

**United States Federal Trade Commission**  
**“Privacy: From the Woods to the Weeds”**  
**An Address before the International Association of Privacy Professionals**  
**Privacy Academy**  
**September 15, 2011**

Good morning. It's great to be here. Thank you to Bojana for that kind introduction. And thanks to Trevor and the IAPP for inviting me here today.

It is great to be here in Dallas. I am going to begin my remarks today by chatting about one of my heroes – and a hero to many who care about privacy – Louis Brandeis. First, I can't help but note that the hero I think most people are grateful for in Dallas this week is the person who invented air conditioning. And the folks with their finger on the dial at this hotel were obviously trying to welcome me. Back where I come from, Northern New England, it is usually snowing by now! So I feel right at home!

We all know Louis Brandeis is one of the most influential Justices on the Supreme Court. But fewer of you may know that he was also the person who conceived the Federal Trade Commission. At the beginning of the 20<sup>th</sup> century, Louis Brandeis led a crusade against the large steel trusts and other monopolies that were engulfing this country's economic system. His call to cut back on the economic power of the trusts became the focus of the presidential election 100 years ago.

After Woodrow Wilson won the 1912 election, he asked Brandeis to recommend specifically how to solve the problem of the trusts. Brandeis conceived the Federal Trade Commission, which, at Brandeis's urging, Congress empowered to investigate and prohibit unfair methods of competition with a “broad and flexible mandattess bit

His famous law review article, “The Right to Privacy” successfully advocated for the creation of a tort for breach of privacy. Its focal point was the then-revolutionary phenomenon of “snapshot photography” with light, mobile cameras, which allowed the press to, in his words, “overstep[ ] in every direction the obvious bounds of propriety and of decency”<sup>2</sup>. And in *Olmstead v United States*, where Brandeis issued his famous and influential dissent, arguing that “against the government,” Americans have “the right to be let alone,”<sup>3</sup> Brandeis was grappling with the appropriate boundaries for the use of nascent wiretap technology.

The Internet revolution makes snapshot photography and wiretap technology look like child’s play. Because of innovations in the Internet, social media, mobile communications, and location-based apps, we can now become friends with people whose voices we’ve never heard. We can tweet our thoughts to a cyber café full of anyone who wants to listen. We shop for groceries online –share photo albums online – pay traffic tickets online – even date online. Health care workers deliver prenatal care in the farthest corners of the developing world using mobile phones. And populist movements, armed only with Twitter and the Internet, bring down dictatorships.

But all this cyber-wonder does not come for free. Just as technology is extending our reach to the limits of our imagination, many of those providing us with all of these advances are reaching back – harvesting and trading in information about us. The amount of tracking of an individual’s behavior online—what sites she visits, what ads she clicks on, what she says when she chats, and where she wanders through the day as she carries a cell phone in her pocket—is unprecedented. It is also largely undetected by the consumer, raising serious privacy concerns.

Granted, much of this data is collected to fuel targeted advertising, a practice that has solved the problem posed over a century ago by one of Brandeis’s contemporaries, the great merchant and philanthropist John Wanamaker, who said “Half the money I spend on advertising is wasted; the trouble is I don’t know which half.” Companies are willing to pay significantly more for targeted advertising, so it is paying for much of the online free content we all enjoy.



When taken as a whole, I believe the framework we have proposed is flexible enough to allow businesses and consumers to continue to profit from an innovating, growing, and rich information marketplace, and also sturdy enough to provide guideposts on how to innovate and grow in a responsible manner.

Now we are engaged in the very tough work of moving from the forest to the trees, and even down into the weeds, to get the details right. We have received over 400 comments on our report. We are working our way through them, and continuing our conversations with industry and consumer groups, and other policy makers to develop final recommendations.

One area where the details are critically important is in Do Not Track. A majority of the Commissioners – myself included – has called for development – whether by industry or otherwise – of Do Not Track mechanisms. Mechanisms that will give consumers information about online data collection and use practices, and allow them to make certain choices in connection with those practices. We have identified five necessary elements that we will be looking for in any Do Not Track solution:

First, any Do Not Track system should be implemented universally, so that consumers do not have to repeatedly opt out of tracking on different sites.

Second, the choice mechanism should be easy to find, easy to understand, and easy to use.

Third, any choices offered should be persistent and should not be deleted if, for example, consumers clear their cookies or update their browsers.

Fourth, a Do Not Track system should be comprehensive, effective, and enforceable.

So let's drill down a bit into some of the five necessary elements for any DNT mechanism that I've just described. Let's talk about the details that we at the FTC will be paying attention to in the coming weeks and months, as these programs continue to unfold.

security has been, and continues to be, a critical part of our pr

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Consumers have embraced many of the amazing innovations that new technologies have brought us. At the FTC, we want consumers to enjoy the benefits of all that is now possible. It is our job to take the aerial view of the new technological landscape, zoom in and take a close look at the forest, and then get into the weeds to figure out what is growing and what might grow in the future.

And as we continue to dive deep into this fertile ground, we will strive to live up to the legacy of Louis Brandeis, by ensuring that, with each new technological revolution, consumers' interests are adequately protected.

Thanks again for having me today.