



Christopher Oswald
Vice President, Advocacy

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The Honorable Michael C. Burgess, M.D.
Chairman
Subcommittee on Commerce, Manufacturing, and Trade
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Dear Chairman Burgess and Chairman Walden:

The Direct Marketing Association (DMA) wishes to express its support for continued efforts to successfully resolve the negotiations to create a successor agreement to the now stricken U.S.-EU Safe Harbor. The recent decision of the European Court of Justice (ECJ) to invalidate the Safe Harbor Agreement has increased the sense of urgency around these negotiations, and we thank you for continuing to bring attention to these negotiations by holding this joint subcommittee hearing, “Examining the EU Safe Harbor Decision and Impacts for Transatlantic Data Flows.”

Since 2001, the DMA has operated the DMA Safe Harbor Program for its members. Through this program, DMA has served as a recognized independent recourse mechanism available to investigate unresolved complaints from European data subjects. In addition, the DMA has collaborated with business and consumer experts to mediate data privacy disputes and make policy recommendations involving the Safe Harbor Framework. In this role, the DMA has had a unique view of the benefits provided to businesses and consumers by the free flow of information across the Atlantic.

DMA is the world’s largest trade association dedicated to advancing and protecting responsible data-driven marketing in the United States and globally. Founded in 1917, DMA represents thousands of companies that drive the information economy. DMA members have

engaged in the responsible collection and use of data for marketing purposes for more than 100 years. These responsible and innovative data uses have revolutionized the delivery of products and services to their customers and fostered many additional consumer benefits, such as virtually limitless free online content and services. According to a recent study, the resulting Data-Driven Marketing Economy (DDME) added \$156 billion in revenue to the U.S. economy and fueled more than 675,000 jobs in a single year.¹

These activities are not strictly geographically limited and contribute to a robust global economy. Research published in July 2012 by the Direct Marketing Association (UK) Ltd revealed a projected growth of 7% in the direct marketing industry in 2012 in the UK, from the £14.2 billion spent in 2011 to nearly £15.2 billion forecast for 2012. UK companies profiled in the research attribute, on average, 23% of their total sales to direct marketing, with the travel and leisure and retail and wholesale sectors attributing 30%+ of their sales to direct marketing.² The uncertainty created by the ECJ decision undercuts confidence in the market for digital trade between the United States and the European Economic Area.

About the DMA Safe Harbor Program

Despite concerns expressed by EU stakeholders around the robust nature of the Safe Harbor Framework, DMA has always taken its role under the Safe Harbor Enforcement Principle seriously. Under the U.S-EU Safe Harbor Framework, U.S. companies interested in self-certification with the U.S. Department of Commerce were required to certify that they adhere to the seven core Safe Harbor principles and FAQs surrounding data collection, protection, choice, security and enforcement. Under this self-certification process, U.S. companies were required to select a third-party dispute resolution provider to serve as a mediator regarding any data privacy complaints that qualify under the Safe Harbor Framework. DMA Members could choose DMA as their Safe Harbor dispute resolution provider. DMA assisted companies with meeting the requirements of the Safe Harbor Enforcement Principle. Under the Enforcement Principle, companies were required to take reasonable steps to ensure that any consumer privacy concern was addressed by: (1) referring consumers to its customer service department or other in-house dispute resolution program; (2) subscribing to a third-party dispute resolution mechanism to address any unresolved in-house consumer data privacy complaints; and (3) having appropriate monitoring, verification, and remedy procedures in place.

As a third-party dispute and enforcement mechanism, DMA members could rely on our decades of experience in addressing and satisfactorily resolving consumer disputes. In addition to dispute resolution, DMA provided technical assistance and educational materials that support member compliance with the Safe Harbor Framework. We actively engaged with the Safe Harbor privacy principles by conducting a staff review of member company privacy policy statements. Members certified under the DMA Safe Harbor program received a DMA Safe Harbor Program mark to display, signifying their alignment with EU principles.

¹ Deighton and Johnson, *The Value of Data: Consequences for Insight, Innovation & Efficiency in the U.S. Economy* (2013), available at <http://thedma.org/valueofdata>.

² The Direct Marketing Association (UK) Ltd, "Putting a Price on Direct Marketing 2012" (31 July 2012).

Safe Harbor Program participants were required to provide not only company contact information in privacy policy statements, but also the appropriate DMA Safe Harbor contact information. This information promotes clarity, accessibility and transparency within the U.S.-EU Safe Harbor Program.

Under the Safe Harbor self-certification process, American companies must select a third-party dispute resolution provider to serve as a mediator regarding any data privacy complaints that qualify under these frameworks. In this capacity, the DMA Safe Harbor Program currently serves 57 participating member companies, 19 of which enrolled in the last enrollment period alone. In the two years, the DMA has received over 130 complaints through the Safe Harbor complaint process with four qualifying under the Safe Harbor Frameworks. All complaints and inquiries were promptly forwarded to the appropriate contacts and were quickly addressed and resolved.

Our goal is to keep data-driven direct channels open, safe, and productive for business and consumers, helping the DMA to advance and protect responsible data-driven marketing. The Safe Harbor Framework has been integral in allowing the DMA to realize this goal with regard to transatlantic data transfers. DMA and its member companies have long recognized that promoting best practices through effective self-regulation mechanisms like the Safe Harbor Framework enhances consumer trust and confidence. Our members understand that their success in the data driven economy is dependent on consumers' confidence in the online medium, and members support efforts that enrich a user's experience while fostering consumer trust in online channels.

Restoring previously relied upon channels of transatlantic data flow is vitally important to our economy. We thank you for your attention on this important matter. We hope that members of Congress continue to encourage the Department of Commerce to rapidly conclude the Safe Harbor negotiations, and we look forward to continuing to work with you on this important issue.

Respectfully Submitted,



Christopher Oswald
Vice President, Advocacy
Direct Marketing Association