



16 February 2011

**FTC Preliminary Staff Report: “Protecting Consumers Privacy in an Era of Rapid  
Change: A Proposed Framework for Businesses and Policymakers”**

**Contribution by the German Federal Commissioner for Data Protection  
and Freedom of Information**

The BfDI welcomes the opportunity to submit comments on the FTC Preliminary Staff Report “Protecting Consumers Privacy in an Era of Rapid Change: A Proposed Framework for Businesses and Policymakers”.

The report contains many important suggestions for improvement in the area of data protection. In particular, the proposal to introduce a “do not track mechanism” is of high relevance. By this suggestion the FTC faces up to one of the biggest privacy issues on the Internet: The creation of comprehensive user profiles.

Also the European Parliament has determined in the so-called ePrivacy Directive (Article 5 paragraph 3) that tracking mechanisms, such as the setting of persistent cookies, is only allowed with the data subject’s explicit consent on the basis of comprehensive information. The “do not track me” approach now favored by the FTC offers a practical example to fill the relevant regulation in the ePrivacy Directive with life. However, the FTC solution should also include the preset of this option in the respective program. Then the data subject would have to agree to an activation of the tracking function himself by clicking the appropriate button (no tracking by default).

Given the high relevance of this issue the Federal Commissioner would be very interested in a further exchange of information with the FTC, in particular as regards the implementation of the proposed measure.