



NATIONAL
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Department of Commerce
National Telecommunications and Information Administration
Multistakeholder Process to Develop Consumer Privacy Data Codes of Conduct
Docket No. 120214135-2135-01

Via electronic filing: privacyrfc2012@ntia.doc.gov

March 26, 2012

Comments of the National Association of REALTORS®

On behalf of the 1.1 million members of the National Association of REALTORS® (NAR) and more than 1400 local REALTOR® associations, I wish to thank you for this opportunity to respond to the Administration's recent white paper Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy. NAR applauds the Administration for embracing a multi-stakeholder framework to enhance consumer privacy. We believe that the primary goal of a dynamic privacy framework should be to protect consumers while, at the same time, encouraging continued online innovation. NAR notes that it is critical that the multi-stakeholder process consider all relevant voices on this most important issue—including the small business/independent contractor whose business model is increasingly dependent on internet technologies to innovate and thrive. Real estate professionals are often just this type of business.

Real estate firms vary widely in size, but the overwhelming majority of realty firms are very small entities. NAR's most recent surveys indicate that more than half of all realty firms have less than twenty-five agents and that the typical REALTOR® is affiliated with an independent realty firm with only one office. This unique industry structure can make compliance with regulatory burdens particularly onerous. Further compounding this concern is the independent contractor status of the overwhelming majority of real estate sales professionals. Any new privacy and data security requirements will necessarily impact the individual real estate agent who is a legal business entity separate from the real estate company with which they are affiliated.

Traditionally technology policy debates—including online privacy—are generally played out between the technology industry lead by large technology vendors and consumer advocacy groups who, while important to the discussion, may have a tenuous link to business technology users. Often left out of the discussion are the many businesses that increasingly rely on technology products. These businesses, including REALTORS®, are both consumers of technology who may or may not share interests with their technology vendors, as well as business concerns (often small businesses) who are concerned with the cost that additional regulatory burden may add to their bottom line. As such, these technology-dependent businesses tread the line between industry and consumer interests and often offer a unique and important perspective on technology policy debates. NAR strongly



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believes that the multi-stakeholder process must include voices like ours and others who are often not automatically at the table for technology policy debates.

REALTORS® recognize that respecting and safeguarding privacy builds consumer confidence and enhances the trusted relationship between a REALTOR® and his client. For this reason, NAR has long been supportive of efforts to protect consumers' sensitive personal information.ⁱ However, we strongly believe that any new comprehensive federal privacy law must be narrowly tailored to minimize the regulatory burden such a law could place on vulnerable independent contractors and small businesses.

We are pleased that the Privacy Framework addresses consumer privacy through the use of self-regulatory regimes. NAR supports the development of voluntary codes of conduct that enable continued flexibility in rules that can evolve with new technologies and business models. Self-regulation is an effective method of protecting consumer privacy because it allows for flexible responses to rapidly changing market developments—including changes in consumer preferences and concerns—as well as advances in technology. Entities that will have to comply with these codes of conduct should be responsible for their creation because it goes against the notion of self-regulation if these policies are actually developed and imposed on industry by government agencies.

Moreover, industry codes of conduct will allow for consideration of industry specific characteristics that will encourage the implementation of more efficient and comprehensive consumer privacy protections. In the case of real estate for example, the relationship of the independent agent to his broker could create undue burdens on small businesses or loopholes leaving consumers at risk in a one-size-fits-all regulatory scheme. A real estate specific code of conduct will necessarily consider the independent contractor relationship to create rules that are more likely to be complied with, thereby maximizing consumer protections.

We thank you for your work on this important consumer issue to date and urge that small entities, including independent contractors, be included in any multi-stakeholder process. Their involvement will be critical in order to ensure that all relevant parties are heard. We look forward to working with you to advance a consumer privacy framework that will both protect consumers and create an environment where businesses and innovation can flourish.

Sincerely,

A handwritten signature in black ink, appearing to read "Moe", followed by a horizontal line.

Maurice "Moe" Veissi
2012 President, National Association of REALTORS®

ⁱ The REALTOR® Code of Ethics and Standards of Practice explicitly acknowledge a REALTOR's® obligation to preserve the confidentiality of personal information provided by clients in the course of any agency or non-agency relationship - both during and after the termination of these business relationships. Protection of client personal information is an important part of the trusted relationship our members enjoy with their clients.