

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

DISCLOSURE OF CODE SHARING)	
And LONG-TERM WET LEASE)	
ARRANGEMENTS)	Docket No. OST-2004-19083

**COMMENTS OF THE
AMERICAN SOCIETY OF TRAVEL AGENTS, INC.**

The American Society of Travel Agents, Inc. (ASTA) submits these comments in response to the Notice of Proposed Rulemaking (NPRM) issued by the Department of Transportation in the referenced proceeding. 70 Fed. Reg. 2372 (January 13, 2005).

ASTA is the world's largest association of professional travel agencies. Its membership includes travel agency companies of the traditional, on-line and hybrid varieties, as well as individual travel agents and many others engaged in aspects of retail and wholesale distribution of transportation services.

ASTA believes the proposed change to the regulations governing print advertisements is appropriate. There is little reason to believe that the blizzard of footnotes accompanying typical complex fare advertisements is of any real value to consumers in deciding which airline to use. However, we are deeply concerned that the Department would deny the same benefits of simplification to those retailers who compete with the airlines for the patronage of consumers using the Internet as the advertising medium.¹

¹ We are aware that the Department does not recognize "legally" the competition between travel agents and airlines, but the economic reality is otherwise and we hope the Department will indulge our need to deal with economic reality when it comes to regulations with differential impacts.

The subject of harmonizing the print and Internet rules was raised by the airlines and Orbitz in the pleadings leading to the NPRM. They proceed from the premise that there is in place a policy that Internet advertising is currently subject to the same rules as print advertising. The NPRM appears to accept that premise, then denies equal treatment.

ASTA does not believe the assumption is warranted. The original policy on code share disclosure was set out in the Department's formal Policy Statements at 14 CFR 399.88. The Department issued a "letter" to 166 industry executives back in 1996, explicitly saying that the "rule" (actually only a policy statement) in 14 CFR 399.88 "also applies to Internet ... listings."² However, when the current policies were enshrined in a formal regulation in 1999,³ the Internet was not even mentioned, while the formal Policy Statement was simultaneously revoked. The silence of the formal regulation, which was the subject of a 15 page Final Rule notice in the Federal Register, suggests that the policy regarding the Internet was abandoned, or at least not formally perpetuated, whatever the intent may have been. Surely it was no accident that the Internet was not discussed while the Department was prescribing every other detail of acceptable code-share disclosure practices.

Going forward, however, the question remains: what should the policy be? While the issue affects the largest online travel agencies significantly, it has much broader potential impact. About 65 percent of member agencies have a website, representing a near-doubling since 1998 of the percentage with such facilities.⁴ A third of those without sites planned to add them in the next year. Many of these agencies advertise on their websites the availability of airline flights that identify particular markets such as to trigger the disclosure rules.

² Letter to List of 166 U.S. and Foreign Airline and Travel Industry Chief Executives, March 18, 1996 at 3.

³ 64 Fed. Reg. 12838, March 15, 1999.

⁴ ASTA 2004 Automation Report at 21 *et seq.*

No reason has been given why these agencies, regardless of size or business model, should be subjected to a different and more difficult regime regarding code share disclosure than the regime applied to print advertising, which, on a dollars-spent basis, is surely the largest outlet for airline direct advertising. The NPRM says that Internet advertising can easily provide the same degree of detail as the old print rules it is proposing to liberalize by using hyperlinks “or other techniques.” 70 Fed. Reg. 2375. There is no explanation of those “other techniques.” Nor is any consideration given to how the complexity of moving between main text and a series of hyperlinks that are essentially electronic footnotes is any less confusing than moving between printed text and a series of footnotes at the bottom of that text. The NPRM basically says DOT is not treating Internet advertising the same because it has decided not to treat it the same. This is not a satisfactory explanation. If disparate treatment cannot be affirmatively justified, it should not be mandated. Absent a proposed justification, with an opportunity to comment on it, the principle of unequal treatment should be rejected and all channels treated the same.

Respectfully Submitted,

AMERICAN SOCIETY OF TRAVEL AGENTS, INC.

By: _____

Paul M. Ruden