



OFFICE OF CHAIRWOMAN  
EDITH RAMIREZ

United States of America  
FEDERAL TRADE COMMISSION  
WASHINGTON, DC 20580

January 9, 2017

**VIA EMAIL**

Federal Councillor  
Johann N. Schneider-Ammann  
Head of the Department of Economic Affairs, Education and Research  
Bundeshaus Ost  
3003 Bern  
Switzerland

Dear Federal Councillor:

I appreciate this opportunity to affirm the Federal Trade Commission's commitment to enforce the Swiss-U.S. Privacy Shield Framework, which is modeled on the EU-US Privacy Shield Framework and replaces the U.S.-Swiss Safe Harbor Framework. We believe this new Framework will facilitate continued trade between the United States and Switzerland and strengthen privacy protections for Swiss consumers.

I have previously explained the FTC's commitment to enforce the EU-U.S. Privacy Shield in correspondence to Vera Jourová, the European Union's Commissioner for Justice, Consumers and Gender Equality,<sup>1</sup> and extend these same assurances in connection with the Swiss-U.S. Privacy Shield Framework. In particular, I want to highlight the FTC's commitment in four key areas: (1) referral prioritization and investigations; (2) addressing false or deceptive Privacy Shield membership claims; (3) continued order monitoring; and (4) enhanced engagement and enforcement cooperation. We provide below detailed information about each of these, together with relevant background about the FTC's role in protecting consumer privacy and enforcing the Safe Harbor programs.<sup>2</sup>

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<sup>1</sup> See Letter from Edith Ramirez, Chairwoman, Fed. Trade Comm'n, to Vera Jourová, Commissioner for Justice, Consumers and Gender Equality of the European Commission (July 7, 2016), *available at* <https://www.ftc.gov/public-statements/2016/07/letter-chairwoman-edith-ramirez-vera-jourova-commissioner-justice> [hereinafter FTC EU-U.S. Privacy Shield Letter].

<sup>2</sup> Additional information about FTC privacy enforcement and policy work and U.S. federal and state privacy laws is

**I. Background**

**A. FTC Privacy Enforcement and Policy Work**

The FTC has broad civil enforcement authority to promote consumer protection and competition in the commercial sphere. As part of its consumer protection mandate, the FTC enforces a wide range of laws to protect the privacy and security of consumer data. The primary

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and digital worlds – send an important message to companies about the need to protect consumer privacy.

Our enforcement actions also have a global impact. The FTC Act’s prohibition on unfair or deceptive acts or practices is not limited to protecting U.S. consumers from U.S. companies, as it includes those practices that (1) cause or are likely to cause reasonably foreseeable injury in the United States, or (2) involve material conduct in the United States. Further, the FTC can use all remedies, including restitution, that are available to protect domestic consumers when protecting foreign consumers.

Our cases enforcing Section 5 of the FTC Act have protected the privacy of U.S. and foreign consumers alike. For example, in a case against an information broker, Accusearch, the FTC alleged that the company’s sale of confidential telephone records to third parties without consumers’ knowledge or consent was an unfair practice in violation of Section 5 of the FTC Act. Accusearch sold information relating to both U.S. and foreign consumers.<sup>8</sup> The court granted injunctive relief against Accusearch prohibiting, among other things, the marketing or sale of consumers’ personal information without written consent, unless it was lawfully obtained from publicly available information, and ordered disgorgement of almost \$200,000.

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effective compliance, including through the use of questionnaires to Framework participants, and its increased efforts to identify false Framework membership claims and misuse of any Framework certification mark.<sup>13</sup>

## **II. Referral Prioritization and Investigations**

As we did under the Safe Harbor program, the FTC commits to give priority to Privacy Shield referrals from the Swiss Federal Data Protection and Information Commissioner (“Swiss DPA”). We will also prioritize referrals of non-compliance with self-regulatory guidelines relating to the Privacy Shield Framework from privacy self-regulatory organizations and other independent dispute resolution bodies.

To facilitate referrals under the Framework from Switzerland, the FTC is creating a standardized referral process and providing guidance to the Swiss DPA on the type of information that would best assist the FTC in its inquiry into a referral. As part of this effort, the FTC will designate an agency point of contact for Swiss DPA referrals. It is most useful when the referring authority has conducted a preliminary inquiry into the alleged violation and can cooperate with the FTC in an investigation.

Upon receipt of a referral from the Swiss DPA or a self-regulatory organization, the FTC can take a range of actions to address the issues raised. For example, we may review the company’s privacy policies, obtain further information directly from the company or from third parties, follow up with the referring entity, assess whether there is a pattern of violations or significant number of consumers affected, determine whether the referral implicates issues within the purview of the Department of Commerce, assess whether consumer and business education would be helpful, and, as appropriate, initiate an enforcement proceeding.

The FTC also commits to exchange information on referrals with the Swiss DPA, including the status of referrals, subject to confidentiality laws and restrictions. To the extent feasible given the number and type of referrals received, the information provided will include an evaluation of the referred matters, including a description of significant issues raised and any action taken to address law violations within the jurisdiction of the FTC. The FTC will also provide feedback to the Swiss DPA on the types of referrals received in order to increase the

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Finally, the FTC will continue to maintain an online list of companies subject to orders obtained in connection with enforcement of both the Safe Harbor program and the new Privacy Shield Framework.<sup>18</sup> In addition, the Privacy Shield Principles now require companies subject to an FTC or court order based on non-compliance with the Principles to make public any relevant Framework-related sections of any compliance or assessment report submitted to the FTC, to the extent consistent with confidentiality laws and rules.

## V. Engagement With the Swiss DPA and Enforcement Cooperation

The FTC recognizes the important role that the Swiss DPA plays with respect to Framework compliance, and encourages increased consultation and enforcement cooperation. In addition to any consultation with the Swiss DPA on referral-specific matters, the FTC commits to participate in periodic meetings with the Swiss DPA to discuss in general terms how to improve enforcement cooperation with respect to the Framework. The FTC will also participate in the annual review of the Framework to discuss its implementation.

The FTC also encourages the development of tools that will enhance enforcement cooperation with the Swiss DPA, as well as other privacy enforcement authorities around the world. In particular, the FTC, along with enforcement partners in the European Union and around the globe, last year launched an alert system within the Global Privacy Enforcement Network (“GPEN”) to share information about investigations and promote enforcement coordination. This GPEN Alert tool could be particularly useful in the context of the Privacy Shield Framework. The FTC and the Swiss DPA could use it to coordinate with respect to the Framework and other privacy investigations, including as a starting point for sharing information in order to deliver coordinated and more effective privacy protection for consumers. We look forward to continuing to work with participating authorities to deploy the GPEN Alert system more broadly and develop other tools to improve enforcement cooperation in privacy cases, including those involving the Framework.

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The FTC is pleased to affirm its commitment to enforcing the new Privacy Shield Framework. We also look forward to continuing engagement with our Swiss colleagues as we work together to protect consumer privacy.

Sincerely,



■ Edith Ramirez  
Chairwoman

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<sup>18</sup> See FTC, Business Center, Legal Resources, [https://www.ftc.gov/tips-advice/business-center/legal-resources?type=case&field\\_consumer\\_protection\\_topics\\_tid=251](https://www.ftc.gov/tips-advice/business-center/legal-resources?type=case&field_consumer_protection_topics_tid=251).