



Wu Appointment May Mean More Regulation to Come

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On February 8, the Federal Trade Commission announced that Columbia Law Professor Tim Wu would be joining the Commission's Office of Policy Planning. The law professor known for coining the phrase "net neutrality" reportedly will advise the Commission on long-range competition and consumer protection policy initiatives.

Professor Wu's appointment is considered by many in the business community as a harbinger of more market-stifling regulation to come. In a recent *Forbes* article, D.C. business consultant Scott Cleland was quoted as saying, "It's nothing but trouble for business ... He's about as interventionist and hyper-regulatory a thinker as you will find."

There is sound basis for the concern that Professor Wu will help the federal agency identify new – and possibly costly and unnecessary – regulatory interventions. He has been a long-standing advocate of government regulation of Internet access, professing fears of "private power as much as public power." He has been instrumental in aiding the Federal Communications Commission to devise net neutrality rules and policies.

Just as the FCC, armed at least in part by Wu policy proposals, vies for more regulatory control over the Internet, the FTC has invited the same pro-regulation thinker to help it build its justifications for a power grab.

But the FTC already has its place in Internet commerce, is very active on this front, and should not seek regulatory control beyond this role. For instance, the agency recently settled a sizeable "scareware" case against several individuals and companies for their deceptive Internet advertising schemes. The case looks pretty egregious: the defendants apparently incorporated



automatic downloads in their Internet ads, involuntarily redirected consumers to their websites, falsely claimed to scan and detect malware on the consumers' computers, and prompted consumers to purchase software to remove the nonexistent files.

The scareware case seems to fit squarely within the FTC's jurisdiction: Rogue companies bilked consumers of significant sums (roughly \$40 per software download) under false pretenses through deceptive advertising. Investigating and bringing charges against such companies is within the parameters of the FTC's purpose to protect consumers and within the agency's statutory powers to prevent "unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce."

The FTC seems to have acted appropriately in the scareware case. But pursuing a systematic course of looking for new regulatory mechanisms, which is what is anticipated from the Wu appointment, is another thing. Just as free marketers, entrepreneurs, and businesses have been chiming, "if it isn't broken, don't fix it" vis-à-vis the FCC's endeavors to assume more regulatory control over the Internet, the same should be said vis-à-vis the FTC.

FTC Beat is authored by the [Ifrah Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.

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