Testimony of Christine Varney
Before the Congressional Privacy Caucus
March 1, 2001

Thank you very much for inviting me to testify this afternoon. My name is Christine Varney, I'm a former Federal Trade Commissioner and currently a partner at Hogan & Hartson, where I chair the Internet Practice Group. This afternoon I am here on behalf of the Online Privacy Alliance, a coalition of more than 100 industry and trade associations that came together three years ago to formulate and advocate for best privacy practices online.

Privacy has become the pivotal issue in the information age. The concerns of many Americans about the privacy of their information needs to be addressed through a combination of best practices, technology, enforcement of existing law; and if and when appropriate, additional legislation. The interesting thing about privacy, however, is there is NO one size fits all solution. Some may value a seamless personalized internet experience without regard to the data used to create such an experience; while others may value privacy – to the point of anonymity – over any benefit they receive from sharing information. The beauty of the internet is you can have either; or as most of us desire – something in between.

While I share many of the concerns that have been raised here today about the abuse of technology or the potential to use technology in a privacy-invasive manner, I am extremely concerned that the Caucus not be misled in thinking that the technology itself is either dangerous or nefarious. As with any technology, bad actors will use technology for bad purposes. It is this kind of behavior that we must target, not the technology itself.

The Online Privacy Alliance remains fully committed to robust notice and choice for non-sensitive personally identifiable data. When technology is used to provide purely analytical and statistical services or non personally identifiable

data transfers we do not believe there is any threat to the privacy of American consumers. I would urge the Caucus to keep these considerations in mind as you delve into the complicated balance between the beneficial use of technology tools by legitimate businesses and the abuse of technology by bad actors.

Today we are discussing a specific programming format, technically known as GIFs. This acronym has many interpretations. GIFs can mean graphical image files, graphical interface formats or what I believe is the technically correct definition, graphic interchange format. A GIF is a common format for image files, especially suitable for images containing large areas of the same color. GIF format files of simple images are often smaller than the same file would be if it were stored in another commonly used format called JPEG. GIFs can also be used for online data collection purposes.

The terms web bugs, web beacons, web tags, pixel tags and one by one pixels are often used interchangeably with what is technically known as a GIF and sometimes pronounced "JIF". GIFs can be either visible, as is usually the case in a banner ad; or invisible as is usually the case in a small 1x1 pixel. Invisible GIFs are often called Clear GIFs. The term bug, on the other hand, has a very specific meaning in the computer world: it describes a software problem that affects the functioning of a software program or computer. True bugs can crash software and disturb the functioning of a computer's operating system. The technology tool under discussion today does not meet the definition of a computer bug.

In the world of e-marketing and site analysis, the GIF is often a 1x1 pixel image that can exist on any web page. Clear GIFs can be used to connect the online consumer, the website the consumer is visiting and a data processor. Each time a web page is called, the GIF signals a server to issue a cookie to a browser. It is the cookie that identifies the browser, not the GIF. The GIF is simply a vehicle for delivering the cookie. Clear GIFs can perform administrative functions without detracting from the consumer's online experience. They are often used to perform

statistical and administrative tasks including measuring site and page traffic, verifying advertising avenues, verifying payment amounts and positioning images on the web.

Clear GIFs can be used by first parties, that is the publisher of the site you're visiting or by third parties, such as ad servers or measurement companies. By gaining an understanding of aggregate consumer habits on specific sites publishers can customize information so that it will be more appealing to specific groups of consumers. They can highlight the content that is most interesting, make it easier to get to the most heavily used pages on a site and streamline the process for getting to the information a person is seeking when they visit a site. Clear GIFs can also be used to provide accurate statistics on the number of pages viewed, the number of ads clicked through, and the number of ads that lead to a purchase. All of this can and is, to the best of my knowledge, usually done without transmitting personal information to third parties.

For example, when counting completed purchases, the placement of a clear GIF on the confirmation page of any commerce site registers that a purchase has been made. It does not capture the credit card information or the consumer's identity. Instead, the GIF verifies that a page confirming the purchase and thanking the consumer has been viewed. Because clear GIFs are so small – just a 1x1 pixel -- they take up very little space on the page and cause no disruption to the consumer accessing the page. Clear GIFs count pages viewed, confirm purchases and perform other administrative activities with minimal intrusion on the consumer and no delay in loading a page.

I hope this panel will focus on the uses of this technology that could raise privacy concerns; while recognizing that GIFs are integral to the Internet's architecture and can be used in ways that do not harm consumers. Technology is neutral. How we use technology and what can be done to prevent abuses is a matter of importance to us all. Thank you.