

Remarks for CDT Dinner (March 10, 2009)

It is an honor for me to share the dais with Chairman Rick Boucher. As you know, he was a strong and early supporter of the development of e-commerce, and has fought to ensure that everyone has access to the Internet's benefits, whether by encouraging municipal broadband initiatives or by expanding broadband to rural areas.

Making sure technology works for people is also a critical part of the Center for Democracy & Technology's mission. I'd like to thank CDT for inviting me to speak tonight. Many of you know that I have strong feelings, many unprintable, about the spyware and nuisance adware foisted on unsuspecting consumers without notice or consent. I'm proud to say that the Commission developed an active anti-spyware program and brought more than a dozen cases, including two against major nuisance adware purveyors Zango and Direct Revenue.

Now that iniquitous business model has been mostly eradicated – with help from CDT. CDT was very effective both in prodding the Commission to do more and in its own efforts – via the Anti-Spyware Coalition – to get the “good guys” working together on the problem. Spyware is just one of many areas where CDT's thoughtful guidance on privacy issues has had an impact, but one that's very close to my heart.

Turning to the Commission, this is my first speaking engagement since being appointed Chairman by President Obama. After Tim Muris took over as FTC Chairman in 2001, he said something to the effect that he agreed with 95 percent of former Chairman Bob Pitofsky's agenda and initiatives. I can say the same thing about my two predecessors, Debbie Majoras and Bill Kovacic.

I marvel at President Obama's commitment to change and his fearlessness in tackling so many needed reforms. In our own small way, we also will be looking for fresh ideas about how we can accomplish our mission most effectively. But when you think about it, the Commission has already embraced change in a number of core areas. So at the Commission – our agenda for helping consumers in the upcoming years is going to be, I believe, about both change and continuity.

First, on the competition side, we will continue to be unanimous in opposing collusive pay-for-delay settlements between brand and generic pharmaceutical companies – in which the brand literally pays the generic to delay entry into the market. These deals cost billions of dollars for consumers – and ultimately for the government, which makes almost a third of all drug purchases. Stopping these unconscionable deals – and vigorously enforcing the antitrust laws – are going to be top priorities.

Second, on the consumer protection side, nobody who has picked up a newspaper in the last year or so – I know I'm dating myself with that “dead tree” reference – will be surprised that one of our biggest issues is going to be stopping predatory financial practices, particularly schemes directed at lower-income and financially distressed borrowers. We're going to examine every stage of the lending process, from broker solicitations to mortgage servicers to foreclosure rescue scams.

The sad truth is that we'll likely see more and more frauds as the economy struggles. Just last week we had a press conference to warn people about scam websites that promised folks they could get a direct handout from the stimulus package, like one that offered a \$12,000 government payout, supposedly, for a small fee. Hey, I want that deal too! Unfortunately, many malefactors are taking full advantage of the broad reach and relative anonymity offered by the Internet. Senator Dorgan and Chairman Rockefeller deserve our utmost thanks for inserting a provision in the omnibus that would allow us to do a rulemaking to address abuses in the financial services area.

Moreover, Internet privacy has been and will remain a foremost area of focus. On behavioral marketing, there are obviously benefits that targeting can bring to consumers in the form of more relevant advertising and the additional revenue that targeting can provide. This revenue may be vital to the survival of some industries.

But we have to face the fact that the current model is not working. Staff recently issued guidelines identifying key components that a robust self-regulatory approach could be built around, and I'm hopeful that industry will respond with concrete improvements to the existing approach.

Self-regulation, if it works, can be the fastest and best way to change the status quo. We will continue to monitor and report on developments and, if there isn't an appropriately vigorous response, my sense is that Congress and the Commission may move toward a more regulatory model.

To be clear, we know our work in this area is not done or even near it. Online privacy is broader than behavioral targeting, and we will not neglect issues presented by data collection and its use for other purposes.

Third, on the legislative side, we hope to work with Congress to make the agency more effective. For example, getting the resources to better accomplish our mission is a major priority. In the past decade, our agency has been charged with enforcing a variety of new statutes, including Gramm Leach Bliley, FACTA, COPPA, and CANSPAM, not to mention the new health privacy requirements in this year's stimulus bill. And we're doing it with about 1100 employees instead of the 1800 we had in 1980 – when the American population was one-third smaller. Simply put, the quality of our work is being strained by the quantity of demands placed upon us. We need to grow the agency to tackle the pressing issues facing the American public.

By the way, if you combine all the consumer redress, disgorgement, and fines we collect with our Hart-Scott-Rodino and Do Not Call fees, our agency actually brings in more money than it costs. We may not be a profit center but we are not running any deficits, either.

Finally, the Commission is most effective when it works closely with other agencies that share our mission, particularly the FCC and DoJ. I am looking forward to partnering with two people who could not be here tonight – Julius Genachowski, who will be the next Chairman at the FCC; and Christine Varney, a great friend and former Commissioner, who will head the Antitrust Division of DoJ. They both are incredibly talented, smart, and dedicated – and working together, I'm hopeful we will be able to accomplish remarkable things for consumers.

Let me close by saying that it is personally a tremendous honor for me to lead the FTC. Commissioners are just temporary custodians of a wonderful agency with a great staff and a critical mission. That's really why I come into the office each day, well, "fired up and ready to go."