

April 2, 2012

National Telecommunications and Information Administration
1401 Constitution Avenue NW.,
Room 4725,
Washington, DC 20230

Submitted via email to privacyrfc2012@ntia.doc.gov

Comments to the National Telecommunications and Information Administration
on
“Multistakeholder Process To Develop Consumer Data Privacy Codes of Conduct”
Docket No. 120214135–2135–01

The undersigned organizations appreciate the opportunity to respond to the National Telecommunications and Information Administration (NTIA) request for comment on the proposal to establish a multistakeholder process to develop voluntary codes of conduct for consumer data privacy.

We commend the Administration for introducing its Consumer Privacy Bill of Rights, which sets out baseline principles that the Administration believes should govern the handling of personal data. We hope that these principles will lay a strong foundation for codes of conduct regarding how consumers’ personal information should be collected and used. We are also pleased that the Administration has called for comprehensive privacy legislation in its white paper, *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Innovation in the Global Digital Economy*.¹

As a complement to privacy legislation, an open, transparent, consensus-driven multistakeholder process could foster compliance with norms for handling consumer data in specific contexts. In this respect, it would be helpful for the Administration to clarify the scope of the Consumer Privacy Bill of Rights and the multistakeholder process. Are they intended to address the privacy of online data only, or will it also address offline data practices? In today’s interconnected data landscape, where personal information gleaned online and offline is often merged, it is sometimes difficult to draw clear distinctions.

The results of the multistakeholder process will only be legitimate if the process itself is legitimate. To that end, we and other leading consumer, civil liberties, and privacy groups, under the leadership of the World Privacy Forum, have identified a set of

¹ <http://www.whitehouse.gov/sites/default/files/privacy-final.pdf>

fundamental principles that must be implemented if the multistakeholder process is to succeed.² These include, but are not limited to:

- Consumer representation must be robust and reasonably balanced;
- The process must be open and transparent to the greatest extent possible;
- Adequate resources must be made available to facilitate civil society participation in in-person meetings. If funding is not provided, meetings should only be held electronically;
- Decisions must be based on a fair and broad consensus among stakeholders.

A full list of the Multistakeholder Principles is attached to this letter, and will also be submitted as part of a separate formal filing by the World Privacy Forum.

The first order of business should be to convene a meeting of interested stakeholders to develop the rules for how the process will work. This must be done before stakeholders begin discussing any substantive privacy issues. As our principles state, at the end of 12 months, civil society stakeholders may reevaluate the process and make recommendations for changes in rules, procedures, or process going forward. In addition, should NTIA bring on a third party to facilitate the day-to-day interactions and discussions among stakeholders, as it has suggested it may do, we urge the agency to ensure that the third party is unbiased and fair in its implementation of the multistakeholder process.

NTIA has also asked for comment on what substantive issues should be addressed through the privacy multistakeholder process. We wish to note, however, that it is the stakeholders who should ultimately decide what issues should be discussed. As mentioned in the request for comments, NTIA's role in the privacy multistakeholder process will be to provide a forum for discussion and consensus-building among stakeholders. But as a convener, it should not make ultimate decisions about what topics should be addressed. Only the stakeholders can make that determination.

Our view is that the topics should ultimately be chosen by asking two important questions: 1) which issues are realistically achievable through the process laid out by NTIA, and 2) which issues would significantly advance consumers' privacy protection. We do not believe that the speed with which consensus may be reached should be the overarching or determining factor.

There are several privacy topics which could be appropriate to address through a multistakeholder process. These include, but are not limited to:

- Data collection and use practices of mobile apps;
- Facial recognition and facial detection software;
- Data minimization through data collection and retention limitations;
- Collection and use of data about children and teens;
- Social media companies' use of consumers' personal information;

² See <http://www.consumerfed.org/pdfs/MultiStakeholderPrinciples2012fs.pdf>.

- Collection and use of data that may affect consumers' employment, credit, or insurance rates;
- Access and use issues related to consumers' personal information in cloud computing.

In developing codes of conduct on various privacy issues, we believe that the rights as outlined in the Consumer Bill of Rights must be applied to the fullest extent possible. These rights should serve as a roadmap to guide the multistakeholder process.

Finally, we wish to note that multistakeholder proceedings are likely to be particularly time and resource intensive, and civil society groups often face resource restraints that industry does not. This must be taken into account as the agendas are considered, to ensure that civil society groups are robustly represented in each individual proceeding.

We look forward to participating in creating the operational framework for the multistakeholder process and using the process to advance consumers' privacy interests.

Regards,

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³ The Benton Foundation is a nonprofit organization dedicated to promoting communication in the public interest. These comments [or this press release] reflect the institutional view of the Foundation and, unless obvious from the text, are not intended to reflect the views of individual Foundation officers, directors, or advisors.

Principles for Multi-Stakeholder Process

February 23, 2012

Civil society groups believe that protecting the online privacy of consumers is crucial to ensuring the availability, utility, and vitality of the Internet. For any approach to privacy to be meaningful, it must reflect fair information practices, including mechanisms to assure accountability. The US Department of Commerce is proposing a multi-stakeholder process for developing better applications of privacy principles. For the multi-stakeholder process to succeed, it must be representative of all stakeholders and must operate under procedures that are fair, transparent, and credible.

We believe the following baseline principles will provide the multi-stakeholder process the legitimacy it needs to succeed.

Principles:

1. No multi-stakeholder process can succeed unless consumer representation is robust and reasonably balanced. Only consumer representatives can determine who speaks for consumers.
2. To the greatest extent practicable, the multi-stakeholder process should occur in the open with public sessions and public documents. All substantial decisions must be made in open sessions.
3. Any stakeholder may submit proposals and those proposals must be addressed and resolved within the consensus process.
4. Participants, but not necessarily observers, must specifically identify their employer and/or the group, industry, or organization whose interest they represent.
5. There must be a fair opportunity for public engagement at all levels of the stakeholder process. Stakeholders must be allowed to communicate with members of their communities about the multi-stakeholder process in any way that the stakeholders see fit, including use of electronic processes such as web sites, social media, and other methods.
6. The formal publication of any consensus document or decision must include dissenting views and statements.
7. Decisions must be based on a fair and broad consensus among stakeholders rather than a majority vote by participants. The process should seek to resolve issues through open discussion, balance, mutual respect for different interests, and consensus.
8. A multi-stakeholder process needs to be fully informed by stakeholders from civil society. As such, in person meetings may only be scheduled if adequate resources are made available to facilitate in person participation by civil society. Otherwise, meetings

may only be conducted electronically to facilitate equal participation by all stakeholders. Meeting locations must be chosen with robust input from civil society stakeholders.

9. All stakeholders must receive a copy of a draft document at least ten days prior to consideration or presentation of the document at any level of the stakeholder process.

10. At the end of 12 months or at any other time, civil society participants may decide to reevaluate the multi-stakeholder process and make recommendations for changes in rules, procedures, or process.

Signatories:

World Privacy Forum
American Civil Liberties Union
Center for Digital Democracy
Consumer Action
Consumer Federation of America
Consumers Union
Consumer Watchdog
Electronic Frontier Foundation
National Consumers League
Privacy Rights Clearinghouse
U.S. PIRG

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