

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641  
March 22, 2016

Mr. Scott R. Peppet  
Professor of Law  
University of Colorado Law School  
420 Wolf Law Building, 401 UCB  
Boulder, CO 80309-0401

Dear Mr. Peppet,

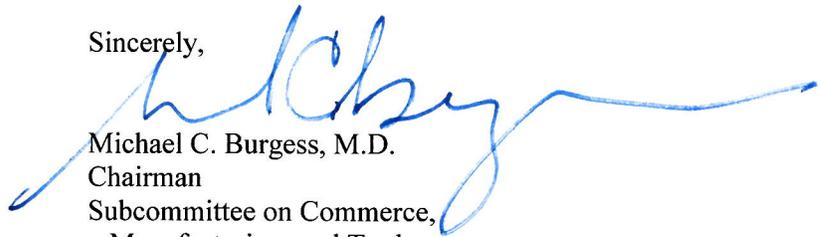
Thank you for appearing before the Subcommittee on Commerce, Manufacturing, and Trade on Thursday, March 3, 2016, to testify at the hearing entitled "Disrupter Series: Wearable Devices."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Tuesday, April 5, 2016. Your responses should be mailed to Giulia Giannangeli, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to [Giulia.Giannangeli@mail.house.gov](mailto:Giulia.Giannangeli@mail.house.gov).

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Michael C. Burgess, M.D.  
Chairman  
Subcommittee on Commerce,  
Manufacturing, and Trade

cc: Jan Schakowsky, Ranking Member, Subcommittee on Commerce, Manufacturing, and Trade

Attachment

## Attachment - Additional Questions for the Record

### **The Honorable Michael C. Burgess, M.D.**

1. In your testimony, you discussed concerns with how retailers are increasingly the first organization that the CPSC is contacting during the recall process instead of the product's manufacturer. In previous sessions of Congress, concerns were raised about recalled products making their way into the stream of commerce through discount retail chains. Please explain your concerns with the CPSC's outreach process during a recall, and additionally, what is being done in the retail industry to ensure that recalled products are not reentering the stream of commerce through discount merchants.

### **The Honorable Gregg Harper**

1. What enhanced capabilities do you see wearable devices providing in the next five to 10 years, beyond what they are providing to consumers and businesses today?
2. What does this fast pace of innovation mean for policymakers in terms of how we should be thinking about the technology?

### **The Honorable Jan Schakowsky**

1. In your testimony, you discussed how easy it can be to identify a person from their biometric information, and argued that legislation was needed to bring it within the definition of personally identifiable information. You also mentioned that "other sensor-based data" should be included in that definition. What are the other sensor-based data that should be included?
2. Many wearables manufacturers are relative newcomers to the technology space or are brand new companies, and may therefore have little experience building such a complex, robust data security system. What should be done to ensure that newer companies are familiar with the necessary security protocols and properly establish them before their products reach consumers?
3. As you noted in your testimony, employers are incorporating wearables into the workplace. When employees are given fitness trackers as part of a workplace wellness program, could their employers have access to the data collected by those devices? What kinds of inferences can an employer make from the seemingly innocuous data collected by a fitness wearable?
4. In your 2014 paper on regulating the Internet of Things, you gave the example of a CEO of a company who said he could infer from an employee's pattern of movement whether than employee would leave the company or get a promotion. Can you expand on that? What are some examples of non-fitness wearables? What other inferences can be made from the data collected by non-fitness wearables?

5. Are there any potential negative consequences of using wearables to monitor employee activity in the workplace?
6. Notice and choice are essential elements of the Fair Information Practice Principles set out by the Federal Trade Commission. It seems that the idea of consent may be somewhat more complicated in a workplace context.
  - a. In the example of fitness trackers given to employees as part of a wellness program, can employees be required to wear fitness trackers? Or might they feel pressured to participate in an employee wellness program and use a wearable even if they are not formally required to do so?
  - b. How should consent be properly obtained in this context?
7. Should privacy practices, and therefore privacy policies, for wearables be different in some way from the privacy practices and policies created for websites, or apps that are not related to wearables? What information would be beneficial to help consumers understand their privacy rights with regard to wearable devices?
8. Consumers are concerned about how their information—particularly health information—is used. In your testimony, you suggested that there should be constraints on use of personal information to ensure that “wearable device data will not migrate” into areas not contemplated by device users.
  - a. What kinds of constraints can the wearables industry put in place to prevent misuse of wearable device data?
  - b. You also suggested that if Congress takes some legislative action regarding wearable devices, we should consider use constraints on wearable device data. What are your recommendations for what that kind of legislation should look like?