



Chairman Jon Leibowitz
The Federal Trade Commission
Washington, DC

Jan. 30, 2013

Dear Chairman Leibowitz:

I am writing on behalf of Consumer Watchdog to ask that you and the entire Federal Trade Commission ensure that people's online privacy is protected by calling on Congress to enact Do Not Track legislation. As you know consumers are tracked virtually everywhere they go on the Internet and have virtually no control over what data about them and their online activity is collected. As the Commission advocated in its report, *Protecting Consumer Privacy in an Era of Rapid Change*, a Do Not Track mechanism would offer people control over whether data about them was collected.

Almost a year ago with great fanfare in the media you said a Do Not Track mechanism would be in place by the end of last year. You and you colleagues opted to rely on a self-regulatory process to implement Do Not Track, but alluded to the possibility of legislation if that process failed. Not surprisingly the self-regulatory effort to design Do Not Track is virtually dead in the water. After a year nothing has changed for the consumer. You tried to use the bully pulpit, but the advertising industry did not heed your call. The time for words has passed; if you expect Do Not Track to be implemented, the Commission must endorse Do Not Track legislation now.

Let me review some of what you've said over the past year. Last March you testified to a panel of the House Energy and Commerce Committee that "Online advertisers, major web browsers and an international consortium have all made great strides on Do Not Track." You told *The Washington Post*: "We are confident that consumers will have an easy-to-use and effective Do Not Track option by the end of the year because companies are moving forward expeditiously to make it happen and because lawmakers will want to enact legislation if they don't."

In June you told Bloomberg Television, "And so we hope there will be by the end of the year a real, meaningful Do Not Track option for consumers who, again, should have choice and control over their data. And that Do Not Track option should also include limits on collection of information." Later that month you told *Communications Daily*: "There have been hiccups along the way, but we think this process is moving forward and we will reach the finish line -- choice and control for consumers and a continuing vibrant Internet ecosystem for businesses -- by the end of the year."

In other words you and the Commission repeatedly put faith in self-regulatory efforts and predicted that a Do Not Track mechanism would be in place by the end of the year. Unfortunately that optimism has proved to be unwarranted. As you know the World Wide Web Consortium (W3C), an Internet standards setting organization, has been trying to develop specifications about how the Do Not Track message would be sent and what the obligations

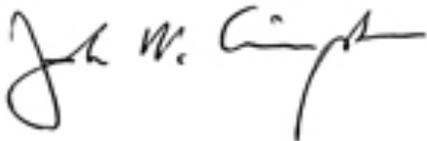
would be for a website that receives it. Talks have dragged on more than a year with weekly conference calls and six face-to-face meetings, while the W3C's Tracking Protection Working Group has grown to 102 members. Another round of meetings is scheduled next month. Talks can at best be charitably described as stalled.

"We are definitely at a critical point in whether folks will be able to come together and develop a real Do Not Track option for consumers," you told *Politico* in October. You said the lack of consensus was "encouraging the possibility of legislation -- maybe not today, maybe not in the lame duck, but soon." You also told *The New York Times*, "It is time to drop some of the bluster and work toward compromise."

In November you used the bully pulpit again to tell *Politico*, "If by the end of the year or early next year, we haven't seen a real Do Not Track option for consumers, I suspect the commission will go back and think about whether we want to endorse legislation."

The end of the year has passed. Your words have gone largely unheeded by the advertising industry. The bully pulpit has not brought about a Do Not Track standard. Lest your words be taken as empty threats and given the logjam in the World Wide Web Consortium process, the time for decisive action by the FTC has arrived. Sen. Jay Rockefeller, (D-WV) introduced a Do Not Track bill in the last session of Congress. We understand he intends to re-introduce the bill this session. We call on you and the entire Commission to endorse the urgent need for Do Not Track legislation. If nothing else, the threat of legislation could be the stick that prompts a recalcitrant advertising industry to stop its foot dragging and re-engage in real negotiations. Thank you for your consideration.

Sincerely,

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
Privacy Project Director

Cc: Commissioner Julie Brill, Commissioner Edith Ramirez, Commissioner Maureen Ohlhausen, Commissioner Joshua Wright, Sen. Jay Rockefeller