



**17 December 2008**

**To: Susan Ness, Phil Weiser, and Peter Swire/FTC Transition Team**

**From: Jeffrey Chester, Center for Digital Democracy**

**Re: The Role of the FTC During the Administration of President Obama**

The Federal Trade Commission has a potentially extraordinary role to play in the new Administration. The agency should be engaged in developing and promoting policies that protect privacy, ensure consumer welfare, and stimulate economic development. Unfortunately, in recent years the commission has largely failed to comprehend the threats to consumer privacy arising from the data collection-based online marketing system. It ignored, for example, the role that data collection and behavioral targeting played in the marketing of subprime loans and other consumer financial products. Indeed, we believe the glaring failure of the FTC to investigate this area and to alert policymakers and the public to the dangers makes it partially responsible for the tragic economic conditions so many Americans now face.

Under new leadership, the FTC should view its role as a champion of consumers. Today, a prevailing view among a number of FTC officials is that the agency is not an advocate for consumer interests—a wrong-headed and cynical, not to mention dangerous, approach that undermines the basic need to protect consumers. Under the current regime, there has been a conscious decision not to have the FTC staff engage in rigorous intellectual analysis on a range of market issues. Consequently, in consumer protection, privacy, and online-related competition policy, the agency has failed to conduct the kind of serious inquiry that would enable it to make sophisticated recommendations or decisions. It has not developed a 21<sup>st</sup> century framework that will protect consumers in the digital marketing “ecosystem.” We saw this with behavioral advertising and privacy policy, protecting children and youth from marketing linked to the obesity crisis, and in the approval of the Google and DoubleClick merger, for example.

If the FTC is to help the country move forward during this crucial period of economic transition, it should:

- Make Consumer Protection its highest priority
- Recruit new staff for consumer protection with a background and commitment to consumer interests
- Engage in a serious and ongoing analysis of the digital marketplace, with a focus on the impact of interactive advertising/behavioral targeting on financial products, health and medical services, product purchasing, and children and adolescents
- Propose new policies to protect consumer privacy and welfare online
- Conduct meaningful public education initiatives, and improve its media/online outreach capability



- Work with the FCC and state authorities to create a new Mobile Marketing, Consumer Protection, and Privacy Task Force (with annual reports to the public, and, where appropriate, new legislation recommended to Congress).