

U.S. Senate Committee on Commerce, Science and Transportation

Hearing on Internet Privacy

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Submitted Testimony of:

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Mr. Chairman and Members of the Committee:

My name is Les Seagraves and I am the Chief Privacy Officer for EarthLink. I appreciate this opportunity to speak to you about EarthLink, privacy and legislation.

EarthLink, based in Atlanta, is the nation's 2nd largest Internet Service Provider, connecting approximately 5 million customers to the internet through dial-up, broadband and wireless services. We have built our company and customer base over the last 7 years by providing fast, reliable connections and superior customer service and technical support.

Our focus on customer service has immersed us in the privacy debate. While we generate the majority of our revenue from monthly subscription fees, there is always the temptation, not to mention a compelling business case, to sell our valuable customer information to third parties. But early in our company's history we decided to forgo the additional revenue we could make from selling our customers' personal information in exchange for gaining our customers' long term trust by protecting their privacy.

This decision continues to be a tough one. On one hand, EarthLink stands on the threshold of renewed profitability with pressure from shareholders and the investment community to squeeze out every extra dollar we can. And with the devaluation of internet advertising, merchants are increasingly willing to pay for targeted personal information.

On the other hand, we are an ISP with a strong focus on customer service. Our customers rely on us not only to give them fast, reliable internet connections, but to help them enjoy the best possible online experience. If our customers have technical problems, they can use our award-winning technical support. To reduce spam, they look to us to provide both server-side and client-side filters. And regarding their personal information, they look to us to protect their privacy. We have gladly accepted this role and continue to garner high levels of customer satisfaction and loyalty.

Why is EarthLink different?

As an ISP, we're not just running a website. We have lots of detailed customer information that would be quite valuable to "affiliates" or "partners" or other third-party marketers. Opt-in versus opt-out really isn't an issue for us because we don't share customers' personal information. Although our privacy policy may seem to be the typical notice, choice, access and security, the fact is that EarthLink is not in the business of selling, sharing or renting customers' personally identifying information. This is a huge distinction between EarthLink and many other companies that collect online information. We believe that good privacy means good business. Or put another way, trust equals revenue. EarthLink has highlighted privacy in its national advertising campaign with great response.

While we believe that our current privacy policy meets industry best practices, we are currently working on a new privacy policy which should set an example for proper clarity and scope. We will, in clear plain language, explain how and what information we collect, what we do with it and what a customer can do to protect their information. We have developed the following privacy principles as an internal guide to our day to day business activity:

1. We will let our customers know all of the personal information that we collect and what we do with it.
2. We will not give, sell or share personally identifying information to anyone except to:
 - comply with valid law enforcement requests for information
 - deliver our service to our customers

- honor agreements where customers come to us through third-party promotions
- 3. No one else will use the information that our customers give to us to contact our customers except on our behalf.
- 4. Our customers will be able to choose what non-essential information they provide to us.
- 5. Our customers will be able to choose how we contact them.
- 6. Our customers will have access to all of their personal information.
- 7. We will take care to secure all customer information that we have.
- 8. We will insure that all of our partners and contractors abide by and agree to these principles.

Why is EarthLink doing this?

I think it is important to point out the forces that control EarthLink's actions and decisions on privacy today. First, a strong stance on privacy is just good business. On the outside we are guided by the FTC privacy guidelines and Section 5 of the FTC Act. On the inside we do what we say we are going to do, this is one of the Core Values and Beliefs developed by former EarthLink Chairman and MindSpring founder Charles Brewer. If we make a huge privacy mistake, we would be severely penalized by the press, our customers and the market.

What would be the advantages to EarthLink if federal legislation passed?

Under most of the pending and proposed federal legislation in Congress today, EarthLink probably already complies without making significant changes. We have a solid privacy

policy. We notify customers what information we collect. Although we say we give customers a choice of sharing their information, so far we have not asked them to make the choice. Customers can access their information 24 hours a day through the internet or the telephone. Our network security involves some of the most advanced practices in the industry.

What would be the advantages to EarthLink if federal legislation passed?

Federal legislation would have certain benefits. It could set a much needed federal standard for privacy policies and practices. It could preempt state law, eliminating the need for EarthLink to navigate 50 different state privacy laws. It would also help to weed out those companies that abuse the privacy of others.

What are EarthLink's concerns about legislation?

Congress should exercise care not to create a regulatory minefield for good companies like EarthLink that do their best to comply. Legislative requirements should not prevent us from clearly and effectively communicating with our customers about their privacy. Legislation should not strain the ability of government by enforcing broad laws that focus on technical compliance rather than the actual harm to consumers.

In the media, much of the debate about privacy legislation seems to focus on opt-in versus opt-out provisions. While important, these provisions should be viewed in their proper context as part of the single information practice of notice. And we should all recognize that no standard is foolproof. Even with the stricter opt-in standard, if the

boxes on the screen are already checked, is it still opt-in? With either an opt-in or an opt-out standard, the bottom line is to ensure customer notice and consent.

We should further note that any proposed new privacy legislation would not be the first. Congress has a long history of enacting laws that address the use of personal information, including the Gramm-Leach-Bliley Act, the Health Insurance Portability and Accountability Act (HIPAA), the Children's Online Privacy Protection Act (COPPA), the Electronic Communications Privacy Act (ECPA), and many others.

However, Congress should also be aware of the unintended consequences that can result from even the best intentioned legislation. While few would argue with the goal of COPPA to prevent the collection of information from young minors, the cost of compliance proved to be too great for many legitimate, independent, local kid-oriented websites. In an online world where an increasing amount of web traffic is concentrated in a relative handful of sites owned by large media and software companies, privacy protection should not further reduce diversity on the World Wide Web.

How would legislation effect EarthLink's customers?

Most of our customers want to take advantage of the convenience and innovation that the internet provides. They want to get the best prices for merchandise and services. They don't want to have to log in to every web site. They want an internet that is customized to their tastes and preferences. They also want protection from fraud and misuse of their information. Our customers would benefit from the creation of a standard that clearly

gives them the information they need to make intelligent decisions about their own privacy. By encouraging the same technical innovation that brought us the internet, Congress can rely on the private sector as a partner in protecting privacy.

Conclusion: Suggestions to lawmakers:

If you must pass privacy legislation, focus on setting a standard not creating regulatory barriers. Focus on getting customers meaningful information they really need to make decisions. Focus on helping good companies like EarthLink provide services that people really want and use and thereby drive the economy.

Thank you again for the opportunity to testify.

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EarthLink Core Values & Beliefs

What's important at EarthLink? We are convinced that the key to creating a truly great organization is an intense focus on the values that guide its people's actions. These are EarthLink's "Core Values and Beliefs". If we don't seem to be living up to them, call us on it!

- We respect the individual, and believe that individuals who are treated with respect and given responsibility respond by giving their best.
- We require complete honesty and integrity in everything we do.
- We make commitments with care, and then live up to them. In all things, we do what we say we are going to do.

- Work is an important part of life, and it should be fun. Being a good businessperson does not mean being stuffy and boring.
- We love to compete, and we believe that competition brings out the best in us.
- We are frugal. We guard and conserve the company's resources with at least the same vigilance that we would use to guard and conserve our own personal resources.
- We insist on giving our best effort in everything we undertake. Furthermore, we see a huge difference between "good mistakes" (best effort, bad result) and "bad mistakes" (sloppiness or lack of effort).
- Clarity in understanding our mission, our goals, and what we expect from each other is critical to our success.
- We are believers in the Golden Rule. In all our dealings we will strive to be friendly and courteous, as well as fair and compassionate.
- We feel a sense of urgency on any matters related to our customers. We own problems and we are always responsive. We are customer-driven.