



December 21, 2009

Via electronic filing

Hon. Donald S. Clark
Federal Trade Commission
Office of the Secretary, Room H-135 (Annex P)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Privacy Roundtables - Comment, Project No. P095416

Dear Secretary Clark:

TRUSTe appreciates the opportunity to comment in connection with the FTC's Privacy Roundtable discussions. Thank you for hosting this important public dialogue and fact finding effort. We are eager to respond to your interest in understanding the roles of self-regulation and independent third party certification as important parts of an approach to privacy accountability that is responsive to consumers.

In these comments we will first illustrate TRUSTe's experience and belief that helping consumers effectively resolve privacy questions, concerns and complaints is among the most significant means of protecting and promoting consumer privacy in a globally-connected world, with varying legal privacy frameworks and limited avenues for direct consumer assistance. Our comments also address the value around work to innovate privacy notices to enable consumer understanding and choice and to encourage privacy attentive behaviors by business and consumers. Finally, as a company that recently received venture capital funding to build out and utilize privacy enhancing technologies to address new business models and evolving privacy risks, we believe technology used by independent third parties to scan for compliance and deliver services can raise privacy awareness and best practices



to the broadest businesses sector in the US and globally – small and medium size companies – in a manner that is scalable and effective, but to date has been underserved.

Company Background

Since our founding in 1997, TRUSTe has helped thousands of businesses promote online safety and trust, and guided consumers to sites that protect their online privacy. Through our Watchdog program, our consumer dispute resolution service which we provide free of charge to consumers, we have addressed over 7,000 consumer privacy complaints to date in 2009. TRUSTe helps both consumers click with confidence and online companies promote their Web site privacy policies online. Over 3,000 Web sites currently participate in TRUSTe's privacy seal programs, including top-50 sites like Yahoo, Facebook, MSN, eBay, AOL, Disney, New York Times, Comcast and Apple. Our programs include the TRUSTe Web Privacy Seal, EU Safe Harbor Seal, Trusted Download Seal, Children's Privacy Seal, Email Privacy Seal and Site Reputation Services.

Key Concepts Related to Effective and Emerging Roles for Independent Third Parties and Consumer Privacy Protections:

1. Providing the consumer with a simple accountability mechanism

TRUSTe believes that business accountability is essential to improving consumer confidence and consumer privacy protection both online and offline. Consumers benefit directly and in tangible ways when they are able to timely access independent third party services that serve businesses and consumers by providing efficient and effective dispute/question resolution that satisfies consumer concerns. This is a function that credible and trusted accountability agents can and do successfully fulfill.



Initiatives such as our Watchdog program provide effective solutions that can hold companies accountable for privacy promises and consumer protection in situations that might fly well below the radar for government enforcement. The independent third party can be a partner not only to consumers and to businesses, but also to the government. Independent third parties are able to resolve individual consumer complaints that otherwise would not raise to the level of regulatory review or be resolved either timely or cost-effectively through the courts. They can also provide a survey of information across consumer contacts and complaints received to provide an early warning on emerging privacy threats and risks, including deceptive or unfair practices that may indicate bad actors of whom government regulators should be made aware.

For consumers and businesses in a globally connected world, effective and accessible online and offline dispute resolution by independent third parties can help them navigate resolution of privacy concerns and receive redress, where otherwise there are varying legal and regulatory privacy frameworks globally that can be confusing to navigate by parties across borders. For a dozen years, TRUSTe has worked diligently to provide no-cost and flexible online dispute resolution processes for use by consumers from around the world. We respond to thousands of individual consumer contacts and complaints each year. Our experience has taught us that being able to offer such services to our client companies and their consumers in various languages (33 to date) benefits consumers who are dealing with US or other companies cross-border, but who do not file a complaint in English and whose ability to participate in online dispute resolution might otherwise be limited.

At TRUSTe, we are making it even easier for the consumer to log a complaint regarding our seal holders' privacy practices via our Watchdog dispute resolution service that is accessible directly from our Click to Verify TRUSTe seal. After we receive a Watchdog



complaint, TRUSTe investigates and works with a seal holder and consumer to resolve the issue. We strive to resolve all issues that are submitted to us through this program and have a very high success rate in providing consumers with timely and satisfactory solutions. Our Watchdog program is free and simple for consumers to use. Since it is online, it is available to consumers at any time, and we also handle complaints in a variety of languages since consumers in the online world are global. The prime advantage to our program to consumers is that it facilitates a prompt resolution to privacy issues -- most likely in a much faster time frame than a legal or regulatory action would take.

Our experience is that frequently a consumer desires to have a specific and personal issue resolved, such as removing an unauthorized profile containing their personal information (10.9% of complaints in 2009), an account access issue (19.8%) or receiving unwanted emails (9.3%). *(Please see Appendix A for a breakdown of all complaint types in 2009).* As we have a direct connection to the business areas of our seal holders that can take prompt action on these types of issues, the consumer's specific issue can be raised to those who can resolve it.

In the absence of this type of process, we are concerned that a single consumer would likely have to wait until perhaps hundreds of similar complaints were made to a regulatory agency for action to be taken via enforcement, due to limited government resources and the need for government to prioritize case types and risks across the marketplace. Moreover, private legal actions against companies related to privacy face difficult legal hurdles under current case law to be successful, as well as often being expensive and time consuming for the consumer. For a single occurrence privacy issue there may, in fact, never be resolution when recourse is dependent upon regulatory review and court thresholds. Additionally, by effectively resolving this large bucket of consumer complaints, independent accountability



agents free up regulatory agencies to handle the most important cases and truly systemic risk issues.

Consumers have consistently given high marks and recommended our dispute resolution processes. We believe that our dozen years of experience validates the important role of these services to the consumer and actual privacy protection through programs that effectively implement the fair information privacy principles and other best practice standards.

2. Developing tools to improve transparency and consumer choice

We are developing as part of the TRUSTe seal program for small businesses a graphics based short form privacy notice – on the new TRUSTe click-to-verify destination page -- that will give consumers a meaningful picture of how their information is being used. While there has been much questioning of the efficacy of privacy notices lately, we believe that with clearer expressions of concepts, such as through using icons, a consumer can appreciate how their data is being used and then exercise choices accordingly. We believe that these privacy “road signs” could potentially be as recognizable and meaningful to consumers online as traditional road signs are to drivers today.

For large enterprises we are continuing to support efforts for meaningful short and layered notices, but hope to bring this graphical initiative to that segment as well after it is further refined in the typically simpler data processing environments of smaller businesses. We are also working to develop “just in time” notices to be displayed at the point of collection including to address tracking related to behavioral advertising and retargeting.

While notice itself is not equivalent to consumer privacy protection, effectively encouraging businesses and consumers to engage in privacy attentive behavior based upon



some information sharing between the two is essential to the privacy protection equation. We look forward to continuing collaborative work with the FTC, consumer organizations, academics and accountable businesses to make that link dynamic and effective.

3. Ensuring that privacy solutions are scalable

As the FTC considers privacy enforcement, TRUSTe particularly would like to focus on the need for scalable solutions so that small and medium size business can participate more widely in privacy enhancing programs that will be cost-effective, utilize technology, provide teaching moments to business and consumers, and directly assist consumers with dispute resolution and privacy inquiries. We have found that smaller online businesses lack dedicated privacy staff and the expertise to even create a privacy policy, so any requirements that may be placed upon them need to recognize their limited resources. Notwithstanding, TRUSTe surveys indicate that this largest segment of the US business market appears to be underserved and not sufficiently addressing consumer privacy protection or data security planning to protect consumer information. Efforts by government to support independent third party programs reaching out to bring privacy accountability to this market need to be nurtured and supported.

4. Testing privacy disclosures by utilizing web site scanning

TRUSTe has developed a tool that allows us to scan websites to determine what types of data a site collects as well as what tracking technologies are utilized by the site (See Appendix B for screen shot of application). This helps us to determine whether a site's privacy policy is accurate and compliant with our program requirements. Also, the tool scans for any malware on the site.



We see a particular benefit here for smaller businesses since they typically outsource certain elements of their website (e.g. shopping carts, site analytics, display advertising) and as such, may not be fully aware of all the tracking technologies that appear on their sites. With this tool, a website owner can ascertain what cookies and other tracking devices are being utilized by these third party applications, and then will be better able to provide more accurate privacy disclosures to consumers.

Closing

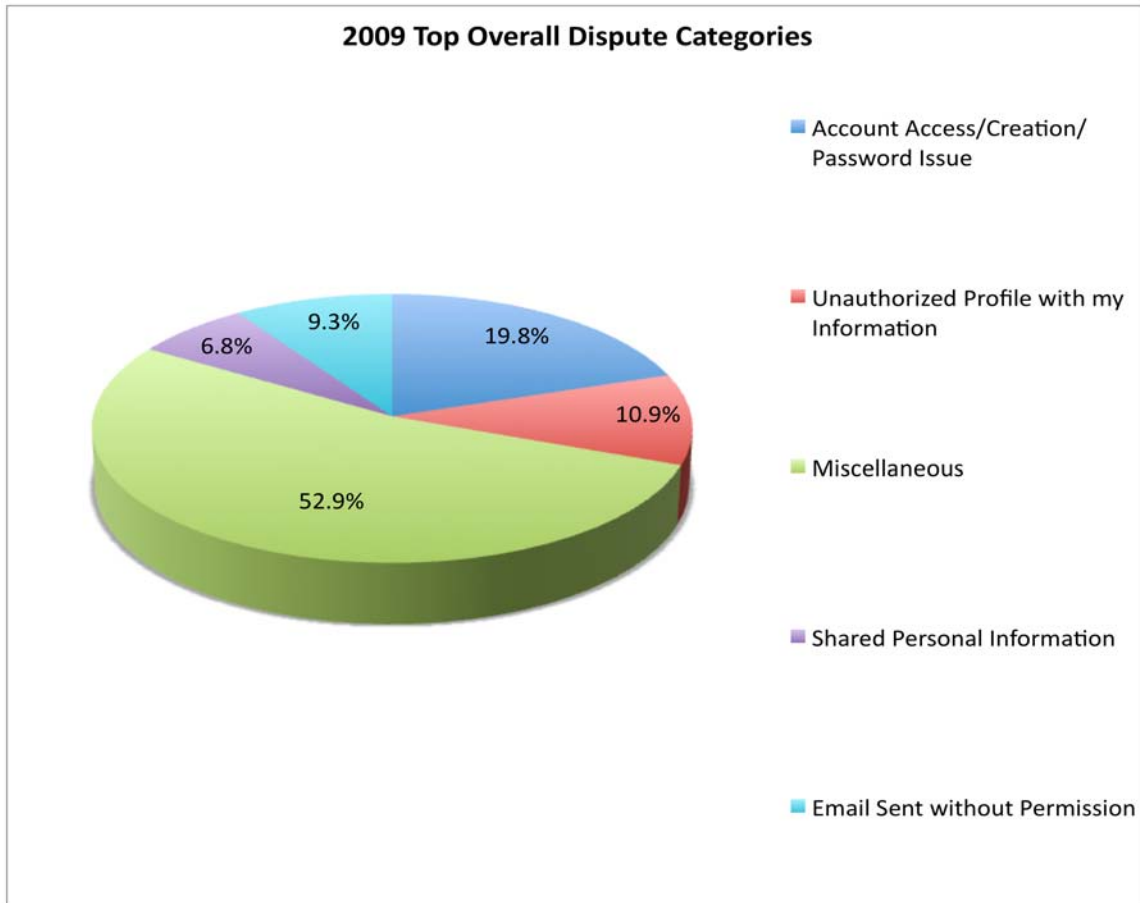
TRUSTe has a twelve year-history as a privacy trustmark running privacy programs with seals viewed in upwards of 100 countries. We believe that providing consumers with a highly effective online privacy accountability mechanism is an appropriate and significant role for independent privacy accountability agents in current and future US privacy frameworks. We are pleased to share our perspective and recommendations, acknowledging the trust that has been put in us by companies and consumers and their help in developing more effective mechanisms over the years. We look forward to the opportunity for further discussion at the upcoming Roundtables and commend the FTC on these open dialogues concerning effective protection of consumer privacy.

Sincerely,

Fran Maier
President and Executive Chair



Appendix A – Breakdown of Watchdog complaints -- 2009





Appendix B – Site Scanning Tool

TRUSTe Enterprise Client Portal

Logout Manage account Help

Company: Widget X
Contact: Bridgette Gladner (bgladner@widgetx.com)
Today's date: Aug. 13, 2009
Last access: Aug. 12, 2009

Home
Programs and Services
Program Compliance Reports
Watchdog-Dispute Resolution

Back to compliance reports
Regular Site Review-Q109 [www.bing.com](#)

Web Site Crawl Results for Widget X

Crawl Date: **Aug. 12, 2009** Previous Crawl Date: **Aug. 12, 2009**

Site Crawled: [www.widgetx.com](#) No. of Pages Crawled: **1000**

Print Summary

Summary of Results

Category	Crawl Findings	Results															
Third Party Links	<div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <p>25 (7%)</p> <p>450 Unique</p> </div> <div style="text-align: center;"> <p>75 (9%)</p> <p>800 Total</p> </div> </div> <p style="text-align: center;">3rd Party Totals</p>																
Tracking Technologies	<table style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 20px; background-color: #4CAF50; height: 10px;"></td><td>40</td><td>1st Party Cookies</td></tr> <tr><td style="width: 20px; background-color: #4CAF50; height: 10px;"></td><td>10</td><td>3rd Party Cookies</td></tr> <tr><td style="width: 20px; background-color: #4CAF50; height: 10px;"></td><td>20</td><td>3rd Party Web Beacons</td></tr> <tr><td style="width: 20px; background-color: #4CAF50; height: 10px;"></td><td>15</td><td>3rd Party Scripts</td></tr> <tr><td style="width: 20px; background-color: #4CAF50; height: 10px;"></td><td>10</td><td>3rd Party Frames</td></tr> </table>		40	1st Party Cookies		10	3rd Party Cookies		20	3rd Party Web Beacons		15	3rd Party Scripts		10	3rd Party Frames	
	40	1st Party Cookies															
	10	3rd Party Cookies															
	20	3rd Party Web Beacons															
	15	3rd Party Scripts															
	10	3rd Party Frames															
Collection of PII (# of forms)	<table style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 20px; background-color: #4CAF50; height: 10px;"></td><td>20</td><td>PII Info</td></tr> <tr><td style="width: 20px; background-color: #4CAF50; height: 10px;"></td><td>5</td><td>Age-Identifying Info</td></tr> <tr><td style="width: 20px; background-color: #4CAF50; height: 10px;"></td><td>15</td><td>Credit Card Info</td></tr> <tr><td style="width: 20px; background-color: #4CAF50; height: 10px;"></td><td>5</td><td>SSN or Tax ID Info</td></tr> </table>		20	PII Info		5	Age-Identifying Info		15	Credit Card Info		5	SSN or Tax ID Info				
	20	PII Info															
	5	Age-Identifying Info															
	15	Credit Card Info															
	5	SSN or Tax ID Info															
Downloadables	6 total	Downloadable URLs www.company.com/software_1 www.company.com/software_2 See more															
Privacy Statement	Percent of Pages with Privacy Link <p>75 (9%) 800</p> <p>Privacy statement link on home page? YES Seal validation link on home page? YES</p>	Forms or Pages Without a Link to the Privacy Statement www.company.com/software_1 www.company.com/software_2 www.company.com/software_3 www.company.com/software_4 See more															
Host Reputation	IP Address: 164.109.38.25 DNS Provider: EasyDNS.com SSL Provider: VeriSign, Inc. WHOIS Registrar: Easy DNS Technologies Inc. Shopping Cart Provider: N/A	<div style="border: 1px solid green; padding: 2px 5px; background-color: #e0f0e0;">Host Reputation Info (PDF)</div>															
Malicious Content Scan Results	<p>Current Scan</p> <p>First Party: 0 out of 1000 pages Third Party: 2 out of 1200 pages</p> <p>Past 30 Days</p> <p>First Party: 2 Third Party: 4</p>	Malicious Content identified from Current Scan www.company.com/software_1 See more															

Resources

- White Papers
- Case Studies
- Webinars
- Research
- Video
- Newsletter
- TRUSTe Membership Kit
- Useful Links
- TRUSTe Website

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