

**Before the
Department of Commerce
National Telecommunications and Information Administration**

)	
)	
In the Matter of)	
)	
Multistakeholder Process to)	Docket No. 120214135-2135-01
)	
Develop Consumer Data Privacy)	
)	
Codes of Conduct)	
)	

COMMENTS OF THE INTERNET COMMERCE COALITION

Jim Halpert, General Counsel
Sydney White, Counsel
Internet Commerce Coalition
500 8th Street, NW
Washington, DC 20004
202-799-4441

April 2, 2012

I. Introduction

The Internet Commerce Coalition welcomes the opportunity to comment on NTIA's multi-stakeholder process to develop privacy codes of conduct. The ICC's members include leading Internet and e-commerce companies and trade associations: Amazon.com, AOL, AT&T, CareerBuilder, Comcast, eBay, Google, Monster.com, Verizon, TechAmerica and US Telecom.

The ICC both appreciates and respects NTIA's approach to Internet policymaking, and is supportive of the Obama Administration White Paper's call for voluntary Codes of Conduct to address privacy issues in the U.S. and to develop globally interoperable privacy solutions.

We offer these comments with the goal of making the multi-stakeholder process a success, both in terms of the topics it tackles and its process for developing consensus.

II. Topics for the Process

We agree with the goal set out at the beginning of the Notice: "NTIA seeks to conduct a privacy multi-stakeholder process focused on a definable area where consumers and businesses will receive the greatest benefit in a reasonable timeframe." 77 Fed. Reg. 13099.

It is important that the initial topics be selected so that they lead to concrete successes in a timely manner. To maximize chances of success, it is important to choose topics that are discrete, rather than highly complex or multi-faceted, and than can be addressed within a reasonable time. It is also very helpful to build upon existing frameworks as to which there is a meaningful degree of consensus already.

We support mobile notice as an initial topic. As the *Notice* observes at footnotes 16 and 17, this discussion could draw upon CTIA, GSMA, and MMA guidelines, as well as the California Attorney General's agreement with mobile platform providers.

A separate topic that holds promise is international data transfers in the cloud, an issue that cries out for global interoperability. This could build upon the US-EU Safe Harbor program and/or EU model contract structures. It is a uniquely promising topic to advance international interoperability by involving EU officials who could work on the code remotely leading to a similar code of conduct framework in Europe or an expansion of the US-EU safe harbor framework, which EU DG Justice officials praised in the joint communiqué issued during the U.S.-E.U. Safe Harbor Conference on March 19th.

III. Process

It is important that the first multi-stakeholder process be structured to succeed and to succeed in a timely fashion.

As the White House and Commerce Department have repeatedly recognized, codes of conduct are voluntary, and thus will work best if developed under processes that will attract business participation. It is critical that the code of conduct be agreed to by the centrally affected businesses in order for consensus exist. To do otherwise would make the codes of conduct more symbolic than effective. It is equally important that government serve as a convener and facilitator, but not chair the discussions or be the arbiter of outcomes.

From our experience with other policy-related negotiations, the ICC believes that in order for discussions to move efficiently, it is critically important that groups of stakeholders be able to meet privately to develop negotiating positions. Conducting all discussions in public in front of the full multi-stakeholder group would inevitably lead either to slow progress or paralysis.

Second, it is important to identify a reasonable number of key issues to resolve and to structure discussions well in advance to achieve progress on each of those issues. An overly ambitious or shifting agenda is unlikely to yield agreement within a reasonable time.

Third, in response to Question 16, while transparency as to eventual agreed drafts is critically important, the negotiation process will proceed most efficiently through off-the-record discussions and exchanges of pre-drafts. Parties usually negotiate very differently and much more cautiously if negotiating in public.

Fourth, to bring parties to the negotiating table, it is very important that the parties agree in advance not to characterize other parties' positions to the media during negotiations. To do otherwise would lead to posturing that would complicate and slow down negotiations.

We hope that these process suggestions help toward structuring fruitful and efficient negotiations toward codes of conduct.

Respectfully submitted,



General Counsel