



February 18, 2011

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington DC 20580

Re: Protecting Consumer Privacy in an Era of Rapid Change – Comments

Dear Commissioners and Commission Staff:

Thank you for the opportunity to submit these comments to the Federal Trade Commission on the staff report entitled “Protecting Consumer Privacy in an Era of Rapid Change.” My name is Alan Chapell. I am an attorney, privacy professional, and an interactive media industry analyst and have worked with hundreds of companies in this space over the past fourteen years. My comments are my own and will focus primarily on the impact of the staff report on the interactive media and advertising marketplace.

I applaud the Commission’s work in this area and believe that the report addresses many important issues. For example, “privacy by design” is a concept that should be incorporated into most if not all consumer facing technology offerings. In the interest of brevity, I won’t elaborate on the many well thought out and helpful concepts outlined in the report. Rather, I’d like to concentrate on a few areas of concern.

The report focuses on Do Not Track mechanisms – and such emphasis on Do Not Track has inadvertently created issues in several areas. Specifically, the focus on Do Not Track is negatively impacting the progress toward industry self-regulation and may ultimately hinder consumers’ online experience. While I’m certain that this was unintentional, I encourage the Commission to clarify its position on these issues publicly - particularly in regards to Commission support for industry self-regulation - in order to minimize the potential for further damage.

As a preliminary thought - I have strong concerns that Do Not Track as a policy has received the approval of the Commission and other policy makers without a thorough review and analysis of the economic impact of such a policy. And as the following paragraphs will outline, I am concerned that such an approach may fall victim to the law of unintended consequences.

Soon after the report was released, three of the major browser manufacturers, presumably acting in response to the Commission’s call to action, announced a browser-based implementation of Do Not Track. Each of the browser implementations of Do Not Track adopt entirely different approaches using completely different technologies and methodologies. The net result is that companies in the interactive media space are already allocating time and resources in an attempt to configure their technology platforms in order to harmonize with these three separate approaches. One of the drivers of growth and innovation in the online media industry has been the ability for content and advertising to seamlessly render across a myriad of computers, browsers and operating systems. Having three completely separate implementations of Do Not Track would seem at best a step in



the wrong direction. Moreover, consumers, many of whom utilize more than one browser, will undoubtedly also be forced to navigate the complexities of multiple approaches.

Moreover, the Commission's public statements in support of DNT have fostered uncertainty in the marketplace – as many companies are left with the impression that the FTC has abandoned its support for industry self-regulation. As someone who has worked tirelessly to foster industry support for self-regulation, I can assure the Commission that the marketplace is paying close attention to the public statements of each Commissioner and those of Commission staff. And to the extent that such statements appear to be in conflict with prior public statements, the marketplace reaction is one of paralysis as companies struggle to determine the “right” and/or FTC sanctioned approach to privacy as and online behavioral advertising.

Finally, one of the browser manufacturers has chosen a Do Not Track implementation that not only blocks online tracking, but also blocks advertising and content. Moreover, some of the features of this Do Not Track mechanism may run contrary to the long-standing consumer privacy concept of informed consent. If such a Do Not Track implementation reaches ubiquity, the net impact on the economic tradeoff between content and advertising on the consumer Internet could be disastrous.

For example, I acknowledge that the widespread blocking of advertising might initially be well received by some consumers. However, such initial enthusiasm would fade if the dearth of advertising revenue created by such ad blocking begins to negatively impact online content options. Moreover, few if any consumers would be pleased if they found themselves unable to play their favorite online videos, or enjoy content sharing widgets as a result of a browser based content blocker.

I'm certain that this is not the result that the FTC intended when it publicly endorsed Do Not Track back in December. It is difficult to fully quantify how many consumer benefits that such a browser based Do Not Track approach may negate. For this reason, I encourage the Commission and other interested parties to conduct an analysis of the impact of Do Not Track before the Commission makes additional public statements that may be interpreted as support for a potentially dangerous Do Not Track tool.

I appreciate this opportunity to share my thoughts on these important issues, and encourage Commission staff to contact me at 917-318-8440 with any questions or comments.

Sincerely,

Alan Chapell
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