

FTC Commissioner Comments on Consumer Privacy

Digital Media and Data Privacy Law Blog

By Elizabeth Spainhour on 03.08.2015

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Last week, we posted about the Consumer Privacy Bill of Rights “discussion draft” released by the Obama Administration. On Thursday, March 5, at the annual U.S. meeting of the International Association of Privacy Professionals (which I attended), FTC Commissioner Julie Brill answered questions about her take on the bill and other policy issues. Here are just a few comments from that discussion that merit a follow-up post:

- Commissioner Brill stated in no uncertain terms that the draft bill is not protective enough of consumers. At various times, she said there are “serious weaknesses in the draft,” “there’s no there there,” it needs “some meat,” and “where are the boundaries?” She mentioned a specific example of a more consumer-protective approach relating to consent to certain data practices. She indicated she would like to see the bill require *affirmative express* consent of the individual for (a) material retroactive changes to a privacy statement and (b) use of sensitive information out of context of the transaction in which it was collected.
- Although Section 402 of the draft bill provides that the FTC’s unfair and deceptive authority under Section 5 of the FTC Act remains intact, Commissioner Brill expressed concern that it is not clear enough in the bill that the FTC would retain its full authority to enforce the “common law” of privacy as developed in its prior enforcement actions.
- Will anything come of the bill this Congress? Commissioner Brill said she expects it’s unlikely given other legislative priorities at this time.

Commissioner Brill commended the Administration for grappling with tough issues and working to improve privacy overall. However, hers is one more voice calling for additional work on broad federal consumer privacy legislation.