



The Software & Information Industry Association (SIIA) is pleased to provide its comments on the future work of the Federal Trade Commission (FTC) on the important topic of consumer protection in the global electronic marketplace. We welcome the opportunity to share the perspective of our member companies as the FTC considers the agenda for a forthcoming workshop.

SIIA was formed by the January 1, 1999 merger of the Software Publishers Association and the Information Industry Association. SIIA represents 1,400 member companies involved in every aspect of electronic commerce, serving the education, corporate, consumer, Internet and enterprise markets. Our companies are finding unique and innovative methods to leverage the Internet as a distribution model for code, content and a wide variety of goods and services.

For SIIA members, the question of consumer protection is a critical one for companies involved in business-to-consumer electronic commerce and business-to-business electronic commerce. The online consumer market reached almost \$7 billion in 1998; business-to-business e-commerce is expected to reach \$60 billion by 2002. As the e-commerce market continues to grow, consumer protection will be an increasingly important issue for our entire industry.

General Observations

SIIA strongly believes that initiatives to address consumer concerns must be industry-led and market driven. Given the potential of the electronic marketplace, industry has an inherent interest in ensuring that consumer concerns are met in a timely and responsive manner. SIIA and its member companies fully recognize that the promise of the Internet and electronic commerce will never be realized unless the online environment is trustworthy and secure. Our member companies that seek to use the medium understand that they play a critical role in ensuring consumer trust and confidence.

Industry initiatives are far more likely to be effective than regulatory approaches because of the very nature of the Internet. The electronic marketplace changes quickly and is highly competitive. In an environment where geographic location and physical facilities are less important, consumers can quickly and easily compare prices, site policies and product offerings. Companies seeking to compete on the Internet must be responsive to their consumers immediately and effectively to survive.

Prices for consumer goods and services – books, travel services, computer hardware and software, information services and interactive content – are increasingly competitive because of the incredible market pressures of the Internet. As a result, consumers are seeking and companies are providing additional services in an attempt to differentiate among multiple competitors. For consumers, features like personalization and special offers are critical to ensure brand or product loyalty. For companies, robust privacy policies, consumer protection and customized customer support become critical as consumers become increasingly sophisticated.

Businesses can and do respond more quickly than can government regulation. While regulation can help foster confidence among consumers, SIIA believes that industry-led initiatives are more effective because companies can adapt more quickly, more efficiently and more proactively than the regulatory process. Further, online companies know their customers and their preferences and, in a competitive environment, are better poised to develop consumer policies that directly address their consumers' needs.

More importantly, existing consumer protection laws are applicable to online transactions, just as they are in the physical world. We encourage the FTC to consider how existing consumer protections might be applied to existing e-commerce models before considering additional regulatory initiatives.

The Growth of the Global Electronic Marketplace

The development of the global electronic marketplace is critical to SIIA and its member companies. It is clear that there is significant consumer and corporate interest in the further growth of e-commerce, but to achieve those benefits, consumer must have confidence in the medium.

To further confidence in the global electronic marketplace, questions regarding security and privacy must be addressed. Unless consumers have the ability to protect their transactions, communications and online activities, e-commerce cannot reach its full potential.

Security is a critical issue. SIIA firmly believes that the Administration's policy of restricting robust encryption fails to address the fundamental flaw with encryption export restrictions. Simply put, encryption export controls are ineffective, put U.S. companies at a competitive disadvantage, and undermine the long-term competitiveness of the U.S. economy in general and the software and information industry in particular.

While the current provisions proposed in the Interim Rule released by the Department of Commerce allow for the export of 56-bit encryption products, after a one-time review, developments in recent months indicate that 56-bit encryption is not sufficient to protect online transactions or sensitive information. Companies and individuals that rely on encryption to protect their personal information and online transactions recognize that 56-bit encryption does not provide sufficient levels of protection. Companies cannot provide their consumers with a trustworthy environment unless they have the tools to do so.

Further, it is imperative that the Administration recognize that there are significant differences between the implementation of encryption for confidentiality and for authentication. Encryption used to facilitate digital signatures, certificates and other advanced applications are critical to ensure that e-commerce can be conducted in a predictable, transparent environment. The continuing insistence of the Administration to restrict these technologies continues to undermine the ability of companies to conduct online transactions.

The question of privacy is also critical for the continued growth of the global electronic marketplace. Industry has made great strides in recent months in adopting effective, comprehensive privacy protections and, where appropriate, providing third-party enforcement mechanisms. These privacy policies have been well-received by consumers who recognize that companies have implemented privacy practices that provide individuals with sufficient information to make good choices regarding their online activities.

SIIA has played an important role in working with its member companies. We have developed a comprehensive three-hour seminar that helps companies understand the issue of privacy, develop sound privacy practices and implement these practices effectively. Our seminar has been delivered in more than 12 cities to date and is scheduled throughout the rest of 1999. By working with our members, their customers and other interested parties, SIIA is helping to ensure that these industry members are responding appropriately to consumer concerns.

To guide our efforts, SIIA has adopted a broad, robust approach to privacy, outlined in our Fair Information Practices Principles. These guidelines help companies understand consumer's privacy concerns and develop good privacy practices, and are available to every member company. Our ongoing education efforts, outreach and policy work have helped our member companies create good, solid privacy practices.

Like the question of consumer protection, SIIA strongly believes that the industry can respond most effectively to their consumers preferences. Market pressures, competition and the quickly changing nature of the industry ensure that companies that do not respond in a timely manner will quickly lose their customers. Regulation of privacy, like consumer protection, is premature and may have severe unintended consequences that could harm the growth of e-commerce.

Workshop Agenda

In creating an agenda for the forthcoming workshop on consumer protection, SIIA strongly encourages the FTC to carefully consider the goals of the event. We believe that a workshop focused on educating consumers about the tools available to them to facilitate their online activities would be very useful. Providing a forum for industry and consumer to discuss their common interests could begin a dialogue that would benefits both parties. However, this broad issue cannot be resolved in a single workshop. As the FTC opens this discussion, we encourage the FTC to recognize that regulation or legislation would be premature.

SIIA also believes that as the FTC develops the agenda for the workshop, it should keep several key principles in mind.

First, consumer protection guidelines developed for the online environment should not be more burdensome than those that apply to physical transactions. Care should be taken to ensure that no disincentives are created for companies seeking to do business online.

Second, the FTC should take care not to adopt a position that would have ramifications beyond the scope of consumer protection. Questions regarding jurisdiction, the applicability of national law or the choice of law are as yet unresolved and are the subject of discussions in policy circles around the world. Developing guidelines or recommendations that may prejudice or affect these discussions could be harmful, premature or detrimental.

Third, the role of self-regulation and consumer empowerment should be given special consideration. Because companies competing in the digital age must be able to respond quickly to changing consumer preferences, SIIA strongly believes that self-regulatory mechanisms are most appropriate. Consumers are best served by allowing industry to develop consumer protection approaches that reflect their consumer needs. Self-regulation, especially when combined with consumer education and outreach, is an effective and efficient mechanism for meeting consumer preferences.

Finally, any recommendations or further work considered should not infringe on the ability of companies to develop and enter into contracts with mutually acceptable terms. Companies need to be able to work with their consumers – whether corporate or individual – and develop contracts that reflect their respective preferences. We urge the FTC to ensure that future work not to limit the types and scope of contractual agreements available to companies.

Conclusion

The SIIA appreciates the opportunity to work with FTC on this important issue. We look forward to a continuing dialogue as this work moves forward.

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