Webcast: From Data Protection to IP Reform: Protecting Consumers and Preserving Competition in a Dynamic Marketplace
Date and Time: Wednesday, December 13, 2006 at 3:00 PM ET
Presented by ACC's Information Technology Law & Ecommerce Committee, sponsored by DLA Piper
Presenters: The Honorable Deborah Platt Majoras, Chairman, US Federal Trade Commission
Moderator: Karen Boudreau, Senior Legal Counsel, Websense, Inc

ASSOCIATION OF CORPORATE COUNSEL

Moderator: Karen Boudreau
December 13, 2006
2:00 p.m. CT

Operator: Just a reminder, today's conference is being recorded.

(Karen Budreau): Hi, good afternoon. My name is (Karen Budreau) and I'm the Senior Legal Counsel for (Web Sense), Inc. and member of the IT and eCommerce Committee, Executive Committee. Thank you all very much for joining us today.

We're excited today to have Deborah Majoras, Chairman of the Federal Trade Commission, who is going to speak to us today about a variety of issues from data protection to IT reform. I've heard the Chairman speak before and she is absolutely excellent. I wanted to do a few housekeeping matters first.

If you'd like to submit questions, and we'd love to have questions, type them in the box in the lower left of the screen and hit the send button. Also, we'd really appreciate it if you would fill out the Web cast evaluation forms and there's a link to that in the center of the screen. Also, there's a link to the DLA Piper Web site.

We're very pleased that DLA Piper has agreed to sponsor this and we thank them very much. They sponsor not only this Web cast, but the IT&E Commerce Committee, both for this year, 2006, and also for 2007. Now I'd like to introduce Chairman Majoras.

She was sworn in as Chairman of the Federal Trade Commission in August of 2004. She had joined the Federal Trade Commission from Jones Day in Washington, D.C. where she was a partner in the firm's antitrust section and also part of the firm's technology issues practice and handled a number of other commercial disputes in criminal cases.

In April, 2001, Chairman Majoras was appointed the Deputy Assistant Attorney General for the U.S. Department of Justice, Antitrust Division, and then she was named Principal Deputy in November of 2002.

She oversaw a variety of matters and served as Chair of the International Competition Networks, Merger Working Group, and oversaw policy initiatives such as the FCC, I'm sorry, the FTC DOJ Healthcare hearings and the DOJ's merger review process.

She graduated Summa Cum Laude from Westminster College and received her JD from the University of Virginia in 1989, where she was awarded Order of the (Course) and served as Editor of the University of Virginia's Law Review. She lives in McLean, Virginia with her husband, John Majoras.

Chairman Majoras, thank you very much for joining today and we look forward to hearing what you have to tell us about the FTC. Thanks.

Deborah Majoras: Karen, thank you so much. I appreciate the opportunity to visit with you and everyone else today on the Web. So thank you to everyone for your interest in the FTC and our work. The FTC is actually a relatively small agency in Washington.

We have about 1,100 employees, but we're charged with promoting competition and consumer welfare by enforcing our nation's antitrust and consumer protection laws. And those laws together touch many areas of commerce with which you will all have a lot of familiarity.

We think that our two missions go together hand in hand, a mission that focuses entirely on promoting healthy competition would insure a free market, but if it didn't, also look at areas where consumers maybe need some protection because they can't protect themselves. The market may not function as efficiently or robustly as it could.

But to the same degree, if our mission focused only on consumer protection, we would perhaps lose sight of the fact that it's a free and competitive market that best serves the interest of the greatest number of consumers. And so we take very seriously the interaction of our mission at the FTC.

Our approach to protecting competition and consumers is multi-pronged. First, we actively enforce the antitrust and consumer protection laws, litigating when we need to, and negotiating settlements when we think that they can fully resolve our concerns, which is most often the case. Second, we inform all of our work through a very vigorous market and consumer research program.

Third, we promote the benefits of competition and free market through a vigorous competition advocacy program in all sectors of the government, so that includes filing a [[inaudible]] in court, filing comments with other federal agencies, consulting frequently with Congress on how proposed legislation is likely to impact consumers and competition.

And also as of late, consulting with a lot more state legislatures on proposed legislation. And finally, because we recognize that informed consumers are empowered market participants, we employ a very robust consumer education program as well as an active program to educate businesses about what we think consumers expect of them and certainly what the laws we enforce expect from them.

So I'm going to begin today with a little bit about our competition work. I'll start with merger review, which consumes about two-thirds of our competition resources.

As you probably know, we are required by statute to review mergers of a certain size when they come in, and what we've seen recently is a real uptick in the number of mergers that we have – that we have to review. So our merger review staff is extremely busy.

Over the past fiscal year, for example, we've issued 28 second requests and had 16 merger enforcement actions. Now none of those actions actually went to court. They either ended in consent decree or transactions that were abandoned, but it's been a pretty active year.

And the merger release that we've been obtaining for consumers spans multiple industries. For example, in the recent (FCI, Alder Woods) transaction, we preserved competition in 47 markets for funeral and cemetery services.

In an action we had recently involving Barr Pharmaceuticals, we were promoting competition in certain markets for generic pharmaceuticals treating depression, high blood pressure, and ruptured blood vessels. In Enterprise (Pepco), we preserved competition among vital natural gas liquid storage facilities, which protected consumers of derivative products like plastics and heating gels and gasoline.

And we even protect the beautiful people, so in a recent deal called (Allergan Intimate), we preserved competition for Botox and dermal fillers. So as you can see, our merger work really spans a large number of industries.

Now, I think it's fair to say that one of the things that has occurred in recent years is that both we and the antitrust division of the Justice Department, with which we share antitrust authority, have become more transparent in our merger review and how we look at these things.

And I think that that's one of the reasons why we haven't litigated a merger case in a couple of years. I think counsel today are quite well informed about the types of merger problems that we're likely to identify.

And either mergers get scrapped in the boardroom before we ever see them or the experienced antitrust litigators tend to come to us now, even saying right up front, look, we

know there's a problem here but we already know how we can probably fix it. And we work together with them.

But to improve that transparency even further, earlier this year, we, together with the antitrust division, issued what we call our horizontal merger guidelines commentary, which provides for business people and for the bar short summaries of past investigations to explain how we used our horizontal merger guidelines, which now have been in use for about 14 years, to actually review mergers and what facts were relevant to us and the like.

And I think one of the reasons that this has been – I think, has received some good acclaim is because it not only covers cases in which we did bring a challenge, but it also explained in, instances in which we could consistent with our confidentiality obligations hear our matters in which we did not think there was any competitive problem and here's why.

And I think that counsel have found that to be – to be very useful. One other thing that I would note for you on the merger front is that in February of this year, I announced some significant merger process reforms.

Anyone who has ever been involved in a significant merger in the United States knows that responding to our second request, which of course are the requests for additional information, once we have reviewed a merger over the first 30 days, can be – responding can be time consuming and so many would say burdensome, because it's not easy to do competitive analysis, particularly forward-looking predictive analysis as we have to do in mergers. And so staff has typically requested a lot of documents and information. Having

been in private practice myself, and having now been at both antitrust agencies, I'm aware of the issue.

I think it's an important issue and so I've tried to put in place – well, I have put in place reforms that I think are helping to reduce the burden. And quite frankly, are making it easy for us to be more efficient because the fact of the matter is, with all of the technology and tools that counsel now have for producing documents, including in electronic form, we were getting inundated.

And we were getting inundated in ways that I thought were inefficient and did not lead to the most effective analysis. So you can find those on our Web site and so far, we've had I think pretty good success with these reforms, but we'll continue to tinker with them along the way as needed.

I'm going to turn now briefly to talk a little bit about some of our non-merger cases that we have – that we have been working on. Many of our actions today, as you might expect, implicate important issues of innovation and issues that are at the interface between intellectual property and antitrust.

For example, we've given substantial focus to agreements between brand and generic pharmaceutical firms that would delay the entry of generic drugs.

So for example, we've been working on a case in which we sought to enjoin Warner Chilcott, the manufacturer of the branded oral contraceptive, Ovcon (B), and Barr Laboratories, which was the only potential generic competitor, from an agreement that Barr

would stay out of the market and Warner would pay Barr $20 million in exchange for a five-year exclusive license with generic Ovcon product.

And what we said in the complaint was that Warner asked for this agreement with Barr. When it realized that Barr was about to enter with a generic and Warner had had a plan in mind to shift customers from its Ovcon (B) to a new patented product, which would be basically Ovcon (B) with spearmint flavoring added to it so that women could chew it.

And because they couldn't get that spearmint product on the market fast enough, Barr was going to come in with a generic and Warner was concerned about cannibalization. So it entered into this agreement and Barr agreed to stay out of the market.

So we sued in Federal District Court and that case continued for a while, and then recently, Warner announced that it was about to bring its spearmint chewable oral contraceptive to market and we realized that with Barr still not in the market, Barr would not stand a chance.

So we moved for a preliminary injunction and Warner then agreed to release Barr from its obligations and the agreement. Barr then entered with its generic and Warner settled the case with us. The case against Barr continues.

We thought this was an important victory for consumers of Ovcon (B) and this is indicative of some of the types of agreements that we have seen as companies who are losing patent protection and having to compete with generics are worried about loss of sales.

While we certainly understand that, there is no excuse for entering into agreements that we think violate the antitrust laws. Another area in which we've been – which we've been involved that involve innovation pretty heavily is the standard setting area.

Standard setting often is quite pro-competitive and can provide enormous benefits for consumers, but we have seen some cases in which firms have engaged in anti-competitive conduct to distort the standard setting process.

So for example, in a matter that we brought against (Unical), we alleged that (Unical), when it was engaged with other companies in a standard setting process with the California Air Resources Board, to develop mandatory standards for certain low emission gasoline products.

(Unical) deceptively said that it did not have any patent rights, but then was at the same time, secretly pursuing patent rights and so unbeknownst to CARB and the members of the standard setting organizations, the standards that were then adopted did in fact incorporate (Unical's) intellectual property.

And lo and behold, after that happened, (Unical) said, oh, by the way, you all owe us royalties. And ultimately, we were able to settle that case with (Unical) entering into consent decrees around – in conjunction with their being acquired by Chevron in which they agreed not to enforce these patents.

And this I think was an important case, that we think would have resulted in the passing on of about $500 million in royalty costs to consumers, and since consumers are already unhappy about the price of gasoline, this was – this was an important case.

And one other standard setting case you might be aware of, the Commission issued a decision in August in a case we had against (Zamba), finding that (Zamba) distorted a critical standard setting process and then engaged in hold up of the computer memory industry.

That case is still before the Commission right now for determining an appropriate remedy, so I won't be able to talk about that any further and I will move on. Now, with respect to competition, we don't see our job as just being limited to identifying antitrust violations and challenging them.

Congress set up this agency so that we could have an important role in market research and policy making. One area in recent years in which we've been involved in looking at U.S. policy is the area of patent and in particular, patent reform.

Starting back in 2002, the FTC, together with the Department of Justice Antitrust Division, posted a series of hearings over 24 days in which more than 300 panelists debated lots of issues relating to competition and intellectual property and how this all fits together.

The hearings led to a major report that the FTC put out in October of '03, on the proper balance of competition and patent law and policy. And it stands for a strong endorsement of a properly functioning patent system, but also recognizes that when the system grants a patent that shouldn't have been granted, competition can be – can be unduly harmed.

So the report recommended several measures to better promote patent quality. For example, it seconded the PTO's proposal that Congress should enact legislation establishing procedures for post-grant review by the PTO.

And so there were several recommendations in that report. More recently, Representative (Lamar Smith) from Texas and Senators Hatch and Leahy have introduced patent reform legislation that addresses post-grant review as well as several other important patent reform issues, and we're quite hopeful that further progress can be made in the next – in the next Congress.

But in the meantime, we're in close touch with the patent office with which we have a very good relationship and they're taking several steps already to try to I think improve the quality of the patent grant process, understanding and thereto – their leadership understands the importance that intellectual property plays today in competition in the United States industries.

And so that's something that we'll be continuing to follow with great interest. And I'll also just note that coming out of those hearings that started way back in 2002, we and DOJ have been trying to put out a second report that would look more specifically at issues at the intersection of antitrust and (IP) like standard setting, like licensing and the like.

And I've been promising that report for so long that I think people who have heard me say it don't believe me anymore, but I can assure you that we've been working on it and actually we're close and we do expect hopefully in the early part of 2007 to be able to put out a

report that explains issues we see at this important nerve section and how we think such issues ought to be – ought to be analyzed.

So you can – you can look forward to that if you're interested. So now I'm going to switch over to the consumer protection side of the house where we have a lot of exciting things going on Consumer issues comes in all shapes and sizes and as the economy progresses so rapidly into new technologies and the like, consumer problems morph and expand and we have a lot more work to do.

I'll start – I'll start with identity theft and data protection. Those issues are extremely prominent for consumers these days.

As you probably know, in the United States, there is no one privacy agency that works on these issues. Different issues are spread out in different agencies, but as the agency charged with protecting consumers, we have – we have the role of to some degree protecting consumer's privacy.

Identity theft has clearly become one of the top concerns. The stories roll in. We as the – we at the FTC are the national identity theft clearinghouse, so we take in consumer complaints and get consumer requests for help for the entire Federal Government.

So we get about 15 to 20,000 calls or e-mails or otherwise contacts from consumers per week on the subject of identity theft. The stories are heart wrenching. I checked to see some of the recent calls that we had received.

We had a woman in Montana call our consumer response center to report a recent discovery that an identity thief had opened more than 17 private and bank – credit card and bank accounts in her name and then had rung up almost $150,000 in charges, including multiple automobile loans.

We had another consumer from the Dallas area call in to report her recent discovery that an identity thief had obtained a $300,000 home loan in her name. It happened more than five years ago and she didn't even know about it. So these are the stories of U.S. consumers and I'm sure you've had friends or family with similar stories.

Just this morning, I participated in a press conference with Secretary Chertoff at the Department of Homeland Security and Assistant Secretary Julie Myers from Immigration and Customs Enforcement.

In working on an illegal immigration case involving several meat packing plants like for – it's Swift, the Department of Homeland Security asked for our help because what they were finding was that workers in these places were not using false Social Security numbers like we've seen in the past, but were actually somehow purchasing the Social Security numbers of other Americans and using these Social Security numbers to get employment.

And when we cross-checked these Socials with our identity theft database, lo and behold, we found a lot of consumer complaints matching and showing that not only had these folks that Homeland has now went in and was able to get arrests on yesterday.

But these folks had also committed all kinds of identity theft by using these Social Security numbers. They'd opened bank accounts. They committed credit card fraud. They committed student loan fraud and so on. And so it shows you that identity theft is a real problem and one that we need to continue to work on, on a going forward basis.

Earlier this year, President Bush concluded that Federal Government resources could be more effectively marshaled through a more comprehensive effort at the federal level and so in May, he appointed an identity theft task force which Attorney General Gonzales chairs and I co-chair, and we are working with several other government agencies to do more at the federal level to try to stamp out identity theft.

So you will continue to see news on that front. Now, security problems, now the causes of identity theft are varied. You'd be surprised at the large number of victims whose identities were stolen by someone they know, unfortunately by family members or friends who have entered their homes.

So there are many different ways that identity theft can be committed. We also know that we're seeing more identity theft rings and in fact, those who then, as in the case I told you about this morning where we held the press conference, these rings that can sell, literally sell people identities to those who would use them to commit fraud and other crimes.

One of the things we've really focused on in combating – in combating this, and quite frankly, in combating consumer's perception that they have no privacy anymore, which of course is a scary perception for consumers, is to work with companies on data security.

As you know, we have experienced in this country a lot of data breaches over the last couple of years. I don't think it's likely the case that we didn't have data breaches before 2005, and now suddenly, they're just occurring over and over again.

I think it's probably more likely that we had them before 2005, but before then, we didn't have state laws that required companies to actually disclose to consumers that there was a data breach that might have affected the consumers.

But in any event, suffice it to say that what we're seeing today are data breaches that are occurring by accident as well as unfortunately many with companies just simply not taking precautions when they're holding sensitive consumer information. So we have been very active in that – in that realm.

As you may know, there is no single data security law, but rather what we have today as a mosaic of federal and state laws that apply to certain entities or certain kinds of information, so for example, the Gramm-Leach-Bliley Act contains safeguards requirement for financial institutions.

And we have the HIPAA role which protects the security of health information and the Fair Credit Reporting Act and so. And in addition, we've used the Federal Trade Commission Act and its prescription against unfair or deceptive practices in cases where businesses have made false or misleading claims about their security procedures or where their failure to employ reasonable security has caused substantial consumer injury.

We have used in our cases a standard of reasonableness. We don't think that there exists any such thing as perfect security for data any more than there is perfect security for just about anything. But we do think that companies need to be reasonable.

That means they have to look at the types of information that they are holding to evaluate its sensitivity, the potential risks to it, the cost involved in avoiding those risks, and companies need to have security plans that can be adapted to their – to their situation. And that's what we mean by reasonableness.

We do not mandate specific technical requirements. For example, to say everything needs to be encrypted. We think that that does not make sense for either through legislation or through government agencies like the FTC saying it because quite frankly, two years from now, we don't know what technologies are going to exist to protect our data.

And encryption may be – may have gone by – may have gone by the wayside. We've brought to date 14 cases of companies that have failed to protect consumer's data. Probably our best known action was the one against Choice Point.

You may recall that Choice Point is a data broker and it sold information, on more than 160,000 customers to data fees who used that information to then open new accounts and commit identity theft. And what we said was, Choice Point simply did not use reasonable procedures to screen prospective subscribers as it was required to do by law.

So it approved as customers who were then allowed to get very sensitive information like Social Security numbers, individuals who were using commercial mail drops as their business

addresses and who were faxing multiple applications from nearby public commercial locations, you know, like a Kinko's or some sort of an office store like that.

So in that case, we obtained 10 million in civil penalties for the violations and then also five million in consumer redress which we've just now been able to start giving back to the consumers who were victimized by identity theft. I'm pleased to say that Choice Point has taken its lesson – the lessons from this breach to heart.

It has put in place an entirely new security program. It hopes to become a model for the industry and so we're pleased to see that they have taken this so seriously on a going forward basis. And we hope other companies are watching and are taking it just as seriously. I'm going to just very briefly touch on a few other important consumer protection problems that we're – that we're addressing.

One also goes to the privacy area and that is – well, the next two actually. One is pretexting and pretexting is – it's a nice euphemism for simple fraud. It is of course the practice of obtaining a consumer's personal information under false pretenses and a lot of us never heard of the practice of pretexting until the recent Hewlett Packard incident in which we learned – we all learned a lot more about it in the newspaper.

In any event, even before that happened, we had filed complaints in federal court against five Web-based entities that had obtained consumer's confidential telephone records and then sold them to anyone who was willing to pay a fee. And we alleged that these practices were unfair as to the FTC Act.

I mean, the fact is consumers can't control this and they do not want their phone records out there in the public eye, but one of the things that we have found aside from people feeling that their privacy has been violated, is that pretexting has been used to facilitate stalking and worse than that, so it can be a serious problem.

Now, just last week, the U.S. Senate passed by voice vote a law that would make obtaining phone records through fraud or lying a criminal act and the House had already passed it. And so we think that that will likely become law and so now it will be clear that this is a crime.

We of course don't have criminal jurisdiction, so we will not be prosecuting it as a crime, but as always, we will assist criminal law enforcement partners in any way we can in stamping out that practice. Another important priority that implicates privacy is spyware. Spyware takes several different forms.

It's most pernicious forms can include a keystroke logger that tracks all of the consumer's online activity, which of course causes a significant risk of ID theft. And at the other end of the scale, spyware can certainly be at a minimum, a true annoyance to consumers when it is – when it is causing popup ads to distract us when we're on our computers.

We've brought nine enforcement actions involving spyware and in doing so, we are trying to affirm three key principals. First, a consumer's computer belongs to him or her and not to the software distributor.

Second, varied disclosures about attaching spyware do not work just as varied disclosures have never worked in more traditional areas of commerce. And third, if a distributor puts a program on a consumer's computer, and the consumer doesn't want it, then the consumer has to be able to uninstall or disable it.

We illustrated these principals most recently in a settlement with Zango, Inc., formerly known as 180 Solutions. Zango is a company that provides advertising software programs or adware that monitor consumer's Internet use in order to then display targeted popup ads to them.

And what we said in our case is that the company installed this advertising software program without adequate notice or consent. Their distributors frequently offered consumers free software, but then didn't disclose that downloading it would result in the installation of Zango's adware.

And in some other instances, distributors exploited security vulnerabilities to install the adware and what we would call drive by downloads, so that we had millions of consumers receiving all these popup ads without even knowing why. Then they were having their Internet usage monitored without their knowledge.

In any event, we have settled with Zango. Zango too is putting in place new procedures and very much want to – want to become more of a model for the industry in how to do this and do it the right way. Spam we continue to work on for consumers.

That's another – that's another issue for us, but I think what I'd rather do now is stop so I can get some water. Anyway, and then leave enough time for questions since I've been talking for quite a while. And I hope you have a few questions. Thank you very much.

(Karen Budreau): Hi, this is (Karen Budreau).

Deborah Majoras: Yes Karen.

(Karen Budreau): If any of you have any questions, please feel free to submit them using the question box in the lower left-hand corner of the screen and to send it, of course, you hit the send button. As somebody is an in-house counsel for a couple of decades, we always like to try and – my company says, try and make sure that we stay off your radar screen.

And so if you could give us a little advice on ways to do that and how to better advise our clients so that we don't run into trouble, that would be helpful.

Deborah Majoras: Of course. First of all, I'd like you all to be aware of our broad array of business education materials. In fact, we've put all of them on a very tiny CD-ROM that people can carry around with them that we call our business briefcase. And we'd be happy to get some of those to you.

And basically, this goes – it goes through a whole series of materials in the areas that we enforce, including advertising, you know, they types of disclosures that are – that are required under the law, data security, which I talked about ways that we think companies ought to be acting to secure their data.

And the whole range of issues that we cover on the consumer side are included there. And then I would say when you can, check the Web site. We are – we try to remain very current in our Web site and I think a great way to understand what the issues are that we're concerned about is to watch to see what other kinds of cases we're bringing, and you can say, oh gosh, I'm glad that's not us.

I'm glad that's not our company who's gotten themselves in hot water with the FTC, but obviously, every one of our cases we hope will be viewed by other companies similarly situated and something they can learn from and something on a going forward basis.

And if all else fails, and there's something that there's a concern about and you want more information, by all means, contact our staff who are very, very helpful. We're not trying to play got you with anybody. What we want is – what we want are well functioning markets in which consumers are armed with the information they need to make their purchasing decisions in the marketplace.

And we're pleased as can be when companies are complying and providing services to consumers. So I hope that helps, Karen.

(Karen Budreau): That's wonderful. I have a couple of other questions. The first one that we received is, what do you think about services that many online users – that may monitor online use in order to send customers coupons and to send follow-up e-mails for discounts?

Deborah Majoras: I'm sorry. Could you repeat that one more time?

(Karen Budreau): Yes, it's a little – it's a little it strangely written. What do you think about services that, I think they mean monitor online use, or which monitor online use to send customers coupons and to follow-up with e-mails for discounts?

Deborah Majoras: Right, OK. I think that's – I think that falls – I think the question is getting at something that I was talking about earlier, which is – which is companies attaching spyware or adware to people's computers, monitoring their use and then figuring out what kind of products they like to buy for example, and then sending them coupons or sending them popup ads.

Our views on these are that – a couple things. One, consumers need to be informed and they need to be informed conspicuously, not buried in some – in some EULA way down far that consumers have to click three times to get to.

But while we wish that consumers always thought that things on the Internet when they're told, oh, here's a free download. Go ahead and download it. It's all for free. We wish consumers would remember that there's really nothing in life that is free and there's probably a hitch.

They don't recognize it and it's important that companies disclose what they're doing and if they're going to download software that's going to monitor habits so that they can then give consumers coupons that they think they will like and enjoy, that may be fine, but consumers need to know about it and so they can consent to it and then – and then move on.

(Karen Budreau): I also think they may have been asking about the issue of monitoring use of a Web site and where people go on the Web site and then sending an e-mail for coupons to follow up. For instance, if you're using a retail Web site, …

Deborah Majoras: A cookie?

(Karen Budreau): … and you go to typewriters for – if there are any anymore, but a computer store.

Deborah Majoras: Right, right.

(Karen Budreau): Then you would get a coupon for a discounted computer.

Deborah Majoras: Right. We haven't – we haven't to date brought any cases involving the use – the use of cookies. Cookies can be useful tools we recognize, and that's not to say that we never would if there were a situation where consumers were truly being harmed by it, so I give you that cautionary – that cautionary note.

So it's a little – I think this is an area where industry is continuing to develop standards going forward for what is really permissible for monitoring consumer's habits and what is not.

To date, what we have really been concerned about is the downloading of software onto consumer's computers that monitor their habits and that's where we have – that's where we have been concerned to date.

(Karen Budreau): OK. We have another question. Is the FTC looking at the potential misuse of varying tracking technologies such as RFID and GPS?

Deborah Majoras: We are. We are in the exploratory sense. We had a workshop, a public workshop on RFID technology I think in 2004, so it's now been two years ago. Having public workshops on new technologies, new techniques and other things we're seeing in the marketplace is one of the ways in which we gather information.

So we'll for example get in the RFID context, had I can't remember if it was a day or more than a day, in which experts from across the spectrum in the marketplace came in and told us about current and future uses of RFID technology, its benefits and then, you know, privacy act advocates and the like talked to us about what they're concerned about on a going forward basis.

And what we concluded, and we did put out a report on that which would be available on our Web site, and what we concluded was that we would need to, you know, continue to watch what's happening in the marketplace.

It's not very typical that we would put out some sort of guidelines or new rules well in advance of a technology gaining acceptance and sort of making it so hold in the marketplace, because quite frankly, we don't know enough at the beginning.

We need to know more about how it's benefiting consumers, which new technologies typically do, and then what the downsides might be, you know, where consumers may be harmed.

In that vein, you should also be aware that in early November, we held three days of public hearings here in Washington, which we titled, Protecting Consumers in the Next Tech Aid, and our purpose in doing that was similar to the RFID workshop, but on a broader scale.

And what we were – what we did was we brought in experts from across the technology industry from investment institutions, from universities, other parts of government, and we had really exciting panels about what the new technologies are that are coming down the pike and what sorts of consumer's issues those might present.

And it was really an exciting few days and what we do is we'll take this information, we'll likely issue a report sometime in the spring, and then we use the information to – to be honest with you, just get prepared for future, for the new scams that may be coming down the pike because, you know, the fact of the matter is, those that perpetrate fraud on consumers, they're very smart, they're very wily and we have to try to get a jump on them as much as we can.

So we – in those – and I know that RFID technology was one of the ones that we discussed in that – in that workshop as well, so we are looking at it from an observation to educate ourselves perspective and we'll see whether there are consumer problems it creates that we have to get active in.

(Karen Budreau): Thank you. I just want to remind people, if they'd like to submit a question, they can type it in the box on the lower left-hand corner of the screen and send it to us by hitting the send button. We had a question that I frankly didn't entirely understand.

I wondered if you could comment on the FCRA commentary and if you're expecting to do an update? And explain, I wasn't sure what the FCRA commentary was when the question was asked.

Deborah Majoras: Yes. The FCRA commentary and whether we're going to do an update. I think we have – I think we have business guidance on complying with the FCRA. The FCRA of course was updated pursuant to the Fact Act at the end of 2003. I think we have business education materials on all of that, but I'm not – I guess I'm not aware of any other sort of commentary.

But to answer the question, I'm also not aware of any efforts that we're making right now to update. We keep our business guidance pretty well updated on our Web site, but I'm not aware of any formal, anything formal that we're doing right now under FCRA, so I'm sorry if that's not very helpful, but that's – I think that's the best I can do.

(Karen Budreau): Well, and for those of us who are less aware, can you explain the FCRA commentary? I'm not familiar with it is why I'm asking.

Deborah Majoras: Well, no, I don't know of anything called the FCRA commentary myself. That's why I was wondering if it was just referring to guidance that we've issued on it or what – or what – I'm sorry. Hold on, one second.

I will – I can take a look at that and if the person who is asking the question wants to get in touch with us through Karen, I'll try to get you a better answer to that question.

(Karen Budreau): That's great. And I wondered if you could just give us some overview of some of the advertising issues that you all are seeing now?

Deborah Majoras: Sure. Yes, we are – a lot of the – well, the advertising issues that we are most focused on, we try to focus on those that would be most harmful to consumers, so we continue to work very, very hard on marketing of phony weight loss products, marketing and advertising of phony health and dietary supplements.

Some of these – some of these products that are marketed to consumers that consumers actually buy are really affirmatively harmful. There are products out there that claim to cure cancer and Alzheimer's and diabetes.

I mean, I'm talking about the same product and so people who have terminal illnesses that are quite desperate, we've seen, you know, go off their cancer treatments and start taking these ridiculous pills that do nothing. And so we focus, you know, again, as much as we can on the advertising issues that really could pose the greatest risk to consumers.

Another area that we've been quite engaged in, in the last couple of years on advertising relates to the advertising of food to children. Obviously, we have an obesity problem in our country and it is affecting our children in a major way. And obesity levels for children have really been climbing and unfortunately, aren't falling.

This has caused a number of people, including a lot of consumer groups and a lot of public health groups, to call for bans on food advertising to children or bans on junk food advertising for children.

We have tried to serve as something of a guiding hand in the debate that's going on in Washington, on this right now. Quite frankly, we think that it – that trying to ban food advertising to children, would number one, run into major legal roadblocks, would probably afoul of the First Amendment. We're almost certain that it would.

Second, would just be just almost impossible for us to implement, and third, one has to question whether it would be worth all of that because the fact is, we think there are lots of causes of obesity in kids. And of course, depending on the age of the children, children are not buying their own food after the TV ads anyway.

They have to rely on their parents to buy it and so the parents can obviously – can obviously say no. So it's quite a social debate that's going on. We have worked together with (HHS). We held a public workshop.

We put out a report on that workshop and that led recently to a number of companies taking a number of steps to commit to helping in this – in this problem of obesity in children. That ranges from offering healthier choices and advertising those healthy choices to reducing the number of ads for food that kids see on their programming and the like.

And in addition, the Children's Advertising Review Board, which monitors this advertising and takes complaints, is modifying its practices to make them I guess sturdier. And so we are

– that's an issue and I would just put in another category as issues under the (Rubik) of children.

We are constantly called on by Congress and other policy makers with respect to the advertising of violent entertainment to kids, so we have done several reports for Congress on violence in music and in movies and in particular, of great note lately, in video games.

And there again, we've had a lot of people in Congress and other places say, oh, we've got to ban the marketing of violent video games to kids. Again, First Amendment problems, the video game industry has won all 10 cases that have been brought against them and they've won all 10 of their challenges to state statutes that have tried to restrict the sale of these games.

But we've done – but we've done some work in that arena, again, mostly providing information to Congress and other policymakers and quite frankly, to parents about the rating system so that they will understand what those rating systems are and what they mean.

So those are some of the advertising areas that have been of particular interest as of late.

(Karen Budreau): OK, that's very helpful. And one last question, could you give us some information, on the Safe Web Act so that we're all more familiar with it?

Deborah Majoras: Yes, by all means. I was hoping I would have a chance to get to that and I was worried that I was overstaying my welcome here. Yes, this is a law that we were delighted

that Congress just passed at 4:30 last Saturday morning, just before they left town. But it's one that we've been pushing for, for a few years now.

One of the things that we have found in our work on scams over the Internet in particular, as a lot of people know, a lot of these scams are coming to U.S. consumers from overseas. A lot of people are familiar with, you know, the Nigerian request for assistance, lotteries and sweepstakes that come out of Canada.

There are all – there are a lot of – a lot of places. And one of the things that we found in trying to cope with those was that we were really hampered in our ability to share information with some of our counterparts overseas and our ability to keep confidential any information that they shared us, for example, keep it from being (foible) and the like.

And so that's hampering our efforts. I mean, the fact of the matter is, most of the spam that you get in your e-mail box now crosses at least one international border and so what we're faced with is a bunch of scam artists who have no borders and no jurisdictional requirements to worry about, whereas here we are hamstrung.

And so we asked Congress to give us – well, to lift some of the restrictions on us and so the Safe Web Act of 2006 that was passed does such things as allows the FTC to share confidential information in our overseas protection cases with foreign law enforcers.

It allows us and foreign law enforcement agencies to obtain, investigative assistance from one another, so if they said, we're worried about this case preying on our consumers, can you help investigate that? We do it and we can do it and then vice versa.

It exempts information from foreign agencies for public disclosure laws, which means that they'll actually now I think be happy to give us the information.

It does a number of other things in the realm of cooperation for our – for our cases overseas, and so we're delighted to have – to have those abilities now and we will use them wisely so that we can continue this fight across the globe with our – with our consumer protection counterparts in other parts of the world.

(Karen Budreau): Oh, that's – we look forward to seeing all of that implemented, at least I do for the sake of my inbox.

Deborah Majoras: Yes, I know. I know, it's a problem.

(Karen Budreau): Well, thank you very much for your time. I know you're extremely busy and we really appreciate all of the information that you've given us. We also again want to thank DLA Piper for sponsoring this Web cast and for all the other things that they do in support of the information technology in e-commerce committee and (ACO) as well.

And I just want to let those on the line know that this Web cast will be available on the (ACO) Web site for a while if you'd like to listen to it again or if you would like to suggest that somebody else listen to it.

Again, thank you all very much and I wish you the best for the rest of the day and the holidays.

Deborah Majoras: Karen, thank you very much. I've enjoyed it. I hope to travel to California again soon and be able to see you in person, although under better circumstances than the last time I saw you.

(Karen Budreau): Yes, let's hope. Thank you again.

Deborah Majoras: Thank you, OK. Bye-bye.

(Karen Budreau): Bye.

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