

# When was your company's website privacy policy last updated?

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# Fair Information Practice Principles

- Notice about information:
  - Collection: by whom and what and how collected
  - Use: how used
  - Disclosure: to whom disclosed
- Choice: use of information beyond necessary to complete contemplated transaction
- Access
- Security
- Enforcement

## Section 5 of the Federal Trade Commission Act

- Prohibits unfair or deceptive practices in commerce
  - Unfair: causes injury to consumers that (i) is substantial, (ii) is not outweighed by countervailing benefits to consumers and competition and (iii) consumer could not necessarily have avoided
  - Deceptive: material representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances
- FTC cases
  - Enforcement of promises in company privacy policies
  - Fact-specific

## Example of privacy policy provisions under scrutiny

- Disclosure of information to third parties/others, often in mergers & acquisitions and bankruptcy
  - FTC letter regarding XY.com and XY Magazine (2010)
  - FTC cases:
    - Gateway Learning (2004)
    - Toysmart (2000)

## Recent regulatory developments

- Department of Commerce green paper (2010)
- FTC preliminary report on privacy (2010)
- FTC case: Sears Holding (2009)
- FTC report on self-regulatory principles for online behavioral advertising (2009)

## Example of description of cookies

- A “cookie” is a bit of information that a Web site sends to your Web browser that helps the site remember information about you and your preferences.
- “Session” cookies are temporary bits of information that are used to improve navigation, block visitors from providing information where inappropriate and collect aggregate statistical information on the site. They are erased once you exit your Web browser or otherwise turn off your computer.

## Example of description of cookies

- “Persistent” cookies are more permanent bits of information that are placed on the hard drive of your computer and stay there unless you delete the cookie. Persistent cookies store information on your computer for a number of purposes, such as retrieving certain information you have previously provided (such as passwords), helping to determine what areas of the Web site visitors find most valuable, and customizing the Web site based on your preferences on an ongoing basis.

## Example of description of cookies

- Persistent cookies placed by this site on your computer may hold personally identifiable information, but only if you have registered or have otherwise consented to the retention of personally identifiable information you have provided at the site. Otherwise, our site's server only knows that an unidentified visitor with your cookie has returned to the site.

## Example of description of third party advertising

- Kodak and Kodak Imaging Network participates in cookie-based ad networks operated by:
  - Netmining LLC.
  - AOL and affiliates, Tacoda and Advertising.com

## Example of description of third party advertising

- These companies use cookies, web beacons, pixels, or other technologies to collect information about the effectiveness of their advertisements and the types of ads that would be of greatest interest to you. These tools allow them to track some data relating to your computer and your internet browsing on Kodak sites or other sites that participate in their networks. This data includes your computer's IP Address, the website addresses visited, the browser type used, the computer's operating system, and the date, time and duration of the visit to each page. We do not permit these companies to collect any personal information about you, such as your name, e-mail or physical address.

## Example of description of third party advertising:

- For more information about these specialized cookies and other technologies, and how to “opt out” of information collection by these companies, we suggest you visit: <http://www.netmining.com/en/privacy-policy-service.html>, [http://www.tacoda.com/notice/privacy\\_policy.html](http://www.tacoda.com/notice/privacy_policy.html) and [http://www.advertising.com/privacy\\_policy\\_details.php](http://www.advertising.com/privacy_policy_details.php)
- In addition, the Network Advertising Initiative offers useful information about Internet advertising companies (also called "ad networks" or "network advertisers"), including **information about how to opt-out of their information collection.**  
Please visit [http://networkadvertising.org/optout\\_nonppii.asp](http://networkadvertising.org/optout_nonppii.asp)

## Example of description of Web beacons

- **Web Beacons:** We also place small “tracker gifs” or “beacons” on many of the pages on our website, in online advertising with third parties, and in our e-mail. We use these beacons, in connection with cookies, to collect non-personal data on the usage of our site including but not limited to the date and time of the visit, the pages visited, the referring web page, the type of browser (e.g., Internet Explorer, Firefox), the type of operating system (e.g., Windows, Linux, or Mac), and the domain name of the visitor's Internet service provider (e.g., AOL).

## Example of description of Web beacons

- This information is collected about thousands of site visits and analyzed as a whole. This information is useful in, for example, tracking the performance of our online advertising such as online banner ads and to determine where to place future advertising on other web sites.

## How up-to-date is your company's website privacy policy?

- When was the policy last revised?
- Since the date of the last revision, has your company's use of the website, the website itself or the company's business changed?
- How does the policy compare with those of its competitors?
- Are recent developments considered?

## FTC preliminary report on privacy

- Proposed limited set of “commonly accepted practices” for which companies should not be required to seek consent once the consumer elects to use the product or service:
  - product and service fulfillment
  - internal operations
  - fraud prevention
  - legal compliance and public purpose
  - first-party marketing

## FTC preliminary report on privacy

- Considering the appropriate way to obtain consent for practices that are not “commonly accepted”
- Should simplify consumer choice and provide choice mechanisms in a prominent, relevant and easily accessible place for consumers
- Suggested “Do Not Track” approach: the placement of a persistent setting, similar to a cookie, on the consumer’s browser signaling the consumer’s choices about being tracked and receiving targeted ads

## FTC preliminary report on privacy

- Should standardize format and terminology used
- Companies dealing with consumers' data should keep up-to-date on privacy-related developments and should modify their practices as necessary to maintain privacy and ensure that their practices comport with their representations to consumers

## Personally versus non-personally identifiable information

- Recent Federal Trade Commission Roundtable participants discussed the diminishing distinction between personally identifiable information like name, address and social security number and anonymous or de-identified information and suggested that any data relating to a person has privacy implications and should be appropriately protected