

**Remarks of Cameron Kerry
General Counsel, Commerce Department
State of the Net Conference
January 18, 2011
Washington, DC**

It's a pleasure and an honor to be here.

I am grateful to Rick for that introduction — and for the role of the Congressional Internet Caucus Advisory Committee in forging forward-looking, non-partisan, innovation-enabling Internet policy.

This Caucus was founded by a bipartisan group including Rick, Rick Boucher, Conrad Burns, and Pat Leahy, beginning a decade-plus dialogue that has enriched the legislative process with laws that have enabled the vital contribution of the Internet to our economy, our social life, and our democracy.

I'm also grateful to Jerry Berman, the Chair of the Internet Caucus Advisory Committee for his leadership in bringing together the commercial world, civil society, and government around principles of openness and Constitutional values of freedom of expression and privacy.

Such values steered Internet policy in the United States in the right direction. The kind of multi-stakeholder policymaking Jerry Berman has championed sets an example for us as we address issues such as privacy, security, copyright and the global free flow of information that are critical to the lasting economic and social potential of the Internet.

Today, the Internet has become unparalleled in its ability to drive U.S. innovation and growth and a vital engine of economic recovery.

Annual global online transactions are estimated at \$10 trillion. Just last Friday, the Commerce Department released the December 2010 Advance Monthly Sales for Retail Services. Our report shows that in 2010 online and catalogue sales grew at an annual rate of 13.5 percent — almost double all other retail sales categories.ⁱ And in the third quarter, E-commerce sales grew 4 percent compared to overall retail sales growth of just 0.8 percent.ⁱⁱ

Statistics like these do not measure the full impact of the Internet. The Digital Economy connected by the Internet reaches much more than retail E-commerce. Between 1998 and 2008, the number of domestic IT jobs grew 26 percent — four times faster than U.S. employment as a whole — and IT employment is projected to increase another 22 percent by 2018.

From business planning to producing products and services and delivering them customers, these jobs are generating new ways of doing business. And they are changing the ways we communicate as well as how we govern ourselves.

The Obama Administration is seeking to harness this transformative potential. Whether through health information technology, smart grid, or greater access to educational resources, an open, innovative, ubiquitously accessible Internet has a critical role to play in our economy and society.

At the Commerce Department, the Internet has always been important to our stewardship of technology and communications, as reflected in the Clinton Administration's 1999 Framework that has guided Internet policy over the past decade. Today the Internet is central to our mission to promote growth and retool the economy for sustained US leadership in the 21st Century.

In April, Commerce Secretary Gary Locke established a Department-wide Internet Policy Task Force to address key Internet policy challenges. Specifically, he directed our Task Force to look at establishing norms that promote innovative uses of information in four key areas:

- Enhancing Internet privacy;**
- Ensuring cybersecurity;**
- Protecting intellectual property; and**
- Ensuring the global free flow of information.**

This Department-wide Task Force includes experts across five Commerce Department agencies: the National Telecommunications and Information Administration, the International Trade Administration, the National Institute of Standards and Technology, the U.S. Patent and Trademark Office, and the Office of the Secretary.

As we approach these challenging issues, we are guided by two lodestars.

The first is trust.

About 18 months ago, I attended a think tank policy conference where participants — a cross-section from business, academia, civil society, and government; from across the political spectrum — identified risks and drivers in various scenarios for broadband development. Regardless of the scenario — whether it was rosy or dark — each group, working independently, identified privacy and security as key risks and key drivers, and each one independently framed the issue the same way: as trust.

The importance of trust cannot be understated. Enterprises of all kinds rely on the willingness of consumers and business partners to entrust them with private information, and in turn the latter must be able to trust that this information will stay both private and secure. In a world where commerce and trade operate on exchange of digital information, security and privacy are two sides to the same coin. And this coin is essential currency.

Our second guiding principle is a commitment to multi-stakeholder policymaking.

This multi-stakeholder process is modeled on the institutions that so successfully built the Internet itself, relying on businesses, consumers, academia, and civil society as well as on government. That's the kind of dynamic and adaptable regulatory system we believe is needed to keep up with rapidly-changing technology.

Our approach recognizes a key role for government in convening stakeholders and leading the way to policy solutions that protect the public interest as

well as private profits. But pure government prescription is a prescription for failure.

I'll focus on privacy today, but we believe a similar model applies across the range of Internet issues we are working on at the Department of Commerce.

Privacy has been our first order of business. We begin with a strong foundation. This audience needs no reminding of how seriously Americans take privacy.

Unlike many of our international partners, Americans have rejected any national identity card system. A recent study reported that 65 percent of adult Internet users in the United States have taken steps to increase their privacy on social networking sites. And even though the conventional wisdom suggests that younger Internet users are casual about their privacy rights, surveys show that young adults are also taking steps to protect their online privacy.

Privacy protections are deeply embedded in our legal system. A fundamental right against government intrusion is enshrined in our Bill of Rights. We have strong statutory protection in sensitive sectors, a world-class consumer privacy regulator in the Federal Trade Commission, and a range of common law and state law protections.

The Commerce Internet Policy Task Force is taking a fresh look at this policy framework — and asking how to assure privacy and simultaneously encourage continued innovation in the Internet environment. We began by listening — to

companies, trade groups, civil society, and academics. Last spring, we used these conversations to shape a Notice of Inquiry that posed a number of questions about the relationships among privacy, policy, and innovation. The Task Force also held a public symposium on “Privacy and Innovation,” with a broad cross-section of industry, consumer groups, and privacy advocates.

Based on what we learned, last month we issued a set of policy recommendations as a Department of Commerce “Green Paper.” We identify it as ‘green’ not because of its environmental impact, but because it contains green shoots rather than a final statement of policy. Like the 1999 Framework document based on another “green paper,” the recommendations and further questions on which we seek input should ripen into an Administration white paper.

Our goal is to contribute to an Obama Administration position on information privacy policy and Internet principles and to advance both the domestic and the global dialogues.

Our Green Paper concludes that the time has come to strengthen our privacy framework. This is an area where there is a lot of convergence in consumer, business, and government interests. Consumers need transparency and control, and businesses need certainty, they need affirmative U.S. leadership internationally, and they need to maintain consumer trust.

This is what we have outlined:

First, Americans need a “privacy bill of rights” to ensure that personal data on the Internet is protected. Stronger enforcement is needed to maintain trust in the digital economy. To borrow from one of the responses to our Notice of Inquiry, baseline privacy rights are something consumers want, companies need, and the economy will appreciate.

Baseline privacy protections, based on the globally-accepted Fair Information Practice Principles, will build consumer trust and give businesses in the United States more guidance about what’s expected. We ask a series of questions about the content of such principles and how they should be enforced.

Second, above this baseline, multi-stakeholder groups must develop effective, consensus-based, enforceable codes of conduct in a wide variety of commercial contexts. The goal is to operate in a nimble, flexible way to address emerging online privacy issues so that consumers are protected and innovation can flourish.

The Commerce Department will begin this process and, as new applications and services emerge — for example, in the mobile or social networking environments — we will convene stakeholders to hammer out rules of the road that will protect consumer expectations as well as promote business innovation.

Let me be clear that this is not just self-regulation. As I said in my foreword to the Green Paper and Secretary Locke reiterated in his public statement

when the paper was released, “more than self-regulation is needed.”

This is a multi-layered approach to policy, much like the Internet itself. As we all know, the physical network of the Internet operates on baseline technical protocols (TCP/IP and DNS for example) that enable us to connect the entire world. But on top of this network — at the edge — is a dynamic applications-and-content layer that enables agile development of innovative services and applications.

So when we speak of voluntary but enforceable codes, we are talking about a multi-stakeholder process on top of the baseline privacy bill of rights that can be as flexible and dynamic as the developing applications and services it will address.

The resulting codes of conduct — developed by a consensual process but enforced at law by the Federal Trade Commission — are the second layer in our multi-layer policymaking model. Industry, consumer groups, civil society, and the United States Government all have important roles to play in ensuring a truly dynamic privacy framework.

Finally, we need robust engagement with the global privacy community. The legal and policy framework surrounding the Internet, especially privacy, is increasing complex both domestically and internationally. While we understand governments must be able to act to protect their citizens, we also need to avoid fragmented, unpredictable, or restrictive rules that frustrate innovation, block the

free flow of information, and hamper the broad commercial success of the online environment.

*** * ***

This is a continuing conversation.

On January 28, our Internet Policy Task Force will receive comments on to the privacy Green Paper. These comments and other discussions will inform the work of the White House inter-agency committee on Privacy and Internet Policy I chair with Assistant Attorney General for Legal Policy Chris Schroeder as we work to get from Green Paper to White Paper in short order.

I have been heartened by comments from Members of both parties that online privacy will be on the agenda in the current Congress. This Caucus has shown over the years that enabling the Internet is not a bipartisan concern. That is true today.

So we expect a robust and active dialogue with Congress and stakeholders on privacy and internet policy.

Together, we have an important task ahead of us — to safeguard a universal Internet as a medium of information and of commerce, across the globe. I welcome the dialogue, I thank the Congressional Internet Caucus and the Advisory Committee, and I believe that — working together — we are up to the task.

-
- ⁱ http://www.census.gov/retail/marts/www/marts_current.pdf
ⁱⁱ http://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf