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February 12, 2001

**Via Facsimile and Regular Mail**

Toby Milgrom Levin  
Dean C. Forbes  
Division of Advertising Practices  
Federal Trade Commission  
Washington, D.C. 20580

Re: *Amazon.com Information Practices and Privacy Notice*

Dear Ms. Levin and Mr. Forbes:

As we discussed, I am writing to reaffirm Amazon.com's commitment to abide by the privacy policies and practices set forth in our Privacy Notice and to confirm your understanding of how we administer those policies and practices.

As background, you should know that we have attempted to work directly with the Electronic Privacy Information Center and Junkbusters (the "complainants") – as well as other privacy and consumer groups – to address their issues and to consult with them about potential new features for our customers. Amazon.com has long supported many of the same goals that those organizations advocate, such as customer notice, choice, and access regarding the information that customers give to companies.

Obviously, we strongly disagree with the complainants' public accusations regarding Amazon.com's revised Privacy Notice. Amazon.com has devoted a great deal of energy, management time, and resources to considering our privacy policies and developing a Privacy Notice that is clear, fair, and responsive to the needs and desires of our customers. We believe our new Privacy Notice is a significant improvement over our old privacy policy; it is actually *more* protective of customer privacy than the old policy. Further, our desire for customers to read and understand the Privacy Notice led us not only to change the policy on our Web site and announce the changes publicly to the press, but to take the unprecedented step of notifying each and every Amazon.com customer by email about the changes. Given how much clearer (and more protective of customers) our new Privacy Notice is than our old one, we are perplexed that the complainants now seem to be calling for a return to the old policy.

In response to some of the more general concerns voiced by the complainants, let me start by confirming that Amazon.com has done nothing different with customer information collected before the new Privacy Notice went into effect. Specifically:

P.O. BOX 81226, SEATTLE, WASHINGTON 98108-1226  
Tel. (206) 622-2335

WWW.AMAZON.COM

- We have *never* sold customer information or mailing lists to marketers, financial institutions, subscription clearinghouses, "Trusted Partner" or "affiliated" web sites like drugstore.com or pets.com, or other third parties.
- We will *never* do so without customer consent. Although Amazon.com's old privacy policy specifically reserved the right to sell customer information to "trustworthy third parties" without customer consent (except for customers who told us not to by sending an email to [never@amazon.com](mailto:never@amazon.com)), we never did so and we will not in the future.

Under the new Privacy Notice, Amazon.com shares only information relating to *specific transactions* (on a transaction-by-transaction basis) with *co-branded* or *jointly owned* businesses – namely, Toysrus.com (for Toysrus.com toy purchases), Greenlight.com (for automobile purchases on our co-branded auto store), and some wireless service providers (for purchases of wireless telephone service). But even in those circumstances, customer information is transferred only after (1) the customer receives notice of the information sharing via messaging on the Web site, (2) the customer opts to go ahead with the transaction in the context of a clearly co-branded online environment (*i.e.*, where the information transfer is explicitly disclosed or otherwise evident to the customer as part of the transaction), and (3) the sharing is limited to information relating to the specific transaction in question. For example, the Amazon.com book purchases of a customer who also purchases a Toysrus.com toy selection is not disclosed to Toysrus.com or anyone else; only information about the specific toy purchase is shared with Toysrus.com. Thus, we only share information about transactions with co-branded and jointly owned businesses with the consent of the customers themselves.

I respond to some of the more specific questions and issues raised by the complainants, below.

1. **How Does the New Privacy Notice Provide More Protection for Customers?**

As many have observed, Amazon.com's old privacy policy specifically reserved the company's right to sell customer information to marketers and other third parties at any time, without giving additional notice to or obtaining additional consent from customers. Thus, the old policy read:

Amazon.com does not sell, trade, or rent your personal information to others. We may choose to do so in the future with trustworthy third parties, but you can tell us not to by sending a blank e-mail message to [never@amazon.com](mailto:never@amazon.com). (emphasis added)

When we revised Amazon.com's privacy policy last summer, the company made the decision to relinquish that right to sell customer data. In keeping with our continued support for customer notice and choice regarding personal information gathered from customers, we adopted as our model the basic and easily understood principle that Amazon.com will *never sell* customer information to third parties without customer consent. In fact, under our new policy, we will not even *transfer* customer information to third parties except in certain limited, largely intuitive circumstances, most of which either already existed under the old policy or require customer consent in any event.

Thus, under the new Privacy Notice, the basic commitment we previously made to customers who opted out by e-mailing [never@amazon.com](mailto:never@amazon.com) has been extended to *all* our customers. No opt-out is required; it's no longer necessary to send an e-mail. Now, for each and every customer, Amazon.com promises not to transfer customer information without customer consent, except as specifically enumerated in the Privacy Notice.

## 2. How Will Amazon.com Obtain Customer Consent?

The Privacy Notice sets out Amazon.com's commitment to providing notice and choice to customers regarding how their information is shared in the future, and we intend to live up to that commitment. At the same time, we know we can't predict the future with certainty – either the circumstances where Amazon.com might want to transfer customer information, or the best method available for obtaining customer consent in a given circumstance. Thus, the policy sets forth a fundamental commitment – to obtain customer consent by providing notice and choice before selling information to third parties if we ever decide to do that – and the company retains some flexibility within that commitment to figure out the best way to give customers real notice and meaningful choice under the circumstances.

## 3. Does the "Business Transfers" Paragraph Change Amazon.com's Policies?

Many elements of the new Privacy Notice were added not because they represent changes in policy, but because they provide more and clearer information about the company's existing policies and practices. The so-called "business transfers" paragraph, which makes clear that relevant customer information passes along with other company assets when a business unit or the entire company is sold or transferred, is a good example.

It has always been self-evident that customer information is an inseparable part of our business and that such information would necessarily be included in any business unit acquisition or sale. Indeed, in a merger or stock sale, the most common type of acquisition, customer information would be included as part of the transaction as a matter of law. Prior to the publicization of our new Privacy Notice, no one ever suggested that customer information relating to a business unit or product line would not pass as a matter of course to an acquiring party along with the rest of the business. Certainly, the old notice never suggested such an interpretation, and Amazon.com never intended or implied one.

In fact, it is well understood and expected that customer information is normally transferred in mergers and acquisitions of businesses or business units. These kinds of transfers happen every day – often with far more sensitive customer information – when banks and financial institutions merge or dissolve. Likewise, in the wide-ranging debate over the Time-Warner/AOL merger, no one has ever suggested that the *Time* or *People* magazine subscriber lists or the pay-per-view movie purchase history of cable customers should somehow be immune from transfer to the combined AOL/Time Warner entity. To the contrary, subscribers are more likely to be concerned with ensuring continued and timely service – something that's impossible to achieve without customer information.

Importantly, however, customers also understand and expect companies to keep the promises they make regarding information they volunteer, regardless of which particular corporate entity "owns" the company. Thus, Amazon.com understands and expects that any

transfer of customer information in connection with the sale or acquisition of a business unit carries with it all of the restrictions placed on that information by Amazon.com's Privacy Notice – that is, it cannot be sold by the acquiring company to marketers or other third parties (outside the context of a subsequent transfer of the entire business unit or the other enumerated exceptions) without the consent of customers.

4. **The “Business Transfers” Paragraph Does Not Permit Sale of Customer Information Absent A Sale or Acquisition of the Company or Business Unit.**

As noted, Amazon.com added the “business transfers” paragraph to make its existing policies clearer to customers. The complainants, however, have accused Amazon.com of relying on the “business transfers” language, and particularly the words “business assets,” to justify any potential sale of customer information to any third party on a stand-alone basis (that is, outside the context of a business unit or company acquisition). This is a tortured and unfair reading of the Privacy Notice, and it is obviously not what Amazon.com intends.

The new Privacy Notice states unambiguously that Amazon.com is not in the business of selling customer information. The “business transfers” paragraph cannot and should not be understood to contradict that promise; Amazon.com certainly cannot start engaging in that business simply by calling customer information an “asset” and selling it to third parties piecemeal. Rather, as discussed above, the “business transfers” language simply clarifies that information relating to our business may someday be transferred as part of the transfer of a business – that is, the sale or acquisition of the entire company or a business unit (such as a store or product line). In any such transfer, as noted above, the information that passes along with the rest of the business will remain subject to the commitments previously made to customers by Amazon.com regarding use and disclosure, and the successor entity acquiring the business will be obliged to abide by those commitments.

Finally, the charge that the new Privacy Notice allows Amazon.com to sell customer information as a separate asset in bankruptcy proceedings is simply wrong. The notice says nothing about bankruptcy. Indeed, as you well know, it might actually be misleading for Amazon.com to make promises to customers about what might or might not happen in the unlikely event of a bankruptcy. As the Toysmart.com case demonstrated, a company does not control the disposition of its assets in bankruptcy – the courts and the bankruptcy trustee do. And notwithstanding some of their public statements, the complainants concede in the materials filed with your office that it is inappropriate for companies to make promises about what will happen to customer information in bankruptcy.

5. **What Happens To Information From Customers Who E-mailed “Never”?**

As noted above, Amazon.com's old privacy policy did not limit the potential transfer of customer information in the context of a future business transfer, even for customers on the “never” list.<sup>1</sup> Nevertheless, to avoid any potential for misunderstanding, Amazon.com will

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<sup>1</sup> The number of customers who e-mailed [never@amazon.com](mailto:never@amazon.com) was relatively small, less than half of one percent of all customers. (Since October 1, 1998, 73,124 customers sent emails to that address.) But since Amazon.com has never considered selling, trading, or renting its customer information, we have not used that list for any purpose.

ensure that information from customers on the "never" list will not be transferred without customer consent even in the event of a future business unit sale. Although Amazon.com has communicated this policy to a number of customers and other individuals who specifically asked about it, we did not discuss it broadly, both because the number of affected customers is so small and because the policy only applies to a potential future event (a sale of a business unit) that may never happen.

6. **What Information Does Amazon.com Share With "Affiliated Businesses"?**

One of the new elements of Amazon.com's revised Privacy Notice is the description of how customer information might flow to companies that participate in jointly owned or co-branded businesses when customers choose to buy products and services from those businesses. Unfortunately, some observers have wrongly interpreted this provision to mean that Amazon.com shares customer information freely with all companies that it promotes or is affiliated with. In fact, a fair reading of the entire description shows the actual sharing of information is much more limited than has been claimed by the complainants. Here is the text of from the Privacy Notice:

**Affiliated Businesses We Do Not Control:** We work closely with our affiliated businesses, an example of which is drugstore.com, our Health & Beauty merchant. In some cases, these businesses operate stores at Amazon.com or sell offerings to you at Amazon.com. In other cases, we operate stores, provide services, or sell product lines jointly with these businesses. You can tell when another business is involved in your transactions, and we share customer information related to those transactions with that business. (emphasis added)

Amazon.com included this provision in its revised Privacy Notice in part to ensure customers know that companies other than Amazon.com might be involved in transactions that start out on Amazon.com's Web site. Thus, for example, under our current practices, Amazon.com customers who click on our Health & Beauty store are redirected to drugstore.com's Web site and servers. Although it is possible to return to Amazon.com's Web site by clicking on an Amazon.com button built into the customer interface, *Amazon.com does not receive any information* about customers' purchases or browsing behavior once they go to drugstore.com, and *Amazon.com does not give drugstore.com any information* it has about the customer. Likewise, while there are a variety of "trusted partner" and "affiliated" Web sites accessible by a link from Amazon.com (e.g., gear.com, Ofoto.com, Ashford.com, and eZiba.com), *Amazon.com does not disclose or share any information about customers* to these companies. Of course, when customers click through to these Web sites and volunteer information to complete transactions or take advantage of services, those Web sites receive and maintain that information under their own privacy policies and practices.

So far, Amazon.com has created only a few jointly owned or co-branded businesses that involve the sharing of customer information. In each case, the sharing is *clearly signaled to customers*, the transfer is *limited to information about the transaction with that business*, and the *transfer occurs after the customer has an opportunity to choose* whether or not to go forward with the transaction. Thus, even apart from the broad disclosures in Amazon.com's Privacy Notice, we have designed the situations where information sharing actually takes place to be understood and affirmatively selected even by customers who may not have read the Privacy Notice.

There are three co-branded businesses today that involve the sharing of Amazon.com customer information: our New Cars store with Greenlight.com; our sales of Toysrus.com toys and video games; and our Wireless Phone service store. The following is a detailed description of those businesses' current practices. Obviously, these may change in the future from time to time consistent with our Privacy Notice.

**Greenlight.com:** Most customer browsing and purchase activity within the New Cars store takes place on Greenlight.com's Web site, and therefore the Greenlight.com car logo appears prominently at the top of every page within that store, along with the legend: "A service provided by our Trusted Partner Greenlight.com." Because the New Cars store is hosted on Greenlight.com's servers, information volunteered by customers goes to Greenlight.com, not Amazon.com (similar to the drugstore.com scenario, described above). Before purchasing a car on Greenlight.com, customers must enter account and contact information. To make that process easier, Amazon.com provides customers with an opportunity to sign into their Amazon.com account, so that Amazon.com can automatically fill in some of the on-line forms required by Greenlight.com with contact information from their Amazon.com account. At the sign-in page, before signing in, customers receive a full description of this information transfer:

**Trusted Partner Privacy:** By signing in, you give us permission to share your contact information with Greenlight.com as needed to service your order. For verification purposes, this includes certain information about your credit card, but does not include your full card number, which stays in our secure system at all times. As an Amazon.com Trusted Partner, Greenlight.com will use this information only to service your order.

If the customer chooses to sign in, Amazon.com will fill in some of the customer's contact information automatically. In addition, Amazon.com subsequently provides customers with the opportunity to pay deposits required during the Greenlight.com ordering process using the credit card information on file at Amazon.com (but without revealing the entire credit card number to Greenlight.com).

**Toysrus.com:** Beginning last fall (after the roll-out of the new Privacy Notice), Amazon.com and Toysrus.com joined forces to enable Amazon.com to sell toys and video games from Toysrus.com's extensive selection. Because the toys and video games featured on Amazon.com's Web site are actually part of Toysrus.com's inventory, Toysrus.com receives information relating to sales of Toysrus.com merchandise, including customer information, just as it would if customers purchased the items directly from Toysrus.com's own Web site. To make this clear to customers, Amazon.com redesigned its toys and video game stores to include specific co-branding and privacy disclosures for every product detail page on which Toysrus.com inventory is featured. Thus, before purchasing a Toysrus.com toy, customers see the legend: "Toysrus.com selection delivered by Amazon.com" prominently displayed toward the upper left-hand corner of the page. Beneath the logo, the highlighted words "(What This Means)" link directly to a more detailed disclosure page entitled: "Toysrus.com/Amazon.com Toy Store Privacy Policy." It states:

Toysrus.com and Amazon.com have teamed up to provide you with the ultimate online toy-shopping experience. Toysrus.com's great deals, exclusive offers, and vast selection of the hottest toys, combined with Amazon.com's award-winning online store, super-reliable shipping and delivery, and renowned customer service, means you'll get the best of all worlds.

As part of this winning combination, we want you to be aware that Amazon.com will provide Toysrus.com with information related to your transactions involving their products (including, for example, your name and address, Toysrus.com products you purchase, and Toysrus.com products you add to your Wish List). We know that you care about how information about you is used and shared, and we appreciate the trust that you place in us. (emphasis added)

In addition, the Toysrus.com logo appears at the top of almost every page in our toy store. Note that although we intentionally designed these disclosures to be as broad as possible to avoid misunderstandings by customers, we currently do not share credit card information, even for credit cards used to purchase Toysrus.com inventory.

Wireless Service Providers: In November, Amazon.com opened a new Wireless Phone store. Amazon.com hosts this store within its own Web site, but it provides customers with a wide variety of wireless service plan options in addition to phones, pagers, and accessories. Amazon.com does this by partnering with wireless carriers, such as AT&T Wireless and Voicestream, but we obviously cannot sell service plans without disclosing the identity of the customers to the carriers themselves. Thus, the need for information sharing in this context is clear to customers. Moreover, when customers choose a wireless service plan for their shopping cart, they see a special message in red lettering at the top of their shopping cart display indicating that additional information will need to be collected and shared with a wireless carrier in order to complete the purchase:

**\*\* Your order contains at least one Wireless Package (Phone + Service Plan):** Wireless service providers will perform a routine credit check which requires your social security number and driver's license before approving service. \*\*

During the checkout process, before completing the purchase of a wireless service package, customers are asked to provide additional information so that the wireless carrier can perform a credit check on the customer, including name, address, DOB, drivers license number, and social security number. Included at the top of this page is a disclosure describing the uses of this information:

### **Provide Credit Check Information**

In order to quickly establish service, service providers routinely perform credit checks. Your private identification information, such as Social Security number, driver's license number and date of birth, is necessary in order to perform this credit check. This information will not be disclosed to anyone else other than your carrier.

Customers are also provided with an opportunity on this page to click on links to each wireless carrier's own privacy policies and terms of conditions before providing the information.

In sum, Amazon.com has worked hard to provide new kinds of offerings for customers by partnering with other companies in a variety of ways. We've worked equally hard to make sure that customers understand the situations when transacting business with those partners may involve the sharing of customer information by Amazon.com. Importantly, the information shared in these situations is limited to information regarding the specific transactions at issue. For example, under no circumstances would book purchase information be shared with Greenlight.com without the consent of the customer. Equally importantly, information sharing only occurs after relevant disclosures are displayed to customers and the customers choose to go forward with their transactions. Thus, currently in these circumstances, we already obtain customer consent before transferring *any* customer information to third parties.

### **7. Does Amazon.com Share Information With Its Subsidiaries?**

Amazon.com makes use of a large number of wholly owned subsidiary corporations in order to execute the functions of its business. For example, our distribution facilities and call centers are often owned by separate subsidiaries: our Delaware distribution center is held by Amazon.com.dedc, Inc.; and our West Virginia call center is held by Amazon.com.wvcs, Inc. In addition, Amazon.com, Inc. has a number of subsidiaries that are not involved in our core business functions. Instead, these subsidiaries serve a wide variety of business and transactional purposes, from holding confidential intellectual property to complying with foreign regulations. These kinds of subsidiaries do not receive customer information.

Obviously, Amazon.com could not function without sharing customer information between its customer service call centers (where we answer questions from customers about their account), distribution centers (where we store and ship products addressed to customers), and its Seattle headquarters (where we build and maintain the Web site). Therefore, Amazon.com makes clear in its Privacy Notice that Amazon.com "may share customer information . . . with subsidiaries Amazon.com, Inc. controls." At the same time, the restrictions set forth in the Privacy Notice apply to all Amazon.com subsidiaries that come into possession of customer information.

Only a small number of Amazon.com subsidiaries are engaged in businesses that are distinct from Amazon.com's Web site: Alexa Internet, Bibliofind, Inc., Internet Movie Database Ltd., and Livebid.com, Inc. Although the Privacy Notice permits us to do so, Amazon.com does not currently share customer information with those entities.

### **8. When Might Amazon.com Disclose Customer Information Absent Consent?**



Amazon.com reserved the right in its old privacy policy to “release account information when we believe, in good faith, that such release is reasonably necessary to (i) comply with law, (ii) enforce or apply the terms of any of our user agreements or (iii) protect the rights, property or safety of Amazon.com, our users, or others.” The new Privacy Notice contains nearly identical language, albeit once again more detailed than the old privacy policy.

**Protection of Amazon.com and Others:** We release account and other personal information when we believe release is appropriate to comply with law, enforce or apply our Conditions of Use and other agreements; or protect the rights, property, or safety of Amazon.com, our users, or others. This includes exchanging information with other companies and organizations for fraud protection and credit risk reduction.

Nearly every company, Internet-based or offline, that has implemented a privacy policy has adopted a similar provision, because it permits the company to make reasonable judgments, without risk of legal liability, regarding the release of customer information for predominantly non-commercial purposes, such as to comply with valid subpoenas, to cooperate with law enforcement authorities, to investigate and report illegal or fraudulent activity, and to prevent and reduce risk of loss to the company by fraud.

As a matter of practice, we normally require valid subpoenas before complying with third-party requests to provide customer information, although we also investigate and report fraudulent activity independently, and we cooperate with law enforcement agencies and financial institutions and representatives in investigating fraudulent or illegal conduct. In some cases, we have challenged the validity of subpoenas when the party seeking the information failed to demonstrate a compelling need for the information and we believe the request may compromise customer privacy interests or First Amendment rights. Necessarily, however, these types of determinations must be made on a case-by-case basis, and they are always based on the relevant facts and circumstances of each case. Thus, while the Privacy Notice gives the company latitude in making these determinations, we have always tended to err on the side of protecting customer privacy, and we have never had any serious complaints about a decision to release information pursuant to this provision.

Finally, apart from routine processing of credit cards, credit screening of Auctions and zShops sellers applying for Amazon.com’s Payments service (which is governed by a separate Participation Agreement), and individual fraud investigations (as noted above), Amazon.com’s current practice is not to disclose customer information to other companies and organizations for fraud protection or risk reduction purposes. We have begun exploring various options for doing so, however, and as the Privacy Notice makes clear, Amazon.com may elect in the future to participate in one or more credit information clearinghouses for the purpose of obtaining negative credit information about individual customers. Any such disclosure of customer information would be strictly controlled so that it can be used only for the purposes disclosed in the Privacy Notice.

#### 9. Which Privacy Policy Applies to Each Customer’s Information?

One of the overarching goals of revising Amazon.com’s Privacy Notice was to make it simpler and more understandable to our customers. Thus, we have attempted to design the

Privacy Notice, and our Conditions of Use, so that the most current version always applies to every customer.

Amazon.com recognizes, on the one hand, that the company cannot materially change its policies or conditions of use retroactively to the detriment of customers who relied on such representations at the time they chose to place an order or volunteer information. Stated simply, we cannot break promises that we make to customers – and we would never do so. On the other hand, it's important to recognize that our business environment, and particularly the industry in which we operate, changes extremely fast, and the company will doubtless need to modify its policies and conditions of use from time to time.

Thus, the Privacy Notice makes it easy for customers to understand our policies by making clear that the most current version always applies to all customers. Customers never have to keep track of more than one Privacy Notice. At the same time, customers know that our practices will probably change sometime in the future. And when they do, we will change the Privacy Notice in a way that ensures we don't break any promises that customers have relied on in the past (much in the way that we decided not to transfer information for customers on the "never" list without consent even in the event of a sale of a business unit).

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In sum, we believe Amazon.com's revised Privacy Notice is fair, understandable, forthright, and as comprehensive as possible. The actions of consumers, despite all the erroneous publicity about the Notice, resoundingly proves that it meets or exceeds their expectations. It provides increased privacy protection for all customers: it sets forth the company's commitment never to sell customer information to third parties without consent and never even to transfer such information except in specific limited circumstances, which are clearly spelled out in the new Privacy Notice. Further, we believe our decisions to include additional details about our policies in the new Privacy Notice and to notify each customer about the changes by e-mail reinforce customer confidence and trust that Amazon.com will treat customer information with care.

Feel free to contact me directly if you have any additional questions about this matter.

Very truly yours,



David A. Zapolsky  
Associate General Counsel