



COMPETITIVE ENTERPRISE INSTITUTE

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**Internet Privacy**

by  
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In conjunction with the release of its annual Internet privacy report in May 2000, the Federal Trade Commission asked Congress for the authority to regulate on-line information practices.<sup>1</sup> Aside from doing little to improve the state of privacy on the Internet, new regulations would stifle innovation, raise costs to consumers, and create a new universe of victimless crime.

**Background.** Companies gather information about consumers on-line, just as they do off-line, to more accurately target their advertising. They do this two ways. The first is by asking visitors to fill out a form when they visit a site. Consumers can refuse to do this, but often this is a prerequisite for gaining access to that site's services or information. In this sense, the consumer's information acts as currency on the Internet. A 1999 study found that 86 percent of Internet users polled wanted the ability to exchange their personal information with websites, as long as they knew the benefits for doing so and were informed about the use of their data.<sup>2</sup>

The second way companies gather information is more controversial, but no less benign. Tiny files known as "cookies" are sent to the user's hard drive to keep track of the sites he visits and the advertisements that catch his attention. If consumers prefer, they can set their browsers to ask them before accepting cookies or to block them entirely (it takes four clicks on Microsoft's Explorer).

The May 2000 FTC Internet Privacy report verified the increasing state of information-notification practices on commercial websites. The number of sites in the "most popular" sample that have posted privacy policies was up from 14 percent in 1998 to 66 percent in 2000. Similarly, a random sample of all websites returned an 88 percent posting rate this year.<sup>3</sup> However, FTC brushed over these improvements and took issue with the substance, or lack thereof, of these privacy policies, and then asked Congress for the authority to regulate them.

**It is in businesses' interest to meet consumer demands.** Simple as that sounds, it is a notion foreign to bureaucrats and leg-

islaters casting about for new regulatory turf. As more consumers make known their preference for privacy, more websites will respond accordingly. In fact, just as discerning consumers may choose not to deal with off-line businesses whose standards and policies prove disagreeable, so too will they avoid websites whose privacy standards fall short.

**Consumers are empowered in the marketplace.** Even with this industry response, proponents of privacy regulations argue that we need laws because consumers are powerless on any website that fails to post its privacy policy or whose posting is insufficient. This is wrong; the workings of the market are empowering consumers. Savvy Web surfers can always simply set their browsers to consult them before accepting any cookies (for more information, visit [www.cookiecentral.com](http://www.cookiecentral.com)).

New technologies also allow for anonymous Web browsing, browsing under digital pseudonyms, and automatic screening of privacy policies. For example, Anonymizer ([www.anonymizer.com](http://www.anonymizer.com)) provides both free and premium services that use an intermediary to prevent unauthorized parties from detecting users' viewing habits, geographical location, or even search terms they've entered on other sites. Instead of hopping from one website to another, anonymizer.com users always leave from, and go to, the company's protected location.

Freedom 1.0, available from Zero-Knowledge Systems Inc. ([www.zeroknowledge.com](http://www.zeroknowledge.com)) uses the technological equivalent of fake names to disguise a user's identity while on-line. The authenticated digital pseudonyms, called "nyms," are unrelated to the user's actual information and are one of three elements that provide on-line anonymity. The use of a nym triggers a function that encrypts (scrambles) all outgoing data and messages from the user's system in multiple layers of cryptography. Then the user's Internet traffic is routed through a series of "privacy-enhancing detours" in a group of servers that strip out location information for the user's ISP and leave only the nym intact. Freedom users remain largely anonymous even to Zero-Knowledge; the company is unable to match the nym to the credit-card information. Zero-Knowledge charges \$49.95 for five nyms and one year of service.

Idcide Inc. offers a free browser plug-in called the Privacy Companion that distinguishes between first-party cookies (sent from the current site)

and third-party cookies (sent from other servers the user may not trust). The tool can be set to accept all cookies, just first-party cookies, or no cookies at all. In many cases, setting the Privacy Companion to block third-party cookies thwarts the tracking software used by advertising agencies, but still allows the first-party cookies that many companies require before granting access to their sites.

The Enonymous Advisor ([www.enonymous.com](http://www.enonymous.com)) is a service that provides a “just-in-time” rating of more than 25,000 websites’ privacy policies. The product is a browser companion that can be downloaded and starts automatically every time the browser is in use. After the user enters an address, but before any user information is given to the site, a window automatically appears with links to details about that site’s privacy practices. This service ensures consumers’ privacy standards are always in line with the sites they use.

The Enonymous Advisor will also point out websites that carry a Better Business Bureau Online ([www.bbbonline.org](http://www.bbbonline.org)) or Truste ([www.truste.org](http://www.truste.org)) seal. Both seals signify that a website has complied with that service’s standards for privacy policies, information collection, handling, and more. More detailed information about standards for site membership is available on their respective web pages.

**Policy recommendation.** The false notion of an impending “privacy crisis” has inspired a knee-jerk reaction for government regulation. But the business incentive to cater to consumers’ privacy concerns renders potentially costly government regulations unnecessary. As FTC Commissioner Orson Swindle recently noted, “Legislation could limit consumer choices and provide a disincentive for the development of further technological solutions.”<sup>4</sup> Congress should practice restraint and choose not to mandate Internet privacy policies.

~ JESSICA P. MELUGIN

<sup>1</sup> “Privacy Online: Fair Practices in the Electronic Marketplace,” Federal Trade Commission (May 2000); available at [www.ftc.gov](http://www.ftc.gov).

<sup>2</sup> “Seizing the Initiative on Privacy: On-Line Industry Presses its Case for Self-Regulation,” *The New York Times*, 11 October 1999.

<sup>3</sup> “Privacy Online: Fair Practices in the Electronic Marketplace,” p. 10.

<sup>4</sup> Prepared written testimony of Federal Trade Commissioner Orson Swindle before the Senate Committee on Commerce, Science and Transportation, 25 May 2000.