



Federal “Do Not Track” Bill Introduced

When the Federal Trade Commission (FTC) issued its privacy report in December 2010, it discussed the possibility of providing consumers with a universal choice mechanism, that would permit or prevent the collection and use of data regarding a consumer’s online searching and browsing activities. However, the Commission admitted that it lacked the authority to establish such a requirement without Congressional authorization. A bill introduced by Rep. Jackie Speier (D-CA) would provide the necessary authorization.

H.R. 654, titled the “Do Not Track Me Online Act,” would require the FTC to establish standards for an online opt-out mechanism that would allow consumers to “effectively and easily” prohibit the collection or use of any “covered information.”

“Covered information” includes any of the following information that is transmitted online:

- The online activity of an individual (such as web sites accessed, content viewed on web sites, date and time of access, the computer and geolocation from which online information was accessed, and the device, browser or application used to access online information);
- A unique identifier such as a customer number or an Internet protocol address;
- Name, postal address, email address, user name, telephone or fax number, and a government-issued ID;
- Financial account number, or a credit/debit card number, or a security code/password that is necessary to access a financial account.

The bill would also require “covered entities” to disclose their information collection practices, including the names of those with whom the entities disclose such information. The bill allows, but does not require, the FTC to develop rules requiring covered entities to provide consumers with access to their data.

A “covered entity” is someone who is engaged in interstate commerce and collects or stores online data containing covered information. A company that meets all of the following requirements is excluded from the definition of covered entity and would therefore be exempt from the bill’s requirements:

- The company stores covered information from or about fewer than 15,000 individuals;
- It collects covered information from or about fewer than 10,000 individuals during any 12-month period;
- It does not collect or store “sensitive information” (“sensitive information” includes medical or health data; race or ethnicity; religion; sexual orientation; financial information (unless provided by the individual), precise geolocation, unique biometric data, and Social Security number); and
- It does not use covered information to study, monitor or analyze the behavior of individuals as the company’s primary business.

This publication may constitute “Attorney Advertising” under the New York Rules of Professional Conduct and under the law of other jurisdictions.

The FTC may exempt the following common business practices from the bill's requirements:

- Providing customer service and support;
- Analyzing data to improve a service, product or operation;
- Basic business functions such as accounting, inventory, and supply chain management; and Protecting IP rights.

The bill would not pre-empt state laws and would not curtail any of the FTC's existing powers. The bill authorizes civil enforcement by state Attorneys General and the FTC, with civil penalties up to \$5,000,000 for a series of violations.

Rep. Speier also introduced a bill called the Financial Information Privacy Act of 2011 (H.R. 653) that mirrors California's financial privacy law. The bill would prevent financial institutions from sharing or selling personally identifiable nonpublic information with affiliates without giving consumers an opportunity to opt-out, and it would require that a financial institution obtain opt-in consent before sharing information with unaffiliated third parties.

For more information about these privacy bills, or any other privacy issues, please contact leuan Jolly at 212.407.4810 or ljolly@loeb.com.

If you received this alert from someone else and would like to be added to the distribution list, please send an email to alerts@loeb.com and we will be happy to include you in the distribution of future reports.

This alert is a publication of Loeb & Loeb and is intended to provide information on recent legal developments. This alert does not create or continue an attorney client relationship nor should it be construed as legal advice or an opinion on specific situations.

Circular 230 Disclosure: To ensure compliance with Treasury Department rules governing tax practice, we inform you that any advice contained herein (including any attachments) (1) was not written and is not intended to be used, and cannot be used, for the purpose of avoiding any federal tax penalty that may be imposed on the taxpayer; and (2) may not be used in connection with promoting, marketing or recommending to another person any transaction or matter addressed herein.

© 2011 Loeb & Loeb LLP. All rights reserved.

Advanced Media and Technology Group

KENNETH A. ADLER	KADLER@LOEB.COM	212.407.4284
PHILLIP E. ADLER	PADLER@LOEB.COM	310.282.2260
ROBERT M. ANDALMAN	RANDALMAN@LOEB.COM	312.464.3168
IVY KAGAN BIERMAN	IBIERMAN@LOEB.COM	310.282.2327
CHRISTIAN D. CARBONE	CCARBONE@LOEB.COM	212.407.4852
TAMARA CARMICHAEL	TCARMICHAEL@LOEB.COM	212.407.4225
NATASHA CHAMILAKIS	NCHAMILAKIS@LOEB.COM	212.407.4853
MARC CHAMLIN	MCHAMLIN@LOEB.COM	212.407.4855
CRAIG A. EMANUEL	CEMANUEL@LOEB.COM	310.282.2262
KENNETH R. FLORIN	KFLORIN@LOEB.COM	212.407.4966
RUPEN R. FOFARIA	RFOFARIA@LOEB.COM	312.464.3154
DANIEL D. FROHLING	DFROHLING@LOEB.COM	312.464.3122
DAVID W. GRACE	DGRACE@LOEB.COM	310.282.2108
MICHELLE ONTIVEROS GROSS	MGROSS@LOEB.COM	212.407.4233
THOMAS A. GUIDA	TGUIDA@LOEB.COM	212.407.4011
NATHAN J. HOLE	NHOLE@LOEB.COM	312.464.3110
MELANIE J. HOWARD	MHOWARD@LOEB.COM	310.282.2143
THOMAS P. JIRGAL	TJIRGAL@LOEB.COM	312.464.3150
IEUAN JOLLY	IJOLLY@LOEB.COM	212.407.4810
MICHAEL MALLOW	MMALLOW@LOEB.COM	310.282.2287
DOUGLAS N. MASTERS	DMASTERS@LOEB.COM	312.464.3144

NERISSA COYLE MCGINN	NMCGINN@LOEB.COM	312.464.3130
ANNE KENNEDY MCGUIRE	AMCGUIRE@LOEB.COM	212.407.4143
DOUGLAS E. MIRELL	DMIRELL@LOEB.COM	310.282.2151
DANIEL G. MURPHY	DMURPHY@LOEB.COM	310.282.2215
DANIEL O'CONNELL OFFNER	DOFFNER@LOEB.COM	310.282.2252
SETH A. ROSE	SROSE@LOEB.COM	312.464.3177
ROBERT MICHAEL SANCHEZ	RSANCHEZ@LOEB.COM	212.407.4173
ALISON POLLOCK SCHWARTZ	ASCHWARTZ@LOEB.COM	312.464.3169
STEVE A. SEMERDJIAN	SSEMERDJIAN@LOEB.COM	212.407.4218
BARRY I. SLOTNICK	BSLOTNICK@LOEB.COM	212.407.4162
BRIAN R. SOCOLOW	BSOCOLOW@LOEB.COM	212.407.4872
SHARON CERESNIE SORKIN	SSORKIN@LOEB.COM	312.464.3132
WALTER STEIMEL, JR.	WSTEIMEL@LOEB.COM	202.618.5015
AKIBA STERN	ASTERN@LOEB.COM	212.407.4235
JAMES D. TAYLOR	JTAYLOR@LOEB.COM	212.407.4895
MICHAEL A. THURMAN	MTHURMAN@LOEB.COM	310.282.2122
JOHN T. UM	JUM@LOEB.COM	212.407.4109
ROSA K. WALKER	RWALKER@LOEB.COM	212.407.4824
DREW WEINSTEIN	DWEINSTEIN@LOEB.COM	212.407.4102
JILL WESTMORELAND	JWESTMORELAND@LOEB.COM	212.407.4019
MICHAEL P. ZWEIG	MZWEIG@LOEB.COM	212.407.4960