

**U.S. DEPARTMENT OF COMMERCE**

**National Telecommunications and Information Administration**

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Information Privacy and Innovation in ) Docket No. 100402174-0175-01  
the Internet Economy )

**COMMENTS OF THE  
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (“NCTA”)<sup>1</sup> hereby submits its comments in response to the Notice of Inquiry (“NOI”) issued by the Office of the Secretary of the U.S. Department of Commerce , the National Telecommunications and Information Administration (“NTIA”), the International Trade Administration, and the National Institute of Standards and Technology (collectively “Department”) on the nexus between privacy policy and innovation in the Internet economy.<sup>2</sup>

NCTA commends the Department for its recent creation of the Internet Policy Task Force and Privacy and Innovation Initiative, which seeks to engage in a policy analysis that balances the twin goals of preserving and enhancing innovation on the Internet while protecting individual privacy. The Department’s recognition that privacy protection needs to be aligned with flexibility for innovators and new business opportunities is a critical input to the current privacy discussion among policymakers.

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<sup>1</sup> NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation's cable television households and more than 200 cable program networks. The cable industry is the nation’s largest provider of high-speed Internet service (“broadband”) after investing over \$145 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to over 20 million customers.

<sup>2</sup> *Information Privacy and Innovation in the Internet Economy*, U.S. Department of Commerce, National Telecommunications and Information Administration, Notice of Inquiry, 75 Fed. Reg. 21226, April 23, 2010 (“NOI”).

Indeed, innovation is the hallmark of the Internet ecosystem and “continues to drive U.S. commerce.”<sup>3</sup> American businesses – from the more established to newly emerging – have developed and are developing information content, applications and services to meet consumers’ needs and interests – supported by the electronic marketing of goods and services. Online advertising is the bedrock of the free content the public enjoys and often expects on the Internet and is essential to promoting the continued expansion of new content and services. And the rapid growth of high speed Internet services and online transactions over the past decade shows that consumers want and enjoy the benefits of e-commerce.

Targeted advertising, in particular, has many advantages for consumers. Advertising that is more relevant for the consumer is likely to be of more practical value to the consumer. Instead of receiving irrelevant ads, consumers receive information about products and services tailored to their specific interests based on prior purchases, and increasingly through self-managed preference profiles. Customized advertising enables them to make more accurate purchasing decisions in the marketplace, and more businesses, in turn, are empowered to compete by fostering their ability to reach receptive and intended audiences.

Consumers’ actual behavior in the marketplace suggests that online advertising has not intruded significantly on their privacy interests. Yet the sophistication of data collection practices and a complex set of players and business models present concerns to some consumers about the collection and use of personal information online. Consumers are entitled to certain fundamental norms and ground rules that respect their legitimate privacy interests *and* are still flexible and adaptable enough to promote innovative and beneficial uses of online information. The complexity of the issues does not lend itself to definitive, line-drawing regulation that by

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<sup>3</sup> *Id.* at 21227.

nature can not keep up with advancements in technology and unique user interests. The Internet is not static and customer expectations continually evolve. As NTIA Assistant Secretary Strickling recently observed: “the rate at which new services develop, and the pace at which users form expectations about acceptable and unacceptable uses of personal information, is measured in weeks or months.”<sup>4</sup> Federal agency rulemakings take years and may result in “rules addressing services that may be long abandoned.”<sup>5</sup> Similarly, as Federal Trade Commission Chairman Leibowitz recently stated:

[S]o long as self-regulation is making forward progress, the FTC is not interested in regulating in this area. The FTC does not want to shut down responsible business practices or stifle innovative and efficient uses of the online marketplace – and we don’t plan to do so. We want only, as behavioral advertising develops and spreads, to protect those two pillars of the growing, changing, thriving cyber-world: consumer choice and consumer control.<sup>6</sup>

From the cable industry’s perspective, consumer choice and control over private data, providing clear notice and transparency of data practices, and protecting sensitive data are paramount to our companies’ efforts to protect their customers’ privacy.<sup>7</sup> This is not surprising. Cable system operators providing video services have long operated under a comprehensive

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<sup>4</sup> “Internet Policy 3.0: All Hands on Deck”, Remarks of Lawrence E. Strickling, Assistant Secretary of Commerce for Communications and Information, Internet Society’s INET Series: Internet 2020: the Next Billion Users, April 29, 2010.

<sup>5</sup> *Id.*

<sup>6</sup> “Where’s the Remote? Maintaining Consumer Control in the Age of Behavioral Advertising”, Remarks of FTC Chairman Jon Leibowitz at the National Cable & Telecommunications Association’s Cable Show 2010, May 12, 2010.

<sup>7</sup> *See e.g.* Testimony of Kyle McSillarow, President and CEO, National Cable & Telecommunications Association, on Communications Networks and Consumer Privacy: Recent Developments, House Energy and Commerce Subcommittee on Communications, Technology and the Internet, April 23, 2009 at 3 (discussing that achieving and sustaining subscribers’ trust requires adherence to a privacy framework addressing four main principles: 1) giving customers control; 2) providing transparency and notice; 3) safeguarding personal information and 4) providing customers with value; also noting that special care should be given to sensitive data, such as health or financial information, as well as protecting children online). *See also*, *In the Matter of A National Broadband Plan for Our Future* (“FCC NBP proceeding”), GN Docket No. 09-51, Public Notice, *Comments Sought on Privacy Issues Raised by the Center for Democracy and Technology*, NBP Notice # 29, DA 10-62, Comments of NCTA, Jan. 22, 2010 (“NBP Notice #29”).

framework of protecting their customers' privacy pursuant to section 631 of the Communications Act.<sup>8</sup> Enacted in 1984, this provision:

- requires cable operators to provide annual written notice to consumers of the nature of personally identifiable information (“PII”) collected, including clearly and conspicuously describing how it is used, disclosed to others, and maintained;
- prohibits cable operators from collecting PII over the cable system without prior customer consent, except as necessary to render service and detect service theft, and from disclosing PII without prior customer consent, except as necessary to render services or conduct other legitimate business activities related to rendering service;
- provides detailed requirements governing how subscriber records may be disclosed pursuant to court order;
- requires that subscribers be given access, at reasonable times and convenient locations, to all PII that is collected and maintained, and a reasonable opportunity to correct any errors in PII; and
- requires cable operators to take “such actions as are necessary” to prevent unauthorized access to PII, including destroying it if it is no longer necessary for the purposes for which it was collected and there are no pending court orders or requests for access to such information.

In providing digital voice service, cable providers comply with the privacy protections of Section 222 of the Communications Act regarding customer proprietary network information (“CPNI”).<sup>9</sup> Between Section 631 and Section 222, the cable industry already operates in an enforceable privacy framework that substantively embodies well-recognized fair information principles.<sup>10</sup>

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<sup>8</sup> 47 U.S.C. § 551.

<sup>9</sup> 47 U.S.C. § 222; 47 C.F.R. Part 64, Subpart U.

<sup>10</sup> Organization for Economic Cooperation and Development, “OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data”; [http://www.oecd.org/document/18/0,3343,en\\_2649\\_34255\\_1815186\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/18/0,3343,en_2649_34255_1815186_1_1_1_1,00.html).

The cable industry regards the protection of its customers' privacy as a fundamental part of our broadband Internet service. Cable companies operate pursuant to a robust set of self-regulatory principles and are working to incorporate and adapt well-accepted "fair information practices" to interactive advertising and related online activities. Moreover, privacy and security controls related to cable broadband access have become standard practice in protecting consumers from malware, spyware, viruses and other privacy invasions.<sup>11</sup>

Cable companies are exploring new broadband business models and network technologies with the full appreciation that new services must be deployed consistent with our long-standing commitment to protect customers' personal information and facilitate well-informed privacy decisions. No business benefits from disregarding customer privacy concerns and discarding their trust and confidence. Cable systems, in particular, operate in a highly competitive marketplace, and their ability to succeed depends on winning and retaining the trust of their customers.

As the Department and other federal agencies, as well as Congress, review the global and U.S. privacy legal and regulatory framework, we urge federal policymakers to adopt a privacy framework that incorporates the following major considerations:

First, the government should seek to rely on competitive market forces, existing safeguards and industry self-regulation to protect consumers' privacy interests rather than further regulatory mandates. In today's dynamic, competitive Internet ecosystem, reliance on market-driven business incentives to protect consumers' privacy – bolstered by self-regulation at the company and multi-stakeholder level – is the best course to ensure that entities collecting and using private consumer information meet widely-agreed upon standards for consumer choice and

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<sup>11</sup> See *e.g.* FCC NBP proceeding, Comments of Time Warner Cable Inc. at 13 (June 8, 2009), citing variety of privacy tools; Comments of Comcast Corporation at 25 (June 8, 2009); NCTA Comments on NBP Notice #29.

control. Given the complexities involved in a rapidly evolving Internet world, where consumer concerns vary and new services and technologies must respond in these unique contexts, it is important for all industry stakeholders to continue to work together to establish best practices and self-regulatory principles.<sup>12</sup> These codes of conduct, backed by FTC and other government enforcement authority over unfair and deceptive practices, should give consumers the certainty and predictability that they need in an era of rapid data flow and use of personal information in the provision of Internet services.

The Department's review of existing self-regulatory principles may yield further recommendations to ensure that ongoing self-regulation meets consumer expectations of privacy and incorporates other privacy objectives but absent evidence of a breakdown in market-driven approaches, the government should not intervene with regulation that has the potential to constrain the development of online advertising, and innovative online content and services, and thereby undermine the growth and prosperity of our web-centric information environment.

Second, the government should fully take into account the privacy protection tools in place today and on the near horizon. The various tools currently being offered and in development will more fully engage consumers in their privacy choices and give them the ability to control their choices. As the Department notes, for example, there are new privacy-enhancing technologies and consumer information management tools that seek to effectively anonymize and aggregate personal information, as well as the emergence of innovative ways to make consumers more aware of data collection practices and make it easier for them to set their privacy preferences. Furthermore, consumer education goes hand-in-hand with personal data

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<sup>12</sup> See e.g. FCC NBP proceeding, Comments of Cox Communications, "Improving the U.S. Broadband Experience" (industry should establish "meaningful and transparent self-regulatory principles or best practices for broadband data security, privacy and online safety") (June 8, 2009); Comments of Time Warner Cable at 12 (Sept. 4, 2009); Comments of Comcast Corporation at 26 (June 8, 2009); Charter Communications, Ex Parte, "Providing Regulatory Clarity to Enable Ad-Supported Models" (Sept. 15, 2009).

management tools in ensuring a well-informed and more engaged public on the use and sharing of their data.

The Federal Trade Commission's recent series of roundtables featuring a cross-section of privacy experts and technology demonstrations, as well as the Department's recent symposium on privacy and innovation, showed that technology can play a key role in ensuring that consumers' privacy interests are protected. We believe that current and next generation interactive tools combined with baseline self-regulation principles should empower consumers to direct their online experience. The federal government, working with the private sector, also can help raise awareness and educate consumers on how to create an Internet environment that addresses their individual privacy concerns.

Third, the privacy policy framework should remain technology neutral and should promote competitive entry of new innovative behavioral advertising and other online content and services. The government should refrain from policies that disadvantage new approaches to the delivery of marketing and information services or freeze today's online advertising models. And it should be cautious not to pick winners and losers by favoring certain technologies, and even inadvertently certain players, over new, yet-defined innovators and business opportunities. This will only artificially distort to the detriment of consumers what should continue to be a constantly-evolving and expanding Internet marketplace.

Today's headlines demonstrate that the dominant players in the online Internet commerce ecosystem – whose ranks do not include cable companies – are being called to answer for their privacy policies and practices as new applications are deployed. And recent events have shown that the gathering of personal data may implicate a host of entities that possess the means to collect and use personal data in a way that raises privacy concerns. From the consumer's

perspective, what matters are the clearly discernable privacy principles that apply to their usage of the Internet, not the technologies or business models operating in this space today or invented tomorrow.

The dynamic and complex broadband ecosystem presents new opportunities and challenges for protecting consumer privacy. As the Department weighs in on the global Internet privacy debate, we urge it to trumpet the benefits of new entrants in a marketplace characterized by rapid technological change and recommend policies that fulfill its goal of “the continued development of new business models and the free flow of data across state and international borders in support of domestic and global trade.”<sup>13</sup>

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<sup>13</sup> NOI at 21227.

## CONCLUSION

In a constantly-evolving online environment with many different actors and situations, the current dialogue addressing online privacy issues is producing the desired outcome – a concrete focus on developing privacy policies and imperatives for the 21<sup>st</sup> century Internet age. We believe that the government should encourage a framework that strikes the appropriate balance between legitimate privacy concerns and promoting the tremendous value of online information for consumers. And the emphasis should be on principles that both ensure a vibrant Internet that supports current and emerging content and services and protects consumers in the use and collection of their personal information. NCTA and its members remain committed to working cooperatively and constructively with the government and other stakeholders to address these issues.

Respectfully submitted,

**/s/ Rick Chessen**

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