



Computer & Communications
Industry Association
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September 28, 2021

The Honorable Maria Cantwell
Chair
Committee on Commerce, Science, and
Transportation
United States Senate
Washington DC, 20515

The Honorable Roger Wicker
Ranking Member
Committee on Commerce, Science, and
Transportation
United States Senate
Washington DC, 20515

RE: Senate Commerce Committee Hearing on “Protecting Consumer Privacy”

Dear Chair Cantwell, Ranking Member Wicker, and Members of the Committee:

On behalf of the Computer & Communications Industry Association (CCIA)¹, I write regarding the Committee’s upcoming hearing on “Protecting Consumer Privacy.” CCIA welcomes the Committee’s focus on the important issue of consumer privacy and the vital need to enact comprehensive federal privacy legislation. In recent years, increasing public attention to the treatment of consumers’ personal data, the adoption of inconsistent state-level privacy laws, and pressures to American digital trade and economic competitiveness produced by foreign data governance regimes have all underscored the necessity for the US to adopt a strong and consistent framework for the responsible treatment of consumer information throughout the economy.

While the upcoming hearing is a positive development and valuable opportunity to hear from expert witnesses on consumer privacy interests, many stakeholders are hopeful for announcements on progress towards the adoption of comprehensive privacy legislation. Members of the Senate Commerce Committee have introduced several well-considered consumer privacy bills including the *Consumer Online Privacy Rights Act*, the *Setting an American Framework to Ensure Data Access, Transparency, and Accountability Act*, and the *Consumer Data Privacy and Security Act*.² These bills share many common attributes for establishing consumer data privacy rights, organizational accountability mechanisms, and robust enforcement processes. We urge the Committee to move forward in a bipartisan manner on these shared principles to swiftly advance a comprehensive consumer privacy framework this Congress.

¹ CCIA is an international nonprofit membership organization representing companies in the computer, Internet, information technology, and telecommunications industries. Together, CCIA’s members employ nearly half a million workers and generate approximately a quarter of a trillion dollars in annual revenue. CCIA promotes open markets, open systems, open networks, and full, fair, and open competition in the computer, telecommunications, and Internet industries. A complete list of CCIA members is available at <http://www.cciagnet.org/members>.

² S.2968 (116th Congress); S.2499 (117th Congress); S.1494 (117th Congress).

CCIA appreciates the Committee's recognition of the central role that the Federal Trade Commission ("FTC" or "The Commission") does and should continue to play in the protection of consumer privacy and offers the following comments for consideration as the Committee moves forward on this important subject.

The Federal Trade Commission and Protecting Consumer Privacy

The Commission has a proven track record of independence and bipartisan collaboration in protecting Americans' privacy and has taken hundreds of enforcement actions on privacy and security by virtue of both its authority to police "unfair and deceptive acts and practices" and pursuant to sector-specific privacy laws such as the Children's Online Privacy Protection Act and Fair Credit Reporting Act. These actions have included approaches such as requiring the implementation of comprehensive privacy and security programs, regular assessments by independent experts, monetary redress to consumers, and the deletion of illegally obtained data.³ An enduring strength of the Commission is its ability to leverage a varied toolkit to take flexible, appropriate action in the context of an alleged privacy or security violation.

In considering avenues for equipping the Commission with additional resources and enforcement authority, consumer privacy interests will be best served if advanced as part of the enactment of comprehensive federal privacy legislation. Establishing clear and consistent baseline rules for the fair and transparent use of personal information will protect individuals, give organizations predictability in meeting their compliance obligations, and enable the Commission to most effectively deter and enforce violations of consumer privacy rights. CCIA recommends that the Committee consider the following approaches to augmenting the Commission's enforcement capacity as part of the adoption of a national privacy framework.⁴

Commission Resources:

A recent report revealed that the Federal Trade Commission employs approximately 40 Full-Time Equivalents (FTEs) focused on privacy and security issues, lagging far behind many foreign privacy regulatory agencies.⁵ CCIA supports the allocation of additional resources to expand the Commission's existing privacy work, not limited to conducting investigations and undertaking enforcement actions, but also to carry out its important roles in hosting educational workshops,

³ See Federal Trade Commission, "Privacy & Data Security Update: 2020" (May, 2021), https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-2020-privacy-data-security-update/20210524_privacy_and_data_security_annual_update.pdf.

⁴ For additional consideration on the substance of a modern consumer privacy framework, see CCIA's letter to the Committee dated September 23, 2020 available at <https://www.cciagnet.org/wp-content/uploads/2020/09/CCIA-Statement-for-the-Record-on-Senate-Commerce-Privacy-Hearing-9.23.pdf>.

⁵ Federal Trade Commission, "FTC Report on Resources Used and Needed for Protecting Consumer Privacy and Security" (2020), www.ftc.gov/system/files/documents/reports/reports-response-senate-appropriations-committee-report-116-111-ftcs-use-its-authorities-resources/p065404reportresourcesprivacydatasecurity.pdf.

issuing public reports, and completing the necessary studies to quantitatively evaluate the benefits and harms of particular data practices to ensure an empirically grounded regulatory approach.

While additional funding for the Commission is advisable, we encourage Congress to ensure that any allocation of new resources will fulfill identified needs. Privacy enforcement has been effectively carried out through the Bureau of Consumer Protection, and lawmakers should carefully consider whether organizational readjustments will help the Commission fulfill its privacy role. Recent proposals including the creation of a new privacy bureau within the Commission or the creation of three new privacy focused units are worth exploring in greater detail.⁶

Commission Enforcement Authority:

In addition to ensuring that the Commission has adequate resources to protect consumer privacy, Congress should consider augmenting the Commission's regulatory authority to enforce comprehensive privacy legislation in the following ways.

First, as part of enacting comprehensive privacy legislation, Congress should consider granting targeted APA rulemaking authority to the Commission to provide greater clarity and ensure the statutorily mandated federal privacy framework remains fit for purpose in light of changes in technology and business practices. For any grant of rulemaking it will be important to delineate specific definitions and issues for which the promulgation of federal rules will promote understanding and compliance and protect consumers. A protracted, expansive rulemaking process lacking statutory guardrails and grounding could have the impact of turning compliance into a moving target, creating confusion for both businesses and consumers, and risk needlessly politicizing the rulemaking process. Elected members of Congress are best positioned to negotiate the critical substantive policy determinations that will animate a durable and comprehensive privacy framework and deliver a win for American consumers and American innovation and economic competitiveness.

Second, a privacy framework should ensure that consumers can feel confident that their personal data is protected, no matter who is using it or for what purposes. Therefore, in establishing comprehensive, tech-neutral rules, Congress should also grant the FTC jurisdiction over common carriers and non-profit organizations and eschew sector-specific carveouts. Organizations currently excluded from FTC enforcement nevertheless can process data in ways that raise significant privacy and security concerns.

⁶ See Committee on Energy and Commerce, "Budget Reconciliation Legislative Recommendations Relating to FTC Privacy Enforcement" (September, 2021), https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Subtitle%20O_FTC%20Privacy%20Enforcement.pdf; Chairman Simons, Letter to the Subcommittee on Consumer Protection and Commerce (Apr. 1, 2019), <https://congress.gov/116/meeting/house/109415/documents/HHRG-116-IF17-20190508-SD010.pdf>.

Finally, the FTC's enforcement capacity should be expanded by granting first-time fining authority that the Commission may pursue, where appropriate, for violations of the federal law and implementing rules. The Commission already exercises such authority effectively and responsibly in carrying out enforcement of the Children's Online Privacy Protection Rule and the Fair Credit Reporting Act.

Conclusion

We look forward to working with you and other stakeholders on a strong and flexible privacy framework for the digital economy. Should you have additional questions, please feel free to reach out to Arthur Sidney, Vice President of Public Policy (asidney@ccianet.org) and Keir Lamont, Policy Counsel (klamont@ccianet.org). Thank you again for holding this important hearing.

Sincerely,

Arthur Sidney
Vice President of Public Policy
Computer & Communications Industry Association