Multistakeholder Process to Develop
Consumer Data Privacy Codes of
Conduct

Docket No. 120214135-2135-01

Comments of Microsoft

In Response to a
Request for Public Comments
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COMMENTS

Microsoft welcomes the opportunity to submit these comments to the National Telecommunications and Information Administration ("NTIA") in response to its request for comment on the substantive consumer data privacy issues that warrant the development of industry "codes of conduct" and on the procedures to foster the development of those codes.

Consumer trust is vital to the growth of a vibrant Internet, and respect for privacy – putting people first – is essential to earning and maintaining that trust. Microsoft supports the framework in the *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy* report (the "Privacy and Innovation Blueprint"). The Privacy and Innovation Blueprint promotes the privacy interests of Americans and individuals around the world.

The Administration's policy calls for an environment of transparency and meaningful privacy choices. Further, we are hopeful that the policy's establishment of a robust stakeholder dialogue will lead to more specific solutions and help overcome challenges faster. We support the Administration and NTIA in this effort.

Microsoft views the Privacy and Innovation Blueprint as essential to a comprehensive approach to privacy that includes federal privacy legislation, technology tools for consumers, effective self-regulation, and all stakeholders working together on initiatives to improve privacy practices. For these efforts to be successful, the private sector needs to play a critical role, and important work has already begun.

Since 2005, Microsoft has endorsed the adoption of comprehensive federal privacy legislation to establish a baseline set of privacy and security requirements. We have created privacy tools, like Tracking Protection in Internet Explorer, to help keep personal information private when browsing sites across the Web; Internet Explorer was the first major browser to respond to the Federal Trade Commission's call for a do-not-track mechanism.

We appreciate the Administration's leadership in this area. At Microsoft, we are committed to fostering innovation in a way that respects individual privacy.

Comments on the Blueprint

The explosive growth of the Internet, cloud computing, computers, and handheld mobile devices as well as e-commerce, e-government, e-health, and other web-based services have brought tremendous social and economic benefits.

Today, more than 1.6 billion people connect to the Internet for information, entertainment, social networking, and business. Technological advancements and increased computing power have benefitted businesses and consumers, both online and offline. At the same time, these technologies have fundamentally redefined how, where, and by whom data is collected, used, and shared.

Microsoft has long recognized the critical importance of privacy. This long-standing commitment to privacy includes tools, technologies, people, processes, and procedures for embedding privacy protections in our products and services—from development through deployment and operation. We understand that for governments, business, and individuals to reap the full benefits of the Internet and cloud computing, they must have confidence that service providers will respect and protect the privacy of the data entrusted to them.

In Microsoft's view, government and industry together with stakeholders from civil society, including consumer and privacy advocates, must partner to protect consumer's privacy and data security while still enabling and fostering innovation, productivity, and cost-efficiency offered by new technology. To help address the challenges, policy must achieve two ends. First, it must afford consumers robust privacy protections, while at the same time enabling businesses to develop and offer a wide range of innovative products and services. Second, it must be designed to withstand the rapid pace of technological change so that consumer data is protected not only today, but also in decades to come. Any process to create codes of conduct should be crafted with these goals in mind.

The Topics for the Stakeholder Process: Cloud Computing Security

The request for comments seeks to initially conduct the "multistakeholder process focused on a definable area where consumers and businesses will receive the greatest benefit in a reasonable timeframe." A number of areas are identified.

Aspects of cloud computing services would particularly benefit from the multistakeholder process and would be ripe for consideration as an early area to develop a code of conduct.

A cloud services code of conduct should be aimed at encouraging cloud providers to explain their security testing and data handling practices; to identify authentication measures used; and to be clear about whether their information security programs comply with leading global standards for information security management, such as the ISO/IEC 27001 standard.

At the same time, cloud providers should be encouraged to create customer tools that improve transparency and facilitate comparisons among different cloud providers.

Longer term, it may prove effective to use a cloud services code of conduct as the basis for a multilateral framework on a broader set of cloud-related matters, including

jurisdictional issues and cross-border data flows, in the form of treaties or similar international instruments. While this option would undoubtedly require significant diplomatic leadership and resources, it offers perhaps the best hope of addressing the needs of governments, consumers, and providers alike on a global scale. The United States could work with the EU to lead within an entity such as the G8 or G20 on this issue, and rely on multilateral organizations such as the OECD to research the problems faced and make recommendations for how to resolve them. There may also be opportunities to use international fora such as APEC as a venue for developing consistent approaches to demands for user data and rules for cloud computing providers. Organizations like ISO can also be an important tool to create international standards, which have a broad base of support and applicability.

Comments on the Stakeholder Process

The stakeholder process envisioned in the Privacy and Innovation Blueprint should provide an opportunity to deliver privacy protections while allowing for innovation and to account for the rapid pace of technological change.

As the stakeholder process is formed and begins to focus on definable areas, several principles should be considered among the overarching goals of any code of conduct:

- **Flexibility.** The codes of conduct must be flexible enough to permit businesses to develop innovative privacy technologies and tools. Flexibility means that businesses can adapt their policies and practices to match the contexts in which consumer data is used and disclosed and the type of relationship that they have with the consumer.

- **Simplified Data Flows.** Data is no longer constrained within geographic or business silos to the extent that it has been in the past. Today, data regularly flows across state and national borders, is shared within company affiliates and with vendors, and may be transferred to third parties that use the data to provide consumers with information about products and services that may be of interest to them. Microsoft supports efforts to develop globally consistent policy frameworks that recognize the worldwide nature of data exchanges and provide strong privacy protections. Codes of conduct that are clear, flexible, technology neutral, and developed through collaborations among all stakeholders can help provide the right balance.

- **Technology Neutrality.** The codes of conduct must avoid preferences for particular services, solutions, or mechanisms to provide notice, obtain choice, or protect consumer data. There is no question that technology will continue to change rapidly and the framework should not hinder companies' ability to adapt to new technologies.

A diverse range of privacy stakeholders have already expressed great interest in participating in the process. Because of the potential for varying views, a fair process will determine whether consensus will be reached and the ultimate success of the effort.

It is likely that defining the process will in itself require several rounds of dialogue beyond consideration of the filed comments. Laying a solid foundation is critical and it will be worthwhile to get it right at the start.

There are several other critical factors needed for the process to succeed:

- Microsoft agrees that the stakeholder process should ensure balanced representation and an open and transparent process.
- An important goal of the stakeholder process and the subsequent privacy codes of conduct is consumer trust. To that end how to engage the public in an appropriate way is important.
- There should be a mechanism to address proposals that are submitted within the consensus process.
- Similarly, agreement on how to reach a fair consensus among stakeholders will be critical.
- Microsoft agrees with members of civil society that consideration should be given to ensure and facilitate their participation.
- Timeframes should be established for any notices of meetings, publication of papers for comment, etc.

Conclusion

Microsoft remains committed to privacy and looks forward to participating in the multistakeholder process. Any such effort will undoubtedly require significant time and effort of all involved. Thoughtful consideration of the topics considered as well as a well-organized process that is transparent and open will help make consensus possible and lead to successful outcomes.

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