

**PREPARED STATEMEN**

---

<sup>1</sup> This written statement represents the views of the Federal Trade Commission. My oral presentation and responses are my own and do not necessarily reflect the views of the Commission or of any Commissioner.

<sup>2</sup> Information on the FTC's privacy initiatives generally may be found at <http://www.ftc.gov/privacy/index.htm>

forth some preliminary suggestions for moving forward on consumer privacy issues. It concludes by discussing our proposal to repeal the common carrier exemption for telecommunications providers.

## **I. The FTC's Efforts to Protect Consumer Privacy**

The FTC has a long track record of protecting

---

<sup>4</sup> 15 U.S.C. §§ 1681e-i.

<sup>5</sup> This work included the Department of Health, Education, and Welfare's 1973 report, *Records, Computers, and the Rights of Citizens*, available at <http://aspe.hhs.gov/datacncl/1973privacy/c7.htm>, and the Organisation for Economic Cooperation and Development's 1980 *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data*, available at [http://www.oecd.org/document/18/0,3343,en\\_2649\\_34255\\_1815186\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/18/0,3343,en_2649_34255_1815186_1_1_1_1,00.html).

---

<sup>6</sup> See Federal Trade Commission, Privacy Online: A Report to Congress (June 1998), available at <http://www.ftc.gov/reports/privacy3/priv-23.shtm>.

<sup>7</sup> See Federal Trade Commission, Privacy Online: Fair Information Practices in the Electronic

---

<sup>8</sup> *Id.* at 36-38.

<sup>9</sup> In 1999, Congress also passed the Gramm-Leach Bliley-Act, 15 U.S.C. §§ 6821-27, requiring all financial institutions to provide notice of their data practices and choice for sharing data with third parties

<sup>10</sup> *In the Matter of GeoCities, Inc.*, FTC Docket No. C-3850 (Feb. 5 1999) (consent order).

*Id.* (Jan. 10, 2000) (

<sup>11</sup> *FTC v. Toysmart.com LLC*, 00-CV-11341-RGS (D. Mass. filed July 10, 2000). *See also In the Matter of Liberty Fin. Cos.*, FTC Docket No. C-3891 (Aug. 12, 1999) (consent order) (alleging that site falsely represented that personal information collected from children, including information about family finances, would be maintained anonymously); *FTC v. ReverseAuction.com, Inc.*, No. 00-0032 (D.D.C. Jan. 10, 2000) (

---

online auction site obtained consumer data from competitor site and then sent deceptive, unsolicited e-mail messages to those consumers seeking their business); *FTC v. Rennert*, No. CV-S-00-0861-JBR (D. Nev. July 24, 2000) (consent order) (alleging that defendants misrepresented their security practices and how they would use consumer information); *In the Matter of Educ. Research Ctr. of Am., Inc.*, FTC Docket No. C-4079 (May 6, 2003) (consent order) (alleging that personal data collected from students for educational purposes was sold to commercial marketers); *In the Matter of The Nat'l Research Ctr. for College & Univ. Admissions*, FTC Docket No. C-4071 (Jun. 28, 2003) (consent order) (same); *In the Matter of Gateway Learning Corp.*, FTC Docket No. C-4120 (Sept. 10, 2004) (consent order) (alleging that company rented customer information to list brokers in violation of its privacy policy); *In the Matter of Vision I Properties, LLC*, FTC Docket No. C-4135 (Apr. 19, 2005) (consent order) (alleging that a service provider disclosed customer information in violation of merchant privacy policies).

<sup>12</sup> See, e.g., Speech of Timothy J. Muris, *Protecting Consumers' Privacy: 2002 and Beyond*, Cleveland, Ohio, Oct. 4, 2001, available at <http://www.ftc.gov/speeches/muris/privisp1002.shtm>

---

---

<sup>17</sup> See *In the Matter of Twitter, Inc.*, FTC File No. 092 3093 (June 24, 2010) (consent order approved for public comment); *In the Matter of Dave & Buster's, Inc.*, FTC Docket No. C-4291 (Jun. 8, 2010) (consent order); *FTC v. LifeLock, Inc.*, No. 2:10-cv-00530-NVW (D. Ariz. final order filed Mar. 15, 2010); *United States v. ChoicePoint, Inc.*, No. 1:06-CV-0198-JTC (N.D. Ga. final order filed Oct. 14, 2009); *In the Matter of James B. Nutter & Co.*, FTC Docket No. C-4258 (June 12, 2009) (consent order); *United States v. Rental Research Servs., Inc.*, No. 0:09-CV-00524 (D. Minn. final order filed Mar. 6, 2009); *FTC v. Navone*, No. 2:08-CV-001842 (D. Nev. final order filed Dec. 30, 2009); *United States v. ValueClick, Inc.*, No. 2:08-CV-01711 (C.D. Cal. final order Mar. 17, 2008); *United States v. American United Mortgage*, No. 1:07-CV-07064 (N.D. Ill. final order filed Jan. 28, 2008); *In the Matter of CVS Caremark Corp.*, FTC Docket No. C-4259 (Jun. 18, 2009) (consent order); *In the Matter of Genica Corp.*, FTC Docket No. C-4252 (Mar. 16, 2009) (consent order); *In the Matter of Premier Capital Lending, Inc.*, FTC Docket No. C-42



---

<sup>24</sup> In addition, beginning with the CVS case announced last year, the Commission has begun to challenge the reasonableness of security measures to protect *employee* data, in addition to customer data. *See, e.g., In the Matter of CVS Caremark Corp.*, FTC Docket No. C-4259 (Jun. 18, 2009) (consent order).

<sup>25</sup> *See, e.g., FTC v. Navone*, No. 2:08-CV-001842 (D. Nev. final order Dec. 29, 2009); *United States v. ChoicePoint, Inc.*, No. 1:06-CV-0198 (final order filed N.D. Ga. Oct. 14, 2009).

---

<sup>28</sup> Exec. Order No. 13,402, 71 Fed. Reg. 27,945 (May 15, 2006).

*See The Pr*

---

<sup>32</sup> *FTC v. Consumerinfo.com, Inc.*, SACV05-801AHS(MLGx) (C.D. Cal. final order filed Jan. 8, 2007).

To provide further clarity

Perhaps the Commission's most well-known privacy initiative is the Do Not Call Registry, which has been an unqualified success. The Commission vigorously enforces the requirements of the Registry to ensure its ongoing effectiveness. The FTC has brought 64 actions alleging violations of the Do Not Call Rule. These actions have resulted in \$39.9 million in civil penalties and \$17.7 million in consumer redress or disgorgement. During the past year, the Commission has filed several new actions that attack the use of harassing "robocalls" – the automated delivery of prerecorded messages – to deliver deceptive telemarketing pitches that promise consumers extended auto warranties and credit card interest rate reduction services.<sup>36</sup>

In addition, since the enactment of the CAN-SPAM Act in 2003,<sup>37</sup> the Commission has brought dozens of law enforcement actions challenging spam, including cases involving deceptive spam, failure to honor opt-out requests, and failure to comply with requirements for adult labeling of spam messages.<sup>38</sup> For example, in June 2009, the FTC moved quickly to shut down a rogue Internet Service Provider (ISPs) (11 For)Tj22.5600 moved TD(9.)Tj

---

<sup>36</sup> See, e.g., *FTC v. Asia-Pacific Telecom, Inc.*, No. 10 CV 3168 (N.D. Ill., filed May 24, 2010).

<sup>37</sup> 15 U.S.C. §§ 7701-7713.

<sup>38</sup> Detailed information regarding these actions is available at <http://www.ftc.gov/bcp/online/edcams/spam/press.htm>.

<sup>39</sup> *FTC v. Pricewert, LLC*, No. 09-CV-2407 (N.D. Cal. final order issued Apr. 4, 2010).

down this ISP, there was a temporary 30 percent drop in spam worldwide.<sup>40</sup> Finally, since 2004, the Commission has brought 15 spyware cases, targeting programs foisting voluminous pop-up ads on consumers and subjecting them to nefarious programs that track their keystrokes and online activities.<sup>41</sup>

### **C. Ongoing Outreach and Policy Initiatives**

While the Commission's consumer privacy models have evolved throughout the years, its activities in a number of areas have remained constant. In addition to enforcement, these include consumer and business education, research and policymaking on emerging technology issues, and international outreach.

#### **1. Consumer and Business Education**

The FTC has done pioneering outreach to business and consumers, particularly in the area of consumer privacy and data security. The Commission's well-known OnGuard Online website educates consumers about threats such as spyware, phishing, laptop security, and identity theft.<sup>42</sup> The FTC also developed a guide to help small and medium-sized businesses implement appropriate data security for the personal information they collect and maintain.<sup>43</sup>

---

<sup>40</sup> See Official Google Enterprise Blog, Q2 2009 Spam Trends, *available at* <http://googleenterprise.blogspot.com/2009/07/q2-2009-spam-trends.html>.

<sup>41</sup> Detailed information regarding each of these law enforcement actions is available at [http://www.ftc.gov/bcp/edu/microsites/spyware/law\\_enfor.htm](http://www.ftc.gov/bcp/edu/microsites/spyware/law_enfor.htm).

<sup>42</sup> See <http://www.onguardonline.gov>. Since its launch in 2005, OnGuard Online and its Spanish-language counterpart Alertaena Línea have attracted nearly 12 million unique visits.

<sup>43</sup> See *Protecting Personal Information: A Guide For Business*, *available at* <http://www.ftc.gov/infosecurity>.

The FTC has also developed resources specifically for children, parents, and teachers to help kids stay safe online. In response to the Broadband Data Improvement Act of 2008, the FTC produced the brochure *Net Cetera: Chatting with Kids About Being Online* to give adults practical tips to help children navigate the online world.<sup>44</sup> In less than 10 months, the Commission already has distributed more than 3.8 million copies of its *Net Cetera* brochure to schools and communities nationwide. The Commission also offers specific guidance for certain types of Internet services, including, for example, social networking and peer-to-peer file sharing.<sup>45</sup> In addition, the Commission recently launched Admongo.gov, a campaign to help kids better understand the ads they see online.

---

<sup>44</sup> See FTC Press Release, OnGuardOnline.gov Off to a Fast Start with Online Child Safety Campaign (Mar. 31, 2010), available at <http://www.ftc.gov/opa/2010/03/netcetera.shtm>.

<sup>45</sup> See <http://www.onguardonline.gov/topics/social-networking-sites.aspx>.

<sup>46</sup> See FTC Press Release, FTC Helps Prepare Kids for a World Where Advertising is Everywhere (Apr. 28, 2010), available at <http://www.ftc.gov/opa/2010/04/admongo1.shtm>.



---

<sup>48</sup> Pub. L. No. 109-455 (2006) (codified in scattered sections of 15 U.S.C. and 12 U.S.C. § 3412(e)).

<sup>49</sup> Companies self-certify to the U.S. Department of Commerce their compliance with a set of Safe Harbor privacy principles. If a company falsely claims to be part of this program, or fails to abide by its requirements, the FTC can challenge such actions under its deception authority.

*See In the Matter of Directors Desk LLC, FTC Doc*

The Fair Information Practices model, as implemented, has put too much burden on consumers to read and understand lengthy and complicated privacy policies and then make numerous choices about the collection and use of their data. Indeed, privacy policies have become complicated legal documents that often seem designed to limit companies' liability, rather than to inform consumers about their information practices.

The harm-based model has principally focused on financial or other tangible harm rather than the exposure of personal information where there is no financial or measurable consequence from that exposure.<sup>52</sup> Yet there are situations in which consumers do not want personal

information to be shared even where there maTIO0 0.0000 TD (fha-FITC-01E00700c15.000)9D(8400)B26(65E

---

<sup>52</sup> See Speech of Timothy J. Muris, *Protecting Consumers' Privacy: 2002 and Beyond*, Cleveland, Ohio, October 4, 2001, available at <http://www.ftc.gov/speeches/muris/privisp1002.shtm>.

<sup>53</sup> See Daniel J. Solove, *Identity Theft, Privacy, and the Architecture of Vulnerability*, 54 HASTINGS L.J. 1, 5 (2003).

---

<sup>54</sup> See FTC Press Release, FTC to Host Public Roundtables to Address Evolving Privacy Issues (Sept. 15, 2009), available at <http://www.ftc.gov/opa/2009/09/privacyrt.shtm>.

<sup>55</sup> Similar efforts are underway around the world. For example, the OECD is preparing to review its 1980 Privacy Guidelines (*see* [http://www.oecd.org/document/39/0,3343,en\\_2649\\_34255\\_44946983\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/39/0,3343,en_2649_34255_44946983_1_1_1_1,00.html)); the European Commission is undertaking a review of the 1995 Data Protection

invisible data collection and use, commenters and panelists pointed to enormous increases in data processing and storage capabilities; advances in online profiling and targeting; and the opaque business practices of data brokers,<sup>56</sup> which are not understood by consumers. In addition, as commenters noted, consumers rarely realize that, when a company discloses that it shares information with affiliates, the company could have hundreds of affiliates.

Second, commenters and panelists raised concerns about the tendency for companies storing data to find new uses for that data. As a result, consumers' data may be used in ways that they never contemplated.

Third, commenters and roundtable participants pointed out that, as tools to re-identify supposedly anonymous information continue to evolve, the distinction between personally identifiable information ("PII") and non-PII is losing its significance. Thus, information practices and restrictions that rely on this distinction may be losing their relevance.

Fourth, commenters and roundtable participants noted the tremendous benefits from the free flow of information. Consumers receive free content and services and businesses are able to innovate and develop new services through the acquisition, exchange and use of consumer information. Commenters and participants noted that regulations and 2e

---

<sup>56</sup> Data brokers compile information about individuals and sell it to others.

meaningful choices based on them. Some participants also called for the adoption of other substantive data protections – including those in earlier iterations of the Fair Information Practice Principles – that impose obligations on companies, not consumers, to protect privacy. Such participants argued that consumers should not have to choose basic privacy protections, such as not retaining data for longer than it is needed, that should be built into everyday business practices.

Sixth, many commenters called upon the Commission to support a more expansive view of privacy harms that goes beyond economic or tangible harms. There are some privacy harms, these participants argued, that pose real threats to consumers – such as exposure of information about health conditions or sexual orientation – but cannot be assigned a dollar value.

Finally, many participants highlighted industry efforts to improve transparency for consumers about the collection and use of their information. At the same time, commenters questioned whether the tools are consistent and simple enough for consumers to embrace and use effectively.

#### **IV. Next Steps**

The themes that emerged through the roundtable project have led the Commission to consider several ways to improve consumer privacy. Commission staff intends to release a report later this year in which it expects to discuss several issues, as described preliminarily below.

## A. Integrating Privacy Into Business Practices

Many roundtable panelists and commenters raised the importance of companies' incorporating privacy and security protections into their everyday business practices.<sup>57</sup> A number of roundtable participants and commenters emphasized the value of building privacy and security protections into company procedures, systems, and technologies at the outset, so that they are an integral part of a company's business model. Such protections include providing reasonable security for consumer data, collecting only the data needed for a specific business purpose, retaining data only as long as necessary to fulfill that purpose, and implementing reasonable procedures to promote data accuracy.

Panelists and commenters stated that these measures would provide consumers with substantive protections without placing the burden on them to read long notices and make cumbersome choices. The Commission also notes that many businesses already are providing these types of protections as a matter of good business practice or due to existing sectoral laws.<sup>58</sup> Accordingly, the Commission is exploring whether and how to encourage companies to incorporate these protections into their practices, whether there are other protections that companies should incorporate, and how to balance the costs and benefits of such protections.

---

<sup>57</sup> See generally, Privacy Roundtable Transcripts of December 7, 2009, January 28, 2010, and March 17, 2010, available at [http://htc-01.media.globix.net/COMP008760MOD1/ftc\\_web/FTCindex.html](http://htc-01.media.globix.net/COMP008760MOD1/ftc_web/FTCindex.html) and the Privacy Roundtable public comments, available at <http://www.ftc.gov/os/comments/privacyroundtable/index.shtm>.

<sup>58</sup> See Fair Credit Reporting Act, 15 U.S.C. §§ 1681e-i; Gramm-Leach-Bliley Act, 16 C.F.R. Part 314, implementing 15 U.S.C. § 6801(b); cases cited *supra* n. 17.

## **B. Simplifying Choice**

The Commission is also considering whether and how to simplify the privacy choices presented to consumers. One way would be to recognize that consumers do not need to exercise choice for certain commonly accepted business practices – those that fall within reasonable consumer expectations. By eliminating the need to exercise choice for these practices, consumers can focus on the choices that really matter to them, and on uses of data that they would not expect when they engage in a transaction. Simplifying choice should also reduce the burdens on businesses.

Such commonly accepted business practices may include fulfillment, fraud prevention and responding to legal process, internal analytics, and sharing data with service providers that are acting at the company's direction. For example, it may be unnecessary, and even distracting, to ask a consumer to consent to sharing his or her address information with a shipping company for purposes of shipping a product that the consumer has requested. The Commission is considering how to define these commonly accepted business practices.

The Commission is also exploring – in cases where choice would be needed – how to ensure that such choice is more meaningful. For example, rather than discussing choices in a long privacy policy, it may be most effective to present choices “just-in-time,” at the point when the consumer is providing the data or otherwise engaging with a company. It also may be beneficial to have greater consistency in the way that choices are presented and expressed, so that consumers can better understand and compare companies' privacy practices. In addition, the Commission is examining how best to protect and provide effective choice for the use of sensitive information, such as health, financial, children's, and location data.

### **C. Improving Transparency**

The Commission also is considering a number of other ways to increase transparency about commercial data practices. First, the Commission believes that privacy policies should be improved. Indeed, although excessive reliance on privacy policies has been widely criticized, roundtable participants and commenters recognized the continuing value of privacy notices to promote accountability for companies. Accordingly, in its upcoming report, the Commission will discuss ways to improve the disclosures in privacy policies. One possible approach is the use of standardized terms or formats. Clearer, more standardized privacy disclosures could allow consumers to compare the privacy protections offered by different companies and potentially increase competition on privacy practices.

Second, the Commission also is considering issues related to the practice of data aggregation. Roundtable participants and commenters expressed concern that data collected for one purpose can be combined with other data and then used for purposes not anticipated by the consumer. Further, unbeknownst to many consumers, companies such as data brokers collect and sell such aggregated data on a r

Third, the Commission continues to believe that requiring affirmative express consent for material retroactive changes to how data will be used is an essential means of maintaining transparency.<sup>59</sup>

Finally, the Commission is examining the role of education in promoting greater awareness about privacy among both businesses and consumers. For example, the Commission is interested in exploring whether businesses, industry associations, consumer groups, and the government can do a better job of informing consume

---

<sup>59</sup> See *In the Matter of Gateway Learning Corp.*, FTC Docket No. C-4120 (Sept. 10, 2004) (consent order); FTC Staff Report: Self-Regulatory Principles for Online Behavioral Advertising (Feb. 2009), available at <http://www.ftc.gov/os/2009/02/P085400behavadreport.pdf>.

<sup>60</sup> See Annual Report to Congress for FY 2003 and 2004 Pursuant to the Do Not Call Implementation Act on Implementation of the National Do Not Call Registry, available at <http://www.ftc.gov/reports/donotcall/051004dncfy0304.pdf>.

collaborated in efforts to address concerns raised by phone pretexters obtaining consumers' calling records without authorization.<sup>61</sup> That tradition continues as the FCC works on implementing its National Broadband Plan.

With this history

---

<sup>61</sup> See Prepared Statement of the Federal Trade Commission Before the Committee on Energy and Commerce, United States House of Representatives, "Combating Pretexting: H.R. 936, Prevention of Fraudulent Access to Phone Records Act (Mar. 9, 2007), at 4, *available at* <http://www.ftc.gov/os/testimony/P065409CommissionTestimonReCombatingPretextingandHR936House.pdf>.

<sup>62</sup> 15 U.S.C. § 44, 45(a).

Repeal of the common carrier exemption is particularly timely as the array of communications-related services continues to expand. The FTC has a long track record of addressing competition, consumer protection, and privacy issues with respect to information, entertainment, and payment services. In addition, the FTC has procedural and remedial tools that could be used effectively to address developing problems in the telecommunications industry.<sup>63</sup>

FTC staff continues to work with the FCC on a number of initiatives. Repeal of the common carrier exemption will lead to further and even more productive collaboration and ensure that consumer protection interests are well protected.

## **VI. Conclusion**

Thank you for the opportunity to provide the Commission's views on the topic of consumer privacy. We look forward to continuing to work with Congress and this Committee on this important issue.

---

<sup>63</sup> These tools for injured consumers include the FTC's ability to obtain, in appropriate cases, preliminary and permanent injunctions, asset freezes, restitution, and disgorgement under the FTC Act, 15 U.S.C. § 44 *et seq.*