

**PREPARED STATEMENT OF
THE FEDERAL TRADE COMMISSION**

on

Do Not Track

Before the

**COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER PROTECTION
UNITED STATES HOUSE OF REPRESENTATIVES**

Washington, D.C.

December 2, 2010

¹ This written statement presents the views of the Federal Trade Commission. Commissioner Kovacic dissents. His concerns about the Commission's testimony and the report by its staff, as set for

² 15 U.S.C. §§ 1681e-i.

³ 15 U.S.C. §§ 6501-6508.

⁴ 15 U.S.C. §§ 7701-7713.

⁵ See e.g., Prepared Statement of the Federal Trade Commission Before the Subcomm. on Consumer Protection, Product Safety, and Insurance of the S. Comm. on Commerce, Science, and Transportation, 111

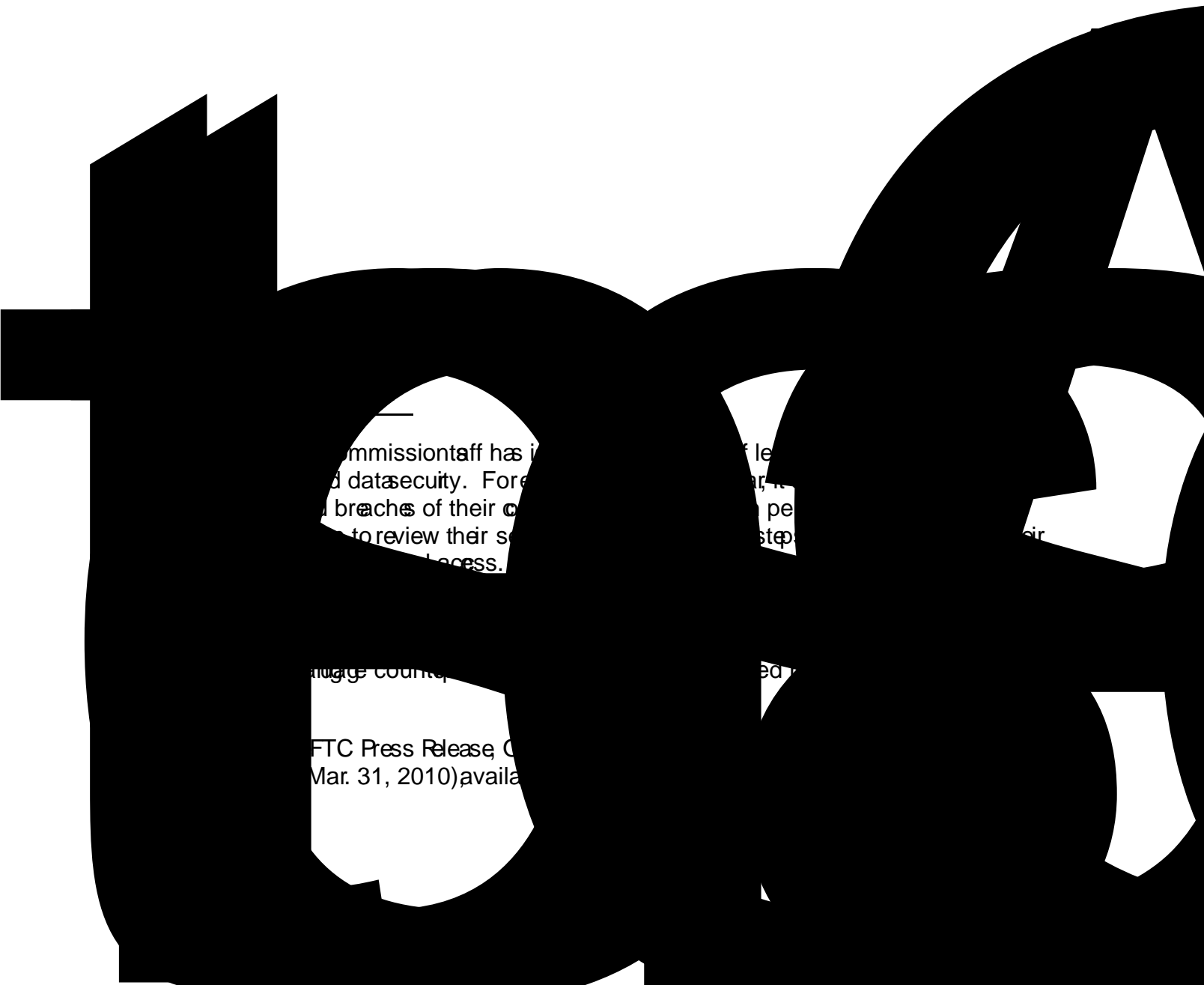
⁸ Many of the Commission's earliest consumer privacy cases similarly held companies accountable for their privacy

XY Corporation ordered the destruction of the information.¹¹

B. Consumer and Business Education

The FTC has done pioneering outreach to businesses and consumers in the area of consumer privacy. For example, the Commission's well-known OnGuard Online website educates consumers about spam, spyware, phishing, peer-to-peer file sharing, social networking, laptop security, and identity theft.¹²

The FTC has developed additional resources specifically for children, parents, and teachers to help kids stay safe



Commission staff has issued guidance on data security. For example, the Commission has advised companies to review their security practices to protect their data.

Language Court, ...

FTC Press Release, ...
(Mar. 31, 2010) available at ...

for example, social networking and peer-to-peer file (“P2P”) sharing.¹⁴

Business education is also an important priority for the FTC. For example, the Commission developed a widely-distributed guide to help small and medium-sized businesses implement appropriate data security for the personal information they collect and maintain.¹⁵ The FTC also develops business education materials to respond to specific emerging issues, such as a recent brochure on security risks associated with P2P file-sharing software.

C. Policy Initiatives

The Commission’s privacy work also includes public workshops and reports to examine the implications of new technologies on consumer privacy. For example, in November 2007, the Commission held a two-day Town Hall event to discuss the privacy implications of online behavioral advertising.¹⁶ Based upon the Town Hall discussions, staff released for public comment a set of proposed principles to encourage industry to improve their behavioral advertising practices.¹⁷

¹⁴ See <http://www.onguardonline.gov/topics/social-networking/sites.aspx>

¹⁵ See Protecting Personal Information: A Guide For Business available at <http://www.ftc.gov/infosecurity>.

¹⁶ FTC Town Hall, Behavioral Advertising: Tracking, Targeting, & Technology (Nov. 1-2, 2007), available at <http://www.ftc.gov/bcp/workshops/behavioral/index.shtml>.

¹⁷ See FTC Staff, Online Behavioral Advertising: Moving the Discussion Forward to Possible Self-Regulatory Principles (Dec. 20, 2007) available at <http://www.ftc.gov/os/2007/12/0859900strmpdf>.

affirmative express consent for the use of sensitive data.¹⁸ This report was the catalyst for industry to institute a number of self-regulatory initiatives, discussed further below.

The Commission also recently conducted a series of public roundtables on consumer privacy,¹⁹ which took place in December 2009, and January and March 2010. The report issued this week discusses the major themes that emerged from these roundtables, including the ubiquitous collection and use of consumer data; consumers' lack of understanding and ability to make informed choices about the collection and use of their data; the importance of privacy to many consumers; the significant benefits enabled by the increasing flow of information; and the blurring of the distinction between personally identifiable information and supposedly anonymous or de-identified information.

At the roundtables, stakeholders emphasized the need to improve the transparency of businesses' data practices, simplify the ability of consumers to exercise choices about how their information is collected and used, and ensure that businesses take privacy-protective measures as they develop and implement systems that involve consumer information. At the same time, commenters and participants urged regulators to be cautious about restricting the exchange and use of consumer data in order to preserve the substantial consumer benefits made possible through the flow of information. Based on these comments, the Commission staff released its report this week, proposing new framework to guide policymakers and industry as they

¹⁸ See FTC Staff Report: Self-Regulatory Principles For Online Behavioral Advertising (Feb. 2009) available at <http://www.ftc.gov/os/2009/02/085400behavior.pdf> at 33-37, 46. The revisions primarily concerned the principles' scope and application to specific business models. at 20-30.

¹⁹ 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>.

providing the contextual disclosures described above, companies should improve their privacy notices so that consumers, groups, regulators, and others can compare data practices and choices across companies, thus promoting transparency.

²⁰ See Comment of Microsoft Corporation at 1 (November 6, 2009), available at <http://www.ftc.gov/os/comments/privacyundtable/544506-00020.pdf>

²¹ See, e.g., Transcript of December 7, 2009, FTC Privacy Roundtable, Remarks of Alan Westin of Columbia University, at 93-94, available at http://www.ftc.gov/bcp/workshops/privacyroundtables/PrivacyRoundtable_Dec2009_Transcript.pdf; Written Comment of Berkeley Center for Law & Technology, Americans Reject Tailored Advertising and Three Activities that Enabled it, #544506-00113, available at <http://www.ftc.gov/os/comments/privacyroundtable/544506-00113>; Written Comment of Craig Wills, Personalized Approach to Web Privacy Awareness, Attitudes and Actions

Indeed, the FTC repeatedly has called on stakeholders to create better tools to allow consumers to control the collection and use of their online browsing data. In response, several companies have developed new tools that allow consumers to control their receipt of targeted advertisements and to see and manipulate the information companies collect about them for targeting advertisements.²⁴ An online certification company has launched a pilot program to display an icon on advertisements that links to additional information and choices about behavioral advertising.²⁵ An industry group comprised of media and marketing associations has developed self-regulatory guidelines and an opt-out mechanism for behavioral advertising.²⁶ This group has formed a coalition to develop an icon to display in or near targeted advertisements that links to more information and choices. The coalition has pledged to implement this effort industry-wide.²⁷

In addition, each of the major browser vendors offers a mechanism to limit online tracking with varying scope and ease of use. These browser vendors recognize the importance of offering consumers choices in this area.

²⁴ See, e.g., Google's Ad Preferences Manager, Google, <http://www.google.com/advertisements/preferences> (last visited Oct. 21, 2010); Yahoo's Ad Interest Manager, Yahoo, http://info.yahoo.com/privacy/us/yahoo/opt_out/targeting (last visited Oct. 21, 2010).

²⁵ See Press Release, TRUSTe, TRUSTe Lanches TRUSTed Ads Privacy Platform (Oct. 4, 2010) available at http://www.truste.com/about_TRUSTe/press-room/news_truste_trustedads.html

²⁶ See supra note 23; Tony Romm and Kim Harper, Political Intel: FTC Chairman on Self-Regulatory Ad Effort, POLITICO Forums (Oct. 11, 2010) available at http://dyn.politico.com/members/forums/thread.cfm?catid_24&subcatid_78&threadid_4611665

²⁷ The coalition has stated that providing consumers with choices about online advertising is essential to building the trust necessary for the marketplace to grow. See supra note 23.

While some industry members have taken positive steps toward improving consumer control, there are several concerns about existing consumer choice mechanisms. First, industry efforts to implement choice on a widespread basis have fallen short. The FTC has been calling on industry to implement innovations such as “just-in-time” choice for behavioral advertising since 2008. Although there have been developments in this area as described above, an effective mechanism has yet to be implemented on an industry-wide basis. Second, to the extent that choice mechanisms exist, consumers often are unaware of them, and click-through rates remain low.²⁸ For example, consumers are largely unaware of their ability to limit or block online tracking through their browsers, in part because these options may be difficult to find; further, those consumers who know about these options may be confused by the lack of clarity and uniformity among the browsers in how choices are presented and implemented.

Third, existing mechanisms may not make clear the scope of the choices being offered. It may not be clear whether these mechanisms allow consumers to choose not to be tracked, or to be tracked but not delivered targeted advertising. Also, consumers may believe that opting out at one company or website will prevent tracking or will block personalized advertising or even all advertising everywhere. Finally, consumers are not likely to be aware of the technical limitations of existing control mechanisms. For example, they may believe they have opted out of tracking if they block third-party cookies on their browsers; yet they may still be tracked

²⁸ Transcript of December 7, 2009, FTC Privacy Roundtable, Remarks of Alan Davidson of Google, at 113, available at http://www.ftc.gov/bcp/workshops/privacyproundtables/PrivacyRoundtable_Dec2009_Transcript.pdf.

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A Flash cookie, or a Flash local shared object, is a data file that is stored on a consumer's computer by a website that uses Adobe's Flash player technology. Like a regular http cookie, a Flash cookie can store information about a consumer's online activities. Unlike regular cookies, Flash cookies are stored in an area not controlled by the browser. Thus, when a consumer deletes or clears the cookies from his browser using tools provided through the browser, the consumer does not delete Flash cookies stored on his computer. Instead, the consumer must know that Flash cookies exist, go to the Adobe website, and follow the instructions provided there to have them removed.

Recently, a researcher released a software tool that demonstrates several technical mechanisms in addition to Flash cookies that websites can use to persistently track consumers, even if they have attempted to prevent such tracking through existing tools. <http://samy.pl/evercookie>

more clear, easy-to-locate, and effective, and by conveying directly to websites the user choice to opt out of tracking. Such a universal mechanism could be accomplished through legislation or potentially through robust, enforceable self-regulation.

0000.D230 TD (c) (1) 78368466-50660 TD (b) (1) 23389690 or 000 TC Congress should consider several issues.

First, any such mechanism should not undermine the benefit that online behavioral advertising has to offer, by funding online content and services and providing personalized advertisements that many consumers value.

Second, such a mechanism should be different from the Do Not Call program in that it should not require a "Registry" of unique identifiers. In the context of the Do Not Call program, each telephone already has a unique identifier in the form of a phone number. In contrast, there is no such persistent identifier for computers, as Internet Protocol ("IP") addresses³¹ can change frequently. Rather than treating such an identifier (California, 44:44a210 1 which is similar in 000 TD r in the f) T

³¹ An Internet Protocol address (IP address) is a number that is assigned to any device that is connected to the Internet.

³² A new identifier would be yet another piece of personally identifiable information that companies could use to gather data about individual consumers.

³³ Although the practicalities of a proposed choice mechanism here would differ from Do Not Call, it would be similar in that it would allow consumer to express lasting persistent preference regarding advertising targeted to them.

For example, at the roundtables, one company described how it shows consumers the categories of advertising associated with them, and allows them to de-select those categories and select additional ones³⁴. The panelist noted that, when given this option, rather than opting out of advertising entirely, consumers tend to choose to receive some types of advertising.

As this example illustrates, consumers may want more granular options. We therefore urge Congress to consider whether a uniform and comprehensive choice mechanism should

³⁴ Transcript of December 7, 2009, FTC Privacy Roundtable, Remarks of Alan Davidson of Google, at 101-02, available at http://www.ftc.gov/bcp/workshops/privacymroundtables/PrivacyRoundtable_Dec2009_Transcript.pdf.

V. Conclusion

Thank you for the opportunity to provide the Commission's views. We look forward to continuing this important dialogue with Congress and this Subcommittee.