



FTC Issues Privacy Report and Proposes New “Framework” for the Collection and Use of Consumer Data

Earlier today, the Federal Trade Commission issued its long-awaited report on privacy that is intended to provide guidance and best practices for businesses and suggestions for policy makers regarding privacy laws.

In the report, the FTC states that industry efforts to address privacy through self-regulation have been too slow, and up to now have failed to provide adequate and meaningful protection. The FTC specifically addresses the inadequacy of privacy notices that are difficult for consumers to understand and sometimes difficult to find.

Acknowledging the rapid changes in technology, increased collection of consumer data, and the benefits of such practices, the FTC proposes a new “framework” for the collection and use of consumer data comprised of the following three principles: (1) privacy by design, (2) simplified choice, and (3) greater transparency. As part of this framework, the FTC supports the development of a “do not track” mechanism for online behavioral advertising, that would enable people to avoid having their actions monitored online, a move the online-advertising industry has opposed. The report suggests that the most practical method of providing a do not track system would be to include a setting similar to a persistent cookie on a consumer’s browser that would broadcast a consumer’s desire not to be tracked or receive targeted advertisements.

Although the report does not propose specific changes to any FTC privacy rules, it does state that it is intended to inform policymakers, including Congress, as they develop solutions, policies, and potential laws governing privacy.

The report issued today is a preliminary report and the FTC is accepting public comments until January 31, 2011. Based on comments received, the Commission plans on issuing a final report in 2011. In the meantime, the FTC stated that it will continue its “vigorous law enforcement in the privacy area,

using its existing authority under Section 5 of the Federal Trade Commission Act and the other consumer privacy laws it enforces.”

Below is a summary of the new framework:

The proposed framework is not limited to companies that collect personally identifiable information, but would apply broadly to online and offline commercial entities that collect, maintain, share, or otherwise use consumer data that can be reasonably linked to a specific consumer, computer or device.

The framework contains three main components.

1. Privacy by Design

- Companies should promote consumer privacy throughout their organizations and at every stage of the development of their products and services.
- Companies should incorporate substantive privacy protections into their practices, such as data security, reasonable collection limits, sound retention practices, and data accuracy.
- Companies should maintain comprehensive data management procedures throughout the life cycle of their products and services.

2. Simplified Choice

- Companies should simplify consumer choice.
- Companies do not need to provide choice before collecting and using consumers’ data for commonly accepted practices, such as product fulfillment.

This publication may constitute “Attorney Advertising” under the New York Rules of Professional Conduct and under the law of other jurisdictions.

- For practices requiring choice, companies should offer easy to use choice mechanisms, at a time and in the context in which the consumer is making a decision about his or her data.

3. Greater Transparency

- Companies should increase the transparency of their data practices.
- Privacy notices should be clearer, shorter, and more standardized, to enable better comprehension and comparison of privacy practices.
- Companies should provide reasonable access to the consumer data they maintain; the extent of access should be proportionate to the sensitivity of the data and the nature of its use.
- Companies must provide prominent disclosures and obtain affirmative express consent before using consumer data in a materially different manner than claimed when the data was collected.
- All stakeholders should work to educate consumers about commercial data privacy practices.

Please contact leuan Jolly at 212.407.4810 if you have questions about this report or need assistance submitting comments to the FTC.

If you received this alert from someone else and would like to be added to the distribution list, please send an email to alerts@loeb.com and we will be happy to include you in the distribution of future reports.

This alert is a publication of Loeb & Loeb and is intended to provide information on recent legal developments. This alert does not create or continue an attorney client relationship nor should it be construed as legal advice or an opinion on specific situations.

Circular 230 Disclosure: To ensure compliance with Treasury Department rules governing tax practice, we inform you that any advice contained herein (including any attachments) (1) was not written and is not intended to be used, and cannot be used, for the purpose of avoiding any federal tax penalty that may be imposed on the taxpayer; and (2) may not be used in connection with promoting, marketing or recommending to another person any transaction or matter addressed herein.

© 2010 Loeb & Loeb LLP. All rights reserved.

Advanced Media and Technology Group

KENNETH A. ADLER	KADLER@LOEB.COM	212.407.4284
ROBERT M. ANDALMAN	RANDALMAN@LOEB.COM	312.464.3168
IVY KAGAN BIERMAN	IBIERMAN@LOEB.COM	310.282.2327
CHRISTIAN D. CARBONE	CCARBONE@LOEB.COM	212.407.4852
TAMARA CARMICHAEL	TCARMICHAEL@LOEB.COM	212.407.4225
NATASHA CHAMILAKIS	NCHAMILAKIS@LOEB.COM	212.407.4853
MARC CHAMLIN	MCHAMLIN@LOEB.COM	212.407.4855
CRAIG A. EMANUEL	CEMANUEL@LOEB.COM	310.282.2262
KENNETH R. FLORIN	KFLORIN@LOEB.COM	212.407.4966
DANIEL D. FROHLING	DFROHLING@LOEB.COM	312.464.3122
DAVID W. GRACE	DGRACE@LOEB.COM	310.282.2108
THOMAS A. GUIDA	TGUIDA@LOEB.COM	212.407.4011
NATHAN J. HOLE	NHOLE@LOEB.COM	312.464.3110
THOMAS P. JIRGAL	TJIRGAL@LOEB.COM	312.464.3150
IEUAN JOLLY	IJOLLY@LOEB.COM	212.407.4810
MICHAEL MALLOW	MMALLOW@LOEB.COM	310.282.2287
DOUGLAS N. MASTERS	DMASTERS@LOEB.COM	312.464.3144

NERISSA COYLE MCGINN	NMCGINN@LOEB.COM	312.464.3130
ANNE KENNEDY MCGUIRE	AMCGUIRE@LOEB.COM	212.407.4143
DOUGLAS E. MIRELL	DMIRELL@LOEB.COM	310.282.2151
DANIEL G. MURPHY	DMURPHY@LOEB.COM	310.282.2215
DANIEL O'CONNELL OFFNER	DOFFNER@LOEB.COM	310.282.2252
SETH A. ROSE	SROSE@LOEB.COM	312.464.3177
ROBERT MICHAEL SANCHEZ	RSANCHEZ@LOEB.COM	212.407.4173
ALISON POLLOCK SCHWARTZ	ASCHWARTZ@LOEB.COM	312.464.3169
STEVE A. SEMERDJIAN	SSEMERDJIAN@LOEB.COM	212.407.4218
BARRY I. SLOTNICK	BSLOTNICK@LOEB.COM	212.407.4162
BRIAN R. SOCOLOW	BSOCOLOW@LOEB.COM	212.407.4872
WALTER STEIMEL, JR.	WSTEIMEL@LOEB.COM	202.618.5015
AKIBA STERN	ASTERN@LOEB.COM	212.407.4235
JAMES D. TAYLOR	JTAYLOR@LOEB.COM	212.407.4895
MICHAEL A. THURMAN	MTHURMAN@LOEB.COM	310.282.2122
MICHAEL P. ZWEIG	MZWEIG@LOEB.COM	212.407.4960