

Preliminary FTC Staff Privacy Report: Remarks of Chairman Jon Leibowitz
as Prepared for Delivery
Wednesday, December 1, 2010

Today, the FTC staff is releasing a preliminary report that proposes a new framework for consumer privacy in the commercial world. The report builds on the FTC's experience over the past 40 years in enforcing privacy laws; educating businesses and consumers (millions, actually); and hosting workshops on new technologies and emerging privacy issues.

Our approach lays a foundation for industry innovation – while protecting consumers and their privacy.

Technological and business ingenuity have spawned a whole new online culture and vocabulary – email, IMs, apps and blogs, much of it free – that consumers have come to expect and enjoy. The FTC wants to help ensure, as well, that the growing, changing, thriving information marketplace is built on a framework that promotes privacy, transparency, business innovation, and consumer choice. We believe that's what most Americans want as well.

Our privacy report discusses advances in technology that allow vast amounts of data to be collected, combined, sliced, diced, and shared, often instantaneously, sometimes beneficially, but virtually **always** in ways that are invisible to consumers. For example:

- If you browse for products and services online, advertisers might collect and share information about your activities, including your searches, the websites you visit, and the content you view.
- If you participate in a social networking site, third-party applications are likely to have access to the information you or your friends post on the site.

Now, some might say, what's the problem? If companies tell consumers what they're doing with their data, consumers can just avoid companies that have data practices they don't like. But many companies are **not** disclosing their practices. And, even if companies **do** disclose them, they do so in long, incomprehensible privacy policies and user agreements that consumers don't read, let alone understand.

Consider the complaint and settlement we announced yesterday. The FTC charged that EchoMetrix sold so-called “Sentry” software to enable parents to monitor their children online, but it failed to adequately disclose that it **also** sold information about the kids’ online activities to third-party marketers. The only – only – potential hint to parents was a vague statement buried 30 paragraphs down in the Sentry end user license agreement.

Our report and law enforcement action send a clear message to industry: despite some good actors, self-regulation of privacy **has not** worked adequately and **is not** working adequately for Americans consumers. We deserve far better from the companies we entrust our data to, and industry, as a whole, must do better.

So: The FTC will take action against companies that cross the line with consumer data and violate consumers’ privacy – especially when children and teens are involved. I think you’ll see more privacy cases in the coming weeks and months.

To address these problems, our privacy report provides concrete guidance to both industry and policymakers. We propose a new framework to guide businesses as they formulate best practices, and to guide Congress as it develops privacy legislation. From my perspective, and speaking only for myself, a legislative solution will surely be needed if industry does not step up to the plate. And keep in mind that privacy protection is the most bipartisan of issues.

The report proposes three main approaches to enhance consumer privacy. First, companies should “bake” certain privacy protections into their operations, like data security and accuracy (sometimes this is called Privacy By Design). They should collect and retain data only if they have a legitimate business need. We’re encouraged by companies that have created a culture of privacy protection; others should follow their lead.

Second, privacy choices should be presented to consumers – and in a simpler, more streamlined way. To be sure, consumer choice shouldn't be necessary for commonly accepted practices. Companies should not have to seek consent, for example, to share your address with a shipping company to deliver the product you ordered. Disclosures should be short, which reduces the burdens on businesses, and allows consumers to focus on choices that really matter to them.

Most of us on the Commission believe that it's time for a Do Not Track mechanism with respect to third-party ads; that is, consumers should be able to choose whether or not to allow the collection of data about online searching and browsing.

The most practical method would likely involve the placement of a persistent setting on the consumer's browser, signaling the consumer's choices about whether or not to be tracked. A "Do Not Track" browser setting would serve as an easy, one-stop shop for consumers to express their choices, rather than on a company-by-company or industry-by-industry basis. Microsoft, Google, Mozilla and Apple have already experimented with this, by the way, as has a coalition of companies.

We're going to give them a little time, but we'd like to see the companies work a lot faster and make consumer choice a lot easier.

Third, we need to improve transparency. Privacy notices should be clearer, shorter, and more standardized, so people understand what's happening with their information and who's watching what they do online – and off. The report proposes additional measures for promoting transparency.

We're seeking public comment on the report by the end of January, and we'll issue final recommendations next year. We are committed to working with stakeholders – Congress, other agencies, policymakers, industry, and consumer groups – to refine and implement our policy recommendations.

Let me make a final point: Some in industry support what we're doing, but we know that others will claim we're going too far. To those highly-paid professional naysayers, I have only one question: What are you for? Because it can't be the status quo on privacy.

So with that, I'll will stop speaking. With me today is Jessica Rich, the Deputy Director of our Bureau of Consumer Protection, and Ed Felten, who will start full time as the Commission's Chief Technologist at the beginning of the year. We'll be happy to answer questions.

In addition, if you have further questions about the Privacy Report, you can reach out to us at 3pm on Twitter and we'll take your questions live. This is a new experiment for the FTC and we would like to have you participate. For more information, follow us @FTCgov.