

**Remarks of Commissioner Edith Ramirez**  
**APEC Data Privacy Subgroup Meeting**  
**Sendai, Japan**  
**September 17, 2010**

**Rethinking U.S. Privacy Protection: The FTC Privacy Roundtables**

Good afternoon. I have met many, but not all, of you over the last several days, so let me begin by introducing myself. I am Edith Ramirez, a Commissioner at the United States Federal Trade Commission, a position I began in April of this year following my appointment by President Obama. I am delighted to participate in this meeting of the Data Privacy Subgroup, and I also very much enjoyed participating in the seminar on Wednesday and the cross-border privacy rules workday yesterday.

I'd like to take this opportunity to provide an extended update on recent privacy developments at the FTC — and let me preface my remarks by saying that they are my own and do not necessarily reflect the views of the Commission or of any other Commissioner. This is an exciting time for privacy issues at the FTC. The FTC has embarked on a re-examination of our existing approaches to privacy in light of emerging technologies and business practices, which we refer to as the FTC "Privacy Roundtables Project." The project has entailed several days of public discussion and the receipt of extensive written comments from over one hundred stakeholders representing industry, consumer advocates, academics, technology experts, and others about how to tackle the core privacy challenges faced by the United States and all APEC member economies: How do we allow technology and commerce to flourish while adequately protecting consumer privacy? A report from the FTC addressing this challenge will be released for public comment later this year, and we invite your input. Today, I would like to provide a preliminary look at the main concepts the FTC will be addressing.

## **I. Background**

Let me begin with a very brief overview of the FTC’s history of privacy protection. Privacy has been a core component of the FTC’s consumer protection mission for decades. The Commission’s work in this arena began with its implementation of the Fair Credit Reporting Act of 1970, which promotes the accuracy and privacy of credit reporting information. With the emergence of the Internet and e-commerce in the mid-1990s, the FTC’s privacy agenda expanded to encompass online privacy issues. Of course, the rise of e-commerce meant that privacy issues became truly global in nature. For that reason, international outreach and cooperation has long been critical to our privacy work, and our involvement here in APEC has been and remains an important part of those efforts. In fact, we just became one of the first participants in the APEC Cross-border Privacy Enforcement Arrangement.

While the FTC’s commitment to consumer privacy has remained constant over the years, its enforcement efforts have reflected two conceptual approaches: the “notice and choice” and “harm-based” models. These two approaches are well-known to you, as they are also reflected in the APEC Privacy Framework. The notice and choice model gained ascendancy in the mid-1990’s, when the FTC began to focus on consumer privacy in the online context. As you know, this model emphasizes that businesses should provide notice of the information they collect from consumers and how they will use it so that consumers can provide informed consent to the collection and use of their information. The harm-based model gained primacy at the FTC in the early part of the last decade. In contrast to the notice and choice model, the harm-based model focuses on tangible harm to consumers resulting from misuse of their information. The harm-based

approach targets uses of information that present financial risks — such as identity theft; threats to physical security — such as children’s privacy; and unwanted intrusions into consumers’ daily lives — such as spyware, spam, and telemarketing.

## **II. Lessons Learned**

The FTC’s privacy reexamination is taking place against that backdrop. What has the FTC learned from its privacy roundtables? Several key themes have emerged.

At the outset, it is important to recognize that the free flow of information *about* consumers fosters the flow of free content and services *to* consumers online. Consumers derive tremendous benefits from the free content and services available online, which are made possible by online advertising. Privacy policy should take this into account.

But it has also become clear that the current approaches to privacy have significant limitations. The notice and choice model puts too much burden on consumers to read and understand lengthy and complicated privacy policies that seem designed more to limit companies’ liability than to communicate with consumers. To be sure, privacy policies play an important role in ensuring accountability, but they do not ensure meaningful consumer choice or inspire consumer confidence in a world in which data may be shared among numerous organizations for multiple, unanticipated purposes.

The harm-based model, on the other hand, has sometimes focused too much on financial harms to consumers and on harms *after* they occur, rather than taking preventive measures before the information is collected, used, or shared. That is not to say that tangible, financial harms are not important — they are, of course. But even where there may be no risk of economic harm, there are situations in which consumers may be injured when their personal information is shared. For example, a consumer may not want

information about a medical condition to be available to third-party marketers, even if receiving advertising based on that condition might not cause financial harm. Online behavioral advertising, in which information about consumers from their online activities is used to send them targeted advertisements, has made that an increasingly real issue for consumers.

Many roundtable participants questioned whether the notice and choice and harm-based models can keep pace with technological and business changes that have dramatically altered the privacy landscape over the past few years. The explosion of social networking, advances in online behavioral advertising, the expansion of mobile services, enormous increases in data processing and storage capabilities, and the rise of cloud computing are just some of the recent technological developments with significant ramifications for consumer privacy. Can, for example, consumers read lengthy privacy policies on a small mobile device? How can we achieve informed consumer consent with constantly changing and complex business models, in which increasingly vast quantities of information about consumers may be used for unexpected purposes?

### **III. Next Steps**

Now that the roundtables have concluded and the written comments submitted, the question is what steps can be taken to improve consumer privacy? I expect that the FTC report that will be issued later this year will touch on several issues.

#### **A. Integrating Privacy into Business Practices**

First, many roundtable panelists and commenters raised the importance of companies' integrating privacy and security protections into their everyday business practices. This means that companies would build privacy and security protections into

company procedures, systems, and technologies at the outset, so that they are an integral part of a company’s business model. This could include providing reasonable security for consumer data, collecting only the data needed for a specific business purpose, retaining data only as long as necessary to fulfill that purpose, and implementing reasonable procedures to promote data accuracy. These measures would provide consumers with substantive protections without placing the burden on them to read long notices and make detailed choices. The FTC is therefore exploring how to encourage companies to incorporate these protections into their practices, whether there are other such protections that companies should consider, and how to balance the costs and benefits of such protections.

#### **B. Simplifying Choice**

Second, the FTC is considering how to simplify the privacy choices presented to consumers. One way would be to recognize that consumers do not need to exercise choice for certain commonly accepted business practices that consumers expect — for example, consumers naturally expect that an online vendor will share a consumer’s address to the shipping company that will deliver the consumer’s purchase. By eliminating the need to obtain a consumer’s consent to this transfer of information, consumers can focus on the choices that really matter to them, and on uses of data that they would *not* expect when they engage in a transaction. Simplifying choice should also reduce the burdens on businesses. The FTC is considering how to define these commonly accepted business practices.

The FTC is also exploring — in cases where choice would be needed — how to make consumer privacy choices more meaningful. For example, rather than discussing

choices in a long privacy policy, it may be more effective to present choices “just-in-time,” at the point when the consumer is providing the data or otherwise engaging with a company. It also may be better to have greater consistency in the way that choices are presented, so that consumers can better understand and compare companies’ privacy practices. The use of universal icons to convey privacy information holds great promise. In addition, the FTC is examining how best to protect and provide effective choice for the use of sensitive information, such as data relating to consumers’ health, finances, children, and location.

### **C. Improving Transparency**

Third, the FTC is considering how to increase transparency about commercial data practices. The FTC will discuss ways to improve the disclosures in privacy policies. One approach would be the use of standardized terms or formats. Clearer and more uniform privacy disclosures could allow consumers to compare the privacy protections offered by different companies and potentially increase competition on privacy practices.

The FTC is also examining the role of education in promoting greater awareness about privacy among both businesses and consumers. We are exploring how businesses, industry associations, consumer groups, and the government can do a better job of informing consumers about privacy. We are also evaluating the roles that government agencies and trade and industry associations can play in educating the business sector.

### **IV. Conclusion**

Briefly stated, these are the issues the FTC has been grappling with and that will be addressed in the report to be released later this year. We hope you will find the report useful as you consider our common privacy challenges and that you will share your

thoughts and ideas on the questions that the report raises. We value the input of our fellow APEC economies and invite your views.

Let me stop here and thank you for the opportunity to give you this update.