



# Federal Trade Commission

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**Remarks of Chairman Deborah Platt Majoras<sup>1</sup>  
Public Hearings on Protecting Consumers in the Next Tech-ade  
Federal Trade Commission  
Washington, D.C.  
November 6, 2006**

## **"Developing Consumer Protection Policy in a Digital Age"**

### Introduction

Good morning. It is a great pleasure to welcome those gathered here on the campus of George Washington University in Washington, D.C., and those watching from places around the globe, to "Protecting Consumers in the Next Tech-ade." Our distinguished panelists have come from across the nation and around the world to share their extraordinary expertise on a wide range of technology and consumer protection issues, and we are deeply appreciative. Your time and efforts will assist the Federal Trade Commission in better serving consumers.

That technology is changing rapidly is no secret; it is simply transforming the way we live. In such a dynamic environment, developing sound public policy is a daunting challenge. These hearings are a key part of the FTC's response to this challenge.

No doubt many of you have been to conferences at which the focus has been on how technology itself might change, and I anticipate that we will learn about a dazzling array of amazing and startling technologies, many of which you can see for yourself over at the Tech Pavilion. But our primary focus will be different. Over the next decade (or "tech-ade," as we have dubbed it), these technologies and others undoubtedly will have a tremendous impact on

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<sup>1</sup> The views expressed herein are my own and do not necessarily represent the views of the Federal Trade Commission or of any other Commissioner.

how we live our lives. This week, we will focus not only on how technology might change, but also on how it will impact consumers every day and how consumer protection policy must adapt in response.

Our ultimate goal is to identify future challenges and opportunities in fulfilling our core mission of protecting consumers. At the FTC, we recognize that being prepared for the future is critical if we are to foster confidence in consumers that they will benefit from new technologies, while being protected from undue risks that they create.

### 1995 Global Hearings

Our hearings build on the solid foundation erected through past FTC efforts. In the mid-1990's, then-FTC Chairman Robert Pitofsky recognized that we were entering an era in which technology was changing at an increasingly rapid pace and that this could have a profound impact on consumers. He also recognized the importance in such an environment of reviving the FTC's historical role as an agency that analyzes and reports on novel and difficult consumer issues, thereby assisting policymakers in their legislative, regulatory, and law enforcement decisions.

Thus, in 1995, the FTC held hearings entitled "Protecting Consumers in the Global, High-Tech Marketplace," more commonly known as the "Global Hearings." For the Commission and the public, the Global Hearings served two important functions: First, they ushered in a new era in which the agency has engaged in significant policy study, analysis, and reporting, a role that we have continued and expanded over the past decade. Second, the Global Hearings provided much of the framework for our consumer protection agenda for the past decade, a result that we hope to replicate for the next decade through these hearings.

Following the Global Hearings, the Commission staff issued a report in 1996<sup>2</sup> concerning

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<sup>2</sup> Federal Trade Commission, *Anticipating the 21<sup>st</sup> Century: Consumer Protection Policy in the New High-Tech, Global Marketplace* (May 1996), *available at* <http://www.ftc.gov/opp/global/report/gc-v2.pdf>.

technological advances and the future of consumer protection policy. Some of the key conclusions set forth in the 1996 Global Hearings Report were:

- new technologies were developing at a rapid pace, and these technologies could result in significant marketplace changes for consumers;
- new technologies could be used to perpetrate old-fashioned scams;
- new technologies were elevating some policy issues - privacy, security, and marketing to children - to the forefront of public debate;
- the challenge for government consumer protection agencies was to respond to these new challenges at a time when resources were stretched thin;
- as the new marketplace took shape, both private and public sector interests would be served by making sure sound consumer protection principles were in place; and
- consumer protection is most effective when government, businesses, and consumer groups all play a role.<sup>3</sup>

A decade later, these predictions may seem obvious, but that is because their insights turned out to be correct. The FTC's consumer protection agenda, for instance, is now heavily focused on privacy and security concerns.<sup>4</sup> Privacy and security issues have become such a key part of fulfilling our consumer protection mission that we recently created a new and separate division within our Bureau of Consumer Protection - the Division of Privacy and Identity Protection - that focuses exclusively on these issues. And, of course, privacy and security issues will be an essential part of our discussions during these hearings.

Of course, the 1996 Global Hearings Report did not predict all consumer protection problems that technology would create in the future. For example, it did not foresee major consumer protection problems like spam, spyware, and viruses. Yet, the fact that so many of its predictions have proven to be true provides confidence that these hearings will be similarly

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<sup>3</sup> *Id.* at i-iii.

<sup>4</sup> For a more extended discussion of the Commission's recent activities concerning security and privacy, see Remarks of Chairman Deborah Platt Majoras, The Exchequer Club, Washington D.C.(Sept. 20, 2006), *available at* <http://www.ftc.gov/speeches/majoras/060920exchequerclub.pdf>.

valuable in developing future consumer protection policy.

### The 2006 Tech-Ade Hearings

Given the passage of more than a decade since the Global Hearings, the time has come to undertake another comprehensive and systematic assessment of potential technological developments and their implications for consumer protection policy. As we scan the horizon to foresee consumer protection challenges, the wisdom of the past is needed to focus our vision for the future. The National Archives building across the street from my office bears the inscription “the past is prologue.” As this inscription teaches, understanding our past experience with technological advances and consumer protection can provide valuable insight into what the future may hold. Studying the past can also help us avoid repeating our mistakes. As philosopher George Santayana once warned, “those who do not learn from history are doomed to repeat it.”

There are at least four lessons from the past that we should bring to bear as we consider the implications of technological innovation for consumer protection policy. First, the impact of technological change is difficult to predict. Second, vigorous competition in the marketplace is necessary to ensuring that consumers obtain the maximum benefit from new technologies. Third, the consumer protection concerns that technological advances create often can be addressed without the passage of new laws or the issuance of new regulations. Fourth, there is a powerful relationship between technology and consumer expectations.

### Difficulty of Prediction

Baseball manager and sometime philosopher Yogi Berra once explained, “things are hard to predict - especially the future.” Trying to predict the course of technological advancements and their impact on consumers in particular can be quite humbling, even for experts. Here are some of my favorite examples of technology predictions that widely missed the mark:<sup>5</sup>

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<sup>5</sup> Things People Said: Bad Predictions (accessed Jan. 9, 2006), *available at* <http://www.rinkworks.com/said/predictions.shtml>.

- In 1876, a Western Union internal company memorandum opined that “this telephone has too many shortcomings to be seriously considered as a means of communication.”
- In the 1920's, an investment banking firm advised its clients not to invest in radio because “the wireless music box has no imaginable commercial value. Who would pay for a message sent to no one in particular.”
- In 1927, H.M. Warner, the founder of Warner Brothers movie studio, responded to the prospect of movies with sound by quipping, “Who the hell wants actors to talk?”
- In 1932, Albert Einstein held forth that “there is not the slightest indication that nuclear energy will ever be obtainable. It would mean that the atom would have to be shattered at will.”
- In the 1930's, Lee DeForest, a famous inventor, said that “[w]hile theoretically and technically television may be feasible, commercially and financially it is an impossibility.”
- In 1943, Thomas Watson, then-Chairman of IBM, offered his insight that “there is a world market for maybe five computers.”
- In 1977, Ken Olson, the president, chairman, and founder of Digital Equipment Corporation, opined that “there is no reason that anyone would want a computer in their home.”

My point here is that no matter how brilliant or well-informed one may be - in fact, even if one is Albert Einstein - - it is extremely difficult to predict the development of technology, including which technologies will succeed in the marketplace and society.

Given the extraordinary challenge of foreseeing the future, some might seek to avoid it altogether, focusing only on addressing today’s consumer protection problems. Given the stakes, however, avoiding this challenge is not acceptable. The inherent difficulties in predicting the future impact of technology on consumers counsels not abdication, but the exercise of the old-fashioned virtues of humility, prudence, and strong effort.

Another lesson that we have learned from the past is that vigorous competition in the marketplace is absolutely critical to consumer welfare. Protecting competition helps ensure efficiencies, lower prices, and improved products and services, innovation, and choice. Competition has this beneficial effect on consumer welfare in markets for all types of products, including the high-tech products that will be central to many of our discussions at these hearings. It is the ultimate consumer protection.

Consumers can have a particularly potent impact on competitors and competition in high-tech markets. On the Internet, consumers appear to reign supreme; they can be powerful and tough customers. A recent example involving Facebook.com, a social networking website, demonstrates the effect empowered consumers can have. Members of Facebook had posted information about themselves on their web pages, and then the friends they identified could read the information they had posted if they went to these pages. On Tuesday, September 5, 2006, Facebook announced a new feature that monitored the activity on web pages of members, for example, noting a change in whether the member was in a romantic relationship or listing of a new favorite song, and then sent this information immediately to all of the friends of the member.

Consumer reaction to this new feature was swift and angry. That very day, Facebook began to receive a barrage of consumer complaints, and the company's president and his programmers immediately began working on a fix. By Thursday, only two days after the new feature was announced, over 600,000 members had joined a protest group on the site, 80,000 members had electronically endorsed a petition objecting to the new feature, and a massive member boycott had been scheduled.<sup>6</sup> At 2:48 a.m. on Friday morning, Facebook's president published a contrite open letter on his blog, which began with the candid acknowledgment that

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<sup>6</sup> Associated Press, Facebook Feature Draws Privacy Concerns, MSNBC.com (Sept. 8, 2006), *available at* <http://www.msnbc.msn.com/id/14728756/print/1/displaymode/1098/>.

“[w]e really messed this one up.”<sup>7</sup> To its credit, Facebook implemented its fix for the new feature at 5 a.m. on Friday, after the company’s president and his programmers worked all night to get it done.<sup>8</sup> Facebook’s experience illustrates vividly the power that consumers have to change business behavior<sup>9</sup> and affect markets on the Internet. Consumers believe quite strongly that it is their Internet, and they will have a strong voice in how it is used.

Yet, consumers often do not receive enough credit. As all policymakers consider new proposals and actions, we must be mindful of the power of the collective voice of on-line consumers.<sup>10</sup> Even as we work to protect consumers from harm, by, for example, challenging deceptive on-line claims and spyware downloads, the power of the collective consumer voice to cause changes in business behavior and move markets must be considered in assessing what policies to adopt.<sup>11</sup> While interested parties will lobby for policies that benefit them, we do consumers the best service when we ensure that markets are competitive and do not impose unnecessary barriers or restrictions on free competition through our own new policies.

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<sup>7</sup> Warren St. John, “When Information Becomes T.M.I.,” *New York Times* (Sept. 10, 2006), available at <http://www.nytimes.com/2006/09/10/fashion/10FACE.html?ex=1315540800&en=ccb86e...>

<sup>8</sup> Warren St. John, “When Information Becomes T.M.I.,” *New York Times* (Sept. 10, 2006), available at <http://www.nytimes.com/2006/09/10/fashion/10FACE.html?ex=1315540800&en=ccb86e...>

<sup>9</sup> Facebook changed its practice to allow its members to opt out of the new feature, or to shield specific bits of their lives from public broadcast.

<sup>10</sup> This is true, for example, in making decisions about “net neutrality.” See Remarks by Deborah Platt Majoras, Chairman, Federal Trade Commission, “The Progress & Freedom Foundation’s Aspen Summit,” Aspen, Colorado (Aug. 21, 2006), *available at* <http://www.ftc.gov/speeches/majoras/060821/pffaspenfinal.pdf>.

<sup>11</sup> At the FTC, we recently formed an Internet Access Task Force headed by the Director of our Office of Policy Planning and composed of economists and attorneys to consider and report on net neutrality.

## The Adaptability of FTC Legal Standards

Past experience also teaches that, at the advent of each new technology, there will be an ever-present temptation to pass new laws or issue new regulations that specifically target the latest problem. Through law enforcement experience, however, we know that the Commission's existing legal authority often is sufficiently elastic to allow the agency to address the consumer protection concerns that new technologies raise without the need for new statutes or regulations. Carefully adapting existing legal standards ensures that we can keep up with new consumer protection problems and decreases the risk that new laws for new technologies will create unintended negative consequences for consumers.

In 1938, the FTC was given the authority under Section 5 of the FTC Act to prevent “unfair or deceptive acts and practices.”<sup>12</sup> Since that time, we have seen the development and deployment of many new technologies that have had a profound effect on consumers, such as television, mobile telephones, the Internet, etc. Notwithstanding the tremendous changes in technology and markets over the last seventy years, the elasticity of the concepts of “unfairness” and “deception” contained in our organic statute has allowed us to readily apply them to new technologies.

Spyware provides an example. As I mentioned earlier, the 1996 Global Hearings Report did not mention spyware or similar intrusive software. Instead, spyware really emerged as a serious consumer protection problem about three or four years ago. When it emerged, we determined that we needed no new statute or regulation to begin combating the scourge of spyware. Rather, we were able to mount an aggressive law enforcement program against spyware under our existing authority to prevent unfair or deceptive acts and practices under the FTC Act.<sup>13</sup>

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<sup>12</sup> 15 U.S.C. § 45(a).

<sup>13</sup> For a more extended discussion of the Commission's activities concerning spyware, see Remarks of Deborah Platt Majoras, Chairman, Federal Trade Commission, Anti-Spyware Coalition, Washington, D.C. (Feb. 9, 2006), *available at*

Our law enforcement efforts against spyware have reaffirmed three key consumer protection principles. First, a consumer's computer belongs to him or her, not to the software distributor. Second, buried disclosures do not work, just as they have never worked in more traditional areas of commerce. And third, if a distributor puts a program on a consumer's computer that the consumer does not want, the consumer must be able to uninstall or disable it. To be sure, spyware presents serious new challenges in detection, apprehension, and enforcement. But our current legal authority under Section 5 of the FTC Act has been sufficiently elastic for us to establish that traditional consumer protection principles apply to a new technology like spyware.

Although we often do not need new laws to challenge harmful practices that arise from new technologies, when Congress provides new tools for protecting consumers, we, of course, vigorously use them. Spam is a good example. As I mentioned earlier, spam is not one of the consumer protection problems that the FTC staff foresaw in the 1996 Global Hearings Report. The extremely low cost of sending email has made it an appealing marketing channel for legitimate companies. Unfortunately, this low cost, combined with e-mail's anonymity, also made spam an ideal vehicle for con artists. In the late 1990's, consumers began to be deluged with spam, threatening to undermine their confidence in e-commerce.

Recognizing this risk, FTC rapidly commenced a concerted effort to combat spam, with aggressive law enforcement at the heart being at this effort. The Commission brought 63 spam-related actions alleging that distributors had engaged in unfair or deceptive acts and practices in violation of Section 5 of the FTC Act. To enhance our ability to fight spam, Congress in 2003 enacted the CAN-SPAM Act,<sup>14</sup> which prohibits specific practices related to the dissemination of spam and which mandates that the FTC issue and enforce rules restricting the distribution of spam. Since the CAN-SPAM Act took effect in 2004, the Commission has brought 25 law

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<http://www.ftc.gov/speeches/majoras/060209cdtspyware.pdf>.

<sup>14</sup> 15 U.S.C. § 7701 *et seq.*

enforcement actions alleging that spam distributors have violated the CAN-SPAM Act and the FTC's rules implementing the Act. In total, the agency has filed 88 spam-related cases involving 240 individuals and companies. Spam, of course, remains a serious consumer protection problem. But aggressive law enforcement under the FTC Act, the CAN-SPAM Act, and our rules implementing the CAN-SPAM Act has been and will continue to be instrumental in attacking spam. In short, we will vigorously enforce the laws we have to protect consumers.

### The Relationship Between Technology and Consumer Expectations

The final lesson from our past experience that I will discuss today is the effect that technological advances have in increasing consumer expectations. Growing up in Meadville, a town of about 13,000 in Northwestern Pennsylvania, we valued convenience and choice. I still remember going to the bank during its limited weekday hours and withdrawing the money we needed to make our purchases. We shopped at local stores, selecting products from the choices that local merchants were able to offer us, except when those big, beautiful Christmas catalogs from Sears and JC Penney arrived, showcasing more toys than we knew existed. In short, this is what convenience and choice meant to us in Meadville at that time.

Consumers in Meadville still value convenience and choice, but technology has had a profound effect on what these terms mean. Without even leaving home, they now use the Internet to purchase a vast array of competing products from sellers located around the world, dramatically changing their expectations as to the convenience and choice that sellers should offer. Likewise, they now can use a wide array of options to pay for the items that they purchase from these sellers; the era of merchants brazenly telling customers "In God We Trust. Everyone Else Pays Cash" is long gone. Technological change thus has altered consumer behavior, and with these alterations have come changes – that is, increases – in consumer expectations. Consumer protection policy must be prepared to respond to such evolutions in consumer expectations. In short, consumers want their risks minimized, but they want it done without a reduction in convenience and choice. There is no turning back.

## Conclusion

Now let us begin in earnest our inquiry into changes in technology and its implications for the future of consumer protection policy. I invite you to indulge your curiosity and listen with an open mind. I am confident that the rich conversation that we will have during these hearings will be productive and will provide us with a firm foundation for developing the next decade of consumer protection policy.