observed, such a mandate likely would fundamentally alter the functionality of the Internet that consumers have come to expect.

First, any universal tracking opt-out faces serious problems meeting consumer expectations while, at the same time, allowing for the continuation of basic Internet functionality. Many third parties use tracking technologies in order to provide important basic functionality on the Internet that consumers have come to expect, even if they do not necessarily understand the specifics of how the collected data is used. The types of tracking performed by these parties include important functionality such as shopping carts and techniques for thwarting hackers. Where, then, should the line be drawn between tracking that is permissible and necessary for the basic functioning of the Internet, and tracking that is forbidden? Consumers are bound to be disappointed and frustrated with a Do Not Track solution that has the appearance of being simple and universal, yet is tangled up in complex policy decisions and still, by necessity, allows a wide array of tracking.

Furthermore, how will consumers with myriad opinions and preferences on tracking and privacy be able to express their preferences with a universal tool? Will consumers be able to exclude from the prohibition companies whose tracking they do not mind or find useful? A binary tracking opt-out (that does not actually cover all tracking) is likely to be frustrating for consumers with a desire to express their individualized privacy preferences. Additionally, without informing consumers about the consequences of selecting a Do Not Track option, many may be frustrated or confused by the loss of online customization they have come to expect, and will likely have little patience to troubleshoot the cause.

In contrast to various Do Not Track proposals, the Advertising Option Icon and Evidon's platform, combined with the ODP, provide the level of transparency, control, and accountability across the online advertising market that enables consumers to express their individualized preferences in a meaningful and customizable way. Moreover, the platform's individualized notice and choice components provide the transparency needed for consumers to make informed decisions about privacy and benefit trade-offs in their online interactions. In many ways, Do Not Track is a blunt hammer for an issue in need of a scalpel, and the combination of the Advertising Option Icon, Evidon's platform, and the ODP provide that scalpel.

I am also concerned that, with a required one-size-fits-all approach such as Do Not Track, consumers, advertisers, and ad-supported publishers may not realize the benefits of innovative, and perhaps superior, privacy technologies that the marketplace is presently developing. Mandating such an approach would shift responsibility away from companies involved in the OBA market, and eliminate their incentive to innovate in this space. We suggest that policymakers carefully consider the risks inherent in this decision and allow competition to develop the best solution that (i) meets consumers' data privacy demands, (ii) is compatible with evolving online business models, and (iii) rewards companies that are making significant investments in credible self-regulatory technologies.

We are confident that competition will, indeed, foster the most effective OBA privacy solution because advertisers and ad networks have a strong incentive to provide increased transparency to consumers and drive the responsible development of OBA. As mentioned above, the Millward Brown study demonstrates that privacy-conscious consumers feel more positive towards brands that give them increased transparency and control.

In addition, consumers already have access to established technologies that meet individual privacy demands. Evidon, for example, provides Ghostery, a free web browser add-on that is described above and gives consumers increased transparency and choice by allowing them to see which companies are tracking them on any web page they visit.

Consumers also have access to a wide variety of other privacy options in addition to Ghostery, such as:

- **NoScript:**¹² NoScript is a web browser add-on that blocks all JavaScript by default unless a user specifically allows it for a site.
- **Abine:**¹³ Abine is a company that offers a number of privacy related tools, including a web browser add-on formerly called Taco that provides users with a persistent set of opt-out cookies for a large number of advertising networks.
- **PrivacyChoice:**¹⁴ PrivacyChoice is a company that also offers a variety of tools that allow consumers to understand and make choices about their online privacy. One of these tools, TrackerBlock, is a web browser add-on that blocks OBA tracking cookies.
- **Better Privacy:**¹⁵ Better Privacy is a Firefox add-on that allows users to manage and automatically delete Flash Local Shared Objects, also known as “Flash cookies.”
- **Network Advertising Initiative (“NAI”) Opt-Out Tool:**¹⁶ The NAI Opt-Out Tool allows consumers to see which NAI member companies have placed an advertising cookie file on the consumer’s computer, and to opt-out of any or all member networks.

¹² NOSCRIPT, <http://noscript.net>.

¹³ ABINE, <http://www.abine.com>.

¹⁴ PRIVACYCHOICE, <http://www.privacychoice.org>.

¹⁵ BETTERPRIVACY HOME, <http://netticat.ath.cx/BetterPrivacy/BetterPrivacy.htm>.

¹⁶ NETWORK ADVERTISING INITIATIVE, OPT OUT OF BEHAVIORAL ADVERTISING, http://www.networkadvertising.org/managing/opt_out.asp.

- **AboutAds.info:**¹⁷ The Digital Advertising Alliance (“DAA”) has set up a website to inform consumers and companies about the Self-Regulatory Program for Online Behavioral Advertising. This website includes a tool that allows consumers to opt-out from receiving interest-based advertising from some or all of the DAA’s participating companies, learn more about the privacy practices of each company, and see which companies have enabled OBA for the consumer’s browser.

Finally, as noted above, when an individual opts-out of tracking, many attributes of their browsing experience will change. The extent to which those changes are deemed acceptable should continue to be an individual decision. With simple and clear information, we believe consumers will be able to make these subtle decisions, balancing their individual privacy and browsing preferences. We are concerned, however, that requiring the adoption of a single tool, using potentially loaded terminology, may encourage consumers to make a rapid decision without evaluating the consequences, which will only frustrate them in both the short and long term.

Conclusion

This hearing is all about consumer expectations. One thing on which we can all agree is that consumers expect free online content. Targeted advertising plays an essential role in supporting the vibrant, open, and free Internet that consumers have come to enjoy and expect.

Thank you again for inviting me to testify before you today. I hope that you will find my testimony and my answers to your questions useful as you evaluate effective solutions for meeting consumer expectations with regard to interest-based advertising.

¹⁷ THE SELF-REGULATORY PROGRAM FOR ONLINE BEHAVIORAL ADVERTISING, <http://www.aboutads.info>.

The Advertising Option Icon and Overlay – Step 1

The screenshot shows a video player interface. In the top left corner, there is a small icon of a play button followed by the text "Ad Choices". A black mouse cursor is pointing at this icon. In the top right corner, there is a "replay" button with a circular arrow icon. The main content of the advertisement is titled "BankAmericard Cash Rewards™" and lists two bullet points: "• Get a \$50 statement credit after qualifying transaction(s)." and "• Earn 1% cash back on all purchases." Below the text is an image of a BankAmericard Cash Rewards credit card. At the bottom of the advertisement, there is the Bank of America logo and a blue button with the text "Apply Now".

The Advertising Option Icon and Overlay – Step 2

Bank of America



This ad has been matched to your interests. It was selected for you based on your browsing activity.

DoubleClick helped Bank of America determine that you might be interested in an ad like this.

[More information & opt-out options »](#)

[What is interest based advertising »](#)

[Bank of America privacy policy »](#)

Powered by Evidon

Bank of America 

Apply Now

...the following companies helped target this ad to you...

Interest-Based Marketing Providers:	Manage	Opt-out
<input type="checkbox"/> BlueKai		<input type="checkbox"/>
<input type="checkbox"/> DoubleClick		<input type="checkbox"/>
<input type="checkbox"/> eXelate		<input type="checkbox"/>
<input type="checkbox"/> Lotame		<input type="checkbox"/>
<input type="checkbox"/> Omniture		<input type="checkbox"/>
<input type="checkbox"/> Turn		<input type="checkbox"/>

All vendors contributing targeting to ad

Rich detail on each vendor available

Global opt-out to hundreds of vendors

Easy opt-out from each; reporting **proves** that the request has been sent

Consumer **profile management** via ODP

Who are they?

Demand side platform: A technology provider that allows marketers to buy inventory across multiple platforms or exchanges. DSPs often layer in custom optimization, audience targeting, real-time bidding and other services

What Data Do They Collect?

Anonymous (browser type, exit pages, page views, referring URLs, time/date), Pseudonymous (IP address, search terms)

How Do They Use It?

Analysis of advertising campaigns, defining audience segments, optimization, ad targeting and reporting.

[More detail about Turn](#)

[Click here to opt out of more companies](#)

**OPT-OUT FROM
SELECTED COMPANIES**

One Place to Manage Targeting Profiles

The Open Data Partnership (ODP)

How Data Powers Your Experience

Online advertising companies tailor advertisements to you by matching your summary of interests. This summary could come from several sources, including your browsing activity and your response to other ads. To learn more about how interest-based advertising works, [click here](#).

The following companies may have been involved with the collection or use of data about your interests and online activity. If you prefer that these companies not use data about you in this way, you can opt-out below. If you opt out, you will still see ads online, and information may be collected about your browsing activity, but companies will not use this information to target the ads you see online. For detailed information on how each company uses your data and their opt-out policies, click on the company name below.

Interest-Based Marketing Providers:	Manage
<input type="checkbox"/> BlueKai	
<input type="checkbox"/> DoubleClick	
<input type="checkbox"/> eXelate	
<input type="checkbox"/> Lotame	
<input type="checkbox"/> Omniture	
<input type="checkbox"/> Turn	

OPT-OUT FROM
SELECTED COMPANIES

I am:

Gender Male Female N/A

Age 18-24 25-34 35-44 45-54 55-64 65 N/A

My interests that marketers may use to deliver relevant ads include:

<input type="checkbox"/> Finance	<input type="checkbox"/> Shopping - Kitchen
<input type="checkbox"/> Finance - Small Business	<input type="checkbox"/> Shopping - Laptops
<input type="checkbox"/> Finance - Stocks	<input type="checkbox"/> Shopping - Lighting
<input type="checkbox"/> Guys and Gear	<input type="checkbox"/> Shopping - Men Fashion
<input type="checkbox"/> Health	<input type="checkbox"/> Shopping - Mobile
<input type="checkbox"/> HH Income \$20,000-\$29,999	<input type="checkbox"/> Shopping - Music
<input checked="" type="checkbox"/> HH Income \$30,000-\$39,999	<input type="checkbox"/> Shopping - Musical Instruments
<input type="checkbox"/> HH Income \$40,000-\$49,999	<input type="checkbox"/> Shopping - Outdoor
<input type="checkbox"/> HH Income \$50,000-\$59,999	<input type="checkbox"/> Shopping - Personal Tech
<input type="checkbox"/> HH Income \$60,000-\$74,999	<input type="checkbox"/> Shopping - Pets
<input type="checkbox"/> HH Income \$75,000-\$99,999	<input type="checkbox"/> Shopping - Shoes
<input type="checkbox"/> HH Income \$100,000-\$124,999	<input type="checkbox"/> Shopping - Software
	<input type="checkbox"/> Shopping - Sports/Recreation
	<input type="checkbox"/> Shopping - Toys
	<input type="checkbox"/> Shopping - TVs
	<input type="checkbox"/> Shopping - Video Games

2 of 3 eXelate Media Preference Manager