

‘The Perfect Gift’
Keynote Address by Commissioner Julie Brill
Before the Direct Marketing Association
March 12, 2013

Thank you so much for that kind introduction

And thank all of you for taking time out of your busy conference schedule to join me here to celebrate my birthday

Increasingly, Internet companies are pushing each other to prove to consumers that their
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Industry has come to recognize that in the last couple of years, consumers have become much more savvy about behavioral advertising, online tracking, and big data. The book *Big Data: A Revolution That Will Transform How We Live, Work and Think* made it into the top 25 best-selling books on Amazon within 24 hours of its release.

And mobile commerce is the newest big data opportunity. As you are well aware, the FTC has plunged into the ever-expanding sea of the mobile space, both ramping up our enforcement efforts and researching policies that rise to the dual challenge of protecting consumer privacy while allowing the exciting mobile

and consent.⁸ In some cases, the revised rule will require the third parties doing the additional collection to comply with COPPA. We also expanded the definition of 'personal information' to include add

If a separate disclosure is absolutely necessary, it must be clear and conspicuous often not an easy task in the mobile space when some ads are no larger than a thumbprint. If a particular platform does not provide an opportunity to make clear and conspicuous disclosures, that platform should not be used to disseminate advertisements that require such disclosures. (7 K L V L V Q ¶ W W quoting by Mother with a speech)

Here are some other highlights of the revised dot com disclosures guidance. The placement of disclosures should be as close to triggering claim as possible to find a disclosure.

We also talk about the desirability of making certain design ads in such a way so that the consumer has no choice but to see the disclosures. And we discuss the circumstances under which disclosures through hyperlinks will work, and circumstances where they may not work.

The key, as always, is the net impression of the ad. The revised guidance notes that an advertiser knows that a significant proportion of consumers are not noticing or understanding a disclosure necessary to prevent an ad from being deceptive, the advertiser should remedy that.

Our revised dot com disclosure guidance is a good recommendation to all of you. Our goal is to inspire consumer confidence in the online and mobile marketplace.

There are two other areas where we can work together to inspire greater consumer trust and confidence in the online and mobile marketplace: Do Not Track and increased transparency for data brokers.

Many of you know that I believe Do Not Track has the potential to offer consumers meaningful choices about how their data is collected and used. And a Do Not Track standard enabled by browsers, whether developed through the W3C or elsewhere, would be the most effective way to provide consumers with granular choices that will be honored across platforms, both online and in the mobile space.

I urge all stakeholders to continue their efforts to arrive at a robust consensus based Do Not Track standard to allow consumers to make effective choices about tracking.

'DWD EURNHUV KDYH EHHQ LQ WKH ELJ GDWD EXVLQH Today, these highly sophisticated companies know a lot about consumers but consumers know nothing about them. But, as I alluded to earlier, that is changing. The)7 & LV LQ WKH SURFHVV RI H[D]D Me Q Y e n J o u r n a l s EURNHUV for information to nine data brokers and we will be analyzing the information submitted

to better understand industry practices with a view towards issuing a report later this year.¹¹

In the meantime, it is important that we focus on ways to increase transparency in this industry. There are data brokers that provide data for marketing to consumers; there are those that provide information for marketing purposes that fall outside the FCRA. However, sometimes these activities can impact eligibility determinations. One area of growing concern is discriminatory marketing offers that qualify some consumers to be eligible for discounts or other benefits based on behavioral data and disqualifying others, all without giving consumers the opportunity to ensure that the information on which these decisions are based is accurate.

I have been engaged in discussions with industry leaders and many of them here in this room² about creating a web portal that would educate consumers about data brokers and how they use consumer information for marketing purposes. This web portal could also allow consumers to opt out of having their information used for marketing purposes, particularly if the data broker already provides such an option. And data brokers that provide information about consumers for eligibility decisions should ensure that their dossiers are accurate by allowing consumers to access and correct their information.

These tools, Do Not Track and a web portal to increase transparency of data brokers² are not required as a matter of federal law. But creating these tools to provide greater transparency and increase consumer confidence would be smart business practice.

The biggest threat to today's expanding and innovative cyber economy is not the FTC. It is not Capitol Hill.² Z K L F K \ U • 0 ^ ä J Ch & Y J E À 57 0 C > -3 < 2651 0 A > 10 < 26.02 57 ID