

Public Law & Policy Client Alert: Protecting Consumer Privacy in the Era of Big Data

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On Tuesday, February 26, 2019, the House Energy & Commerce Committee's subcommittee on Consumer Protection and Commerce held a hearing titled "Protecting Consumer Privacy in the Era of Big Data."

The hearing included testimony from the following witnesses:

- Brandi Collins-Dexter, Senior Campaign Director of Media, Democracy & Economic Justice, Color of Change
- Dave Grimaldi, Executive Vice President for Public Policy, Interactive Advertising Bureau (IAB)
- Roslyn Layton, Ph.D., Visiting Scholar, American Enterprise Institute
- Nuala O'Connor, President and CEO, Center for Democracy and Technology
- Denise Zheng, Vice President of Technology and Innovation, Business Roundtable

Overview

Witnesses at the hearing testified both on the effects of the collection of data on consumer privacy, as well as potential solutions to protect consumer information. There is currently no federal law which comprehensively governs the collection, use, and dissemination of consumer information. Rather, there are a patchwork of federal laws and regulations that govern the collection and disclosure of personal information, and has been addressed by Congress on a sector-by-sector basis. Absent a national standard or "privacy bill of rights" governing the collection, use, and dissemination of consumer information across all sectors, states have begun to consider and pass their own consumer privacy laws. In June of 2018, California became the first state to enact such a law, known as the California Consumer Privacy Act.

As Mr. Grimaldi explained during his testimony, "We believe the time is right for a new, federal paradigm on consumer privacy that sets clear rules that describe which data practices are permitted and prohibited, and that distinguishes between data practices that pose a threat to consumers and those that do not. This is a critical moment for Congress to step in and prevent the country from ending up with a patchwork of ambiguous and inconsistent state laws that will create uncertainty for business and uneven protections for consumers."

The witnesses agreed that any federal solution should address the problem responsibly, without negating the successes realized by the legitimate use of consumer information in today's internet economy. Many consumers take for granted the value created by the internet in areas affecting daily life. According to a March 2017 study entitled "Economic Value of the Advertising-Supported Internet Ecosystem", the interactive marketing industry contributed \$1.121 trillion to the U.S. economy in 2016.

As Ms. Layton explained during her testimony, "Ideally we need a technologically neutral national framework with

a consistent application across enterprises. It should support consumers' expectations to have the same protections on all online entities. The law should make distinctions between personally identifiable information which deserves protection, but not require the same high standard for public data, de-identified, and anonymized data which do not carry the same risks. The U.S. policy should not make it more expensive to do business, reduce consumer freedom, or inhibit innovation."

Additional themes expressed by the witnesses as part of any new federal legislative framework include 1) providing consumers the ability to access, correct, and delete personal information; 2) consistent application of data protection measures across all sectors; 3) exceptions to address public health and safety concerns; 4) preventing data-driven discrimination and civil rights abuses; and 5) providing robust enforcement by the Federal Trade Commission.

Conclusion

There is a willingness by both political parties in Congress, as well as the Trump Administration, to work together to address the growing trend of the misuse of consumer information. In addition to Congressional hearings that are taking place on the issue, President Trump's Commerce Department has begun holding stakeholder meetings to "identify common ground and formulate core, high-level principles on data privacy". Any Congressional action on the issue will ultimately require the work of multiple committees, including the Committees on the Judiciary, and Energy and Commerce in the House; and the Committees on the Judiciary, and Commerce in the Senate. It is clear, judging by recent Congressional and Trump Administration actions, that there is a desire to find consensus to pass the required reforms.

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