

remedies include monetary restitution and rescission of contracts. In an administrative settlement, the Commission can obtain the full range of these remedies, since it is forgoing further litigation in federal court.

FTC's Administrative Complaint and Proposed Settlement With NTT

I have long been concerned with the FTC's Privacy Shield enforcement strategy, which overwhelmingly targets small businesses, some of whom may have made inadvertent mistakes. But these mistakes were still violations of law, and most of these orders did not involve violations of substantive protections of the Privacy Shield framework, so I have supported quick settlements with these small businesses given our limited resources. However, the FTC encountered a very different situation with a major data center company.

In November 2019, the Commission charged NTT Global Data Centers Americas (NTT), a major data center company controlled by Nippon Telephone & Telegraph formerly known as RagingWire, with failing to live up to its promises under the EU-U.S. Privacy Shield Framework. The Commission alleged that the company misrepresented its Privacy Shield participation and failed to meet certain obligations when it was a participant, including one of the core pillars: providing users with the ability to file complaints and disputes about their personal data. An administrative proceeding commenced, and NTT denied most of the Commission's allegations.³

The Commission now proposes to end the administrative litigation through a no-money, no-fault settlement that does not include any of the additional remedies available under the FTC Act for "dishonest" conduct. I believe the proposed settlement should be renegotiated, given that the additional evidence gathered suggests that the company's conduct was dishonest.

It is clear that the company's misrepresentations about Privacy Shield were not limited to a reference in its privacy policy. Most importantly, there was clear evidence of reliance on NTT's representations regarding its privacy

refund of money or return of property, the payment of damages, and public notification[.]"

³ Answer and Affirmative Defenses of Respondent RagingWire Data Centers, LLC, NTT Global Data Centers Americas, Inc., Docket No. 9386 (Nov. 25, 2019), https://www.ftc.gov/system/files/documents/cases/d09386_nov_25-r_answer_and_affirmative_defensepublic596761.pdf. In its answer, the company denied that it disseminated sales materials touting its participation in Privacy Shield. Answer ¶¶ 20–21.

protocols as a prerequisite for purchasing. Take the example of a customer of NTT, DreamHost, which offers web hosting services. DreamHost clearly values privacy. It carefully vets its partners to ensure compliance with the EU's General Data Protection Regulation. DreamHost specifically checks to see whether a prospective partner is a Privacy Shield participant. If not, DreamHost must take other steps to ensure that it meets its data protection obligations. The evidence in the record suggests that DreamHost is locked into a five-year contract that will not expire until 2022.⁴ Making matters worse, [non-public information redacted]. In other words, NTT's deception and dishonesty appears to have generated sales from customers who were seeking to protect customer privacy. This distorted the market, as NTT's competitors likely lost sales due to the alleged deception.

The proposed settlement does nothing for companies that put a premium on privacy, like DreamHost. A more appropriate settlement would include redress for customers, forfeiture of the company's gains from any deceptive sales practices, or a specific admission of liability that would allow its customers to pursue claims in private litigation. Perhaps most importantly, NTT customers that entered into long-term contracts should be free to renegotiate or terminate these agreements if they were finalized during the period when NTT was engaged in the alleged deceptive conduct. Companies like DreamHost should not be locked into long-term contracts with NTT, given the evidence of dishonest conduct. Contract remedies would allow customers to switch to NTT's law-abiding Privacy Shield-compliant competitors, who may have lost business due to the deception. Even if the Commission sought one or more of these remedies and NTT subsequently declined to agree, it would have been more prudent to resume the administrative litigation,⁵ at an appropriate time.⁶

⁴ See Declaration of Christopher Ghazarian, NTT Global Data Centers Americas, Inc., Docket No. 9386 (Dec. 20, 2019).

⁵ As noted earlier, if the Commission entered a final cease-and-desist order at the conclusion of litigation, I believe this could trigger civil penalties, pursuant to Section 5(m)(1)(B) of the FTC Act, for other companies with knowledge of the order that do not fulfill their obligations under the EU-U.S. Privacy Shield Framework or other privacy or security programs sponsored by the government or a standard-setting organization. In addition, there is a paucity of litigated FTC cases in the data protection arena, which hampers development of the law.

⁶ While I have great faith that our staff would be able to successfully renegotiate the existing no-

For these reasons, I respectfully dissent.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Generic for ACF Program Monitoring Activities (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) intends to request approval from the Office of Management and Budget (OMB) for a new generic clearance for information collections related to ACF program office monitoring activities. ACF programs promote the economic and social well-being of families, children, individuals, and communities. The proposed Generic for ACF Program Monitoring Activities would allow ACF program offices to collect standardized information from recipients that receive federal funds to ensure oversight, evaluation, support purposes, and stewardship of federal funds.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing OPREinfocollection@acf.hhs.gov. Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Program monitoring is a post-award process through which ACF assesses a recipient's programmatic

money, no-fault settlement, I would be willing to continue the administrative proceeding at some time in the future. The Commission has voted to issue a number of orders to pause administrative proceedings, given the safety and logistical concerns associated with the current pandemic.

performance and business management performance. Monitoring activities are necessary to ensure timely action by ACF to support grantees and protect federal interests.

Program offices would use information collected under this generic clearance to monitor funding recipient activities and to provide support or take

appropriate action, as needed. The information gathered will be used primarily for internal purposes, but aggregate data may be included in public materials such as Reports to Congress or program office documents. Following standard OMB requirements, ACF will submit a request for each individual data collection activity under

this generic clearance. Each request will include the individual form(s) or instrument(s), a justification specific to the individual information collection, and any supplementary documents. OMB is requested to review requests within 10 days of submission.

Respondents: ACF funding recipients.

BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hour per response	Total burden hours
Program Monitoring Forms	1500	3	10	45,000

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Mary B. Jones,
ACF/OPRE Certifying Officer.
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Advisory Committee on Heritable Disorders in Newborns and Children

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, section 1111(g) of the Public Health Service Act, this notice announces that the Advisory Committee on Heritable Disorders in Newborns and Children (ACHDNC or Committee) has scheduled a public meeting. Information about the ACHDNC and the agenda for this meeting can be found on the ACHDNC

website at <https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html>.

DATES: Thursday, August 6, 2020, from 10:00 a.m. to 3:00 p.m. Eastern Time (ET) and Friday, August 7, 2020, from 10:00 a.m. to 3:00 p.m. ET.

ADDRESSES: This meeting will be held via webinar. While this meeting is open to the public, advance registration is required. Please visit the ACHDNC website for information on registration: <https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html>. The deadline for online registration is 12:00 p.m. ET on August 6, 2020. Instructions on how to access the meeting via webcast will be provided upon registration.

FOR FURTHER INFORMATION CONTACT: Alaina Harris, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Room 18W66, Rockville, Maryland 20857; 301-443-0721; or ACHDNC@hrsa.gov.

SUPPLEMENTARY INFORMATION: ACHDNC provides advice and recommendations to the Secretary of HHS (Secretary) on the development of newborn screening activities, technologies, policies, guidelines, and programs for effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders. ACHDNC's recommendations regarding inclusion of additional conditions for screening, following adoption by the Secretary, are evidence-informed preventive health services provided for in the comprehensive guidelines supported by HRSA through the Recommended Uniform Screening Panel (RUSP) pursuant to section 2713 of the Public Health Service Act (42 U.S.C. 300gg-13). Under this provision, non-grandfathered group health plans and health insurance issuers offering group or individual health insurance are required to provide insurance coverage

without cost-sharing (a co-payment, co-insurance, or deductible) for preventive services for plan years (*i.e.*, policy years) beginning on or after the date that is one year from the Secretary's adoption of the condition for screening.

During the August 6-7, 2020, meeting, ACHDNC will hear from experts in the fields of public health, medicine, heritable disorders, rare disorders, and newborn screening. Agenda items will include updates on the Committee's evidence review process. There will be no Committee votes on recommending new conditions for the RUSP. Agenda items are subject to changes as priorities dictate. Refer to the ACHDNC website for any updated information concerning the meeting. Information about the ACHDNC, a roster of members, as well as past meeting summaries, are also available on the ACHDNC website.

Members of the public will have the opportunity to provide comments. Public participants may submit written statements in advance of the scheduled meeting. Oral comments will be honored in the order they are requested and may be limited as time allows. Requests to provide a written statement or make oral comments to the ACHDNC must be submitted via the registration website by Monday, August 3, 2020, by 12:00 p.m. ET.

Individuals who need special assistance or another reasonable accommodation should notify Alaina Harris at the address and phone number listed above at least 10 business days prior to the meeting.

Maria G. Button,
Director, Executive Secretariat.
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