

**Commissioner Julie Bill**  
**Maurer School of Law: Indiana University, Bloomington**  
**March 21, 2012**

Good evening. It is a pleasure to be here. I want to thank Fred Cate for inviting me today. I had the chance to spend some with Fred today—or Professor Cate, as he’s known around here—and his senior seminar students in the Wells Scholars Program. It was really a joy to spend time with them and hear some of their innovative ideas.

I won’t tell you how many years it has been since I was in law school—but being here at IU brings back many memories of my law school days. Some good, and some, well, not so good. Like those first few days in class as a 1L when I held my breath every time a professor was about to call on a student, praying it wouldn’t be me. I promise—I won’t be calling on anyone this evening—unless you raise your hand with a question at the end.

What I thought I would do this evening is introduce you to the Federal Trade Commission, talk about my role at the agency and how I ended up there, and then spend some time talking to you about one of the agency’s—and my—top priorities—consumer privacy.

The Federal Trade Commission is run by five Commissioners. We are a bipartisan agency—no more than three Commissioners can be from any one political party. And we are an independent agency: once nominated by the President and confirmed by the Senate, we essentially cannot be removed by the Administration.

The Federal Trade Commission’s mandate is to protect consumers, making sure they are not cheated or misled in the marketplace; and to protect competition, making sure that the marketplace is offering up a wide range of goods and services at the fairest price.

This mission requires the FTC to tackle some very complex issues. On the competition side, we protect competition in fast-moving high-tech and health care industries by focusing on anti-competitive practices, and we litigate complex merger cases.

On the consumer protection side, in addition to privacy, we focus on credit reporting, advertising substantiation, negative option billing, debt collection and telemarketing. In fact, we run the Nation’s Do Not Call list, which allows consumers to opt-out of annoying telemarketing calls, and which Dave Barry has called the most popular government program since the Elvis stamp.

I was appointed to serve as one of the Commissioners running the FTC in 2010. Prior to my confirmation by the Senate, I worked at the state level for over twenty years—first in the Vermont Attorney General’s office as an Assistant Attorney General and then as the Senior Deputy Attorney General in North Carolina.

As a state enforcer I worked with consumers, businesses, and state agencies in an up close, hands-on way, whether it was working to get refunds to consumers who had been

victimized by various scams or deceptive practices, closely examining consumer privacy issues, or providing practical antitrust advice to state and local entities.

I was introduced to privacy issues on my first day in the Vermont Attorney General's Consumer Protection division, when I began working with residents of small towns in Vermont who, in large numbers and from all walks of life, were beginning to be rejected for mortgages and refinancing. Working with town clerks, we discovered that the large, national credit reporting agencies had misread Vermont's town records, registering everyone who received a property tax bill as failing to pay. Entire towns were falsely listed as tax dead beats.

It was then that I began to really understand how incorrect information about consumers could have very real and harmful consequences—and I worked to set things right.

I testified before the U.S. House of Representatives about the real life impact on Vermonters of inadequate national consumer protection laws, and that testimony was one reason Congress substantially revised the Fair Credit Reporting Act for the first time in 25 years.

My interest in and experience with privacy issues led me to serve as Chair of the National Association of Attorneys General Privacy Working Group where I coordinated privacy initiatives on behalf of the State AGs, worked with large numbers of stakeholders, testified in Washington, and got to know national leaders in data security and privacy, like Professor Cate.

Now, as a Commissioner at the Federal Trade Commission, I continue to serve consumers with a hands-on approach. For me, that's the only way to obtain the best result for protecting consumers. And protecting consumers has been the mission of the Federal Trade Commission since its inception in 1914.

How the FTC came about is actually quite interesting. After Woodrow Wilson won the 1912 presidential election, he asked Louis Brandeis to recommend specifically how to solve one of the top problems facing the nation at the time: the large steel trusts and other monopolies.

Brandeis conceived the Federal Trade Commission, and Congress empowered the agency to investigate and prohibit unfair methods of competition with a "broad and flexible mandate, wide-ranging powers, and the ability, at its best to respond to the needs of changing times." Of course, Wilson later nominated Brandeis to become a Supreme Court Justice where he became one of our most important jurists.

Not coincidentally – in my view – Brandeis was also an influential thinker on privacy. His engagement with privacy issues was founded on his concerns about modernizing the law to address technologies that were new in his day. His famous law review article, "The Right to Privacy," successfully advocated for the creation of a tort for breach of privacy.<sup>1</sup> It focused on the then-revolutionary phenomenon of "snapshot photography," which allowed the press to, as he put it, "overstep[ ] in every direction the obvious bounds of propriety and of decency." And in *Olmstead v United States*, a case concerning then-nascent wiretap technology, Brandeis issued

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<sup>1</sup> Samuel Warren and Louis Brandeis, *The Right to Privacy*, 4 Harvard Law Review 193, 196 (1890).

his famous and influential dissent, arguing that “against the government,” Americans have “the right to be let alone.”<sup>2</sup>

The Internet Revolution makes snapshot photography and wiretap technology look like child’s play. As Brandeis did in his day, we at the FTC are examining today’s technologies, how consumers are using these technologies, and how they are impacting consumer privacy.

And one of the most significant developments today is the vast amounts of information about consumers that is being amassed. Whether it is through social media, online activities, or geolocation technology, information about consumers is being collected, culled, dissected and catalogued. The catchy term to capture this phenomenon is “Big Data.”

For example, based on her shopping habits, Target developed a methodology to ascertain whether a woman was likely to be pregnant—as well as her possible due date.<sup>3</sup> This enabled the store to provide coupons for products tailored to a pregnant woman. At the same time that we’re reading articles about Target’s “pregnancy prediction score,” we’re also reading articles about massive data breaches, at Sony involving millions of Playstation users; ubiquitous collection of information about smartphone users’ location throughout the day; and “leakage” of information like contact lists through apps.

At the Federal Trade Commission, it is our job to keep pace with the privacy issues that consumers face—and the technologies of today. Through our policy initiatives and enforcement actions, our goal is to protect consumers, but at the same time, allow them to benefit from the incredible power of the Internet and the mobile space.

We have brought law enforcement cases against companies that failed to protect the vast amount of personal information they held about consumers, including sensitive financial information. We have also brought law enforcement actions against companies that disclosed personal data that consumers expected to be private. We took action against Twitter when it made some private tweets public.

And the FTC has entered into settlements with both Facebook and Google relating to their privacy practices. The FTC’s complaint against Facebook alleges a number of deceptive and unfair practices in violation of the FTC Act.<sup>4</sup> These include changes made by Facebook in 2009 so that information users had designated private became public. We also called Facebook out for promises it made but did not keep: It told users it wouldn’t share information with advertisers, and then it did; and the company agreed to take down photos and videos of users who had deleted their accounts, and then it did not.

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<sup>2</sup> *Olmstead v United States*, 277 U.S. 438, 478 (1928).

<sup>3</sup> Charles Duhigg, *How Companies Learn Your Secrets*, N.Y. Times, Feb 19, 2012, *available at* <http://www.nytimes.com/2012/02/19/magazine/shopping-habits.html?pagewanted=all>.

<sup>4</sup> *In the Matter of Facebook, Inc., a corporation* FTC File No. 0923184 (2011).

The proposed FTC settlement with Facebook requires the company to obtain affirmative express consent before sharing users' information in a way that exceeds their privacy settings, and it must block access to information that users delete.

We also require Facebook to implement a comprehensive privacy program that an independent auditor will monitor for 20 years.

The FTC's settlement with Google arose from the roll out of Google's first social media product, Google Buzz.<sup>5</sup> We believed that Google did not give Gmail users good ways to stay out of or leave Buzz, in violation of Google's privacy policies.

We also charged that the company did not adequately disclose to users that the identity of individuals who users most frequently emailed could be made public by default. Like Facebook, Google is required to obtain consumers' express affirmative consent before sharing information in a way that is materially different from its current privacy policies and it must implement a comprehensive privacy program that will be monitored for 20 years.

At the same time that the agency's enforcement program in the data security and privacy areas have proceeded full steam ahead, we have also been reexamining the way we think about some key privacy concepts, like the role of privacy notices.

Unfortunately, most privacy notices today are so long and complicated that consumers have to go to law school to understand them—not that I have anything against going to law school! And trying to read these notices on smart phones can sometimes be virtually impossible – requiring up to 150 clicks to see the full text!

So in December 2010 we proposed a new framework for privacy that contains several important principles to address some of these key issues.<sup>6</sup>

The first principle is —Privacy by Design. This principle encourages industry to build privacy and security protections into new products and not wait until there is a privacy disaster to address problems. For example, companies should:

- Examine the information they collect about consumers and determine whether they really need to collect it; and
- Determine how long they are retaining that data and figure out whether such retention is really necessary.

The second principle of our preliminary report is simpler choice. There are a number of ways that consumer choice can be streamlined. One of the most talked about “simpler choice”

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<sup>5</sup> *Google Inc., a corporation* FTC Docket No. C-4336 (Oct. 24, 2011) (Consent order). Available at <http://www.ftc.gov/opa/2011/10/buzz.shtm>.

<sup>6</sup> See A Preliminary FTC Staff Report on Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Businesses and Policymakers (Dec. 1, 2010), available at <http://www.ftc.gov/os/2010/12/101201privacyreport.pdf>.

recommendations that the agency is calling for is the development of Do Not Track mechanisms. These mechanisms would enable consumers to make choices about whether their online activities across various websites can be collected and used to market to them or for other purposes.

The third principle in the FTC report setting forth the preliminary framework is greater transparency. Companies should provide consumers with more information about what is being done with their personal information.

In issuing the 2010 report setting for the preliminary privacy framework, the FTC called on all stakeholders, including industry and the consumer advocacy community to provide the agency with input on the many issues we explored in the report. Having spent many months analyzing the input that the agency received, we will release our final report, containing the final framework, very soon.

The FTC has not been alone in re-examining the framework that shapes the approach to privacy. The U.S. Department of Commerce has been engaged in an initiative to develop a framework that would set forth company obligations and consumer rights with regard to personal information.<sup>7</sup> The White House recently released a report outlining this framework and a Consumer Privacy Bill of Rights.<sup>8</sup> The FTC and the Department of Commerce initiatives have been complementary, and the two agencies will continue to work together as we move forward to better protect consumer privacy.

And as these initiatives have proceeded here in the United States, similar examinations have been taking place in other parts of the world. Notably, in the European Union, a new regulatory framework for privacy is also being considered—and we at the FTC have been working with our European colleagues so that we can each benefit from the information gathering and policy thinking that is taking place on both sides of the Atlantic.<sup>9</sup>

And while the FTC has been reexamining privacy frameworks, you, the law students of today are doing what you've been doing for years. Going to classes and taking notes—I did it the old fashioned way, with a notebook – the paper kind – and a pen. I imagine some of you don't even carry pens anymore. But you're also thinking about what area of the law to focus on. For me, this brings to mind the wonderful scene in *The Graduate*. If you've never seen it, you can get it on Netflix and watch it on your smart phone. Dustin Hoffman plays a recent college graduate,

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<sup>7</sup> Press Release, Digital Advertising Alliance, White House, DOC and FTC Commend DAA's Self-Regulatory Program to Protect Consumer Online Privacy (Feb. 23, 2012) *available at* <http://www.aboutads.info/resource/download/DAA%20White%20House%20Event.pdf>.

<sup>8</sup> *See* Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy (Feb. 23, 2012), *available at* <http://www.whitehouse.gov/sites/default/files/privacy-final.pdf>.

<sup>9</sup> *See* Proposal for a Regulation of the European Parliament and of the Council on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation) (Jan. 25, 2012), *available at* [http://ec.europa.eu/justice/data-protection/document/review2012/com\\_2012\\_11\\_en.pdf](http://ec.europa.eu/justice/data-protection/document/review2012/com_2012_11_en.pdf).

trying to figure out what to do with his life. At a party his parents throw, one of his parents' friends gives him some advice. "Plastics" – "There's a great future in plastics. Think about it. Will you think about it?"

So I say to all you future law graduates and future lawyers and others: "Privacy – There's a great future in privacy. Think about it."

Thank you.