

**Before the
DEPARTMENT OF COMMERCE
Internet Policy Task Force**

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In the Matter of)	
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Information Privacy and)	Docket No. 100402174-0175-01
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Innovation in the Internet Economy)	
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COMMENTS OF eBay Inc.

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eBay Inc (“eBay”) hereby submits these comments to the Department of Commerce’s (“Department”) “Information Privacy and Innovation in the Internet Economy” Notice of Inquiry (“NOI”). eBay appreciates the opportunity to provide our thoughts and feedback on issues as important as information privacy protections and promoting innovation on the Internet.

Founded in 1995 in San Jose, Calif., eBay (NASDAQ:EBAY) connects millions of buyers and sellers globally on a daily basis through eBay, the world's largest online marketplace, and PayPal, which enables individuals and businesses to securely, easily and quickly send and receive online payments. We also reach millions through specialized marketplaces such as StubHub, the world's largest ticket marketplace, and eBay classifieds sites, which together have a presence in more than 1,000 cities around the world.

eBay takes the quality of the privacy protections we provide to our users very seriously. The success of our community is based on trust, which is strengthened by our ability to provide our users with a level of transparency and control concerning the collection and use of information about them and their activities. Because of our strong privacy protections, Privacy International rated eBay one of the best companies for privacy on the Internet¹ and eBay is the most trusted company in 2009 for privacy as rated by U.S consumers².

eBay strongly believes that innovation in the Internet economy depends on consumer trust and that maintaining consumer privacy is essential to the continued growth of the Internet. Thus, eBay supports initiatives that seek to provide a rational and constructive framework to protect consumers while recognizing legitimate uses of personal information. Therefore, we applaud the Department’s efforts to conduct a comprehensive review of the nexus between privacy policy and innovation in the Internet economy.

Although eBay believes that a number of the questions posed in the NOI are important to the overall discussion of developing a strong and effective U.S. privacy policy framework, we have focused our comments to the particular questions raised in Question 1 of the NOI: “The U.S.

¹ Privacy International Consultation Report, 2007. Available at:

<http://www.privacyinternational.org/issues/internet/interimrankings.pdf>

² Survey conducted by Ponemon Institute and TRUSTe in September 2009. See www.truste.com, Press room, Archives, September 16, 2009 : [2009 Most Trusted Companies In Privacy Announced](#)

Privacy Framework Going Forward”, specifically those relating to the continued relevance of the notice and choice approach and whether other models, such as use-based models, would be a more useful approach:

Is the notice and consent approach to consumer data privacy still a useful model? Are there alternative approaches or frameworks that might be used instead of notice and choice? Those who urge a use-based model for commercial data privacy should detail how they would go about defining data protection obligations based on the type of data uses and the potential harm associated with each use.

I. Is the notice and consent approach to consumer data privacy still a useful model?

eBay has consistently been an Internet industry leader in advocating stronger privacy protections over the past several years. After seeing the need to rally industry support for greater federal action and involvement on this issue, eBay co-founded the Consumer Privacy Legislation Forum, now known as the Business Forum for Consumer Privacy (“BFCP”), which has been the primary developer of the use and obligations model, which we will discuss in greater detail below.

We believe it is important to note that responsible data collection has become almost a de facto necessity for most, if not all, Internet companies today and allows these entities the opportunity to customize and personalize their services and products to better meet the needs and expectations of consumers. Or more simply put, data collection is an important tool used by entities to innovate and compete globally.

However, we strongly believe that the current notice and consent policy framework has not only been ineffective at promoting innovation in this area, but it has not adequately protected consumer data from unexpected or inappropriate collection and use. Innovation is really about moving into “unchartered territory”, but the notice and consent model has proved to be an extremely brittle and restrictive binary framework that has hindered organizations from moving forward in a responsible manner.

While we fully support the need to ensure transparency, notice, choice, accountability, and user preferences, we believe that the current notice and consent model has created a never ending series of requests for consent that has resulted in counterproductive “reflexive” or “blind” consumer consent. In other words, after years of being inundated by consent requests from a multitude of entities, oftentimes consumers

consent to user agreements or privacy policies without thorough review and examination.

In our opinion, the notice and consent model needs to evolve and adapt to the information economy in order to provide the protections needed to encourage consumer trust while still seamlessly delivering to consumers the services they desire.

II. Are there alternative approaches or frameworks that might be used instead of notice and choice?

We believe that the use and obligations model is an alternative approach that would not only improve the consumers experience of the Internet while substantially removing privacy risks associated with undesired collections of user data for commercial purposes, but it would also permit the responsible Internet company to fully utilize this important business tool.

For years, it has been widely accepted and endorsed that any privacy policy must first be built upon the foundation of traditional principles of fair information practices. These principles include transparency of data collection and use, consumer engagement, data security, and data accuracy. Although these traditional principles may still apply today and are still a sound starting point for any privacy framework, the traditional way of applying these principles, for instance through the notice and consent model, no longer effectively provides consumers with adequate protection, as we stated above.

We believe that the use and obligations model provides an alternative framework that applies these traditional principles of fair information practices in a manner that takes into consideration the way data is used and managed today. In short, instead of the collection of data and consumer consent triggering an entity's obligation to protect data (notice and consent), we propose that the way an entity uses data determines the actions the entity must take to: (1) provide transparency and choice to the consumer; (2) offer access and correction when appropriate; and (3) to determine the appropriateness of the data with respect to its quality, accuracy and integrity.

III. Those who urge a use-based model for commercial data privacy should detail how they would go about defining data protection obligations based on the type of data uses and the potential harm associated with each use.

The fundamental principles of the use and obligations model is explained in great detail in the BFCP's Privacy's white paper released in late 2009, "A Use and Obligations Approach to Protecting Privacy: A Discussion Document."³ The white paper clearly outlines and defines the categories of data use, the potential harm associated with each use and the data protection obligations associated with each use.

According to the BFCP white paper, there are five primary categories of data use and two categories of obligations. The categories of data use are as follows: (1) fulfillment; (2) internal business operations; (3) marketing; (4) fraud prevention and authentication; and (5) external, national security and legal.

The categories of obligations include: (1) those that facilitate consumer participation and engagement (i.e. transparency, notice, choice, and access and correction); and (2) those that involve an organization's internal activities to assess and mitigate data security risks (i.e. collection limitation, data use minimization, data quality and integrity, data retention, etc.)

As explained above, the obligation(s) will depend on the use of the data and ultimately the organization's desire to prevent harm to the consumer. For example, data used for marketing purposes would trigger the following obligations: (1) notice; (2) an opportunity to opt-out; (3) generalized access to the data collected; and (3) a requirement for the organization to assess the risks to the individual when determining collection and use minimization and data retention policies.⁴ It is important to note that responsibility for meeting these obligations is not solely on the organization, but on all holders of the collected data, such as third party vendors and service providers, which would hold the third parties to the same standards as the organization itself and provide an added layer of protection for the consumer's data.

³ "A Use and Obligations Approach to Protecting Privacy: A Discussion Document", The Business Forum for Consumer Privacy: December 7, 2010. To access the full document please follow this link: http://www.huntonfiles.com/files/webupload/CIPL_Use_and_Obligations_White_Paper.pdf

⁴ For additional examples, please reference Table A located on page 6 of the BFCP's white paper.

IV. Conclusion

eBay thanks the Department for its commitment to encouraging privacy and innovation in the Internet economy and for the opportunity to provide comments on the current policy framework and potential alternative frameworks, such as the use and obligations model, which we believe might assist in moving the dial in regard to promoting innovation and restoring consumer trust. eBay looks forward to working with the Department in the months and years ahead on these important issues.