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Congress of the United States
House of Representatives

September 25, 2012

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

Dear Chairman Leibowitz:

As a member of the House Small Business Committee, I know that small businesses are a major driver of technology innovation and economic growth in the United States. Protecting the small business technology sector's ability to generate jobs, new markets, and sustain high growth industries is an essential component of our Nation's competitiveness and national security. The Committee places a top priority on thoroughly examining the actions of any federal agency that attempts to impose top-down industry mandates on this economically and innovatively critical sector.

In hearing after hearing, the Committee has listened to small business owners pleading for relief from burdensome regulations and unauthorized enforcement actions by federal government agencies that economically strangle their ability to survive this prolonged recession. It is in light of this experience that I write to express my deep and urgent concern about your involvement and influence in the World Wide Web Consortium's (W3C) attempt to impose a global, European-style Do Not Track (DNT) standard for online advertising on the United States' Internet economy.

Specifically, I request information on three issues:

1. What policies are you promoting through the W3C's Tracking Protection Working Group process?
2. Under what regulatory or legislative authority are you acting?
3. Has the Federal Trade Commission (FTC) conducted any studies or scientific research into the potential impact of cookie-blocking DNT standards as proposed in the FTC's Report¹ on the hundreds of thousands of small business websites, whose only source of income is advertising revenue generated through the use of cookie technologies through independent advertising networks?

The Tracking Protection Working Group has substantial foreign government influence from members such as the European Union's Article 29 Working Party. The history of the Congressional

¹ *Protecting Consumer Privacy in an Era of Rapid Change: Recommendations For Businesses and Policymakers*, <http://www.ftc.gov/opa/2012/03/privacyframework.shtm>, March 2012 ("FTC Report").

debate on Internet privacy, advertising, and other issues illustrates clearly the intent of Congress to reserve for itself any decision-making authority regarding the United States' Internet economy.

The FTC's presence and continued participation in the Tracking Protection Working Group appears to be in conflict with H. Con. Res. 127, which was unanimously approved by the House of Representatives on August 2, 2012. H. Con. Res. 127 explicitly states that it is the "consistent and unequivocal policy of the United States to promote a global Internet free from government control." Further evidence that the FTC is acting outside the scope of Congressional intent is the defeat by the House, by a wide margin, of an amendment to exclude Internet privacy regulation from the Red Tape Reduction and Small Business Job Creation Act (H.R. 4078).

Because the FTC appears to be contradicting Congress' intent by seeking Internet regulation through a foreign agent, it is important to scrutinize its activities to prevent any adverse effects on small business jobs in our country and protect United States' sovereignty over our Internet economy.

My concern over this matter is deepened even further by the fact that the FTC Report does not contain any economic impact analysis or studies describing the potential cost to small businesses as a result of your cookie-blocking DNT policy initiative. In light of the severity of this kind of decision, one that could destroy thousands of small businesses that rely upon cookie technologies to drive advertising revenue to their sites, the absence of any such analysis or research is remarkable. With U.S. unemployment beyond 8 percent, we must encourage economic growth, not dismantle it. Our country cannot afford over-burdensome restrictions on small businesses that derive their revenue through the use of third party cookies and independent advertising networks.

Consumer trust is most important to small business. That is why several self-regulatory organizations continue to develop solutions to protect consumer privacy and educate consumers about cookie-tracking technologies. I believe the Internet should self-regulate where possible, and until Congress sees fit to grant explicit DNT rulemaking authority to the FTC, it shall remain the purview of Congress -- and not the FTC -- to create government policy in this area.

Thank you for your attention to this matter. I look forward to your prompt response to my inquiries regarding your policy promotion, authority, and studies done by the FTC in relation to its DNT negotiations with foreign entities and the impact of such policies small businesses.

Sincerely,



Mick Mulvaney
Member of Congress