



June 13, 2022

The Honorable Maria Cantwell
Chair
Senate Committee on Science, Commerce & Transportation
Washington, DC 20510

The Honorable Roger Wicker
Ranking Member
Senate Committee on Science, Commerce & Transportation
Washington, DC 20510

The Honorable Frank Pallone
Chair
House Committee on Energy and Commerce
Washington, DC 20515

The Honorable Cathy McMorris Rodgers
Ranking Member
House Committee on Energy and Commerce
Washington, DC 20515

Subject: The American Data Privacy and Protection Act

Dear Chair Cantwell, Ranking Member Wicker, Chair Pallone, and Ranking Member McMorris Rodgers:

As trade associations representing hundreds of companies across the information and technology sectors at all stages of development – from the startup to the household-name multinational – we believe that a uniform federal privacy law is essential for consumer protection, to sustain a favorable innovation environment in the United States, and to promote global trade. For years, our organizations, individually and as part of coalitions, have urged Congress to pass comprehensive, bipartisan privacy legislation. The draft privacy bills, including the American

Data Privacy and Protection Act (ADPPA), represent a promising step toward achieving that goal.

We are encouraged by the bipartisan and bicameral support behind the ADPPA. Indeed, while federal privacy legislation has long had support from both sides of the aisle, the release of the ADPPA by members of both parties in the House and the Senate is remarkable. Although the bill still needs further improvements, we believe the ADPPA provides a workable framework to build on, and we are optimistic that an effective compromise can be achieved in the near term.

The legislation contains several provisions that concern our member companies and need further refinement, among them an attempt to restrict the dissemination of information “derived” from publicly available information, a novel “duty of loyalty” and its attendant obligations, and an untailed, burdensome requirement to submit assessments of virtually all computer-based activities involving algorithms.

The bill’s inclusion of a private right of action has the potential to compound the problems created by these and other novel obligations. The ADPPA represents the regulation of a massive, rapidly developing, and highly technical interstate information ecosystem. Every state that has considered and enacted a consumer privacy statute has eschewed a private right of action for good reason: the Federal Reporter is replete with instances of litigation abuse, a risk compounded by the bill’s provisions allowing for recovery of attorneys’ fees. The health of that system is properly delegated to competent and empowered regulators (in this case the FTC and state Attorneys General), and not a host of private lawyers for hire.

In addition, Congress’s consideration of this novel legislation occurs against a backdrop of a rapidly growing patchwork of state laws, each containing slightly different and sometimes contradictory obligations. The language of the bill’s preemption provisions appears to allow those laws to continue to remain in effect so long as the complaint does not allege violations of the ADPPA. In addition, the bill expressly preserves Section 1798.150 of the California Civil Code, which created a private right of action with recovery for statutory damages and led to a wave of costly litigation.

We believe that there is a path forward to resolve these issues. That path involves Congress stating clearly that its federal privacy law will be the uniform standard and that state laws creating qualitatively equivalent rights or duties are preempted. If that path must involve a private right of action, such a right must prevent class action abuse and be narrowly tailored to remedy substantial privacy harms that are specific, individualized, and tangible. Such an approach enables consumers to have clearly defined rights and businesses to have streamlined and scalable compliance. It also provides redress for individual consumers that are truly injured while enabling the federal government to create uniform rules of the road.

As you are no doubt aware, the window to enact this legislation is closing. Although we cannot support the legislation in its current form, we stand ready to work together with Congress to build on bipartisan and bicameral legislation that protects consumers, provides predictability to businesses of all sizes, and promotes innovation.

Respectfully submitted,

Computer & Communications Industry Association (CCIA)
Software & Information Industry Association (SIIA)
TechNet