



April 2, 2012

VIA ELECTRONIC DELIVERY

The Hon. Lawrence E. Strickling
Assistant Secretary for Communications and Information
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue NW, Room 4725
Washington, DC 20230

Re: Multistakeholder Process to Develop Consumer Data Privacy Codes of Conduct
Docket No. 120214135-2135-01

Dear Assistant Secretary Strickling:

Facebook appreciates the opportunity to comment on the multistakeholder process being convened by the National Telecommunications and Information Administration to develop privacy codes of conduct. We applaud the Commerce Department's efforts to encourage stakeholders to respect consumers' expectations in their use of online services and to promote the innovation that has fueled the growth of the Internet.

At Facebook, we have built a global communications platform embraced by hundreds of millions of people because we give them the power to share and connect in the way that they want with the audiences that they want. People use Facebook because they trust that we will use the information they provide to us in a way that is consistent with their expectations, and we are committed to working every day to maintain and deepen that trust. Our commitment to building trust also is reflected in our sustained and constructive engagement with individual users, consumer advocates, privacy experts, academic researchers, industry partners, and policymakers worldwide. We have actively participated in the privacy debate, and we plan to continue doing so – both in the framework of the present multistakeholder initiative and in other venues where we believe that our experience in building industry-leading privacy tools can help inform the ongoing conversation.

It is in that spirit that we offer these comments on the privacy multistakeholder process. At the outset, we encourage NTIA to develop codes of conduct that are sufficiently flexible to account for the speed of innovation on the Internet. As the White House acknowledged, "the United States has both the responsibility and incentive to help establish forward-looking privacy policy models that foster innovation and preserve basic privacy rights."¹ Our comments highlight four points that we hope will

¹ See Executive Office of the President, *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy*, at 9 (Jan. 2012) [hereinafter *Privacy and Innovation Blueprint*] ("The central challenge in this environment is to protect consumers' privacy expectations while providing companies with the certainty they need to continue to innovate.")

contribute to the vital work that the NTIA is doing to protect consumer data privacy while facilitating the development of innovative services that enrich the online experience.

First, it is important that the process include a spectrum of voices, particularly those from the social web. Facebook welcomes, and agrees with, NTIA's view that "[a] broad array of perspectives and expertise will be necessary to ensure that the privacy multistakeholder process thoroughly addresses the issues before it."² The rise of the social web means that the online experience today often involves multiple companies providing content and services through a single interface. In today's interconnected world, it is more important than ever that all of these diverse voices have an opportunity to be heard.

For example, any code of conduct that affects social media will of course affect providers of social networking services as well as the individuals who use social media to communicate with friends, family members, colleagues, and other members of their community. But the effects will also be felt by a much broader range of stakeholders, including the web publishers who rely on social media to make their websites more personalized, dynamic, and engaging; the developers who make their living by creating interactive services that build on social media's rich features; and the many businesses, large and small alike, who use social media to reach out to their customers and understand their customers' needs.

The social web has already revolutionized the way people, organizations, and governments understand privacy, and it will continue to transform the way people communicate and do business in the years to come. For these reasons, the many diverse facets of the social web must be represented in any effort to build the kind of dynamic, forward-thinking codes of conduct envisioned by the Administration's Privacy and Innovation Blueprint.

Second, implementation of the transparency and individual control principles should be considered as part of the multistakeholder process. As the Privacy and Innovation Blueprint recognized, consumers' privacy expectations depend on the context in which data is being collected, used, and shared. Consumers' expectations in the context of an online social network where they can select their audience are much different than in a transaction involving sensitive personal information.³ Thus, "[i]nformation and choices that are meaningful to consumers in one context may be largely irrelevant in others."⁴

Even within a given business context, consumers often have different privacy preferences. For example, individuals have widely varying attitudes regarding the sharing of information on Facebook: some people want to share everything with everyone, some want to share far less and with a small audience, and most fall somewhere in between. At Facebook, we understand that we cannot satisfy everyone's expectations by adopting a one-size-fits-all approach. Transparency, together with its companion principle of individual control, is what empowers individuals to make the privacy decisions that are right for them.

² 77 Fed. Reg. 13,098, 13,100 (Mar. 5, 2012).

³ Privacy and Innovation Blueprint at i.

⁴ *Id.* at 17.

In our past comments to the Department of Commerce and the Federal Trade Commission, we advocated for the development of industry-wide model privacy policies. We suggested that the Commerce Department could play a valuable role in bringing companies and trade groups together to draft model privacy notices that would describe how participants in a given industry commonly use data; individual companies would then supplement the industry-level notice with concise descriptions of how their own practices differ from the standard. We continue to believe that these kinds of industry-level privacy notices would improve transparency, making it easy for consumers to compare different companies' privacy practices and decide which companies should be entrusted with their data. Model industry privacy notices represent one area where – as the Request for Public Comments phrased it – the stakeholder process can focus “on a definable area where consumers and businesses will receive the greatest benefit in a reasonable amount of time.”⁵

We also believe industry should consider developing consensus around practices that concern individual control. For example, properly implemented, the ability for users to delete the information they have shared with a company is a critical empowerment tool; but there is a risk that an over-broad interpretation of the right to delete personal information would disrupt freedom of expression on the Internet. We encourage NTIA to include in its process a discussion as to whether a code of conduct in this area would help serve one of the Department's stated objectives of “provid[ing] consumers with clear, understandable baseline protections and giv[ing] businesses greater certainty about how agreed upon privacy principles apply to them.”⁶

Third, the development of accountability mechanisms also should be a priority for the multistakeholder process. The Privacy and Innovation Blueprint declared that companies should be accountable to consumers for adhering to the principles set forth in the Consumer Privacy Bill of Rights.⁷ We agree that input from users is crucial for ensuring that companies correct practices that are inconsistent with consumers' privacy expectations.

At Facebook, we are accountable to our users for our data management practices and the principles set forth in the White Paper are central to our efforts to build and maintain our users trust online. We are committed to the principles of individual control, transparency, security, access and accuracy of information and we have adopted procedures to implement these substantive privacy principles. We also have adopted numerous channels to facilitate user feedback. Indeed, Facebook's efforts to engage with its users on changes to its privacy policy or information sharing practices are virtually unparalleled in the industry. For example, when we make substantive changes to our privacy policy, we announce them broadly and give users the ability to comment on the proposed changes (unless the changes are administrative or required by law). We are the only major online service provider that allows users to vote on the changes if comments reach a pre-set threshold. And we take the input that we receive from our users seriously. Time and again, Facebook has shown itself capable of correcting course in response to user feedback and thereby continuing to build and maintain user trust.

⁵ 77 Fed. Reg. at 13099.

⁶ *Id.* at 13098.

⁷ Privacy and Innovation Blueprint at 21.

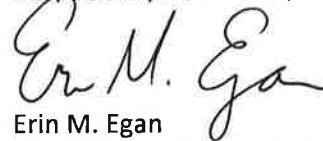
We believe that other industry players should likewise develop accountability mechanisms to demonstrate how they are implementing key privacy principles and honoring consumers' privacy preferences. Because we recognize that the accountability mechanisms will depend on the specific context in which data is being collected and consumers' understanding of how the data is used and shared, we believe that the multistakeholder process is the appropriate place to begin building consensus about what kinds of accountability mechanisms are most suitable for different industries.

Fourth, the Commerce Department should incorporate principles of international interoperability into the multistakeholder process. In today's interconnected world, consumers expect that the interactions they have with companies — including their use of social media platforms like Facebook — will not stop at national borders. Accordingly, the Administration's Privacy and Innovation Blueprint emphasized the importance of "engag[ing] with our international partners to create greater interoperability among our respective privacy frameworks" and noted that this interoperability "will provide more consistent protections for consumers and lower compliance burdens for companies."⁸ Facebook agrees that it is critical for the United States to join the growing discussion, in Europe and elsewhere, around interoperability to ensure that the results of the multistakeholder process empower people to communicate and do business on an international scale and that they do not unintentionally create artificial barriers to economic growth and innovation. To that end, Facebook suggests that, as a part of its process, NTIA explore options such as those proposed in the Privacy and Innovation Blueprint to "support mutual recognition of legal regimes, facilitate the free flow of information, and address emerging privacy challenges" in a manner that promotes international interoperability.⁹

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Thank you for the opportunity to comment on the privacy multistakeholder process. We look forward to engaging with the NTIA and other participants in these discussions to find mutually acceptable solutions that are specific, sophisticated, and flexible enough to accommodate rapidly evolving technologies and consumer expectations of privacy, while still fulfilling the public's demand for new ways to interact and share.

Respectfully submitted,



Erin M. Egan
Chief Privacy Officer, Policy

⁸ *Id.* at i-ii. See also *id.* at 31-33.

⁹ *Id.* at 33.