Does the Privacy “Framework” Matter?

- **Turf war over privacy regulation**
  - FTC, CFPB, Congress, Obama Administration and others are fighting each other to “own” the privacy issue
  - Does the Obama administration’s position matter?
    - DC is shut down until after the election
    - GOP Platform references “privacy” 3x, none relevant to this topic

- **Abstract principles; rehash of long-standing privacy doctrines**

- **Report’s main contributions**
  - Government-guided negotiations between industry and consumer advocates
  - Favors federal solutions and FTC enforcement over options
Report Elements

- Privacy Bill of Rights
- Multi-stakeholder process to implement
- Enforcement
- International coordination
Fair Information Practices Principles

**FTC’s Interpretation** of FIPPs

- (1) Notice/Awareness
- (2) Choice/Consent
- (3) Access/Participation
- (4) Integrity/Security
- (5) Enforcement/Redress
Privacy Bill of Rights [and FIPPs analog]

- Individual control [choice]
- Transparency [notice]
- Respect for context [purpose specification + use limitation]
- Security [security]
- Access and accuracy [access]
- Focused collection
- Accountability [enforcement/redress]

Note: Incumbents usually think they do all of this (ex: Facebook’s definition of “opt-in”)
Who Develops the Implementation?

- International entities
- National entities [BOR-preferred]
- States [BOR would preempt]
- Common law [BOR would preempt]
- Industry standards/“codes of conduct” [BOR-preferred]
  - But opportunity for competitor collusion
  - Biased towards incumbents
    - Small entities don’t participate
    - Next great startup can’t participate
    - See Campbell et al, Privacy Regulation and Market Structure

- Technology
Who Enforces Violations of the Rules?

- See generally Eric Goldman, The Irony of Privacy Class Action Litigation
- Federal Trade Commission [BOR-preferred]
- Other federal agencies, e.g., CFPB
- State AGs [OK with BOR?]?
- Private litigation (especially class action lawsuits)
- Industry enforcement/certification
- Technology
- Publicity/word of mouth (market mechanisms)
What’s Happened Since the Report Issued?

- Legislation unlikely in near future

- First multi-stakeholder effort: mobile apps notice (see [http://www.ntia.doc.gov/category/privacy](http://www.ntia.doc.gov/category/privacy)). **Tech Daily Dose** report:
  - Meetings are “messy, sprawling, and not conducive to quick action”
  - “Quite a bit of lobbying muscle is being brought to bear”

- Other stakeholder efforts could move in parallel (ex: HR data in cloud) + parallel efforts in cybersecurity