

Dissenting Statement of Commissioner Joshua D. Wright
Issuance of The Internet of Things: Privacy and Security in a Connected World Staff Report
January 27, 2015

I dissent from the Commission's decision to authorize the publication of staff report on its Internet of Things workshop ("Workshop Report") because the Workshop Report includes a lengthy discussion of industry best practices and recommendations for broad-based privacy legislation without analytical support to establish the likelihood that those practices and recommendations, if adopted, would improve consumer welfare.¹ This approach differs from the normal approach to a workshop report, which is to synthesize the record developed during the proceedings and not to make broad policy recommendations. An economically sound and evidence-based approach to consumer protection, privacy, and regulation of the Internet of Things would require the Commission to possess and present evidence that its policy recommendations are more likely to foster competition and innovation than to stifle it.

The Commission has a long and well-regarded history of producing public reports that examine novel, emerging or otherwise important issues. These reports are integral to the Commission's role in protecting consumers and competition in the marketplace. The genesis of such reports varies: Congress may ask the Commission to investigate certain subject matter and then to submit a report to them on the findings.² In preparing such Congressional reports, the Commission sometimes will seek information using our authority under Section 6(b) of the Federal Trade Commission Act to compel private parties to submit information for review.³

policy debates.⁵ Another category of reports prepared by staff include those that document public workshops conducted by the Commission, as well as the public comment process that usually accompanies such workshops. While these documentary reports rarely reflect independent research or investigation, they can potentially serve a somewhat useful synthesizing the discussion at the workshop, the comments placed on the public record, Commission's enforcement actions and policy positions relating to the workshop topic

The Workshop Report falls into neither of these categories and thus raises several concerns

First, while documentary reports may serve a useful purpose in providing a record of the workshop proceedings and the accompanying public comments, we must recognize that merely holding a workshop – without more – should rarely be the sole or even the primary basis for setting forth specific best practices, legislative recommendations, or the purpose of the workshop is to examine dry cleaning methods to evaluate appliance labeling, the limited purpose of the workshop and the ability to get all relevant viewpoints on the public record may indeed allow the Commission a relatively reasonable basis for making narrowly tailored recommendations for a well-defined question or issue. But the Commission must exercise far greater restraint when examining an issue as far ranging as the “Internet of Things” a nascent concept about which the only apparent consensus is that predicting its technological evolution and ultimate impact upon consumers is difficult. A record that consists of a one-day workshop, its accompanying public comments, and the staff's impressions of those proceedings, even well-intended, is neither likely to result in a representative sample of viewpoints, nor generate information sufficient to support legislative or policy recommendations

Second, the Commission and our staff must actually engage in a rigorous cost-benefit analysis prior to disseminating best practices or legislative recommendations, and give the real world consequences for the consumers we are obligated to protect. Acknowledging in passing, as the Workshop Report does, that various courses of actions related to the Internet of Things may well have some potential costs and benefits does not come close to passing muster as benefit analysis. The Workshop Report does not perform actual analysis whatsoever to ensure that or even to give a rough sense of the likelihood that the benefits of the staff's various

⁵ See, e.g., FED. TRADE COMM'N, THE EVOLVING IP MARKETPLACE: ALIGNING PATENT NOTICE AND REMEDIES WITH COMPETITION (2011) (cited in *Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S.Ct. 2129 (2014)); FED. TRADE COMM'N, GENERIC DRUG ENTRY PRIOR TO PATENT EXPIRATION (2002) (cited in *Caraco Pharmaceutical Laboratories, Ltd. v. Novo Nordisk A/S*, 132 S.Ct. 1670 (2012)); FED. TRADE COMM'N, TO PROMOTE INNOVATION IN

