

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

MYRON A. BRILLIANT
EXECUTIVE VICE PRESIDENT AND
HEAD OF INTERNATIONAL AFFAIRS

1615 H STREET, NW
WASHINGTON, DC 20062-2000
202/463-5489

April 3, 2014

Mr. John P. Holdren
Assistant to the President for Science and Technology Policy
Eisenhower Executive Office Building
1650 Pennsylvania Avenue, NW
Washington, D.C. 20504

Dear Mr. Holdren:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, urges the U.S. government to address ongoing controversies relating to electronic surveillance by distinguishing more clearly between privacy issues associated with national security and those associated with commercial privacy practices. Further, the Chamber urges you and your colleagues in the administration to correct policymakers as well as media representatives who intentionally or mistakenly conflate the two issues, both domestically and internationally, and to reinforce advocacy for policies safeguarding cross-border digital commerce.

The Internet has revolutionized the way business is conducted and how data are used in all sectors of the global economy. Chamber members of all sectors and sizes use the Internet to interact with employees, existing and potential customers, and business partners around the world. Companies work hard to ensure that their products and services are deemed trustworthy. Companies that fail to meet customers' privacy and security expectations can expect to face swift and decisive marketplace and reputational consequences, as well as legal and regulatory enforcement consequences for regulated business sectors.

The enormous consequences of merging U.S. national security-related privacy issues and commercial privacy practices already can be felt globally. Under the

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mistaken belief that U.S. businesses have conspired with the U.S. government, end users in foreign markets are either not using U.S. company services or products or are demanding that U.S.-headquartered companies needlessly place expensive servers in local markets. These types of measures have negatively affected U.S. business throughout the global marketplace, while also empowering other governments to pass rules threatening the modern, open Internet economy¹ and, in turn, thwarting one of the strongest engines of jobs, growth, and innovation.

Citizens around the world have a legitimate right to engage in a transparent discussion about privacy. In that debate, it is essential the U.S. government dispel misperceptions that are causing real competitive, reputational, and financial harm to U.S. businesses. In so doing, it is important to emphasize that U.S. companies strive to employ cutting-edge data protection and privacy measures and that concerns over government actions can only be solved by government-to-government discussions.

The Chamber believes the U.S. government must act swiftly and collaboratively to prevent the NSA controversy from undermining U.S. economic interests. These interests include, but are not limited to, the following:

- **International Trade** – Some governments are using concerns over spying as a pretext to pass misguided rules that either threaten to cut off the international flow of information or require localized servers and storage. Some of these rules are good faith attempts to address public concerns, but several governments appear to be advancing protectionist measures under the guise of national security concerns.
- **Privacy Globally** – The European Union and a number of other foreign governments are considering new approaches to data privacy. It is essential that any new rules be flexible enough to accommodate different uses and sectors.
- **Internet Governance** – The upcoming meeting of the International Telecommunications Union (ITU) in October and plans to transition oversight of the Internet Corporate of Assigned Names and Numbers (ICANN) have created a precarious situation for the future of the Internet. It is essential for the U.S. government to continue to guard against any efforts by foreign

¹ See e.g. recent statements from the European Union: http://ec.europa.eu/commission_2010-2014/kroes/en/content/making-europe-natural-home-safe-cloud-computing and Brazil: <http://www.usatoday.com/story/cybertruth/2013/11/15/snowden-fallout-brazil-calls-for-local-data-storage/3588861/>.

governments to use the NSA controversy as justification to upend the current, successful multi-stakeholder governance model under which the Internet has heretofore thrived.²

- **Data-Driven Innovation** – Data are being used for a variety of innovative new purposes, including health care, science, education, and human rights. The potential for continued increases in economic vibrancy and public benefits must not only be allowed to continue, but encouraged and facilitated. Although the White House has announced a new focus on “big data,”³ the U.S. government must ensure that the effort is transparent and inclusive, ensuring stakeholders are informed of any long-term plans and involved in every stage of the process.
- **Commercial Privacy Practices** – Given that governments and businesses use data in very distinct ways, with vastly different privacy implications, the NSA controversy must not be allowed to rush any examination of how the private-sector collects, uses, and protects consumer information. A distinction must be made between government collection and use of data, —backed by the inherent power of its authority—with no opt-out available and commercial privacy practices, where there are marketplace curbs on bad behavior and, for some business sectors, legal and regulatory requirements to safeguard consumer data. Experience with the Internet shows that no one knows with certainty what course it will take as technology and business models evolve; therefore, policymakers must carefully consider the economic consequences of hindering the development and use of the Internet before making rash changes to consumer privacy laws or regulations.
- **Cybersecurity** – The NSA controversy has chilled progress on Capitol Hill of vital information-sharing legislation. The Chamber commends the National Institute of Standards and Technologies for collaborating with industry to create the Framework for Improving Critical Infrastructure Cybersecurity, which was released in February. The Chamber urges similar leadership by the administration and Congress to enable greater information sharing about sophisticated threats to businesses’ cybersecurity. Industry still needs legislation that includes robust protections (e.g., legal liability and regulations) for businesses that voluntarily exchange information with their peers and

² See generally http://europa.eu/rapid/press-release_IP-14-142_en.htm.

³ <http://www.whitehouse.gov/blog/2014/01/23/big-data-and-future-privacy>.

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government partners. Such safeguards can coexist with protections for privacy and civil liberties.

Today's Internet and the data-driven economy, which affect businesses of all sizes and sectors, have been an enormous source of economic growth and job creation around the globe. It is unfortunate that concerns regarding revelations of U.S. national security and law enforcement activities are being used to justify actions that jeopardize the tremendous innovation in technologies and services central to the robust recovery of the U.S. economy. To nurture this immense engine of growth, the Chamber urges you and all policymakers to advocate for sound policies that ensure the free flow of data internationally and to be more outspoken in ensuring the separation of national security-related privacy issues from commercial privacy practices. The Chamber looks forward to working with you on these issues domestically and abroad.

Sincerely,

A handwritten signature in black ink, appearing to read "Myron Brilliant", enclosed in a thin black rectangular border.

Myron Brilliant

cc: Members of the United States Congress