

FTC Briefing for the Montana State Administration and Veterans' Affairs Interim Committee

Privacy and Data Security

Chuck Harwood
Director
Northwest Region
Federal Trade Commission



This presentation and the speaker's comments are the views of the presenter and not necessarily the views of the Federal Trade Commission or any Commissioner.



Overview

- FTC Authority and Jurisdiction
- Montana and FTC
- FTC Privacy/Data Security Enforcement



The FTC

- General jurisdiction consumer protection agency
 - ~1,100 lawyers and staff members in Washington and 7 regional offices
 - Federal jurisdiction in the areas of competition and consumer protection
 - Five Commissioners appointed by President and confirmed by Senate
- Three bureaus: Competition, Economics, Consumer Protection



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Nov 13, 2015

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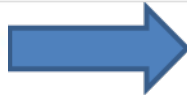
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TAKE ACTION

-  [File a Consumer Complaint](#)
-  [Report Identity Theft](#)
-  [Get Your Free Credit Report](#)
-  [Register for Do Not Call](#)
-  [Get Scam Alerts](#)

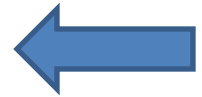


COMPETITION [More >](#)

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- NOV 16** [Cross-Device Tracking](#)
Constitution Center, Washington, DC
- NOV 18** [Debt Collection Dialogue: A conversation between government and business](#)
1:00PM
Latin American Association, Atlanta, GA
- JAN 14** [PrivacyCon](#)
Constitution Center, Washington, DC



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Start with Security



Montana and FTC

- Law enforcement
 - FTC v. American eVoice, Ltd.
 - Cancer Fund of America
- Cooperation
 - Montana Department of Justice
- Data



Fraud and Other Complaints Count from Montana Consumers = 4,550

Top 10 Fraud and Other Complaint Categories Reported by Montana Consumers

Rank	Top Categories	Complaints	Percentage¹
1	Impostor Scams	589	13%
2	Debt Collection	431	9%
3	Prizes, Sweepstakes and Lotteries	362	8%
4	Telephone and Mobile Services	234	5%
5	Banks and Lenders	182	4%
6	Shop-at-Home and Catalog Sales	164	4%
7	Internet Services	135	3%
8	Television and Electronic Media	127	3%
9	Auto-Related Complaints	124	3%
10	Foreign Money Offers and Counterfeit Check Scams	81	2%

¹Percentages are based on the total number of CSN fraud and other complaints from Montana consumers (4,550)

Note: These figures exclude complaints provided by the Montana Department of Justice.



Identity Theft Complaints Count from Montana Victims = 585

Identity Theft Types Reported by Montana Victims

Rank	Identity Theft Type	Complaints	Percentage ¹
1	Government Documents or Benefits Fraud	230	39%
2	Credit Card Fraud	85	15%
3	Phone or Utilities Fraud	42	7%
4	Bank Fraud	40	7%
5	Loan Fraud	23	4%
6	Employment-Related Fraud	21	4%
	Other	158	27%
	Attempted Identity Theft	32	5%

¹Percentages are based on the 585 victims reporting from Montana. Note that CSN identity theft complaints may be coded under multiple theft types.



Privacy/Data Security Enforcement

- FTC and sector based privacy laws
- FTC authority under FTC Act
- FTC has brought over 130 spam and spyware cases, over 40 general privacy cases and over 50 data security cases since 2002



FTC Act (15 U.S.C. § 41 et seq.)

- Section 5(a) of FTC Act: prohibits unfair or deceptive acts or practices and unfair methods of competition
- Must be in or affecting commerce
- Applies to advertising and marketing of most consumer products and services in the U.S.
 - Limited authority over industries subject to extensive regulation by other federal agencies



Definition of Deceptive Act

- 1981 Policy Statement
- Claim that is
 - Likely to mislead consumers acting reasonably under the circumstances
 - Is “material” in that it is important to a consumer’s decision to buy or use the product
- Can be express claim or implied
- Omissions from representations can make representation deceptive



Deception

- Failure to honor a company's promises
 - Promises to maintain confidentiality
 - Promises to refrain from disclosing information to third parties
 - Promises to only collect data consistent with the company's privacy policy
 - Promises to provide adequate security for personal data: use of highest security systems
- Failing to respect consumer's previously established privacy settings
- Failure to honor implied privacy promises



Definition of Unfair Act

- Section 5(n) of FTC Act
- To be “unfair” the act or practice
 - Must cause or be likely to cause substantial injury to consumers
 - Consumers cannot avoid it
 - Harm not outweighed by benefits to consumers or competition
- Public policy considerations a factor, but cannot be primary basis for determination



Unfairness

- Egregious acts relating to use/collection of consumer information
- Privacy: “consumer expectations”
- Data security: “reasonable” data security measures in light of risks posed by a possible breach



Data Security Enforcement

- FTC orders involve a range of industries and platforms: retailers, financial firms, social networks, and mobile; and a range of data types: payment card data, Social Security numbers, account passwords, health data, information about children
- Data security measures must be reasonable in light of:
 - sensitivity and volume of consumer information it holds
 - size and complexity of its data operations
 - cost of available tools to improve security and reduce vulnerabilities
- Commission does not require perfect security and fact that a breach occurred does not mean that law was violated



Privacy Enforcement

- Many general privacy cases involved sharing of data with third parties contrary to claims made when the data was collected and/or contrary to consumers' expectations about how the data would be used
- Have addressed a wide range of privacy issues
 - Do Not Call
 - COPPA
 - FCRA
 - Spam and spyware
 - General privacy cases (FTC Act)

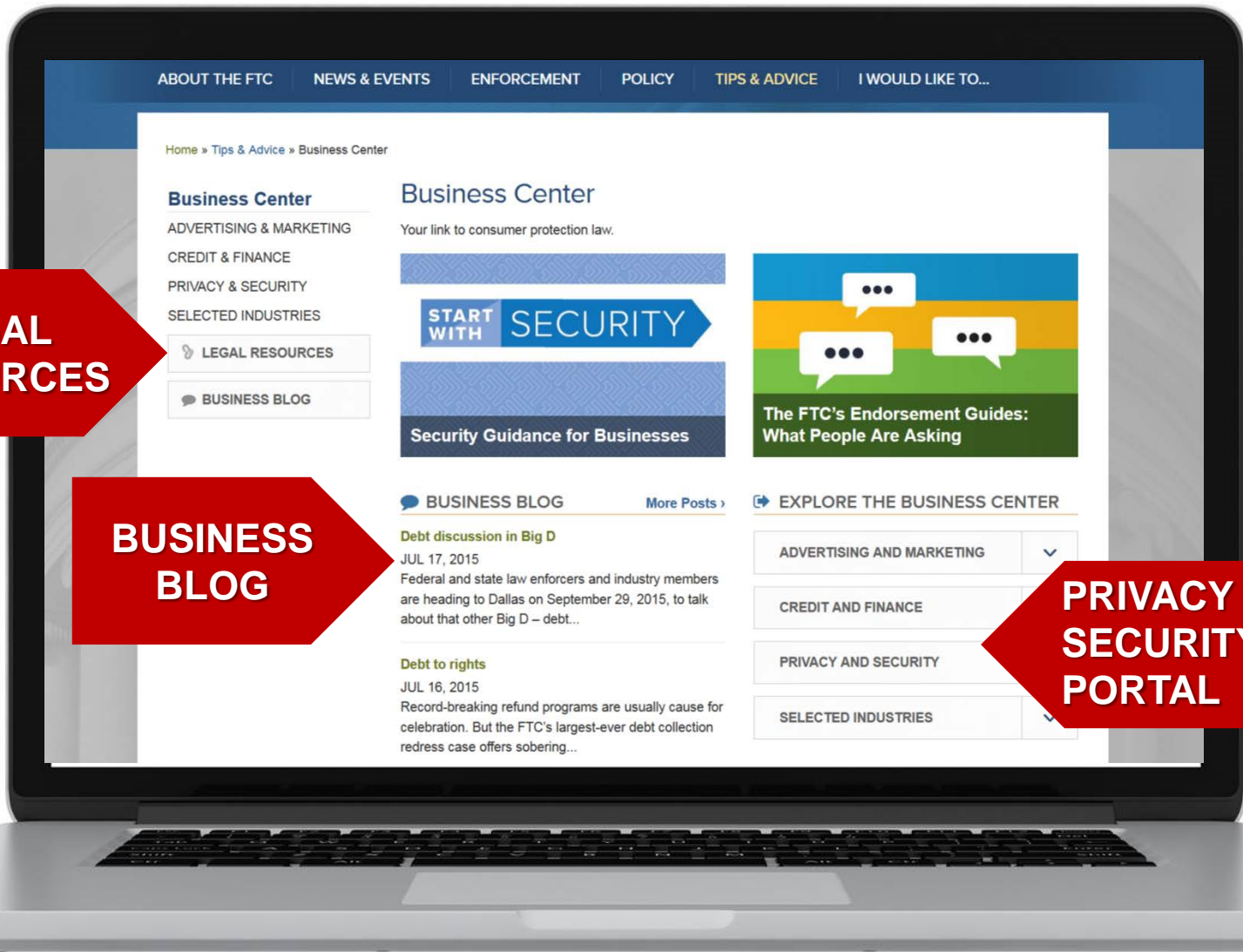


Privacy Principles (2012)

- Privacy by design
- Streamlined choice
- Transparency
- Before data is collected or used in a way that is surprising – inconsistent with the context of the consumer’s interaction or relationship with a business – consumers should be given a say
- Defining appropriate uses of consumer data augments but does not replace limits on the collection or retention of data or whether consumers have a say in the process



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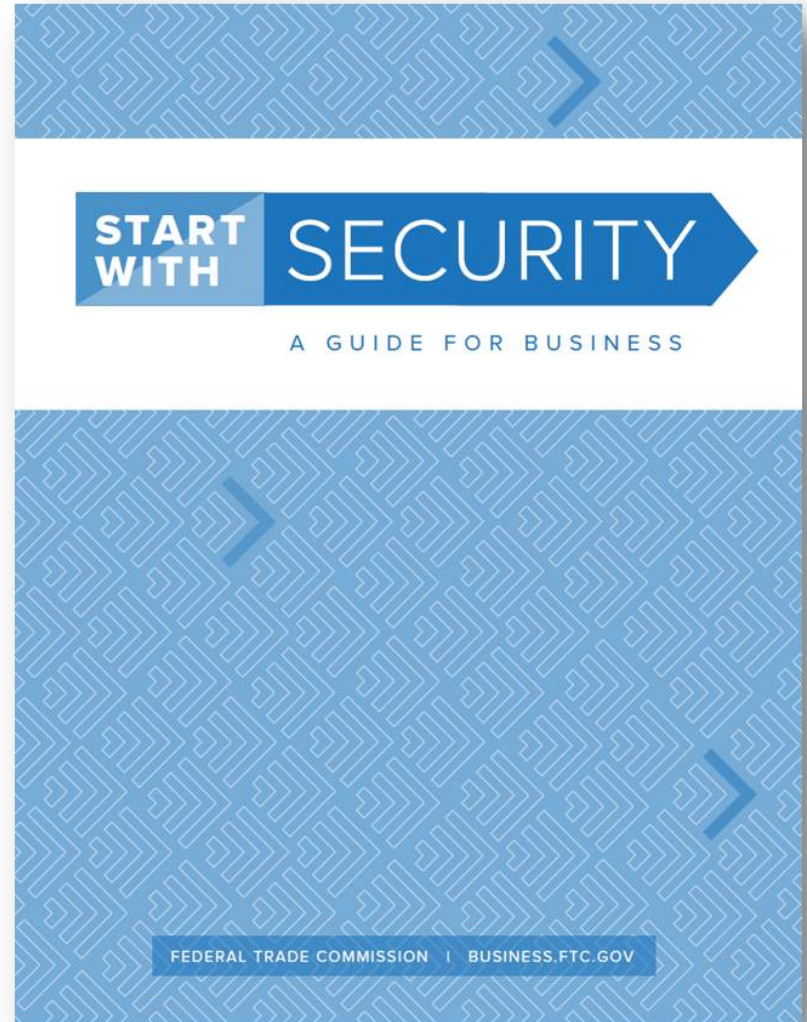


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Chuck Harwood
charwood@ftc.gov
FTC Northwest Region
Seattle
www.ftc.gov

