

ANA Advertising Law and Public Policy Conference
Keynote Address by FTC Commissioner Julie Brill
March 29, 2012

Good afternoon and thank you.

We all know what everyone was talking about on Monday morning. We've waited over 15 months for the latest installment. We can't get enough of this side look at the world of advertising. And when we finally got to see it, it didn't disappoint: drama, new revelations, and sex.

Of course, you know I am talking about the release of the FTC's final report on privacy – and before you go diving through your copy, I made up the part about “sex”.

Oh that the FTC's privacy report could have drawn the same attention that Mad Men and Don Draper's return to Sunday nights did! Conversations at the water cooler about privacy by design along with the hum of “Zou Bisou Bisou”.

Yet I imagine that a few of you were paying close attention to the release of our privacy report as you were to the return of Don Draper.

The report was a culmination of a multi-year effort aimed at ensuring that we will continue to live in a world where we have vibrant and innovative Internet, with loads of interesting and free content, and also a world where consumers trust the online and mobile market to protect their information.

Our agency has long safeguarded consumers' right to privacy, what the intellectual father of the FTC, Louis Brandeis, called “the right to be let alone – the most comprehensive of rights and the right most valued by civilized men.” And we are also committed to the thriving Internet marketplace that is one of the keystones to our recovering economy.

In 2010, the FTC issued a preliminary report on privacy in the 21st century. We outlined a series of best privacy practices through which companies can succeed in cyberspace while treating their customers' information with respect and care.

On Monday, we issued the Commission report with the final framework that reaffirms and refines our original work. We put forward three principles that companies should follow when handling personal data: incorporate privacy protections into products as they are developed – that is, privacy by design; simplify the choices that consumers make about how their data is collected and used; and be more transparent by providing better information to consumers about how their personal information is being handled.

Our final report reaffirms our call for a robust Do Not Track mechanism. And we discuss the good work that industry has undertaken over the past year to answer our call. Leading

¹ Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers, An FTC Report (Mar. 26, 2012), available at <http://www.ftc.gov/os/2012/03/120326privacyreport.pdf>

I think most Americans are not deeply troubled when they receive ads targeted to their interests – though I would appreciate it if you and your clients would stop sending me so many “erase those wrinkles now” ads.

Rather, it is the underlying data collection and use that concerns most consumers. In a recent Pew Research Center study, 68 percent of internet users reported they’re “not okay” with targeted advertising because they don’t like having their online behavior tracked and analyzed.⁶

Target learned this lesson when they used shoppers’ buying habits to predict if a shopper was pregnant, and then sent coupons for newborn items to the moms-to-be. Consumers responded the same way most women do when strangers comment on their pregnancy: with a nasty look and a firm “buzz off.” Target ended up having to change their campaign to make it less obvious they knew when women’s labor pains would begin.

But there is more to this than the “creepiness” factor, as some describe it, of having all sorts of market analysts and data brokers poring over the records of purchasing and online browsing habits, as well as geolocation information and other information gleaned from our computers and smartphones.

I believe that consumers are worried – and should be – about the masses of data that are collected about them, and then packaged, passed, and resold by largely faceless data brokers. This practice runs counter to the FTC’s recommendation that companies practice data minimization – a key tenet of privacy by design, which in turn is a key principle we believe companies should adopt to protect their customer’s privacy.

On the most basic level, collecting and storing vast amounts of consumer information vastly increases the damage a data breach can cause. But the ways in which that data can be used are just as disturbing, maybe even more so.

Researchers have demonstrated how easily we associate the realm of data collected with specific consumers, even when that data has been “deidentified.” As Alex Madrigal said in a recent article in *The Atlantic*, “Right now, a huge chunk of what you’ve ever looked at on the Internet is sitting in databases all across the world. The line separating all that it might say about you, good or bad, is as thin as the letters of your name.”⁸

Mad Men’s Don Draper said: “People tell you who they are, but we ignore it – because we want them to be who we want them to be.” Some may believe that today it is the opposite – that today, data brokers and others obtain so much information from so many sources that they can precisely – and correctly – profile each of us. But I am deeply troubled by the strong possibility that we are not that far from Don Draper’s world, because information brokers and

⁶ Pew Internet & American Life Project, “Search Engine Use 2012,” Pew Research Center (Mar. 9, 2012), available at <http://www.pewinternet.org/Reports/2012/Search-Engine-Use-2012.aspx?src=prc-headline>

⁷ Charles Duhigg, “How Companies Learn Your Secrets,” *N.Y. Times*, Feb. 19, 2012, available at <http://www.nytimes.com/2012/02/19/magazine/shopping-habits.html?pagewanted=all>

⁸ Alexis Madrigal, “I’m Being Followed: How Google – and 104 Other Companies – Are Tracking Me on the Web,” *The Atlantic* (Feb. 29, 2012), available at <http://www.theatlantic.com/technology/archive/2012/02/im-being-followed-how-google-151-and-104-other-companies-151-are-tracking-me-on-the-web/253758/>

others can misconstrue the information or use it in inappropriate ways. And in turn, that can have a real – and negative – impact on people’s lives.

A devoted son researches diabetes care for his ailing mother, and his health insurer may see a reason to raise premiums. A church volunteer prints out the rules of black jack for a casino night fundraiser, and her mo

