



PRIVACY

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As Congress considers new regulations related to commercial data collection practices and use, provisions should be crafted in collaboration with private sector stakeholders to ensure that they do not stifle innovation or hinder legitimate business practices. Opportunities for industry self-regulation should be encouraged and safe harbors for participating companies implemented.

Proposals for do-not-track requirements should be carefully scrutinized as they often represent technological mandates from the government and would serve to enshrine in law the best practices today against the privacy innovation of tomorrow.

The Department of Commerce's multistakeholder process has had one success already in the form of the code of conduct for mobile transparency, and in February 2014 turned to facial recognition as the next goal.

Background: Data privacy continues to present unique philosophical and practical challenges that impact business, consumers, and the government. The U.S. approach to consumer privacy has been limited to patchwork federal statutes that focus on protection for specific categories of high- risk data, such as financial and medical, along with measures dealing with child online safety. This has created a framework that maintains a light touch regulation over data collection, coupled with self-regulation and multistakeholder approaches. While there have always been calls for a comprehensive federal privacy law that would cover situations outside of those specific categories, the political climate does not seem favorable for such a law.

Policy Considerations:

Baseline Privacy Practices

Collecting information from consumers helps companies provide innovative and better tailored products that provide recommendations and remember preferences. Consumers also enjoy a wide array of online services, such as e-mail, social networking, and blogging platforms, all underwritten by online advertising. This has helped to preserve the low barriers to entry that are crucial to creating robust competition and innovation online, and has ensured the First Amendment promises of the Internet, lowering the barrier to online speech for all consumers. Safeguarding this personal information is vital for companies to retain customers, credibility and brand recognition. Internet sites know they are a click away from a customer leaving if they don't like a privacy policy.

Current Status: The past year has been a relatively quiet one in terms of movement on the Hill with regard to commercial privacy. The few pieces of legislation that have been introduced on the subject have not moved very far. Over the past few months, a subset of the House Energy and Commerce Committee, tasked by the chairman to explore consumer protection issues, has held a number of closed-door meetings. The results of that process are still unknown, but they will have the potential to direct the committee's work on privacy going forward.

Congress' inaction places a lot of focus on the FTC and the Department of Commerce. The FTC has maintained an effective enforcement regime for a while. The Department of Commerce has continued to convene stakeholders, including industry and privacy advocates, to develop voluntary but enforceable codes of conduct specific to particular areas of industry that will provide privacy protections without legislation. The first iteration of the process was successful in producing a code for transparency on mobile devices. This process continues to have the potential to make progress in providing flexible yet enforceable policies that will make great strides toward protecting users.

CCIA's Position: Technological innovation and growth in electronic commerce depends upon consumer confidence. As more information is moving online, innovative services will help to bolster lower-cost, more efficient ways to connect, do business, advance learning, and provide for greater economic opportunity. Protecting the privacy of that information is crucial to retaining consumers' trust, and CCIA encourages private industry to join with users and privacy advocates to work together toward solutions that protect users while preserving innovation. The multistakeholder process with the National Telecommunications and Information Administration is one example of this.

If Congress moves to implement a comprehensive federal privacy law, CCIA would advocate for a result that creates baseline privacy rules while still permitting innovation both in services at large as well as in methods of protecting privacy. In particular, any proposed law should not discriminate between online and offline collectors of information, and should focus on bad actors that refuse to participate in self-regulatory programs or the multistakeholder process at the Department of Commerce.