
**Prepared Statement of
The Federal Trade Commission on
"Privacy Online: Fair Information Practices In the Electronic Marketplace"**

**Before the
Committee on Commerce, Science, and Transportation
United States Senate**

Washington, D.C.

May 25, 2000

Mr. Chairman, I am Robert Pitofsky, Chairman of the Federal Trade Commission. I appreciate this opportunity to present the Commission's views on the privacy issues raised by the collection and use of consumers' personal information by commercial sites on the World Wide Web.⁽¹⁾

I. Introduction and Background

A. FTC Law Enforcement Authority

The FTC's mission is to promote the efficient functioning of the marketplace by protecting consumers from unfair or deceptive acts or practices and to increase consumer choice by promoting vigorous competition. As you know, the Commission's responsibilities are far-reaching. The Commission's primary legislative mandate is to enforce the Federal Trade Commission Act ("FTCA"), which prohibits unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.⁽²⁾ With the exception of certain industries and activities, the FTCA provides the Commission with broad investigative and law enforcement authority over entities engaged in or whose business affects commerce.⁽³⁾ Commerce on the Internet falls within the scope of this statutory mandate.

B. Privacy Concerns in the Online Marketplace

Since its inception in the mid-1990's, the online consumer marketplace has grown at an exponential rate. Recent figures suggest that as many as 90 million Americans now use the Internet on a regular basis.⁽⁴⁾ Of these, 69%, or over 60 million people, shopped online in the third quarter of 1999.⁽⁵⁾ In addition, the Census Bureau estimates that retail e-commerce reached \$5.3 billion for the fourth quarter of 1999.⁽⁶⁾

At the same time, technology has enhanced the capacity of online companies to collect, store, transfer, and analyze vast amounts of data from and about the consumers who visit their Web sites. This increase in the collection and use of data, along with the myriad subsequent uses of this information that interactive technology makes possible, has raised public awareness and

consumer concerns about online privacy. Recent survey data demonstrate that 92% of consumers are concerned (67% are "very concerned") about the misuse of their personal information online.⁽⁷⁾ The level of consumer unease is also indicated by a recent study in which 92% of respondents from online households stated that they do not trust online companies to keep their personal information confidential.⁽⁸⁾ To ensure consumer confidence in this new marketplace and its continued growth, consumer concerns about privacy must be addressed.⁽⁹⁾

C. The Commission's Approach to Online Privacy - Initiatives Since 1995

Since 1995, the Commission has been at the forefront of the public debate concerning online privacy.⁽¹⁰⁾ The Commission has held public workshops; examined Web site information practices and disclosures regarding the collection, use, and transfer of personal information; and commented on self-regulatory efforts and technological developments intended to enhance consumer privacy. The Commission's goals have been to understand this new marketplace and its information practices, and to assess the costs and benefits to businesses and consumers.⁽¹¹⁾

In June 1998 the Commission issued *Privacy Online: A Report to Congress* ("1998 Report"), an examination of the information practices of commercial sites on the World Wide Web and of industry's efforts to implement self-regulatory programs to protect consumers' online privacy.⁽¹²⁾ The Commission described the widely-accepted fair information practice principles of *Notice, Choice, Access* and *Security*. The Commission also identified *Enforcement* - the use of a reliable mechanism to provide sanctions for noncompliance - as a critical component of any governmental or self-regulatory program to protect privacy online.⁽¹³⁾ In addition, the 1998 Report presented the results of the Commission's first online privacy survey of commercial Web sites. While almost all Web sites (92% of the comprehensive random sample) were collecting great amounts of personal information from consumers, few (14%) disclosed anything at all about their information practices.⁽¹⁴⁾

Based on survey data showing that the vast majority of sites directed at children also collected personal information, the Commission recommended that Congress enact legislation setting forth standards for the online collection of personal information from children.⁽¹⁵⁾ The Commission deferred its recommendations with respect to the collection of personal information from online consumers generally. In subsequent Congressional testimony, the Commission discussed promising self-regulatory efforts suggesting that industry should be given more time to address online privacy issues. The Commission urged the online industry to expand these efforts by adopting effective, widespread self-regulation based upon the long-standing fair information practice principles of Notice, Choice, Access, and Security, and by putting enforcement mechanisms in place to assure adherence to these principles.⁽¹⁷⁾

Last year, Georgetown University Professor Mary Culnan conducted a survey of a random sample drawn from the most-heavily trafficked sites on the World Wide Web as well as a survey of the busiest 100 sites.⁽¹⁸⁾ The former, known as the Georgetown Internet Privacy Policy Survey, found significant improvement in the frequency of privacy disclosures, but also that only 10% of the sites posted disclosures that even touched on all four fair information practice principles. The latter survey found that 25.7% of the sites posted disclosures that even touched on all four fair information practice principles.

time, but called for further industry efforts to implement the fair information practice principles.⁽²⁰⁾

This week the Commission issued its third report to Congress examining the state of online privacy and the efficacy of industry self-regulation. *Privacy Online: Fair Information Practices in the Electronic Marketplace* ("2000 Report") presents the results of the Commission's 2000 Online Privacy Survey, which reviewed the nature and substance of U.S. commercial Web sites' privacy disclosures, and assesses the effectiveness of self-regulation. The 2000 Report also considers the recommendations of the Commission-appointed Advisory Committee on Online Access and Security.⁽²¹⁾ Finally, the Report sets forth the Commission's conclusion that legislation is necessary to ensure further implementation of fair information practices online and recommends the framework for such legislation.⁽²²⁾

II. Fair Information Practices in the Electronic Marketplace: The Results of the 2000 Survey

In February and March 2000, the Commission conducted a survey of commercial sites' information practices, using a list of the busiest U.S. commercial sites on the World Wide Web.⁽²³⁾ Two groups of sites were studied: (a) a random sample of 335 Web sites (the "Random Sample") and (b) 91 of the 100 busiest sites (the "Most Popular Group").⁽²⁴⁾ As was true in 1998, the 2000 Survey results show that Web sites collect a vast amount of personal information from and about consumers. Almost all sites (97% in the Random Sample, and 99% in the Most Popular Group) collect an email address or some other type of personal identifying information.⁽²⁵⁾

The 2000 Survey results also show that there has been continued improvement in the percent of Web sites that post at least one privacy disclosure (88% in the Random Sample and 100% in the Most Popular Group).⁽²⁶⁾ The Commission's 2000 Survey went beyond the mere counting of disclosures, however, and analyzed the nature and substance of these privacy disclosures in light of the fair information practice principles of *Notice*, *Choice*, *Access*, and *Security*. It found that only 20% of Web sites in the Random Sample that collect personal identifying information implement, at least in part, all four fair information practice principles (42% in the Most Popular Group).⁽²⁷⁾ While these numbers are higher than similar figures obtained in Professor Culnan's studies, the percentage of Web sites that state they are providing protection in the core areas remains low. Further, recognizing the complexity of implementing Access and Security as discussed in the Advisory Committee report, the Commission also examined the data to determine whether Web sites are implementing Notice and Choice only. The data showed that only 41% of sites in the Random Sample and 60% of sites in the Most Popular Group meet the basic Notice and Choice standards.⁽²⁸⁾

The 2000 Survey also examined the extent to which industry's primary self-regulatory enforcement initiatives - online privacy seal programs - have been adopted. These programs, which require companies to implement certain fair information practices and monitor their compliance, promise an efficient way to implement privacy protection. However, the 2000

Survey found that less than one-tenth, or approximately 8%, of sites in the Random Sample display a privacy seal. Moreover, less than one-half, or 45%, of the sites in the Most Popular Group display a seal.⁽³⁰⁾

III. Commission Recommendations

Based on the past years of work addressing Internet privacy issues, including examination of prior surveys and workshops with consumers and industry, it is evident that online privacy continues to present an enormous public policy challenge.⁽³¹⁾ The Commission applauds the significant efforts of the private sector and commends industry leaders in developing self-regulatory initiatives. The 2000 Survey, however, demonstrates that industry efforts alone have not been sufficient. Because self-regulatory initiatives to date fall far short of broad-based implementation of effective self-regulatory programs, a majority of the Commission has concluded that such efforts alone cannot ensure that the online marketplace as a whole will emulate the standards adopted by industry leaders. While there will continue to be a major role for industry self-regulation in the future, a majority of the Commission recommends that Congress enact legislation that, in conjunction with continuing self-regulatory

The Commission recognizes that the implementation of these practices may vary with the nature of the information collected and the uses to which it is put, as well as with technological developments. For this reason, a majority of the Commission recommends that any legislation be phrased in general terms and be technologically neutral. Thus, the definitions of fair information practices set forth in the statute should be broad enough to provide flexibility to the implementing agency in promulgating its rules or regulations.

Finally, the Commission notes that industry self-regulatory programs would continue to play an essential role under such a statutory structure, as they have in other contexts.⁽³⁵⁾ The Commission hopes and expects that industry and consumers would participate actively in developing regulations under the new legislation and that industry would continue its self-regulatory initiatives. The Commission also recognizes that effective and widely-adopted seal progr Tc 00 0 12 45.04 0sl4(c

under which those financial institutions may disclose personal financial information about consumers to nonaffiliated third parties, and provides a method by which consumers can prevent financial institutions from sharing their personal financial information with nonaffiliated third parties by opting out of that disclosure, subject to certain exceptions. The rule is available on the Commission's Web site at <http://www.ftc.gov/os/2000/05/index.htm#12>. See *Privacy of Consumer Financial Information*, to be codified at 16

18. The results for the random sample of 361 Web sites are reported in *Georgetown Internet Privacy Policy Survey: Report to the Federal Trade Commission* (June 1999), available at <http://www.msb.edu/faculty/culnanm/gippshome.html> [hereinafter "GIPPS Report"]. The results of Professor Culnan's study of the top 100 Web sites, conducted for the Online Privacy Alliance, are reported in *Online Privacy Alliance, Privacy and the Top 100 Sites: Report to the Federal Trade Commission* (June 1999), available at <http://www.msb.edu/faculty/culnanm/gippshome.html> [hereinafter "OPA Report"].

19. See GIPPS Report, Appendix A, Table 8C .

20. *Self-Regulation and Privacy Online* (July 1999) at 12-14 (available at <http://www.ftc.gov/os/1999/9907/index.htm#13>).

21. In December 1999, the Commission established the Federal Trade Commission Advisory Committee on Online Access and Security, pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. §§ 1-15. Notice of Establishment of the Federal Trade Commission Advisory Committee on Online Access and Security and Request for Nominations, 64 Fed. Reg. 71,457 (1999).

The Commission asked the Advisory Committee, a group comprising 40 e-commerce experts, industry representatives, security specialists, and consumer and privacy advocates, to consider the parameters of "reasonable access" to personal information collected from and about consumers online and "adequate security" for such information, and to prepare a report presenting options for implementation of these fair information practices and the costs and benefits of each option. The duties of the Advisory Committee were solely advisory. The Advisory Committee Report and proceedings are available at <http://www.ftc.gov/acoas>.

22. The Commission vote to issue the 2000 Report was 3-2, with Commissioner Swindle dissenting and Commissioner Leary concurring in part and dissenting in part. Both Commissioners' separate statements are attached to the Report. Copies of the 2000 Report and of the report of the Advisory Committee on Online Access and Security are attached. The Reports are also available at <http://www.ftc.gov/reports/privacy2000/privacy2000.pdf> and <http://www.ftc.gov/acoas/papers/finalreport.htm>, respectively.

33. 5 U.S.C. § 553.

34. The Commission will soon be addressing the issue of third-party online collection of personal information for profiling purposes in a separate report to Congress.

35. For example, the program administered by the National Advertising Division of the Council of Better Business Bureaus, Inc. ("NAD") is a model self-