

Statement of Commissioner Mozelle W. Thompson
Federal Trade Commission
before the Senate Commerce Committee
July 27, 1999

I am pleased to appear before the Commerce Committee with my fellow Commissioners to discuss the FTC's latest report on online privacy. As you are aware, the Commission has spent much time and energy working on this issue, and each of us thought it important to share our individual views and insights.

Following our 1998 report on online privacy in which the Commission expressed "disappointment" about industry progress on self-regulation, I specifically voiced my concerns about coverage (i.e., the breadth of total web sites actually posting privacy policies) and the development and implementation of enforcement mechanisms. Now, one year later (and three years after the FTC first started working with industry on Internet issues), I find the record of progress is mixed.

If we are going to be the leader in a global system of electronic commerce, and e-commerce is going to continue to lead our "New Economy", we must reach a collective understanding on principles that will provide consumers with the confidence they need to accept e-commerce as a way of life. In that vein, I note that S. 809 incorporates each of the fair information principles the Commission outlined in its testimony before the House Commerce Committee in July 1998.

During the past year, industry leaders have expended substantial effort to build self regulatory programs. However, as the Georgetown and OPA studies clearly show, while many leading online companies understand the business case for protecting consumer privacy, the implementation of fair information practices is not widespread among commercial web sites. In fact, a mere ten percent of companies in the survey have done so. Although the OPA does not audit its members for compliance with its privacy guidelines, the results of its own study show that only 22 percent of the top 100 web sites (most of which are OPA members) have implemented all four elements of fair information practices. These findings suggest that even these industry leaders are only slowly rising to the challenge they have set.

Accordingly, the most important challenges to be addressed include:

- 1) reaching those businesses which have not taken steps to protect consumer privacy, especially small and medium-sized businesses which will provide the base for real growth in e-commerce; and
- 2) encouraging widespread adoption of all of the fair information practices, including educating consumers about the value of these self-regulatory efforts.

The activities the Commission has planned for the coming months are designed to help us pinpoint specific problem areas for action. The information we uncover in these workshops and task forces will go beyond the simple quantitative analysis we have done on the number of sites with privacy

policies to tell us exactly which aspects of fair information practices companies are finding difficult to implement and why. And so, despite my concerns about the pace of industry progress on privacy, I believe that it is appropriate for us to defer making a legislative recommendation because the Commission's upcoming work will assist us in suggesting a more tailored legislative response if industry fails to make substantial progress. However, Congressional review of privacy issues is also helpful and I feel strongly that there is a value to continued hearings and debate about legislative proposals.

I continue to be hopeful that industry can solve this problem. Recent initiatives by IBM, Microsoft, Disney and the Direct Marketing Association are steps in the right direction. I would also ask industry to redouble its efforts to develop effective technology tools that consumers can use to safeguard their own privacy on line, because even well-crafted legislation will not achieve 100 percent compliance with fair information practices. Ideally, easy-to-use technology will empower consumers by allowing them to predetermine the circumstances under which they will share personal information. We heard about some of these technologies last week during our workshop on implementation of the Children's Online Privacy Protection Act, and I am pleased to note that one of our proposed workshops for the coming months focuses specifically on these new tools.

In sum, achieving a robust level of privacy protection will require cooperation between industry, government and consumers. While we have chosen to let industry lead in solving this public policy problem, public confidence in electronic commerce will erode if they fail to live up to the challenge. Ultimately, government officials like us are directly accountable to the public and we must also continue to play a role in shaping solutions to the privacy problem. In any case, the FTC will continue to pursue its enforcement role against those who deceive consumers by misusing their personal information.

I believe that self-regulation will succeed only if industry acts on the specific shortcomings that these recent studies document. Moreover, Congress and the Administration must remain vigilant and should not foreclose the possibility of legislative and regulatory action if we cannot make swift and significant additional progress.