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**Public Comment – Alternative Forms of Privacy Notices  
Project No. P034815**

TRUSTE is pleased to have the opportunity to provide comments on alternative forms of notices required by Subtitle A of Title V of the Gramm-Leach Bliley Act (“GLB Act”).

**About TRUSTE**

TRUSTE is an independent, nonprofit organization dedicated to enabling individuals and organizations to establish trusting relationships based on respect for personal identity and information in the evolving networked world. Founded in 1997, TRUSTE runs an award-winning global privacy certification and seal program. Its seal programs are considered Safe Harbors for the Children's Online Privacy Protection Act (COPPA) and the EU Safe Harbor Framework. Today, TRUSTE maintains the largest privacy seal program with more than 1,300 Web sites certified throughout the world including AOL, Microsoft, IBM, Nationwide and The New York Times. TRUSTE's mission extends standards, certification and oversight into legitimate email for IronPort's Bonded Sender Program and wireless with the Wireless Privacy Principles and Implementation Guidelines. For more information on TRUSTE please visit [www.truste.org](http://www.truste.org).

**Alternative Forms of GLB Act Notices**

TRUSTE is in a unique position to comment on the components of effective online privacy notices. We have extensive experience in reviewing privacy statements as a key component of our certification process, and in consulting with our Licensees as they build privacy statements that effectively communicate their information practices to consumers. Our experience has helped us to identify the goals – for businesses and for consumers – which an effective privacy statement should embody.

**Business Goals**

A consumer-facing privacy statement is, of course, the public reflection of a company's internal policy for handling personal information. Companies see the process of drafting a privacy statement as a valuable opportunity to understand and analyze the flow of

consumer data within their organizations and to assess what inefficiencies, if any, they must address. The public-facing privacy statement is the culmination of that process. Companies see their privacy statements as the means for accomplishing several goals that are integral to their relationship with consumers: (1) to communicate to consumers that privacy is a core corporate value; (2) to encourage consumer participation in e-commerce by explaining the benefits of providing personal information; and (3) to set the ground rules, and therefore consumer expectations, about how customer data will be used as well as the options consumers have with respect to particular uses of their personal information.

Privacy statements also serve important functions that go beyond the customer relationship. Companies regulated by the GLB Act (including many TRUSTe licensees) demonstrate compliance through their public disclosures; companies that are not subject to the GLB Act use their privacy statements to demonstrate good faith efforts to protect consumer privacy. Good, comprehensive privacy statements demonstrate industry leadership and help to inform the ongoing debate among industry, consumer and privacy advocates, and government about what constitute best practices in the commercial use of consumer data.

### Consumer Goals

Our experience as a privacy certification program has taught us that consumers have very real, common-sense expectations about privacy statements. They expect to be told, clearly and in plain language: (1) how a company will use the personal information they provide to it; (2) whether and for what purpose the company shares personal information with third parties; (3) the choices they have with respect to a company's use and sharing of personal information, and exactly how they can exercise those choices; (4) whether the company has taken steps to protect the security and integrity of customer data, and (5) how to contact the company when a privacy-related problem arises. Consumers can and do use the information in privacy statements not only to decide whether to do business with a particular company, but also to distinguish among companies on the basis of the privacy protections they provide. They look to the privacy statement, and in particular to the presence of a privacy seal, as the benchmark for engaging in e-commerce.

## Alternative forms of online privacy notices

In principle, TRUSTe supports the concept of short-form online privacy notices. We believe that the online medium is uniquely suited to providing meaningful, short-form notice that obviates the need to choose between a short-form notice and a more comprehensive version, or to sacrifice quality or key content in the interest of brevity.

As we envision it, to be effective an online short-form notice must be:

- **easy to understand**

The notice must be written in clear language that avoids esoteric terms and concepts. Disclosures must be in the active voice, and conditional statements avoided.

- **easy to find, easy to use, and visually appealing**

Subjects must be clearly delineated in separate sections (or under separate headings), with judicious use of different font styles, colors or graphics to emphasize key points. The notice must be posted prominently.

While much work has already been done to test how well consumers understand both comprehensive and short-form privacy notices, TRUSTe believes it is equally important to test notices for usability. We strongly recommend that the Commission continue to encourage industry and academic efforts in this area.

- **fully interactive with both the comprehensive privacy statement and the Web site's account management features**

Each disclosure in the short-form notice must link directly to the section of the privacy statement that provides a fuller explanation of the topic at hand. If, for example, a consumer is interested in more detail about "choice" options, she can use a hyperlink in the short-form notice to connect to the relevant section of the privacy statement; if instead of more detailed information about "choice" she simply wants to review the choices she has made in the past, she can link directly from the "choice" section of the short-form notice to the Web site's customer preference page to see

those choices and perhaps change them.

The goal here is to leave no ambiguity about a company's information practices: they are succinctly set out in the short-form notice with easy linked access to all of the details, if the consumer wants to learn more.

- **fully consistent with the comprehensive notice**

To the greatest extent possible, the short-form notice must mirror the language of disclosures in the comprehensive privacy statement, to reduce the possibility of confusion when the consumer links from one document to the other.

- **clear about its scope**

The short-form notice must accurately describe the information practices to which it applies. If, for example, a company's comprehensive privacy statement governs its practices regarding the personal information it collects both online and offline, the short-form notice should make that clear.

- **clear about choice options**

The short-form notice must make it easy for consumers to exercise the choices that the company provides them with respect to the use and sharing of their personal information, by explaining the available choices and linking directly to the area(s) of the Web site where consumers may exercise choice.

- **clear about the company's participation in self-regulatory efforts**

The short-form notice must include space not only for the key subjects covered more fully in the comprehensive privacy statement but also for a privacy seal or other indicia of the company's efforts to take a leadership role in protecting consumer privacy.

#### Comments on Sample Notices (Appendices A-D)

The foregoing analysis applies generally to the Sample Notices set out in the Advance Notice of Proposed Rulemaking. Rather than reiterate the key criteria here, we offer the following brief observations about specific aspects of the Sample Notices. The Sample

Notices in Appendices A and B include a box and separate notation, respectively, that provides either a “yes” or “no” applicable to a series of items listed below a top-level disclosure. The Sample Notice in Appendix A includes a statement that “We Share Information About You With . . .” and a “yes” appears to the right of each of several phrases that could complete the disclosure, for example, “Companies in our corporate family so that they may offer their products and services to you for other purposes.” The Sample Notice in Appendix B uses a similar approach. While the fact that customer data is shared with affiliates is reasonably clear, there is risk of considerable confusion if the answer to the statement is “No.” In that case, the consumer is faced with two statements: a top-level assertion that the data is shared, coupled with a notation that it is not shared. We believe the better practice would be to use a declarative sentence (rather than a “yes” or “no” box) stating that the data is (or is not) shared.

The Sample Notice in Appendix C eschews specific language for disclosures, opting instead for requiring simply that particular *topics* be addressed. TRUSTe prefers this less prescriptive approach to a model that prescribes particular language for short-form notices for two reasons. First, the strength of this example lies in its potential for enhancing consumers’ ability to make comparisons among companies based upon their information practices. Second, there is enough variation among business models to militate against a once-size-fits-all approach to the language of privacy disclosures. As we support notices that make choice very clear and easy to exercise, we recommend that a box devoted to consumer choices be labeled as such (i.e., “Your Choices” rather than “Your Preferences”).

As proposed by the Commission, the Sample Notice in Appendix D could consist solely of instructions for exercising choice together with a statement that the comprehensive privacy policy is available upon request. TRUSTe agrees that providing information on exercising choice is *necessary* in any short-form privacy notice. In our view, however, instructions on choice are not *sufficient* for effective notice. The context in which choice options are exercised – the types of information involved, the proposed uses of that information, and the consequences of any particular choice – is critical to informed decision-making by consumers. We believe that this context should be provided in the short-form notice.

TRUSTe looks forward to continuing to serve as an industry leader and resource to all stakeholders in this important debate on best practices for effective privacy notices. For further information, please contact Martha K. Landesberg, Senior Policy Advisor, in Washington DC at 202-835-9751, Fax: 202-719-7207, email: [mlandesberg@truste.org](mailto:mlandesberg@truste.org);, Rebecca Richards, Director of Policy, in Washington, DC at 202-483-1900, email: [rrichards@truste.org](mailto:rrichards@truste.org); or Fran Maier, Executive Director & CEO, in San Francisco at 415-618-3418, Fax: 415-618-3420, email: [fmaier@truste.org](mailto:fmaier@truste.org).