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## United States Senate

COMMITTEE ON COMMERCE, SCIENCE,  
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEB SITE: <http://commerce.senate.gov>

ELLEN DONESKI, STAFF DIRECTOR  
BRIAN M. HENDRICKS, REPUBLICAN STAFF DIRECTOR AND GENERAL COUNSEL

October 3, 2012

The Honorable Jon Leibowitz  
Chairman  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Chairman Leibowitz:

It has come to my attention that some concerns have been raised over the Federal Trade Commission's (FTC) involvement in the deliberations of the World Wide Web Consortium (W3C) and the Consortium's attempt to develop voluntary compliance standards for "do-not-track" (DNT) requests from web browsers. I do not share these concerns and urge you to continue your positive and constructive involvement in these deliberations as the W3C's "Tracking Protection Working Group" is set to reconvene in Amsterdam this week to continue its discussion on voluntary DNT standards.

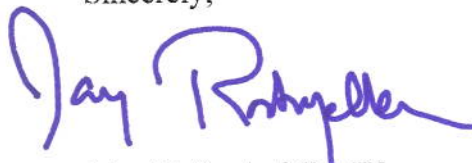
It is entirely appropriate that the FTC is participating in the W3C process to provide technical expertise or otherwise facilitate the promulgation of voluntary standards on DNT or any other consumer protection standard within the Consortium's purview. First, it is worth stating the obvious: the W3C is considering *voluntary* standards. The FTC is not using its formal regulatory authority to create mandatory or coercive regulations, *de facto* or otherwise. In fact, an important element of the FTC's mission is to be a public advocate for consumer protection; the Commission has issued numerous reports and guides, including a comprehensive report on consumer privacy and the efficacy of DNT, to raise public awareness and encourage businesses to adopt best practices. Second, it is not unusual for government agencies to play prominent roles in the development of voluntary standards. Indeed, in the very policy arena of consumer privacy, the National Telecommunications and Information Administration (NTIA) is convening a "multi-stakeholder" process to forge voluntary, enforceable standards by which companies will abide. Other examples of government agencies participating in the development of voluntary consumer protection standards are the Consumer Product Safety Commission (CPSC) and the National Highway Traffic Safety Administration (NHTSA). The CPSC routinely partners with ASTM International to develop voluntary standards for consumer products, and NHTSA is frequently involved with the germination of automotive standards set forth by the Society of Automotive Engineers (SAE). As Chairman of the Senate Committee on Commerce, Science, and Transportation – which has jurisdiction over consumer protection and the FTC, NTIA, CPSC, and NHTSA – I fully encourage all of these government entities to

actively facilitate the promulgation of voluntary industry standards that serve to protect consumers.

As such, the FTC should continue to actively encourage all relevant stakeholders to develop voluntary standards to honor do-not-track requests. To date, self-regulation for the purposes of consumer privacy protection has failed. While many browsers now feature DNT functionality, whereby users can make a global request to online companies to refrain from collecting their information, there is no legal obligation on companies to honor those DNT requests. With much fanfare and in conjunction with the release of the White House and FTC privacy reports earlier this year, the Digital Advertising Alliance publicly pledged to honor DNT browser requests. However, the commitment itself is currently riddled with exceptions – allowing for the collection and use of personal information for “product development” and “market research” – that could render DNT compliance meaningless. And it is not clear if any or all member companies will honor the commitment at all. Furthermore, the current self-regulatory initiative is an ineffective regime in which third party ad networks honor consumer “opt out” requests by abstaining from serving targeted behavioral advertisements, while continuing to collect personal information. This arrangement creates a nonsensical situation: an intrusion on consumer privacy without any of the benefits of targeted advertising.

In your testimony before the Commerce Committee on May 9, 2012, you stated that Congressional action is warranted if industry fails to follow through with its public commitment to fully implement meaningful do-not-track standards during this calendar year. As we enter the fall of 2012, that end-of-the-year deadline looms large. I have introduced S. 913, the Do-Not-Track Online Act, which would establish a legal obligation for online companies to honor consumer DNT requests. With only three months left in the year, this week’s W3C meeting in Amsterdam represents the latest round of deliberations that have made progress, but have yet to finalize voluntary standards. I have long expressed skepticism that private companies are capable of collectively producing and abiding by meaningful standards that protect consumers. If the advertising industry cannot be coaxed into living up to its commitment and adopting robust voluntary DNT standards, I believe it will only highlight the need for Congress to act in the wake of a long history of industry failure to provide American consumers with the privacy protections they deserve.

Sincerely,



John D. Rockefeller IV  
Chairman  
Senate Committee on Commerce, Science, and  
Transportation