

Revisiting Kennedy's Vision of Consumer Rights
Address to the Transatlantic Consumer Dialogue Annual Meeting
Washington, DC
June 5, 2012

Thank you for inviting me to speak on this important panel. At the FTC, where I serve as a Commissioner, President Kennedy's recognition of the importance of consumers to our economy, and his articulation of the four basic consumer rights, are at the "core of our mission" today.

President Kennedy discussed consumers' right to be protected against fraudulent, deceitful or grossly misleading advertising or other practices. Enforcement of this right falls squarely in our wheel house at the FTC. Over the past few years, we have focused our enforcement efforts on fraudulent and misleading practices in the financial area – what we call "last dollar frauds" – and on misleading health claims.

We police the marketplace through our enforcement actions to make sure that consumers get accurate and substantiated information in the health area, and aren't victimized in complicated financial transactions – such as mortgage relief, debt collection, payday loans and other financial frauds.

In rereading President Kennedy's historic speech in preparation for this plenary, I was struck by Kennedy's observation, that, "Marketing is increasingly impersonal." One of the biggest differences I see between 1962 and the modern marketplace of 2012, is that marketing and advertising today is increasingly personal. With behavioral targeting and tracking, marketers now know highly personal details about consumers.

- We learned in an in-depth article in the *New York Times* about the practices of Target, a larger consumer retailer, that used purchasing data to determine whether a consumer is pregnant, and when she is due to give birth.¹
- Researchers have demonstrated that it is relatively easy to take some types of data that are stripped of identifying information, and reassociate the data with specific consumers, or at least their smartphones and laptops.
- And online advertising and marketing campaigns can now be targeted directly to consumers based on highly personal data, rather than a one-size-fits-all marketing campaign.

Such rapid advances in technology and marketing practices have led me and my agency to conclude that we are facing some potentially serious gaps in consumer privacy protection. Despite the FTC's robust privacy enforcement against companies like Google and Facebook, I am concerned that we may be unable to appropriately protect consumers if we do not modernize

¹ 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>.

our framework for thinking about privacy to take account of many of these technological advances.

- The old model of providing consumers with notice and choice about practices concerning information collection and use simply does not work.
- Privacy policies have become too legalistic, placing too great a burden on consumers to understand and make decisions about complex notions that are challenging even to experts in the field.
- When these policies and choices are presented on a mobile device's small screen, the challenges are that much greater.
- Indeed, in 1970, not long after Kennedy's speech, Congress passed a number of pieces of consumer protection legislation, including the Fair Credit Reporting Act,² which was designed to address concerns about the collection and use of consumer data by the credit reporting industry. In today's much more advanced technological age, where traditional credit reports are only one source of information about consumers used by creditors, employers, insurance companies and others, it is important that we consider whether this law, enacted 40 years ago, is sufficiently robust to protect consumers when companies are making substantial decisions about their lives.

The Federal Trade Commission's recently released privacy report seeks to address some of these issues by making three concrete recommendations about companies' practices:³

- Companies should think about privacy as they are developing products and services;
- Companies should provide simplified notice and choice regarding their practices to consumers; and
- Companies should be more transparent about their data collection and use practices.

Many policy makers in the United States are advocating for a more robust and refined approach to privacy.

- US Senators Richard Blumenthal from Connecticut, John Kerry of Massachusetts, and John McCain of Arizona have been leaders on privacy.

² 15 U.S.C. § 1681s(a)(2)(A).

³ Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers, An FTC Report (Mar. 26, 2012) available at <http://www.ftc.gov/os/2012/03/120326privacyreport.pdf>.

- And of course the Obama Administration has called for enactment of a Consumer Privacy Bill of Rights.⁴

My agency supports enactment of the Administration's proposed Consumer Privacy Bill of Rights. Fifty years after President Kennedy articulated the four basic rights that all consumers should enjoy, it is time to add this one – privacy – to the list.

⁴ White House, *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy* (Feb. 2012), available at <http://www.whitehouse.gov/sites/default/files/privacy-final.pdf>.