

Congress of the United States
Washington, DC 20515

September 21, 2012

The Honorable Jon Leibowitz
Federal Trade Commission
600 Pennsylvania Avenue N.W.
Washington, D.C. 20580

Dear Chairman Leibowitz:

We write to express serious concern over participation by you and your agency in multiple meetings, some held overseas, with members of the World Wide Web Consortium (W3C), and to request information pursuant to our oversight and budgetary authority. Specifically, we are alarmed that the Federal Trade Commission (FTC) is driving the development of policies and technical Do Not Track (DNT) standards to restrict online advertising without any formal legal process or Congressional authorization, but rather through informal agency threats.

We are also concerned the FTC and W3C have failed to study how certain implementations of DNT could affect third-party advertising networks, the publishers who depend on advertising revenue, and ultimately, the consumers who today enjoy a vibrant and creative ecosystem of online applications, services, and content. The third-party advertisers and publishers most likely to be affected by the implementation of DNT are not adequately represented in the W3C's Tracking Protection Working Group (TPWG). Furthermore, the companies and activists that dominate the TPWG have limited practical experience with the complex trade-offs inherent in restricting the flow of data at the heart of the Internet's success. For example, one recent study estimates that a European-style "opt-in" framework could wipe out \$33 billion in revenues for American web-based businesses over the next five years.

While we applaud the good intentions of those aiming to empower consumers, it appears some companies are using this extra-legal policymaking process to gain a competitive advantage in the marketplace. American businesses are already under enormous reputational pressure to continue evolving existing self-regulatory codes. While we applaud self-regulatory efforts already underway to help meet consumers' evolving privacy expectations, we should also be careful not to invite one-size-fits-all, stealth regulations on our dynamic tech industry.

When companies deceive consumers or engage in practices that truly harm consumers, we urge your agency to use its existing authority to build a common law of privacy by legal means. Where the United States' current layered approach to privacy fails, Congress will take appropriate steps. But neither foreign entities nor unelected bureaucracies nor any single company should control America's business needs or re-shape the Internet to serve their own agendas. Accordingly, we request your prompt written response to the following questions:

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

2. Please provide itemized details relating to any federal funds spent by the FTC on W3C activities, including all meetings of FTC staff with anyone connected with W3C.
3. Have you or any other Commissioner or FTC employee met with browser companies or publishers about DNT or the W3C outside of the W3C meetings? If so, please describe these meetings in detail, including dates of each meeting and the parties present.
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?
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?
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?
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?

Thank you for your attention to this important matter.

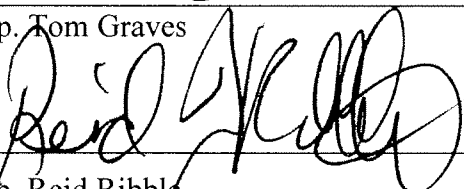
Sincerely,



Rep. Tom Graves



Rep. Mick Mulvaney



Rep. Reid Ribble



Rep. Marsha Blackburn



Rep. Tim Walberg



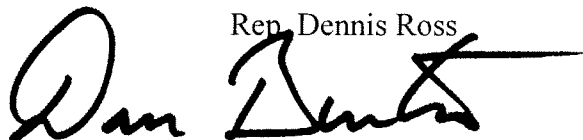
Rep. Tim Huelskamp



Rep. Jeff Duncan



Rep. Dennis Ross



Rep. Dan Burton