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Mr. Lawrence E. Strickling
Assistant Secretary for Communications
and Information and Administrator
U.S. Department of Commerce
National Telecommunications and Information Administration
1401 Constitution Avenue, NW
Room 4725
Washington, D.C. 20230

RE: (Docket No. 120214135-2135-01) RIN 0660-XA27
Multistakeholder Process to Develop Consumer Data Privacy Codes of Conduct

Dear Mr. Strickling:

The Retail Industry Leaders Association (“RILA”) greatly appreciates the opportunity to provide comments to the Department of Commerce on the recently released White House privacy report, *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy*.¹ RILA commends the Administration for its diligent work in creating this report and willingness to develop a broad and transparent stakeholder process to craft the best possible privacy framework for all parties. The retail industry is acutely aware of the importance of consumer privacy, and has a long history of responding to consumer privacy concerns.² In furtherance of these goals, we welcome the chance to comment on the multistakeholder process that has been proposed.

By way of background, RILA is the trade association of the world’s largest and most innovative retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

Consumer privacy is vital to securing and maintaining consumer trust. As such, retailers are dedicating significant time, energy, and resources to developing sound business practices to secure consumer information and to respect their customers’ preferences. To keep these practices

¹ 77 FR 13098

² A copy of RILA’s Privacy Principles is available here:
<http://www.rila.org/email/RILAPRIVACYPRINCIPLES.pdf>

current, retail requires the flexibility to evolve and adapt them in light of changes in technology and business operations. Thus, retail supports self-regulation to achieve clearly articulated consensus goals, such as transparency, as a highly effective process for protecting consumer privacy interests while providing needed flexibility.

Multistakeholder Process Should Be Broad and Inclusive

RILA encourages the Department of Commerce to continue to seek and review comments from a broad spectrum of stakeholders, including retailers and other website operators and purchasers of online behavioral advertising, during the forthcoming meetings. We also support the Department's efforts to make these discussions transparent and open to all interested stakeholders. Obtaining input from a variety of stakeholders and companies within specific stakeholder groups is important to properly articulating how best to implement the Consumer Bill of Rights.

Retail's Unique Perspective on Privacy in the Stakeholder Process

Retail enjoys a unique perspective on consumer privacy because of the breadth of its customer interfaces and because its business model depends on customer service. In addition to brick-and-mortar outlets, retailers have e-commerce sites, social media sites, and mobile applications. Retail is a highly competitive market, and consumer trust is imperative to developing long-lasting consumer relationships. Retail's vantage point uniquely positions the industry to offer the privacy solutions that the Administration seeks through the stakeholder process.

In addition, RILA supports the Department of Commerce's efforts to mediate among the multiple parties in this process in order to facilitate development of a clear, consensus position that all stakeholders can support.

Implementation of Multistakeholder Process

RILA agrees that convening an initial stakeholder group to address a very specific issue, such as transparency in privacy notices for mobile device applications, could be an effective way to test pilot the multistakeholder process. As the potential stakeholder group is very large, though, organizers might consider breaking participants into small groups. These small groups could deliberate on one or more specific issues and attempt to reach consensus before discussing their work product with the larger group. For example, a small group might include representatives from an Internet company, a retailer, a consumer advocacy group, and the Federal Trade Commission (FTC).

The Department should establish systems to ensure continuity and participation, even though interested stakeholders probably will not be able to attend all meetings in person. For example, meeting organizers could use a "live meeting" tool to allow participants both to hear the discussion and see materials online. In addition, all multistakeholder participants should be able

to access full transcripts of meetings as well as written summaries of the discussion and decisions reached.

Flexibility Is Necessary For Achieving Vital Goal of Transparency

RILA supports the emphasis on transparency with respect to companies' privacy practices incorporated in both the Consumer Bill of Rights and the FTC's Final Privacy Report, *Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers*. Retailers are committed to providing clear and consistent information that enables consumers to understand how companies are handling their information. As evidenced by RILA's comment letter on last year's Preliminary FTC Staff Report, RILA has consistently remained supportive of transparency principles.³

Nonetheless, different tactical approaches can be used to achieve transparency. Accordingly, although the goal is extremely important, any new systems should allow flexibility in the methods that can be used to achieve the goal. For example, given the differences in company operations, data retention practices should not be prescribed. A one-size-fits-all approach cannot account for nuances that may hinder a company's ability to protect consumers and that may stifle innovation. In addition to achieving transparency, any solution, whether regulatory or legislative, should also be practical to implement and proportional to consumer risk.

Federal Efforts Should Preempt Inconsistent State Laws

RILA commends the Department of Commerce for recognizing the importance of federal preemption in its privacy plan. We encourage officials to ensure that any new federal legislation or regulation include express federal preemption of state laws that are inconsistent with or different from the federal standard. For example, in the absence of federal preemption, retailers will continue to invest resources to be able to respond to data breaches and related notification requirements on a jurisdiction-by-jurisdiction basis. These inconsistent requirements add unnecessary complexity and inefficiency to the notification process without any benefit to consumers.

Conclusion

RILA is encouraged by the Department of Commerce's commitment to address privacy through the multistakeholder process. We appreciate the opportunity to help shape the development of the Consumer Bill of Rights and to discuss with the Administration the implementation and enforcement of resulting codes of conduct going forward. Retailers understand the importance of protecting consumers' privacy and have long been committed to doing this well. Toward this end, RILA members support self-regulatory models and accountability mechanism as the most flexible, appropriate and effective framework for privacy protection.

³ A copy of RILA's comment letter, dated February 18, 2011, is available here: <http://www.rila.org/email/RILAFinalFTCLetter021711.pdf>

RILA appreciates the opportunity to share its comments with the Department of Commerce on the upcoming multistakeholder process. We would be pleased to discuss RILA's views with you further at your convenience, and welcome the opportunity to participate in the multistakeholder process. You may reach me at doug.thompson@rila.org or 703-600-2065.

Respectfully submitted,



Doug Thompson
Vice President, Government Affairs