



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

September 27, 2012

The Honorable Marsha W. Blackburn
United States House of Representatives
217 Cannon House Office Building
Washington, D.C. 20515

Dear Representative Blackburn:

Thank you for your letter dated September 21, 2012. I appreciate the opportunity to clarify the Federal Trade Commission's ("FTC" or the "Commission") call for a "Do Not Track" mechanism and our participation in the World Wide Web Consortium's ("W3C") efforts to develop a voluntary Do Not Track standard. I share your concern that we not stifle our "dynamic tech industry." I also agree with you that we should empower consumers and encourage existing self-regulatory efforts "to help meet consumers' evolving privacy expectations."

The Commission has repeatedly and forcefully called for industry – not government – to implement a Do Not Track mechanism that would allow consumers to decide whether to have their online activity – e.g., the searches they conduct, the websites they visit, the content they view or read – collected. This call has been part of an ongoing effort to encourage companies to provide more transparency and consumer choice in their information-handling practices. In its March 2012 report, *Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers* ("Privacy Report"),¹ the Commission set forth a voluntary set of best practices that businesses can follow to protect consumer privacy. These best practices include the concepts of privacy by design, consumer control, and increased transparency for the collection and use of consumer data.

In developing these best practices and in calling for a voluntarily-adopted Do Not Track mechanism, the Commission has taken a measured approach that balances the need for additional privacy tools with the benefits that the collection and use of consumer data creates. Indeed, as the Privacy Report notes, "the collection and use of consumer data has led to significant benefits in the form of new products and services."² The Privacy Report includes many recommendations intended to preserve these benefits by reducing undue burdens on businesses. For instance, in calling for additional consumer control, we have identified certain practices – including fraud prevention, security, and most forms of first-party marketing – for which business do not need to give consumers choice. We also suggest that entities that collect

¹ Privacy Report, available at <http://ftc.gov/os/2012/03/120326privacyreport.pdf>.

² Privacy Report at 2.

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limited amounts of non-sensitive data and entities that have taken appropriate steps to “de-link” data from a particular consumer or device need not follow the best practices in the report.

With respect to Do Not Track, the Privacy Report commends the various voluntary efforts already underway. The advertising industry, through the Digital Advertising Alliance, has made notable progress on Do Not Track - sending over a trillion ads a month with a standardized icon allowing consumers to get more information and exercise control over targeted ads. The standard-setting work of the W3C, which includes a number of DAA members, is another important means for giving consumers greater control over the tracking of their online activities. Since issuance of the report, we have engaged with all stakeholders, including the advertising industry, the publishing industry, the browsers, the W3C, and consumer advocates to further our policy recommendations. Concerning our role in W3C, it in no way usurps the legislative process or imposes a burden on industry. Rather, quite the opposite, as any standard the W3C sets would reflect the consensus of the participants and would be a self-regulatory and voluntary standard.

With this background, my responses to questions 1 and 4 through 7 are set forth at Attachment A. Commission staff is in the process of reviewing specific data to respond to your questions 2 and 3, but I wanted to get back to you as quickly as possible with answers to the other questions. Of course, we would be pleased to meet with you at your convenience to clear up any misconceptions about our involvement in W3C and answer any additional questions you may have. I am confident that you will agree that we are pursuing a carefully balanced approach to protecting consumers and allowing business and innovation to flourish.

Sincerely,

A handwritten signature in black ink that reads "Jon Leibowitz". The signature is written in a cursive, slightly slanted style.

Jon Leibowitz

Attachment

ATTACHMENT A

1. By what authority did Congress empower the FTC to participate in, or encourage Internet policy development through, international organizations such as W3C.

The FTC has longstanding policy authority under Section 6 of the Federal Trade Commission Act, dating back to the agency creation in 1914.³ Over the years, we have used this authority to advise Congress, industry, and other stakeholders on many competition and consumer protection matters.

For example, as we often discuss at Congressional hearings, we have hosted numerous workshops on issues ranging from peer-to-peer software to spyware to the use of radio-frequency identification to online behavioral advertising. Following these workshops, we have issued reports that the Commission has approved, often on a bipartisan basis. As another example, during the Bush Administration, the President recognized the FTC's expertise on identity theft and asked the FTC Chairman to serve as co-chair of his Identity Theft Task Force, which put forth numerous recommendations to the public and private sectors on identity theft. In developing policy recommendations such as these, we often meet with stakeholders from industry, academia, government, and the advocacy community to encourage them to follow our recommendations.

The Commission used this same process in issuing its March 2012 Privacy Report. The Privacy Report built upon a series of public roundtables that brought together various stakeholders to discuss the privacy issues and challenges associated with current and developing technology and business practices that collect and use consumer data. Following the roundtables, FTC staff issued a preliminary report that discussed the themes and areas of consensus developed through the roundtables and called for public comment on a series of questions related to a proposed privacy framework. Based upon the more than 450 comments received – a substantial number of which came from individual consumers voicing support for a Do Not Track mechanism – the Commission issued its Privacy Report and its recommended best practices.

Since then, we have met with numerous groups to encourage them to implement our recommendations, including our recommendation for a Do Not Track mechanism. The W3C is a very important venue for implementing a voluntary Do Not Track standard, as it includes active participation by a wide variety of key stakeholders. Accordingly, FTC staff have participated in the W3C process as a way to further the recommendations articulated in our privacy report. Notably, the W3C is not the only organization with which we have engaged – we also provided the Digital Advertising Alliance (“DAA”)⁴ with input on their Self-Regulatory Principles for Online Behavioral Advertising and their Self-Regulatory Principles for Multi-Site Data, and along with the DAA attended a White House event praising all stakeholders for their work on Do

³ Federal Trade Commission Act, 15 U.S.C. § 46.

⁴ The DAA is a consortium of leading media, marketing, and technology companies.

Not Track.

4. What studies have the FTC completed on how a DNT by default setting could affect the online ecosystem, Internet users, and U.S. employment?

We have not completed any studies on this issue. The Commission has never called for a Do Not Track by default setting, and I have publicly supported an easy, persistent opt-out tool for third-party tracking.

5. Did you consider antitrust issues before becoming involved in the W3C? How would you respond to concerns about the exercise of market power in this process?

As an agency with responsibility over both competition and consumer protection issues, we are always mindful of competition concerns. We are also aware that competition issues may arise in standards-setting organizations and that such organizations have competition counsel on staff to advise the group on such issues. In addition, our consumer protection staff consult with our competition staff to ensure that issues involving the exercise of market power are carefully evaluated.

6. On August 2, 2012, the U.S. House of Representatives unanimously approved H. Con. Res. 127, which supports Internet freedom domestically and internationally by making clear that it is the “unequivocal policy of the United States to promote a global Internet free from government control.” Is it consistent with the intent of Congress for the FTC to encourage an international organization to create policy that could have adverse impacts on consumers and the economy?

We note that the W3C is a voluntary standard-setting body, and that there is no legal obligation for anyone to comply with a final standard, absent a promise to comply. However, we also believe that, far from having adverse impacts on the economy, a robust and effective Do Not Track mechanism could help build consumer trust in the Internet marketplace. Indeed, businesses frequently acknowledge the importance of consumer trust to the growth of digital commerce and surveys further support this view. For example, in the online behavioral advertising area, a recent survey shows that consumers feel better about brands that give them transparency and control over advertisements.⁵

Further, we note that this is not the first time we have engaged with international organizations to work on consumer protection issues. Commissioner Orson Swindle headed the U.S. delegation that updated the OECD Security Guidelines in 2002, which set forth best practices on data security. And FTC staff participated in the Bush Administration’s effort to finalize APEC Privacy Principles, which protect consumers’ privacy, while at the same time

⁵ See RESEARCH: Consumers Feel Better About Brands That Give Them Transparency and Control Over Ads, Evidon Blog (Nov.10, 2010), <http://blog.evidon.com/tag/better-advertising> (“when advertisers empower consumers with information and control over the ads they receive, a majority feels more positive toward those brands, and 36% even become more likely to purchase from those brands”).

encouraging and enhancing data flows across international borders. Given the inherently international nature of the Internet, we believe it is important to constructively engage with international organizations and to show U.S. leadership on these issues.

7. Are your actions consistent with policies set by the Administration; specifically with the Office of Science and Technology Policy, the National Telecommunications and Information Administration, and the National Institute of Standards and Technology?

Yes. As noted above, the White House hosted an event on February 23, 2012 praising the progress made on Do Not Track. The Administration released a report that day entitled, *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy*. The report notes the promising development of Do Not Track mechanisms, and the importance of striking a careful balance between consumer privacy and innovative uses of consumer data.