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Excellence Winner**News****FTC Releases Final Report On Protecting Consumer Privacy**

On Monday, the Federal Trade Commission ("FTC") released the much-anticipated final version of its report entitled "Protecting Consumer Privacy in an Era of Rapid Change" ("Final Report"), which sets forth legislative recommendations for policymakers concerning privacy and data security and best practices for business for addressing online and offline privacy concerns. While not intended to serve as a template for law enforcement actions or a proxy for agency regulation, the FTC's framework will impact the privacy debate and business practices in the coming years. The Final Report follows the Commission's 2010 initial privacy report of the same title.

The Final Report incorporates feedback from industry, academics, privacy advocates, consumers, law enforcement, and government agencies received in more than 450 public comments made in response to the initial report. The Final Report is largely consistent with the initial report.

In the Final Report, the Commission renews its call for companies to:

- Incorporate "privacy by design" in their data practices;
- Offer consumers choice regarding how data is collected and used; and
- Provide greater transparency with respect to their data practices.

The Commission has also revised three key recommendations made in the initial report. The Final Report makes changes to:

- **The framework's scope:** The Final Report excludes from the framework companies that collect only non-sensitive consumer data from under 5,000 consumers provided they do not share the data with third parties. The Final Report also clarifies that data that meets certain de-identification process requirements would be excluded from the framework.
- **Guidance for when companies should provide consumers with a choice about how data will be used:** In the Final Report, the Commission states that whether a company should provide consumers with a choice as regards the collection and use of data turns on the context (i.e., the transaction, relationship between parties, etc.) of the consumer's interaction with a company. The Commission explains choice may not be necessary in all contexts.
- **Recommendations for data brokers:** The Final Report recommends the enactment of federal legislation that would give individuals access rights to information held about them by data brokers. The Commission also calls for data brokers that compile marketing information to explore creating a centralized website at which consumers can learn about their practices and access available choice mechanisms.

[Click here](#) for analysis of the Final Report and insights on what to expect during the coming year by Venable attorneys [Stuart P. Ingis](#) and [Michael A. Signorelli](#) on Venable's advertising law blog, www.allaboutadvertisinglaw.com.

[Click here](#) to read the FTC's press release about the Final Report.

[Click here](#) to download a copy of the Final Report.

Social Game Site Operator Charged With Exposing 32 Million Email Addresses and Passwords and Violating COPPA

On Tuesday, the Federal Trade Commission ("FTC") announced a \$250,000 settlement with social game



Top-Tier Firm *Legal 500*



Law Firm of the Year, National Advertising, *U.S. News and World Report*, 2011



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site operator RockYou. The settlement stemmed from FTC allegations that the company violated the Children's Online Privacy Protection Act ("COPPA") and failed to abide by its privacy policy.

The FTC alleged that after promising in its privacy policy to implement reasonable and appropriate measures to protect against unauthorized access to the personal information it obtained from consumers, the company failed to secure consumers' data. This failure resulted in hackers obtaining access to the email addresses and passwords of users. In addition, the FTC alleged that although RockYou's privacy policy stated that it would not collect information from children, the company collected and then failed to delete personal information, email addresses and passwords of 179,000 children. The FTC charged that the company's failures to abide by its privacy policy constituted a deceptive act under the FTC Act.

To settle the FTC's charges, RockYou agreed to pay a \$250,000 civil penalty. They are also subject to injunctive provisions that bar deceptive claims regarding privacy and data security, and that require RockYou to implement a comprehensive data security program and submit to security audits by independent third-party auditors every other year for 20 years.

[Click here](#) to read the FTC's press release about the RockYou settlement.

[Click here](#) to read a blog post about the settlement by Venable partner [Leonard L. Gordon](#) on Venable's advertising law blog, www.allaboutadvertisinglaw.com.

FTC Continues Aggressive Enforcement Actions against Robocallers

On Wednesday, the FTC announced a \$3 million settlement with SBN Peripherals, a California-based telemarketing business, which the FTC alleged made more than 2.5 billion robocalls to consumers during an 18-month period pitching a variety of inferior or worthless products and services.

In the complaint, the FTC alleged that the defendants violated the law by calling telephone numbers listed on the National Do Not Call Registry, placing robocalls to consumers without their written permission, and obscuring the company's identity by manipulating the caller ID data to display vague terms such as "sales dept."

Under the settlement, the company and its principals are banned from all telemarketing activity. In addition, they are prohibited from misrepresenting any good or service, and from selling or otherwise benefitting from customers' personal information. They must dispose of all consumers' personal information in their possession within 30 days and surrender approximately \$3 million in assets.

[Click here](#) to read the FTC's press release about the settlement.

Analysis

Marketers love to claim that something is "free," write Venable attorneys [Amy Ralph Mudge](#), [Randal M. Shaheen](#) and [Setareh Deljo-Roland](#), in a recent post on Venable's advertising law blog, www.allaboutadvertisinglaw.com. However, they write, the FTC is just as interested in "free" offers as marketers are, albeit for a different reason: the FTC spends significant resources investigating and launching enforcement actions against marketers whose "free" offers are not really free. In their blog post, the trio explores recent FTC enforcement actions involving "free" offers and provides best practices to ensure that any terms and conditions associated with a "free" offer are clearly and prominently disclosed.

[Click here](#) to read their post on Venable's advertising law blog, www.allaboutadvertisinglaw.com.

Events

[American Bar Association's Antitrust Law 2012 Spring Meeting - Washington D.C.](#)

March 26-30, 2012

Venable's [Amy Ralph Mudge](#) will chair and moderate a panel on "The Supreme Court Redirects Class Action Defense" and [Claudia A. Lewis](#) will join a panel on the "Fundamentals of Consumer Protection."

Ad:Tech 2012 Conference and Expo - San Francisco

April 3-4, 2012

Venable is attending the ad:tech 2012 conference. Visit with Venable attorneys at exhibition booth number 1816.

MAC 2012 Conference - Las Vegas

April 3-5, 2012

Venable is a proud sponsor of the MAC 2012 Conference. Join the chair of Venable's **Advertising & Marketing Practice Group**, **Jeffrey D. Knowles** in a point-counterpoint conversation with Lois Greisman of the Federal Trade Commission.

Toxics Regulation for Retailers and Consumer Products Manufacturers - Los Angeles

April 24, 2012

Please join Venable partner **Randal M. Shaheen** when he presents "**Setting up an Effective Sustainability Marketing Program and Avoiding Greenwashing Claims.**" Shaheen will provide an update on recent regulations, case law, regulatory initiatives, compliance and marketing issues to assist attorneys, corporate management, risk managers, insurance professionals and governmental representatives. The presentation starts at 1:15 (PDT) and will take place at the Radisson Hotel at Los Angeles Airport.

FDLI 55th Annual Conference - Washington, D.C.

April 24-25, 2012

Venable partner **Ralph S. Tyler** will participate on a Roundtable of Former FDA Chief Counsels and **Ilene R. Heller** will join a panel on "Functional Foods: How Foods, Dietary Supplements and Pharmaceuticals Are Becoming Increasingly Intertwined."

ERA'S Government Affairs Fly-In 2012 - Washington, D.C.

May 7-9, 2012

Please join Venable at the Electronic Retailing Association's 2012 Government Affairs Fly-In. The event, which takes place in Washington, DC from May 7-9, is an outstanding opportunity to learn more about the regulatory and legislative efforts affecting the electronic retailing industry and to meet with lawmakers and senior agency officials. Venable's **Jeffrey D. Knowles** will be among the dozen senior-level speakers from Capitol Hill, federal regulators, industry self-regulatory bodies, policy think tanks and the electronic retailing industry during this important two-day event.

ACI Litigating & Resolving Advertising Disputes - New York

June 19-20, 2012

Venable is a proud sponsor of the ACI Litigation & Resolving Advertising Disputes Conference. Please join Venable's **Thomas E. Gilbertsen** and **Amy Ralph Mudge**. Gilbertsen will speak on the explosion of class action lawsuits and Mudge will moderate a panel of judges providing the judicial perspective on advertising litigation.

Click here to subscribe to Venable's Advertising and Marketing RSS feed and receive the Venable team's insight and analysis as soon as it is posted.

Visit Venable's advertising law blog at www.allaboutadvertisinglaw.com.

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