



Comments of Consumer Watchdog

To

The Department of Commerce

Office of the Secretary

National Telecommunications and Information Administration  
International Trade Administration  
National Institute of Standards and Technology

[Docket No. 101214614-0614-01]  
RIN 0660- XA22

"Information Privacy and Innovation in the Internet Economy"

January 28, 2011

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The Commerce Department's report "Commercial Data Privacy and Innovation in the Internet Economy: A Dynamic Policy Framework" offers an important review of many of the threats to privacy in the online environment. The Report should help focus attention on these issues and further discussion about them. Ultimately, we hope it will help lead to the implementation of necessary laws and regulations.

As the Report's title makes abundantly clear, the Report is presented from a strong business-oriented point of view. However, first and foremost, online privacy is a consumer issue. It is information about consumers that must be protected if it is gathered and consumers must have the right to decide if data about their online activities are collected at all. Framing the issue as a discussion of "commercial data privacy" does a disservice to protecting consumers' privacy rights.

While the Report should be commended for recommending the adoption of "Fair Information Practices" (FIPs), it falls short in its failure to call for legislation to

implement them. Self-regulation simply has not worked. The United States needs a comprehensive federal privacy law based on FIPs and the Department of Commerce should be an advocate for it.

Instead of laws and regulations, the Report advocates “voluntary, enforceable codes of conduct.” We are hard-pressed to understand this oxymoron. If codes are enforceable, they require rules, regulations or laws. If they are voluntary, they are not enforceable. Laws and regulations are exactly what are needed. Baseline online privacy protection for consumers should be based on FIPs and enacted by statute. The law should provide for necessary rulemaking authority for the Federal Trade Commission to ensure proper implementation.

An important element of any online privacy law is a “Do Not Track” mechanism that allows consumers to prevent their online activities from being tracked when they desire. This does not mean simply opting out of receiving behavioral targeted advertising, but means the ability opt out of having activities tracked.

One of the problems with the current “notice and choice” model of privacy protection is that businesses’ privacy policies have become incomprehensible. They are written in dense legalese that appears to have been crafted by lawyers who were paid by the word to obfuscate a company’s practices. Privacy policies should be simplified so they are comprehensible and a company’s practices transparent. There should be regulations or guidelines detailing what must be covered in a policy. Something as simple as the nutrition labels on food could be the model for the sort of clear disclosure that is needed. Ideally clear, concise and comprehensible privacy policies would give consumers choice and could prompt real competition to offer the best privacy protections, in some cases going well beyond the minimum required by rule and regulations.

The Report calls for the creation of a Privacy Policy Office in the Department of Commerce. Its primary function, as described, would be convening “multi-stakeholder discussions” about privacy best practices. The Department of Commerce is, by definition, focused on business interests, not consumer protection. We believe a comprehensive federal privacy law should provide for the creation of an *independent* Privacy Protection Office. However such an office, and multi-stakeholder discussions run out of the Commerce Department, will almost inevitably be industry-dominated forums more likely to hinder strong privacy rules than promote them.

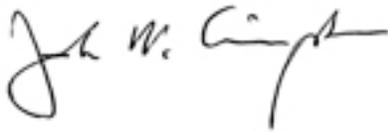
The Report appears to assume that strong privacy protections will hinder business innovation. This is not the case. Privacy enhancing technologies have enabled the commercial use of the Internet. For example, were it not for SSL encryption using the HTTPS protocol, it would be impossible to take payments, or to transfer credit card numbers online. The fact of the matter is that commerce is enhanced when consumers have confidence in the entity with which they are doing business. Knowing that their privacy is protected will build such trust and will prove to be a win-win for consumers and businesses alike. What sort of long-lasting business model can be built on surreptitiously spying on customers?

The United States should support strong international privacy protection frameworks and we urge the Department of Commerce to move forward in this area. With other privacy groups such as EPIC, Consumer Watchdog supports the Council of Europe Convention 108. We urge that the United States begin the process of ratification of Council of Europe Convention 108. We fear that in the drive for harmonization of global privacy practices, Commerce will seek to

circumvent the relatively strong protections in Europe and weaken consumer protection in the United States.

While it is commendable that the Commerce has raised the issue of consumers' online privacy, it's important to note that the Department – as it should – primarily seeks to promote the interests of business. It is not, nor should it be expected to be, the primary protector of consumers' interests. Commerce, therefore, must not have the lead role in online privacy. That is a role best left to a new independent Privacy Protection Office and the Federal Trade Commission.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "John M. Simpson". The signature is fluid and cursive, with a long horizontal stroke at the end.

John M. Simpson

Consumer Advocate

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