

I. FTC Background

1. FTC is an independent law enforcement agency with jurisdiction over competition and consumer protection issues.
2. The FTC's primary source of legal authority is Section 5 of the FTC Act.
3. FTC engages in significant policy work.
4. Privacy is a key consumer protection priority for the FTC.
5. No over-arching federal privacy law; however, the FTC enforces numerous sector specific privacy laws, and the Commission has brought scores of cases under these laws, as well as under Section 5.

II. FTC Has Been at Forefront of Consumer Privacy and Behavioral Advertising

1. Commission has been examining OBA issues for about a decade.
2. In November 2007, the Commission held a 2-day Town Hall event to discuss the implications of OBA.
3. Based upon the Town Hall discussions, staff released for public comment a set of proposed principles to encourage industry to improve their behavioral advertising practices. Over 60 comments were submitted.
4. Thereafter, in February 2009, staff released a report on Self-Regulatory Principles for OBA.
5. Three Roundtables: December 2009, January 2010, and March 2010.
 - A. Significant public participation.
 - B. Based on the major themes and concepts developed through the roundtables, Commission staff proposed in December 2010 a new framework for addressing the commercial use of consumer data.

III. December 2010 Preliminary FTC Staff Report

1. Two main objectives: (1) inform policymakers as they develop solutions, policies, and potential laws governing privacy, and (2) guide and motivate industry as it develops more robust and effective best practices and self-regulatory guidelines.
2. Broad Scope
 - A. Applies to any commercial entity that collects or uses consumer data that can reasonably be linked to a specific consumer, computer, or other device.
3. The framework covers three main principles:
 - A. Privacy by Design
 1. Companies should promote consumer privacy throughout their organization and at every stage of the development of their products and services.
 - B. Simplified Choice
 1. Companies provide choices to consumers about their data practices in a simpler, more streamlined manner than has been used in the past.

2. Consumer choice not necessary for a limited set of “commonly accepted” data practices.
 3. For data practices requiring choice, companies should offer that choice at a time and in a context in which the consumer is making a decision about his or her data.
 - a. One way of providing such consumer choice is to provide it in a uniform and comprehensive way. The Do Not Track (DNT) recommendation is consistent with this approach.
- C. Greater Transparency
1. Companies should take measures to make their data practices more transparent to consumers (e.g., improve privacy notices, provide consumers with reasonable access to data that companies maintain about them).

IV. Do Not Track

1. The Staff report included a recommendation to implement a universal choice mechanism for behavioral tracking, often referred to as DNT.
2. Effective DNT should incorporate following elements:
 - A. Universal.
 - B. Easy to find, easy to understand, and easy to use.
 - C. Ensure that consumer choices are persistent.
 - D. Comprehensive, effective and enforceable.
 - E. An effective DNT would go beyond simply opting consumers out of targeted ads, it would opt them out of collection of behavioral data for all purposes that are not commonly accepted.
3. Recent Industry Developments
 - A. DAA Self-Regulatory Program
 - B. Do Not Track Header: Mozilla and Internet Explorer 9
 - C. Internet Explorer Tracking Protection Lists
 - D. Apple Safari DNT tool
 - E. Google Chrome “Keep My Opt-Outs” Extension

V. Recent FTC Enforcement Actions and Looking Ahead

1. FTC Enforcement Actions
 - A. Chitika: The FTC’s first online behavioral advertising case against a network advertiser.
 1. Facts
 2. Status
 3. Order
 - B. Google Buzz
 1. Facts
 2. Status
 3. Order

2. Finalize Privacy Report

A. Report expected to be finalized later this year.

B. FTC received roughly 450 comments. Staff is in the process of reviewing those comments and revising the report.