

Knocking Down Silos and Weaving the Tapestry: A Look at the Priorities of FTC Commissioner Julie Brill

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Shortly after receiving the IAPP's 2014 Leadership Award at this year's Global Privacy Summit, Federal Trade Commissioner Julie Brill sat down with DLA Piper Partner Jim Halpert for an intimate discussion about the agency's priorities moving forward. Among the most pressing challenges for Brill and the agency are the effects emerging technology is having on the Fair Information Practice Principles paradigm, ensuring that organizations apply robust data security measures and assuaging international concerns about the data collection practices of U.S. government and business.

Speaking in front of a packed room of privacy professionals, Brill applauded their efforts. "You are all on the front lines," she said, "and we're in the same endeavor."

DLA Partner Jim Halpert interviewing FTC Commissioner Julie Brill

Her candid, one-hour discussion provides a window into the efforts and concerns of the FTC.

Data Brokers and Transparency

All through her Reclaim Your Name project, Brill has been candid about her concerns with the data broker industry and its lack of transparency for consumers. During her Global Privacy Summit conversation, she explained some of her reasoning. Data brokers, she said, often share deeply sensitive data and are often not consumer-facing, challenging the concepts of notice and choice. Consumers have no idea their data is being collected and shared among a complex network of businesses. “I think long notices are still important,” said Brill, “as with other things, but with data brokers, there’s not opportunity for that. The Internet of Things (IoT) has similar issues. Many devices will not have a consumer interface,” she said.

Brill said the oft-cited, male, “silver bullet” solution is not a realistic path to take. Rather, “We need a Jungian female solution” that addresses challenges using multiple tools.

Sen. Jay Rockefeller’s (D-V) staff report the Government Accountability Office’s study and the work of a slew of investigative reporters all point to a network of data flows with consumer information that is often highly sensitive, she noted. Data brokers often know if a person is suffering from diseases like cancer or obesity or diabetes. Similarly, data brokers, in some cases, have been known to categorize consumers into “second city urban strugglers” or recent widows.

“Whatever these titles are,” she warned, “these are euphemisms for race and economic status, and that is deeply concerning.”

In addition to being tracked and categorized, consumers, for the most part, do not have a means to access or correct the data collected about them. For Brill, that's where transparency should play a role. Consumers should have a right to interact with these organizations, partic co, p.

With a movement in the European Union toward a risk

Brill said the FTC will “keep chugging away” at data security issues.

“I want to make this clear: We don’t play the gotcha game. We don’t look for perfect security,” she said. “Stuff happens, and we recognize there’s a nuclear arms race” in the cybersecurity world. She noted that, often, businesses with which they do have contact have good security. “And that’s what we’re looking for,” she said.

As more businesses move toward mobile and the IoT, security becomes an even greater challenge, meaning a greater challenge for privacy professionals as well.

Brill also said the agency has been unanimous in supporting breach notification legislation but warned that if the federal government were to preempt state laws and draft federal legislation, it must be robust enough to truly protect consumers. A good law, she said, hinges on the trigger point of notification. Additionally, if federal legislation is enacted, it should give enforcement powers to state AGs.

FTC Authority and Global Interoperability

Some have argued that the FTC should be granted greater enforcement authority to keep up with Big Data and IoT issues. Brill, however, said she thought Section 5 of the FTC Act has given the agency sufficient authority. Section 5, she said, was meant to be flexible as markets and technologies changed.

Criticisms in Europe about the Safe Harbor reached almost fever pitch in 2013 after the Snowden revelations, but earlier this year, the FTC brought

ease European concerns. One solution Brill had for Safe Harbor? Get rid of alternative dispute resolution fees.

On the world stage, the FTC is proactively working with fellow privacy regulators around the world.

“We are working to try to have a better mutual understanding of what enforcement is,” she said. “Part of that dialogue is showing how much we do at the FTC.”

She noted that she is currently on the Executive Committee representing the International Conference of Data Protection and Privacy Commissioners. She also speaks with her European counterparts regularly.

“We do enforcement work really well,” she said, adding, “It may not be the same system as in the EU, but we do a good job as well.”

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