



March 8, 2013

The Honorable Donald Clark
Office of the Secretary
Federal Trade Commission
Room H-113 (Annex E)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: The Federal Trade Commission Data Collection Workshop

Dear Secretary Clark:

Thank you for the opportunity to provide this comment on the topics discussed at the Federal Trade Commission's recent workshop on "Comprehensive Online Data Collection."

The Internet Association's member companies provide innovative products and services to consumers in a safe environment and support the Commission's assessment of the benefits and harms that result from the use of consumer information. The Commission is uniquely positioned to provide guidance on how companies can protect consumers from real online threats while promoting the ongoing innovation that creates new products and services, increased security, and other benefits.

Our comment focuses on three areas:

1. As the Commission determines whether "comprehensive data collection" is actually occurring, it should pay close attention to actual company practices in both the online and offline space, as well as how consumers actually interact with these companies.



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2. The Commission should closely consider the many concrete benefits of data collection, including the circumstances that have allowed companies to provide a continual stream of innovative products and improved data security for consumers.
3. When considering the harms associated with consumer data, the Commission should focus on identifying specific uses of data that are causing real, concrete harms to consumers.

As the Commission analyzes these and other issues, The Internet Association would welcome working with the FTC to provide additional information.

Company Practices and Consumers' Interaction with Online and Offline Products and Services

We agree with the consensus from the workshop that the Commission, when attempting to determine what practices constitute comprehensive online data collection, should utilize a technology-neutral approach. Such an approach would be most useful for two reasons. First, based on consumer demand, companies are rapidly converging the user experience into a multi-screen experience across devices. Thus, rather than focusing on the specific method of delivering software to consumers, the Commission should focus on how software operates regardless of the screen where it is displayed. Otherwise, placing technologies in analytical silos could lead the Commission to conclusions that become quickly outdated.

Second, a technology-specific approach might not adequately account for the offline use of data. This need to include offline data was repeatedly underscored at the workshop. For example, Dan Wallach's opening presentation prominently used the tracking capabilities of scannable codes in coupons received in the mail and used by consumers in brick-and-mortar stores. In its Final Privacy Report, the Commission made clear that its privacy principles applied to offline data practices, and we believe that any future inquiries into how companies use consumer data should continue to include an assessment of offline practices.



Also, we encourage the Commission to be especially mindful of how consumers actually interact with the Internet when assessing the extent of comprehensive information collection. For example, consumers typically use different operating systems, browsers, and devices throughout the day,¹ and consumers will have even greater variety for how they access the same online software in the future with Internet-enabled television, wearable devices, and other means. As Professor Howard Beales stated in presenting at the workshop:

Consumers [are] using multiple devices, multiple networks, multiple browsers from multiple locations and encryption is growing and all of these reduce visibility into consumer behavior.... A 2010 survey that Pew did [showed that] the average person under 45 owns four Internet-capable devices or likely Internet-capable devices -- all of those are used for browsing in different ways.

In addition, consumers' online usage is fragmented across the webpages of competing companies -- and their Internet experiences are further fragmented through using apps, online gaming, streaming movies, and other ways.

Thus, when evaluating the scope of comprehensive data collection, we believe that the Commission should be careful to understand the entirety of how consumers share their data with companies.

The concrete benefits of data innovation when assessing online data collection

We commend the Commission for its panel at the workshop on the benefits and harms to consumers from companies' use of data. Whenever the Commission analyzes issues relevant to the use of consumer data, we believe that it should give considerable attention to the real, existing benefits of how companies analyze and use that information.

¹ For example, a consumer might use their personal iPhone running iOS and Safari, a work Blackberry, a work computer using Windows and Internet Explorer, and a Chromebook at home running the Chrome OS and browser. They might also use devices belonging to friends or family or publicly accessible computers at libraries, Internet cafes, or businesses like FedEx Office.



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For example:

- Restaurants are analyzing in-store customer interactions to more quickly catch bad ingredients in their supply chain, with the hope of one day tracking foodborne illnesses.²
- Non-profits are providing taxpayers with the ability to analyze government spending data online to find examples of waste and fraud.³
- Companies have used data innovation to create beneficial (and often free) products for consumers, like music recommendation engines and news aggregation sites.

In addition, our member companies analyze consumer data in a continual effort to thwart fraudsters, hackers, and other malicious actors who threaten consumers online. For example, companies use aggregated data to quarantine spam, expose malware, and thwart other online threats.⁴

While considering these and the many other concrete benefits of data innovation, the Commission should also take into account the circumstances required for companies to innovate using consumer information. For example, companies today effectively anonymize consumer data and securely analyze it in the aggregate -- a fact that is not contradicted by isolated examples where publicly released anonymized data was re-identified by others. Also, our member companies' innovations often stem from anonymized data previously collected for other purposes -- the re-analysis of search logs to create Google Flu Trends, for example -- meaning that the traditional concepts of data minimization and deletion could thwart the kind of innovation we have already seen.

² See <http://www.npr.org/blogs/thesalt/2013/02/25/172896675/cheesecake-factory-ibm-team-up-to-crack-the-code-of-customer-bliss>.

³ See <http://www.tableausoftware.com/about/press-releases/2011/california-common-sense-tackles-state-financial-data-tableau-public>.

⁴ See, e.g., <http://www.scmagazine.com/big-data-can-fight-malware/article/276467/>.



We urge the Commission to consider the concrete benefits from online data collection, as well as the important circumstances that allow for their creation.

Specific harms of data collection

Finally, we welcome and will work with the Commission to assess whether comprehensive online data collection leads to real harms to consumers. For example, workshop panelists noted that data collection could lead to unfair determinations regarding the creditworthiness of consumers. We believe that the Commission should focus on the uses of consumer data to determine whether consumers face such resulting concrete harms

However, when assessing consumer harm, we recommend against weighing speculative harms that are not actually reflected in consumer's experiences. For example, some commentators stated that online data collection is harmful simply because of the *possibility* of a breach of that data -- a situation that is already addressed by the robust security employed by our member companies. In any event, the Commission has already brought law enforcement actions under Section 5 of the Federal Trade Commission Act against companies that do not provide adequate data security. Similarly, we disagree with those commentators at the workshop that urged the Commission to consider data collection itself to be a harm, even in the absence of concrete harms to consumers stemming from the actual use of the data.

The many specific benefits of data innovation described above would be seriously curtailed if policymakers attempted to regulate online data practices by focusing on the collection of information as a harm or on speculative, non-concrete harms, rather than on the real impact of the uses of online data on consumers.



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Thank you again for the opportunity to comment on this important topic. If you have any questions, please do not hesitate to contact me at 202.803.5783 or beckerman@internetassociation.org.

Respectfully submitted,

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The Internet Association