



900 17th Street, N.W.
Suite 1100
Washington, DC 20006
Phone: 202.783.0070
Fax: 202.783.0534
Web: www.ccianet.org

ABSTRACT

Computer & Communications Industry Association

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 plans to convene a consensus-based multistakeholder process with the goal of developing voluntary industry-specific codes of conduct that ensure user privacy. Only an open and transparent process will guarantee that result.*

Background: Data privacy continues to present unique philosophical and practical challenges that impact business, consumers, and the government. The US approach to consumer privacy has been limited to patchwork federal statutes that include 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, but it can be difficult for businesses and consumers to understand. In the past 18 months, the national conversation has turned to proposals for a comprehensive federal privacy law that would cover situations outside of those specific categories.

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 Department of Commerce has begun working on solutions along these lines.

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.

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 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.

CCIA prefers industry efforts to further develop and adhere to self-regulatory principles. We feel that companies at the forefront of the user experience are the best equipped to provide innovative solutions to privacy problems. The Department of Commerce is taking great strides to shepherd and encourage the process of developing these types of self-regulatory codes of conduct. If Congress does implement legislation, provisions should be crafted in collaboration with private sector stakeholders and focused on to ensure that they do not stifle innovation or hinder legitimate business practices. Technology continues to change rapidly and any attempt to regulate business practices will disrupt progress.

Mobile Privacy

One of the fastest growing markets in the tech sphere today is mobile devices and apps. Large numbers of US residents already carry smartphones and the percentage is growing rapidly. Mobile devices pose unique and unexplored privacy questions. They are always on and nearly always carried with the owner, so they have the capacity to gather large amounts of information about the user. Implementation details, particularly screen size, also present new challenges to the principle of transparency. With such a new technology, there is still much to learn about interacting with users and protecting privacy. In the short term, app developers should be encouraged to have privacy policies for their apps and given information to help them develop those policies without large incurring large costs. Mobile privacy would also be a suitable subject for an early iteration of the multistakeholder process at the Department of Commerce.

Current Status: Many Members of Congress have focused on privacy in the past year, although relatively little has happened on the legislative front. Representatives Rush, Stearns, Speier, Bono Mack, Markey, and Barton, Senators McCain, Kerry, Wyden, and Franken, among others, all have legislation bearing on privacy in some way. While there have been numerous hearings over the past year on the topic, there has actually been fairly little legislative movement. Few if any bills have even passed out of committee yet. With relatively few legislative days remaining in the session, it is unlikely that any significant progress will be made before the end of this Congress.

That fact places a lot of focus on the FTC and the Department of Commerce. Both agencies released final versions of their papers in the past few months. Both have called for Congress to legislate in this area, but in the absence of legislation the Department of Commerce has begun convening 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. This process has the potential to make great progress in providing flexible yet enforceable policies that will make great strides to protecting users.