

**Remarks of Commissioner Maureen K. Ohlhausen
NAI Summit: Third Parties and the Future of the Internet
New York City, NY
May 21, 2013**

Thank you for that kind introduction, Will. It is an honor to be the opening

reports on best practices, and informing consumers on how to avoid being victims of fraud, the FTC can maximize its effectiveness and reach.

For almost two decades, the Federal Trade Commission has worked to understand the online marketplace and the privacy issues it raises for consumers by hosting numerous public workshops, issuing reports on online data collection practices, monitoring industry self-regulatory efforts, and closely following technological developments affecting consumer privacy. As part of this effort, the Commission has examined online behavioral advertising on several occasions. In November 2007, the FTC held a two-day “Town Hall,” which brought together numerous interested parties to discuss online behavioral advertising in a public forum.¹ Following the Town Hall, FTC staff released for public comment a set of proposed principles designed to serve as the basis for industry efforts to address privacy concerns in this area.² Specifically, the principles provide for transparency and consumer control and reasonable security for consumer data. They also call on companies to obtain affirmative express consent from consumers before they use data in a manner that is materially different than promised at the time of collection and before they collect and use “sensitive” consumer data for behavioral advertising.

In March 2012, just before Ieobly,(ove)4o sere of co8vi24.54(o)]TJ -0.004r04 Tw --(te)-

companies should adopt notice and choice options that appropriately reflect the context of the transaction and/or the relationship the company has with the consumer.

- **Greater Transparency** – companies should disclose details about their collection and use of consumers' information and provide consumers access to the data collected about them.

In addition to policy efforts and reports, the FTC has been a very active force in the privacy

My position is that both groups of consumers should have options that comport with their preferences. The first question for a policymaker should be whether those options are available to consumers through products or services or through industry self-regulation.

Many companies are now developing products that cater directly to consumers with heightened privacy preferences. In the area of search, DuckDuckGo offers consumers the ability to search the web anonymously by not tracking the query activity of their users.¹⁴ Without the raw data of a user's search history, search results are less tailored to a consumer's preferences, but privacy is preserved. The extensibility of the modern browser allows developers to incorporate privacy protections into consumers' everyday browsing.

these efforts, the NAI encourages

competition by favoring entrenched entities that already have consumer information over new entrants who need to obtain such information, or encouraging industry consolidation for purposes of sharing data. As a competition agency, the FTC should be sensitive to these concerns as well.

The Commission has consistently recognized the crucial role that truthful non-misleading advertising plays in fostering competition between current participants in the market and lowering entry barriers for new competitors. However, in its Privacy Report, the Commission did not address the possible competitive effects of its recommendations, including potentially reducing the flow of information in the marketplace, which may be an unintended effect caused by compliance with new requirements.¹⁶

Notably, the ABA Antitrust Section filed a comment on the FTC's Preliminary Privacy Report that highlighted the need to weigh carefully the benefits and costs associated with proposals to enhance privacy.¹⁷ The ABA comment pointed out that although the Report emphasized that, to make meaningful choices, consumers need more information about how their data will be used, it did not assess the value consumers may reap from additional uses of their information that facilitate competition.¹⁸ For example, consumers who choose not to allow the collection or sharing of broad categories of information may no longer be exposed to offers by competitors selling products or services that provide better value, pricing, or quality.¹⁹ In turn, these changes could have negative consequences not just for individual consumers exercising their choice over how their information is used following a particular transaction, but also on the market economy in general.

As the Supreme Court has recognized,

“[A]dvertising, however tasteless and excessive it sometimes may seem, is nonetheless dissemination of information as to who is producing and selling what product, for what reason, and at what price. So long as we preserve a predominantly free enterprise economy, the allocation of our resources in large measure will be

¹⁶ See generally FED. TRADE COMM'N, PROTECTING CONSUMER PRIVACY IN AN ERA OF RAPID CHANGE (2012), available at <http://www.ftc.gov/os/2012/03/120326privacyreport.pdf>.

¹⁷ See

made through numerous private economic decisions. It is a matter of public interest that those decisions, in the aggregate, be intelligent and well informed. To this end, the free flow of commercial information is indispensable.”²⁰

A policy that limits the ability of advertisers to access and use information to reach target audiences may have unintended effects on consumers and the marketplace that any policymaker, particularly one with responsibility for consumer protection and competition, must consider.

I want to thank you for your attention and commend each of you for your hard work and dedication to the NAI’s self-regulatory framework. The NAI helps to raise the bar for responsible data management practices across the entire third-party ecosystem, and I am pleased to have the opportunity to participate in the summit.

²⁰ *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 765 (1976).