

to the families, and we have every intention of pursuing it on this side of the aisle.

I yield the floor.

#### INTERNET PRIVACY

Mr. KERRY. Mr. President, last night, the FTC released its report on Internet privacy. We are, all of us, in the midst of an Internet revolution in this country. It is extraordinary, when we think about it, to take note of the fact that the Internet has only been in existence about 6 or 7 years now. During that time, it has had a profound impact on everybody's life, particularly on business, and increasingly on consumer opportunity.

I have tremendous respect for the work the FTC has done on this issue. Its monitoring of web sites and the convening of working groups have been very helpful in educating all of us on a very complicated new arena. The FTC plays an important role in oversight and regulating our economy, and I think it is fair to say that its Commissioners have navigated admirably through the complexity of the new economy.

But—and here is the “but,” Mr. President—at this particular moment in time, I very respectfully disagree with the regulatory approach to Internet privacy proposed by the FTC. Let me be clear. Yes, consumers have a legitimate expectation of privacy on the Internet, and they will demand it, and I personally want that right of privacy protected. But I also believe that they want an Internet that is free and that gives them more choices rather than fewer. I believe that a regulatory approach mandated by in-depth, detailed congressional legislation at this particular point in time could actually harm consumers in the long run by limiting their choices on the Internet.

On the Internet today, we can buy and sell anything. We can research everything from health information to sports scores to movie reviews. We can keep track of our stock portfolios, tomorrow's weather, and the news throughout the world. And we do most of that free of charge. The reason we can surf from page to page for free is because the Internet, like television, is supported by advertising—or is struggling to be supported by advertising. Obviously, access is by subscription in most cases; but the point is that advertising is increasingly growing. Business spent more than \$1.9 billion to advertise on the web in 1998, with spending on electronic advertising expected to climb to \$6.7 billion by 2001.

It is this advertising that is the reason we don't have a subscription-based Internet—at least at this point in time. That would clearly limit a lot of people's online activities, and it would contribute to the so-called digital divide. Instead, we have an Internet that we can freely explore. It is my sense that people like this model of the Internet, and they understand that the

banner ads they see on their screens are necessary in order to try to keep the Internet free.

What I don't think people understand is that, at least for now, the model for Internet advertising is going to include ads that are narrowly targeted to particular customers. The jury is still out on whether a targeted model is going to work. Currently, the click-through rates—the average percentage of web surfers who click on any single banner ad have fallen below the 1-percent mark, compared with about 2 percent in 1998. Some see that as a sign that the advertising model on the Internet has failed. Others say the percentages are lower, but that is because more and more ads are being placed. What it tells me is that it is simply too soon for the Congress of the United States to step in and prevent that model from running its course. If, for the time being, we allow or acknowledge that the economy of the Internet calls for targeted advertising, we must also recognize that it won't attract customers if they believe their privacy is being violated.

Finding the fine balance of permitting enough free flow of information to allow ads to work and protecting consumers' privacy is going to be critical if the Internet is going to reach its full potential. I believe that we in Congress have a role to play in finding that balance, although we should tread very lightly in doing so.

In the past, I have argued that self-regulation was the best answer for consumers and the high-tech industry itself in relation to privacy. I hope we can continue to focus on self-regulation because Congress will, frankly, never be light-footed enough—nor fast-footed enough—to keep up with the technological changes that are taking place in the online world.

However, poll after poll shows that consumers are anxious that their privacy is not being protected when they go online.

For example, a 1999 survey by the National Consumers League found 73 percent of online users are not comfortable providing credit card or financial information online and 70 percent are uncomfortable giving out personal information to businesses online. Moreover, due to privacy concerns, 42 percent of those who use the Internet are using it solely to gather information rather than to make purchases online.

Likewise, a Business Week survey in March 2000 noted that concern over privacy on the Internet is rising. A clear majority—57 percent—favor some sort of law regulating how personal information is collected and used. According to Business Week, regulation may become essential to the continued growth of e-commerce, since 41 percent of online shoppers say they are very concerned over the use of personal information, up from 31 percent two years ago. Perhaps more telling, among people who go online but have not shopped there, 63 percent are very concerned, up from 52 percent two years ago.

In addition to it being too early in the process for Congress to embark on sweeping legislation, I believe there are still a number of fundamental questions that we need to answer. The first is whether there is a difference between privacy in the offline and online worlds.

I think polls like that are the result of the failure, so far, of industry to take the necessary initiative to protect consumers' privacy. But we should not neglect to notice that industry is making progress. When the Federal Trade Commission testified before the Commerce Committee about this time last year, it cited studies showing that roughly two-thirds of some of the busiest Web sites had some form of disclosure of privacy policies. This year, the FTC reports that 90 percent of sites have disclosure policies. Likewise, last year the FTC found that only 10 percent of sites implemented the four core privacy principles of notice, choice, access and security. This year the FTC reports that figure at 20 percent. That is still not high enough, but this is a five-year-old industry. We've seen significant improvements without the need for intrusive congressional intervention. It is simply too soon to write off a market driven approach to privacy.

Most of us don't think about it. But I want to make a point about the distinction between the offline and online world. When you go to the supermarket and you walk into any store and swish your card through the checkout scanner, that scanner has a record of precisely what you bought. In effect, today in the offline world, people are getting extraordinarily detailed information about what you are purchasing. The question, therefore, is to be asked: Is there some kind of preference about what happens at the supermarket, or any other kind of store, and is that somehow less protected than the choice you make online? Likewise, catalog companies compile and use offline information to make marketing decisions. These companies rent lists compiled by list brokers. The list brokers obtain marketing data and names from the public domain and governments, credit bureaus, financial institutions, credit card companies, retail establishments, and other catalogers and mass mailers.

I have been collecting the catalogs that I have received just in the last few weeks from not one online purchase, and I have been targeted by about 50 catalogs just on the basis of offline purchases that have been made and not because of an online existence.

Even in politics, off-line privacy protections may be less than those we are already seeing online. For example, we all know that campaigns can and do get voter registration lists from their states and can screen based on how often individuals vote. They will take this data and add names from magazines—Democrats could use the New Republic and Republicans might choose

the National Review—and advocacy groups, and target all of them. With those combined lists, campaigns decide which potential voters to target for which mailings. The campaigns will also often share lists with each other and with party committees. All of this goes on offline.

On the other hand, when I go to the shopping mall and I walk into a store and look at five different items, five sweaters, or five pairs of pants, whatever it may be, and I don't buy any of them, there is no record of them at all. But there is a record of that kind of traveling or perusal, if you will, with respect to the web.

There are clearly questions that we have to resolve with respect to what kind of anonymity can be protected with respect to the online transaction.

I just do not think this is the moment for us to legislate. I think we need to study the issue of access very significantly.

There is a general agreement that consumers should have access to information that they provided to a web site. We still don't know whether it is necessary or proper to have consumers have access to all of the information that is gathered about an individual.

Should consumers have access to click-stream data or so-called derived data by which a company uses compiled information to make a marketing decision about the consumer? And if we decide that consumers need some access for this type of information, is it technologically feasible? Will there be unforeseen or unintended consequences such as an increased risk of security breaches? Will there be less rather than more privacy due to the necessary coupling of names and data?

Again, I don't believe we have the answers, and I don't believe we are in a position to regulate until we have thoroughly examined and experienced the work on those issues.

I disagree with those who think that this is the time for heavy-handed legislation from the Congress. Nevertheless, I believe we can legislate the outlines of a structure in which we provide some consumer protections and in which we set certain goals with which we encourage the consumer to familiarize themselves while we encourage the companies to develop the technology and the capacity to do it.

Clearly, opting in is a principle that most people believe ought to be maximized. Anonymity is a principle that most people believe can help cure most of the ills of targeted sales. For instance, you don't need to know if it is John Smith living on Myrtle Street. You simply need to know how many times a particular kind of purchase may have been made in a particular demographic. And it may be possible to maintain the anonymity and provide the kind of protection without major legislation. It seems to me that most companies will opt for that.

In addition to that, we need to resolve the question of how much access

an individual will have to their own information, and what rights they will have with respect to that.

Finally, we need to deal with the question of enforcement, which will be particularly important. It is one that we need to examine further. I believe that there is much for us to examine. We should not, in a sense, intervene in a way that will have a negative impact on the extraordinary growth of the Internet, even as we protect privacy and establish some principles by which we should guide ourselves. I believe that the FTC proposal reaches too far in that regard.

I hope my colleagues in the Senate will join me in an effort to embrace goals without the kind of detailed intrusion that has been suggested.

I thank the Chair.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### EXECUTIVE SESSION

#### NOMINATION OF BRADLEY A. SMITH, OF OHIO, TO BE A MEMBER OF THE FEDERAL ELECTION COMMISSION

The PRESIDING OFFICER. Under the previous order, the hour of 11:30 a.m. having arrived, the Senate will proceed to executive session.

The legislative clerk read the nomination of Bradley A. Smith, of Ohio, to be a member of the Federal Election Commission.

Mr. McCONNELL. Mr. President, based on the caricatures of Professor Bradley Smith, one would think he must have horns and a tail. I unveil a picture of Brad Smith and his family in the hopes of putting to rest some of these rumors.

Let me quote Professor Smith himself on this point, talking about the experience he has had over the last 10 months. He said: In the last 10 months since my name first surfaced as a candidate, certain outside groups and editorial writers opposed to this nomination have relied on invective and ridicule to try to discredit me. Among other things, some have likened nominating me to nominating Larry Flynt, a pornographer, to high office. Nominating me has been likened to nominating David Duke, one-time leader in the Ku Klux Klan, to high office. Nominating me has been likened to nominating Theodore Kaczynski, the Unabomber, a murderer, to high office.

Professor Smith went on and said: Just this week I saw a new one. I was compared to nominating Jerry Springer, which is probably not a good comparison since Springer is a Democrat. Other critics have attempted ridicule, labeling me a "flat Earth Society poobah," and more.

He says: I say all this not by way of complaint because I'm sure that Mem-

bers—he is referring to Members of the Senate—have probably been called similar or worse things in the course of their public lives.

I thought it might be appropriate to begin with a photograph of Professor Smith and his family, which bears little resemblance to Larry Flynt, David Duke, or Theodore Kaczynski.

It is my distinct honor today to rise in support of the nomination of Professor Bradley A. Smith to fill the open Republican seat on the bipartisan Federal Election Commission.

In considering the two FEC nominees, Professor Brad Smith and Commissioner Danny McDonald, the Senate must answer two fundamental questions: Is each nominee experienced, principled, and ethical? And: Will the FEC continue to be a balanced, bipartisan commission?

I might state this is a different kind of commission. It is a commission set up on purpose to have three members of one party and three members of another party so that neither party can take advantage of the other in these electoral matters that come before the Commission. The Federal Election Commission is charged with regulating the political speech of individuals, groups, and parties without violating the first amendment guarantee of freedom of speech and association—obviously, a delicate task.

Over the past quarter century, the FEC has had difficulty maintaining this all-important balance and has been chastised, even sanctioned, by the Federal courts for overzealous prosecution and enforcement that treated the Constitution with contempt and trampled the rights of ordinary citizens.

In light of the FEC's congressionally mandated balancing act and the fundamental constitutional freedoms at stake, Congress established the balanced, bipartisan, six-member Federal Election Commission. The law and practice behind the FEC nominations process has been to allow each party to select its FEC nominees. The Republicans pick the Republicans; the Democrats pick the Democrats. As President Clinton said recently, this is, "the plain intent of the law, which requires that it be bipartisan and by all tradition, that the majority make the nomination" to fill the Republican seat on the Commission.

Professor Bradley Smith was a Republican choice agreed to by the Republicans in the House and the Republicans in the Senate and put forward by the Republicans to the President of the United States, who has nominated him.

Typically, Republicans complain that the Democratic nominees prefer too much regulation and too little freedom, while Democrats complain that the Republican nominees prefer too little regulation and too much freedom.

Ultimately both sides bluster and delay a bit, create a little free media attention, and then move the nominees forward. In fact, the Senate has never