

March 3, 2015

President Barack Obama
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Mr. President:

In 2012, you released your vision of the founding principles of consumer privacy—the Consumer Privacy Bill of Rights. Many of us hope that your principles, once implemented in legislation, will form a powerful framework to protect Americans’ fundamental right to privacy. Unfortunately, the discussion draft released last Friday falls short of that promise.

We appreciate your leadership on privacy. We also appreciate that before the discussion draft was released, your administration made several changes that many privacy advocates suggested, including changes to maintain longstanding privacy protections under the Communications Act. We applaud your administration’s willingness to work with us to improve the draft.

Nevertheless, substantial changes must still be made for the legislation to effectively protect Americans’ right to privacy. The bill should provide individuals with more meaningful and enforceable control over the collection, use and sharing of their personal information. The bill should uphold state privacy laws and afford stronger regulatory and enforcement authority to the Federal Trade Commission. In the weeks and months to come, we hope to work with you and leaders in Congress to strengthen the bill and address shortcomings in the draft legislation, including the following:

- The bill does not adequately define what constitutes sensitive information, nor provide consumers with meaningful choices about this data.
- The bill does not protect large categories of personal information. It’s unclear if the bill protects geolocation data, and there are broad exceptions for business records, data “generally available to the public,” and cyber threat indicators.
- The bill gives companies broad leeway to determine the protections that consumers will receive. Most of the bill’s protections apply only if a company identifies a risk of harm; other rules apply only if the company determines that certain processing is inconsistent with context.
- The bill lets companies retain data indefinitely for investigations into certain types of crimes, without placing clear limits on data retention for that purpose.
- The bill contains a broad exception for unreasonable uses of data that are supervised by self-regulatory Privacy Review Boards.
- The bill does not give the Federal Trade Commission (FTC) adequate resources and strong enough standards to review what could be hundreds of proposed Codes of Conduct and Privacy Review Boards.
- The main avenue for public participation is through Multistakeholder Processes that have, to date, brought few benefits for consumers—and that are often dominated by industry.

- The bill does not guarantee consumers meaningful access to and the ability to correct most sets of records held by data brokers.
- The bill fails to improve privacy protections for information about children and teens. The Privacy Bill of Rights section does not treat information about minors as sensitive information that deserves heightened protection, in contrast to existing law and FTC policy.
- The bill prevents private citizens and state Attorneys General from taking meaningful action to protect privacy. The bill limits fines from the FTC in a way that would not deter large companies from significant privacy violations.
- The bill preempts strong state laws (with some exceptions), including many that give citizens the ability to defend their privacy rights in court. It does this without creating new protections that are clearly better.

Our substantive concerns were compounded by the way in which this bill was developed. Most of our organizations were left out of consultations and were allowed to review the draft only one week prior to its release. Many organizations outside the Beltway were not able to review the legislation at all.

We still firmly believe that an overarching privacy law is critical to protect consumers and build trust in our digital world. We will continue to work with Congress and your administration to craft a bill that creates strong, meaningful protections for consumers. We look forward to those discussions.

Sincerely,

Center for Democracy and Technology

Center for Digital Democracy

Alvaro Bedoya, Center on Privacy & Technology at Georgetown Law*

Common Sense Media

Consumer Action

Consumer Federation of America

Consumers Union

Consumer Watchdog

Electronic Frontier Foundation

National Consumers League

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