

**Before the
National Telecommunications and Information Administration
Washington, D.C. 20230**

In the Matter of:)
)
Multistakeholder Process to Develop) RIN 0660-XA27
Consumer Data Privacy Codes of Conduct) Docket No. 120214135-2135-01
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COMMENTS OF NETCOALITION

NetCoalition appreciates the opportunity to provide comments to the National Telecommunications and Information Administration’s (“NTIA”) Request for Comments on a proposed “Multistakeholder Process to Develop Consumer Data Privacy Codes of Conduct” (“Request”).¹ NetCoalition speaks uniquely for consumer-facing Internet business models, including some of the most trafficked web sites in the world. Our members have a direct interest in this process, as the collection and use of consumer data is essential to the operation of nearly every business on the Internet. At the same time, our members are keenly vested in protecting their users’ personal information to ensure that our users continue to trust our products and services. We hope the following brief points will assist NTIA as it develops its framework for discussions.

1. Stakeholders Should Include Offline As Well as Online Entities. With regard to the scope of stakeholders that should be included in the discussion, NetCoalition agrees with the recommendations of the FTC in its report, “Protecting Consumer Privacy in an Era of Rapid

¹ Multistakeholder Process to Develop Consumer Data Privacy Codes of Conduct, Request for Comment, 77 Fed. Reg. 13098 (Mar. 5, 2012) (“Request for Comment”).

Change: Recommendations for Businesses and Policymakers,”² that any framework’s applicability should be to both online and offline stakeholders that collect, store, and use personal information. As the report notes, “regardless of whether an entity collects or uses data from an online or an offline source, consumer privacy interests are equally affected.”³ The issues raised by the Administration’s *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy*⁴ (the “Privacy and Innovation Blueprint”) apply to all stakeholders that collect, store, and use personal information. It would not make sense to develop an asymmetrical regulatory landscape by developing best practices only for online services but not to their offline counterparts.

2. Discussions Should Be Led by NTIA Staff. Although stakeholder participation should be broad, NetCoalition believes that NTIA should not delegate facilitation of these meetings to any outside group. NTIA has developed considerable expertise in this space, especially over the last few years as it has worked to develop the Privacy and Innovation Blueprint. Stakeholders have developed a comfort level with NTIA staff in these discussions.

3. Configuration of Meetings. We believe that NTIA should be practical and flexible in how it configures stakeholder discussions. We would anticipate a hybrid approach to stakeholder discussions, where some meetings would be limited to a discrete number of similarly situated entities, other meetings would include diverse entities, and others would include stakeholders with much different points of view on any given subject.

4. Transparency. The NTIA should strive to make the stakeholder process as open and

² Federal Trade Commission, *Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers*, Mar. 2012, <http://www.ftc.gov/os/2012/03/120326privacyreport.pdf>.

³ Id.

⁴ 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*, Feb. 2012, <http://www.whitehouse.gov/sites/default/files/privacy-final.pdf>.

transparent as possible. At the same time, it should structure the process to ensure an appropriate level of candor and back-and-forth discussion among stakeholders and staff.

5. Definition of “Consensus.” In the Request for Comment, the NTIA noted that “Consensus of a broad set of stakeholders, achieved through a transparent process, will lend legitimacy to the code of conduct.”⁵ We agree with this point and believe that the definition of consensus must be carefully established in order to ensure that any code of conduct is adopted by the appropriate stakeholders and therefore enforceable by the Federal Trade Commission. Consequently, consensus should mean widespread agreement among stakeholders whose compliance obligations and business models are most directly impacted by the proposed best practices. Furthermore, consensus should be durable: once in place, codes of conduct should not be subject to frequent revision and should not be revisited without request from a substantial majority of stakeholders. In the event of revisions, the process must address the effect of revisions will be on any superseded codes of conduct.

In order to achieve the appropriate durability, codes of conduct must be broad enough to survive the test of time while allowing for marketplace competition among stakeholders in developing uses of and protections for data.

6. Subject Matter of Discussion. NetCoalition will be happy to participate in all discussions relevant to Internet commerce sites. We offer the following suggestions with respect to issues specifically raised in the Request for Comment:

a. Mobile device applications. With respect to the NTIA’s request for comment on areas that should be addressed by the multistakeholder process, we agree with the idea of initially working “to facilitate the implementation of the Transparency principle in the privacy notices for mobile

⁵ Multistakeholder Process to Develop Consumer Data Privacy Codes of Conduct, 77 Fed. Reg. 13098, at 13098, (Mar. 5, 2012).

device applications” because “practices surrounding the disclosure of consumer data privacy practices [in that area] do not appear to have kept pace with these rapid developments in technology and business models.”⁶

b. Transparency. We agree with the NTIA that a multistakeholder process could effectuate greater transparency for consumers over their privacy rights and protections. Universally applicable standards have the potential of furthering the goal of consumer privacy and facilitating greater trust between consumers and organizations. As the NTIA continues to explore this area, we offer our assistance in engaging on the subject to explore meaningful and effective solutions going forward.

Respectfully submitted,

/s/

Markham C. Erickson
Executive Director and General Counsel
NetCoalition
And
Partner
Holch & Erickson LLP
400 N. Capitol Street, NW
Suite 585
Washington, D.C. 20001.
merickson@holcherickson.com

⁶ Multistakeholder Process to Develop Consumer Data Privacy Codes of Conduct, 77 Fed. Reg. 13098, at 13099, (Mar. 5, 2012).