



The Role of the FTC in Online Privacy

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Three Messages:

- FTC's role in Internet privacy
- Threat to consumer privacy
- Federal legislation



The FTC's Authority:

“Unfair or deceptive acts or practices in or affecting commerce.”

-- 15 U.S.C. Section 45(a)

FTC has no jurisdiction over:

- Banks
- Savings and loan associations
- Common carriers
- The business of insurance
- Conduct that is not unfair or deceptive
- Noncommercial websites

Fair Information Practices

- Notice
- Choice
- Access
- Security

FTC 2000 Report to Congress

- Self-regulation insufficient
- FTC recommended legislation
- Some members of Industry beginning to support legislation

Existing Law and Regulation:

Different Rules Apply

- If under age 13
- Medical or financial data
- U.S. or Europe
- Online or offline

The Patchwork – Federal

- Children's Online Privacy Protection Act
- Gramm-Leach-Bliley Act
- Proposed HIPPA Regulations

The Patchwork – Non-Federal

- Class actions
- State legislation
- European Union Directive

Fear -- Uncertainty -- Doubt

- 2000 Harris Interactive study: Internet users more concerned with privacy issues (56%) than health care (54%), crime (53%) or taxes (53%)
- 2000 Pew Internet & American Life Project: 84% of consumers are concerned that business and/or unknown people are getting their personal information
- 1999 Alan Westin's survey showed that 92% of consumers are concerned about the misuse of their personal information online

Fear -- Uncertainty -- Doubt

- Identity Theft – FTC receives on average 1000 calls per week
- Privacy policies confusing and inconsistent
- E-Commerce potential not fully realized

Privacy Policies - Fluid

- Constantly changing:
 - “We may e-mail periodic reminders of our notices and conditions, unless you have instructed us not to, but you should check our Web site frequently to see recent changes.”
 - Example from popular website
- Burden is on the consumer to track changes in privacy policies

Privacy Policies

- Long and complicated
- One-sided:
 - “By visiting [this site] you are accepting the practices described in this Privacy Notice.”
 - Example from popular website

Privacy Policies -- Confusing

- “Kitchen Sink” Approach:
 - ◆ Describe relationships and conduct that may exist in the future
- Seamless Hyperlinks:
 - ◆ Consumers do not know whose site they are on or whose privacy policy controls

Cookies: Why Used?

- Collect information about consumers (personally identifiable and anonymous aggregate data)
- To personalize web experience and assist in sales and service
- To track web traffic
- To profile consumers

Cookies – Consumer Awareness

- Cookies are invisible if you do not manipulate your Internet Browser
- Recent Pew Internet Survey reveals that less than half of Internet users are aware of cookies

Cookies -- Regulation

- Network Advertising Initiative developed framework for self regulation
- Commission also recommended Federal legislation to fully protect consumers

Solutions: Technology

- Software and protective services available
- Burden remains on consumer

Solutions: Federal Legislation

- Preemption
- Incorporate Fair Information Practices + Enforcement
- No exemptions
- “Opt-in” should be default choice
- Standardization of privacy policies
- Consumers should have prior notice and consent to changes in policies

Conclusion

- Federal Legislation needed to provide a floor for basic privacy protections
- Technological innovations must continue
- Self Regulation will always have a role

