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5 PROTECTING CONSUMER PRIVACY IN THE ERA OF BIG DATA

6 TUESDAY, FEBRUARY 26, 2019

7 House of Representatives

8 Subcommittee on Consumer Protection

9 and Commerce

10 Committee on Energy and Commerce

11 Washington, D.C.

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15 The subcommittee met, pursuant to call, at 10:00 a.m.,
16 in Room 2123 of the Rayburn House Office Building, Hon. Jan
17 Schakowsky [chair of the subcommittee] presiding.

18 Members present: Representatives Schakowsky, Castor,
19 Veasey, Lujan, Cardenas, Blunt Rochester, Soto, Matsui,
20 McNerney, Dingell, Kelly, O'Halleran, Pallone (ex officio),
21 McMorris Rodgers, Upton, Latta, Bucshon, Carter, Gianforte,
22 and Walden (ex officio).

23 Staff present: Jeff Carroll, Staff Director; Elizabeth

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24 Ertel, Office Manager; Evan Gilbert, Press Assistant; Lisa
25 Goldman, Counsel; Waverly Gordon, Deputy Chief Counsel;
26 Tiffany Guarascio, Deputy Staff Director; Alex Hoehn-Saric,
27 Chief Counsel, Communications and Technology; Zach Kahan,
28 Outreach and Member Service Coordinator; Dan Miller, Policy
29 Analyst; Joe Orlando, Staff Assistant; Kaitlyn Peel, Digital
30 Director; Tim Robinson, Chief Counsel; Chloe Rodriguez,
31 Policy Analyst; Mike Bloomquist, Minority Staff Director;
32 Adam Buckalew, Minority Director of Coalitions and Deputy
33 Chief Counsel, Health; Jordan Davis, Minority Senior Advisor;
34 Melissa Froelich, Minority Chief Counsel, CPAC; Peter Kielty,
35 Minority General Counsel; Bijan Koohmaraie, Minority Counsel,
36 CPAC; Ryan Long, Minority Deputy Staff Director; Brannon
37 Rains, Minority Staff Assistant; and Greg Zerzan, Minority
38 Counsel, CPAC.

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51 Ms. Schakowsky. The Committee on Consumer Protection
52 and Commerce will now be called to order.

53 So I am going to begin with a few comments that are off
54 the clock and then invite our ranking member to do the same.

55 I am going to say good morning and thank you all for joining
56 us today. And before we officially start the hearing, I
57 would like to welcome you to the first Consumer Protection
58 and Commerce Subcommittee of the 116th Congress.

59 Consumer protection has long been my passion and what
60 first drew me to public life. I like to call our
61 subcommittee the nation's legislative helpline because we
62 field consumer complaints. The subcommittee's jurisdiction
63 is vast in scope, ranging from the safety of cars to consumer
64 product defects to consumer fraud, both online and offline.

65 In the past, when Democrats controlled the House, this
66 subcommittee was responsible for making pools and children's
67 products safer, increased the fuel efficiency of cars, and
68 made sure that agencies aggressively protect consumers over
69 corporate interests. Under my leadership this subcommittee

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70 will be extremely active and push companies and the
71 administration to put consumers first.

72 I look forward to working with Ranking Member McMorris-
73 Rodgers. I believe there are so many issues on which we will
74 be able to work together in a bipartisan way. I would also
75 like to welcome several new Democratic members,
76 Representative Mark Veasey from Texas -- let's see, where I
77 am looking the wrong way, okay -- and Robin Kelly from
78 Illinois, my home state; Tom O'Halleran from Arizona; Lisa
79 Blunt Rochester from Delaware; and Darren Soto from Florida,
80 are all new to the Energy and Commerce Committee and they
81 also were smart enough to pick this best subcommittee at a
82 very exciting time.

83 I also welcome back many familiar faces and appreciate
84 your continued commitment to consumer protection issues. And
85 I would like to thank Tony Cardenas for serving as my vice
86 chair of the subcommittee and he will provide the
87 subcommittee with invaluable leadership.

88 And, finally, I would like to recognize the return of my
89 friend Debbie Dingell. Over the past 2 weeks we have mourned
90 the passing of her husband, John Dingell, who was so
91 important to this committee over the years and a friend to so
92 many. Debbie has been a stalwart, but I know it has been a

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93 difficult time.

94 Debbie, you have all of our sympathy and support from
95 the entire subcommittee. And with the indulgence of my
96 ranking member just to let Debbie say a few words.

97 Debbie?

98 Mrs. Dingell. I just want to thank you and all of my
99 colleagues. John Dingell loved this committee. He thought
100 the work that they did was very important and I hear him in
101 my ear going, "Woman, get on," and hearing him in the ears of
102 everybody, "Work together for the American people." Thank
103 you.

104 Ms. Schakowsky. I have been reminded that Darren Soto's
105 birthday is today? Oh, yesterday. Okay, never mind.

106 Okay. So Ranking Member McMorris Rodgers, would you
107 like to take a couple of minutes to welcome your new members
108 as well?

109 Mrs. McMorris Rodgers. Thank you. Thank you, Madam
110 Chair and to all the members of the committee. Welcome to
111 the committee, and I too want to extend my heartfelt thoughts
112 and prayers to Debbie and so appreciate her friendship, her
113 leadership on this committee, and I would join in saying
114 let's work together. As John Dingell would challenge us,
115 let's work together for the American people. And it is great

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116 to have you back, Debbie.

117 To the new members of the committee I would like to
118 recognize some of the newest members on our side of the
119 aisle. Mr. Hudson from North Carolina, he will be here
120 shortly, Mr. Carter from Georgia, Mr. Gianforte from Montana,
121 and I also have the privilege of having former chairmen on
122 this side of the aisle, Bob Latta and Burgess as well as full
123 committee chairmen on this subcommittee.

124 Look forward to working with you, Madam Chair, on
125 putting consumers first while ensuring that we continue to
126 celebrate the innovation and all that it has meant to the
127 American way of life and improving our quality of life. As
128 Americans we have led the world in technology and innovation
129 and I look forward to the many issues that are before this
130 committee and working to find that bipartisan ground wherever
131 possible. Thank you.

132 Ms. Schakowsky. Let's shake on that.

133 Mrs. McMorris Rodgers. All right.

134 Ms. Schakowsky. All right. So I yield myself 5 minutes
135 now for an opening statement. And as I said earlier, our
136 subcommittee is the nation's legislative helpline and our
137 first hearing, Protecting Consumer Privacy in the Era of Big
138 Data, couldn't be more timely because the phone at the end of

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139 the helpline is definitely ringing off the hook.

140 According to a recent survey, over 80 percent of U.S.
141 adults were not very confident in the security of personal
142 information held by social media, retail, and travel and
143 travel companies, and 67 percent wanted the government to act
144 to protect them. There is good reason for consumer
145 suspicion. Modern technology has made the collection,
146 analysis, sharing, and the sale of data both easy and
147 profitable.

148 Personal information is mined from Americans with little
149 regard for the consequences. In the last week alone, we
150 learned that Facebook exposed individual private health
151 information and they thought was -- that consumers thought
152 was protected in closed groups, and collected -- and Facebook
153 also collected data from third-party app developers on issues
154 as personal as women's menstrual cycle and cancer treatment.

155 People seeking solace may instead find increased insurance
156 rates as a result of the disclosure of that information.

157 But Facebook isn't alone. We have seen the data
158 collection industry transform from a nascent industry most
159 Americans haven't heard of to an economic powerhouse gobbling
160 up every piece of consumer data it can both online and
161 offline. While many companies claim to provide notice and

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162 choice to consumers, the truth is that they provide little
163 reason for believing we are protected.

164 Who has the time to wade through the dozens of privacy
165 policies that impact them? How many people think about being
166 trapped through their phone or by the overhead light in the
167 store? And often, only choice, the only choice that we have
168 to avoid data collection is not to go to the store or to use
169 the app. Reports of the abuse of personal information
170 undoubtedly give Americans the creeps.

171 But this data isn't being collected to give you the
172 creeps. It is being done to control markets and make a
173 profit. Without a comprehensive, federal privacy law the
174 burden has fallen completely on consumers to protect
175 themselves and this has to end. Without a doubt, there are
176 legitimate and beneficial reasons for consumers to use
177 personal -- for companies to use personal information, but
178 data collection must come with responsibilities. There
179 should be limits on the collection of consumers' data and on
180 the use and sharing of their personal information.

181 My goal is to develop strong, sensible legislation that
182 provides meaningful protection for consumers while promoting
183 competitive markets and restoring America's faith in business
184 and government. Rules alone though are not enough. We also

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185 need aggressive enforcement. Unfortunately, in recent years
186 the Federal Trade Commission's enforcement action have done
187 little to curb the worst behavior in data collection and data
188 security.

189 Any legislation must give federal regulators the tools
190 to take effective action to protect consumers. It is
191 important to equip regulators and enforcers with the tools
192 and funding necessary to protect privacy, but it is also
193 critical to make sure that requests for more tools and
194 privacy are not used as a excuse for inaction. We must
195 understand why the FTC hasn't used its existing suite of
196 tools to the full extent such as section 5 authority to ban
197 unfair methods of competition or its ability to enforce
198 violators.

199 So I welcome our witnesses today to learn about how we
200 should achieve these goals given the breadth of the issue.
201 This will be the first of several hearings. Others will
202 allow us to focus on specific issues of concern to the
203 public. So I look forward to working with all of you on both
204 sides of the aisle, and I now yield to Ranking Member Cathy
205 McMorris Rodgers for 5 minutes.

206 [The prepared statement of Ms. Schakowsky follows:]

207

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*****COMMITTEE INSERT 1*****

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209 Mrs. McMorris Rodgers. Thank you, Madam Chair. I would
210 like to thank you for organizing this first hearing of the
211 Congress on privacy and security. It really builds on
212 important work that was done in the past by Chairman Walden
213 and Latta in the last Congress and then Chairman Upton and
214 Burgess in the 114th Congress. I am hopeful that we can find
215 a bipartisan path to move forward on a single American
216 approach to privacy, one that is going to protect consumers
217 and individual privacy, one that ensures that consumers
218 continue to benefit from the amazing technology and
219 innovation that has happened in recent years. This
220 morning I would like to lay out four principles as we
221 approach this effort, one that supports free markets,
222 consumer choice, innovation, and small businesses, the
223 backbone of our economy. We often celebrate small businesses
224 in America.

225 Principle number one, one national standard. The
226 Constitution was crafted around the concept that one national
227 marketplace would make America stronger in certain areas. It
228 also recognizes the importance of intellectual property
229 rights, free expression, and the rights of "We the People" to
230 be protected from the power of government.

231 The internet knows no borders. It has revolutionized

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232 our nation's economy by seamlessly connecting businesses and
233 people across the country. Online, a small business in
234 Spokane, Washington can as easily reach customers in Illinois
235 and New Jersey as in Eastern Washington. Distance is no
236 longer a barrier. The internet economy is interstate
237 commerce and subject to federal jurisdiction.

238 There is a strong groundswell of support for a federal
239 privacy law that sets a national standard. Many recognize
240 the burdens multiple state laws would create, but what would
241 it mean for someone in Washington State who buys something
242 online from a small business in Oregon to ship to their
243 family in Idaho? This is a regulatory minefield that will
244 force businesses to raise prices on their customers. Setting
245 one national standard makes common sense and is the right
246 approach to give people certainty.

247 Principle number two, transparency and accountability.
248 Companies must also be more transparent when explaining their
249 practices. For example, we learned last week that Google
250 included a microphone in their Nest device but failed to
251 disclose it, and Facebook is collecting very personal health
252 information from apps, the chair mentioned that.
253 Transparency is critical. When unfair or deceptive practices
254 are identified, there should be enforcement and there should

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255 be consequences strong enough to improve behavior.

256 Principle number three, improving data security.

257 Another area important to this debate is data security.

258 Perfect security doesn't exist online and companies are

259 bombarded by hackers every second of every day. Certain data

260 is more valuable on the black market, which is why Social

261 Security Numbers, credit card data, and log-in credentials

262 are always major targets for criminals. One goal must be to

263 improve people's awareness. For one, how their information

264 is being collected and used, and two, how companies are

265 protecting it and how people can protect themselves.

266 Our focus should be on incentivizing innovation security

267 solutions and certainty for companies who take reasonable

268 steps to protect data, otherwise we risk prescriptive

269 regulations that cannot be updated to keep up with the bad

270 actors' newest tactics.

271 Principle number four, small businesses. We must not

272 lose sight of small and medium-sized businesses and how

273 heavy-handed laws and regulations can hurt them.

274 Established, bigger companies can navigate a complex and

275 burdensome privacy regime, but millions of dollars aren't

276 doable for startups and small businesses. We have already

277 seen this in Europe where GDPR has actually increased, has

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278 helped increase the market share of the largest tech
279 companies while forcing smaller companies offline with
280 millions of dollars in compliance costs.

281 These startups and small businesses could be innovating
282 the next major breakthrough in self-driving technology,
283 health care, customer service, and so many other areas. To
284 keep America as the world's leading innovator we cannot
285 afford to hold them back. Heavy-handed and overly cautious
286 regulations for all data will stop innovation that makes our
287 roads safer, health care more accessible, and customer
288 service experiences better.

289 I am glad our teams were able to work together on
290 today's hearing. This is a good step forward in finding a
291 bipartisan solution for these critical issues. And as we
292 move forward, I am sure there is going to be more hearings in
293 the future to allow more small business owners, startups, and
294 entrepreneurs to join this conversation.

295 I believe we have a unique opportunity here for a
296 bipartisan solution that sets clear rules for the road on
297 data privacy. In its best use data has made it possible for
298 grocery aisles to be organized on how people shop. But we
299 need to explore data privacy and security with forward-
300 looking solutions and I look forward to hearing from the

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301 witnesses and being a part of this discussion today.

302 Thank you very much, Madam Chair.

303 [The prepared statement of Ms. McMorris Rodgers

304 follows:]

305

306 *****COMMITTEE INSERT 2*****

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307 Ms. Schakowsky. Thank you. The gentlelady yields back
308 and now the chair recognizes Mr. Pallone, chairman of the
309 full committee, for 5 minutes for his opening statement.

310 The Chairman. Thank you. I also wanted to welcome back
311 Debbie Dingell. Debbie has shown tremendous strength and
312 courage during the past few weeks, and you were missed,
313 Debbie, and we are glad you are back today. So I just wanted
314 to say that.

315 Welcome to the first hearing of the Consumer Protection
316 and Commerce Subcommittee. We renamed the subcommittee to
317 emphasize the importance of putting consumers first, and that
318 is the lens through which I view the important issue of
319 consumer privacy. How do we empower consumers and impose
320 reasonable limits on companies that collect and use our own
321 personal information?

322 In the past we have talked about major data breaches and
323 scandals involving the misuse and unauthorized sharing of
324 people's data and we have talked about the potential for
325 emerging technologies to be used in unintended and
326 potentially harmful ways. But privacy isn't just about major
327 incidents or predictions of the future, it is an everyday
328 issue constantly affecting our lives and the lives of our
329 children.

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330 Almost every company that we interact with and even many
331 we don't are conducting surveillance of us. When we visit a
332 single website many companies are tracking our actions on
333 that site, what we click on, how long we are on each page,
334 even our mouse movements and that is true for each of the
335 dozens of sites most of us visit every day.

336 When we go out our location is tracked on our phones.
337 Video surveillance of stores, on the street, in doctors'
338 offices record what we do and who we are with. The purchases
339 we make are recorded by the stores through store loyalty
340 programs and by the credit cards we use to make those
341 purchases. And companies use that information to sort and
342 commodify us too.

343 Inferences are drawn and we are labeled as a Democrat or
344 Republican, white or Latino, gay or straight, pregnant teen,
345 a grieving parent, a cancer survivor, so many more, and this
346 is all done without our knowledge. And then our personal
347 information and related inferences are being shared and sold
348 many times over. Companies may share our information with
349 business partners and affiliates that we have never heard of.

350 Our data also may be sold to data brokers who collect
351 massive amounts of data about all of us and then sell that
352 off to anyone who is willing to pay for it.

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353 The scope of it all is really mind-boggling. Without a
354 doubt there are positive uses of data. Companies need
355 personal information to deliver a package or charge for a
356 service. Some data is used for research and development of
357 new products and improving services and sometimes it is used
358 for fraud prevention or cybersecurity purposes and some of it
359 is used for scientific research to find new treatments for
360 medical conditions.

361 But in some cases data use results in discrimination,
362 differential pricing, and even physical harm. Low-income
363 consumers may get charged more for products online because
364 they live far away from competitive retailers. Health
365 insurance companies could charge higher rates based on your
366 food purchases or info from your fitness trackers. A victim
367 of domestic violence may even have a real-time location
368 tracking information sold to their attacker. And these are
369 simply unacceptable uses of people's data.

370 Yet for the most part, here in the U.S. no rules apply
371 to how companies collect and use our information. Many
372 companies draft privacy policies that provide few protections
373 and are often unread. One study calculated that it would
374 take 76 years to read all the privacy policies for every
375 website the average consumer visits every year.

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376 And even if you could read and understand these privacy
377 policies, often your only choice is to accept the terms or
378 not use the service. In a lot of situations that is not an
379 option. Consider when you need to pay for parking at a meter
380 or use a website for work. You don't really have that
381 choice. So we can no longer rely on a notice and consent
382 system built on unrealistic and unfair foundations. As the
383 chairwoman said, we need to look forward towards
384 comprehensive privacy legislation, legislation that shifts
385 the burden off consumers and puts reasonable responsibility
386 on those profiting from the collection and use of our data.

387 Because consumer privacy isn't new to this committee, we
388 have been talking about it for years, yet nothing has been
389 done to address the problem and this hearing is the beginning
390 of a long overdue conversation. It is time that we move past
391 the old model that protects the companies using the data and
392 not the people. So I look forward to hearing from our
393 witnesses today on how we can work together to accomplish
394 this. I plan to work with my colleagues on both sides of the
395 aisle to craft strong, comprehensive privacy legislation that
396 puts consumers first.

397 And I just want to thank you, Chairman Schakowsky, when
398 you said that, you know, what this committee is all about is

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399 putting consumers first, and I think that having this hearing
400 as you are today on the privacy issue is a strong indication
401 that that is exactly what we intend to do. Thank you again.

402 [The prepared statement of The Chairman follows:]

403

404 *****COMMITTEE INSERT 3*****

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405 Ms. Schakowsky. I thank the gentleman. The gentleman
406 yields back and now the chair recognizes Mr. Walden, ranking
407 member of the full committee, for 5 minutes for his opening
408 statement.

409 Mr. Walden. Well, good morning and welcome to our
410 members and our witnesses and congratulations to both
411 Representative Rodgers as the new lead Republican and to
412 Representative Jan Schakowsky as the new chair of the
413 Consumer Protection and Commerce Subcommittee. I know we are
414 off to a good start this morning.

415 We have a lot of important issues to work on in this
416 subcommittee and I am hopeful we can continue the bipartisan
417 achievements out of this subcommittee from Chair Schakowsky
418 and Representative Latta's SELF DRIVE Act to legislation
419 focused on the Internet of Things and the oversight of the
420 FTC, CPSC and NHTSA. I hope we can continue working together
421 for the benefit of the American consumer.

422 I would also like to thank Chairs Pallone and Schakowsky
423 for picking up on the privacy and security issues as the
424 topic of the first hearing for this subcommittee. From the
425 disrupter series of hearings that we held in the last
426 Congress to the first congressional hearings with major tech
427 companies' CEOs, this committee has been on the forefront of

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428 getting answers for our constituents.

429 The debate over privacy, it is not new. From the first
430 Kodak camera to caller ID, major privacy debates ensued when
431 new innovation was introduced. But there are new challenges
432 when it comes to privacy and we have heard some of that today
433 from our members. Privacy means different things to
434 different people, which makes this debate even more
435 challenging in the age of Instagram and YouTube.

436 I believe it is important that we work together toward a
437 bipartisan federal privacy bill that, one, improves
438 transparency, accountability, and security for consumers;
439 that, two, protects innovation and small businesses; and,
440 three, sets one national standard. Now the first issue as
441 some like to frame as incredibly divisive falls under the
442 most basic principle underpinning our jurisdiction and that
443 is the term "interstate commerce."

444 A federal privacy bill needs to be just that, one that
445 sets the national standard for commercial collection use and
446 sharing of personal data in the best interest of consumers.
447 The Supreme Court has recently reaffirmed the principles of
448 the commerce clause. State laws cannot discriminate against
449 interstate commerce. They cannot impose undue burdens on
450 interstate commerce and should take into consideration the

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451 small businesses startups and others who engage in commerce
452 across state lines.

453 There are many policy areas where it makes sense for
454 states to innovate. However, the internet does not stop at a
455 state line and neither should innovative privacy and security
456 solutions. Your privacy and security should not change
457 depending on where you live in the United States. One state
458 should not set the standards for the rest of the country.

459 We can improve the security and privacy of consumers'
460 data without adding to the confusion or harming small
461 businesses and entrepreneurs, so Congress should thoughtfully
462 consider what various states are proposing so we can deliver
463 that certainty and do so with a national standard. We can
464 learn from California and we can learn from Washington and a
465 growing number of other states who have drafted their own
466 legislation reinforcing why we should begin with an agreement
467 that a federal privacy bill sets one national standard.

468 Now a truly American approach to privacy and security
469 can give consumers better control by supporting innovative
470 solutions without massively expanding the regulatory state.
471 We should avoid creating a system that floods people's
472 inboxes with privacy policies that frankly they do not read,
473 or click through notices that even make simple tasks very

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474 frustrating. We can and should, however, learn from previous
475 efforts here at home and abroad.

476 So transparency and accountability are critical to move
477 forward and measurably improve consumers' ability to choose
478 between services they want to use. People need to receive a
479 clearer understanding of exactly how their data are used by
480 the digital services with whom they interact. The FTC has
481 announced their investigation into both Equifax and Facebook.

482 The outcome of their work will help Congress evaluate the
483 effectiveness of laws currently on the books and the
484 enforcement tools utilized to hold companies accountable. We
485 can write bill after bill and the FTC can publish rule after
486 rule, but if we do not have effective enforcement they are
487 just rules on paper.

488 So I believe we have a unique opportunity to address
489 some of the most complex privacy and security questions of
490 the day and I look forward to working with my colleagues
491 across the aisle on setting a national framework and getting
492 this debate moving forward toward a bipartisan national
493 solution. With that, Madam Chair, I yield back.

494 [The prepared statement of Mr. Walden follows:]

495

496 *****COMMITTEE INSERT 4*****

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497 Ms. Schakowsky. Thank you. The gentleman yields back.

498 And the chair would like to remind members that pursuant to
499 committee rules, all members' written opening statements
500 shall be made part of the record.

501 And now I would like to introduce our witnesses for
502 today's hearing and thank you all for coming. We have Ms.
503 Brandi Collins-Dexter, Senior Campaign Director, Media,
504 Democracy & Economic Justice at Color of Change; Dr. Roslyn
505 Layton, Visiting Scholar at the American Enterprise
506 Institute; Ms. Denise Zheng -- is that correct, Zheng? Okay
507 -- Vice President, Technology, Innovation Business
508 Roundtable; Dr. Dave Grimaldi, Executive Vice President for
509 Public Policy IAB; and, Dr. Nuala O'Connor, President and CEO
510 at the Center for Democracy & Technology.

511 And let's begin then with Ms. Collins-Dexter.

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512 STATEMENTS OF BRANDI COLLINS-DEXTER, SENIOR CAMPAIGN
513 DIRECTOR, MEDIA, DEMOCRACY & ECONOMIC JUSTICE, COLOR OF
514 CHANGE; ROSLYN LAYTON, VISITING SCHOLAR, AMERICAN ENTERPRISE
515 INSTITUTE; DENISE ZHENG, VICE PRESIDENT, TECHNOLOGY,
516 INNOVATION BUSINESS ROUNDTABLE; DAVE GRIMALDI, EXECUTIVE VICE
517 PRESIDENT FOR PUBLIC POLICY, IAB; AND, NUALA O'CONNOR,
518 PRESIDENT AND CEO, CENTER FOR DEMOCRACY & TECHNOLOGY
519

520 STATEMENT OF BRANDI COLLINS-DEXTER

521 Ms. Collins-Dexter. Good morning Madam Chair, Ranking
522 Member Rodgers, Committee Chairman Pallone, Committee Ranking
523 Member Walden, and members of the subcommittee. My name is
524 Brandi Collins-Dexter and I am a senior campaign director at
525 Color of Change, the largest online civil rights organization
526 in the United States with more than 1.5 million members who
527 use technology to fight for change.

528 In the wild, wild West of the digital economy
529 discriminatory marketing practices are so lucrative that
530 entire industries have sprung up to discriminate for dollars.

531 One company called "Ethnic Technologies" -- subtle, I know --
532 -- developed software that predicts an individual's ethnic
533 origin based on data points easily purchased from ISPs and
534 then sells that data, which has been turned into a predictive

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535 algorithm, to any company that wants to target groups or
536 services to a particular ethnic group. Part of what we are
537 seeing now is bad online behavior that circumvents civil
538 rights laws.

539 Google and Facebook have both had numerous complaints
540 filed against them for allowing discriminatory housing and
541 employment ads. State commission reports found that voter
542 suppression ads were specifically targeted towards black
543 Americans on social media during the 2016 presidential
544 election and that social media companies made misleading or
545 evasive claims about those efforts.

546 Additionally, low-income communities are targeted by
547 predatory payday loan companies that make billions of dollars
548 in interest and fees on the back of struggling families. We
549 have seen online price gouging and digital redlining where
550 corporations like Staples have used geotracking and personal
551 data to charge customers higher prices for products based on
552 their geography. Some data brokers even lump consumers into
553 categories like, quote unquote, getting by, compulsive online
554 gamblers. One company has even used a category called
555 "Speedy Dinero," described as quote, Hispanic communities in
556 need of fast cash receptive to some prime credit offers.

557 Last week, as was mentioned, Facebook was caught

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558 obtaining sensitive personal information submitted to
559 entirely separate mobile apps using software that immediately
560 shares data with social networks for ad targeting. I mean,
561 literally, my iPad knows more about me than my husband and he
562 is an ex-journalist who is very nosy. Even information that
563 feels innocuous can become a proxy for a protected class.
564 And sensitive information, right now corporations are able to
565 easily combine information about you that they have purchased
566 and create a profile of your vulnerabilities.

567 Earlier this month, Color of Change joined with advocacy
568 groups to urge Congress to put civil and human rights at the
569 center of the privacy fight. Our letter states in part,
570 "Civil rights protections have existed in brick and mortar
571 commerce for decades. Platforms and other online services
572 should not be permitted to use consumer data to discriminate
573 against protected classes or deny them opportunities in
574 commerce, housing, and employment, or full participation in
575 our democracy."

576 There are many bills out there, some we think are weak
577 and some like language we have seen from Senator Cortez
578 Masto, so a great deal of promise. But ultimately we would
579 like to see bipartisan legislation written through an
580 antidiscrimination lens that prevents manipulative or

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581 exclusionary marketing practices that exacerbate poverty. It
582 should offer a baseline that does not preempt innovative
583 state policy and it must contain enforcement mechanisms and
584 not rely on self-regulation.

585 Some say privacy is the currency you pay to engage in
586 our digital ecosystem. We should not have to make that
587 choice. Our communities need to trust that when we go online
588 we can count on our privacy and the safety of our information
589 for ourselves and our children. This shouldn't be a game of
590 political football. Eighty percent of Americans support
591 making it illegal for companies to sell or share their
592 personal information. At least 80 percent of us believe that
593 we should have control over how companies use our
594 information.

595 Privacy is a concept in its most aspirational sense. It
596 is not merely about the freedom and ability to close your
597 digital curtain, so to speak. Instead, we should consider
598 privacy and digital rights for all a necessary framework
599 crucial for ensuring that our human, civil, and
600 constitutional rights are not confined to our offline lives,
601 but are also protected online where so much of our daily life
602 occurs. I would even say that if we fail in the mission to
603 ensure our rights online are protected, we stand to render

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604 many of our offline rights meaningless.

605 Thank you again for having me here today and I look
606 forward to your thoughts.

607 [The prepared statement of Ms. Collins-Dexter follows:]

608

609 *****INSERT 5*****

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610 Ms. Schakowsky. Thank you. I meant to mention that
611 each of you has 5 minutes and I appreciate you, Ms. Collins-
612 Dexter, for sticking to that. The lights that will go on
613 initially will be green and then the light will turn yellow
614 when you have 1 minute remaining and then red means you need
615 to stop.

616 And so, Dr. Layton, you are recognized for 5 minutes.

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617 STATEMENT OF ROSLYN LAYTON

618

619 Ms. Layton. Good morning. Thank you, Chair Schakowsky,
620 Ms. McMorris Rodgers, and members of the committee. It is an
621 honor to be here and I am heartened by your bipartisanship.

622 Today I represent only myself and my research. I have
623 lived in the European Union for the last decade and I work at
624 a European university where I make international internet
625 policy comparisons. As the mother of three Danish-American
626 children, I am legitimately interested in policy that makes
627 Europe a better place.

628 The academic literature shows that online trust is a
629 function of institutions, business practices, technologies,
630 and users' knowledge. But unfortunately the E.U. rejected
631 this formula for its data protection policy. My hope is that
632 Congress will avoid the mistakes of the GDPR and ultimately
633 leapfrog Europe with a better framework based upon privacy-
634 enhancing technologies, a strong federal standard, and
635 consumer education.

636 To analyze a policy like the GDPR we must evaluate its
637 real-world effects. Since its implementation, Google,
638 Facebook, and Amazon have increased their market share in the
639 E.U. This is a perverse outcome for a policy promised to

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640 level the playing field. Today, only 20 percent of E.U.
641 companies are online. There is little to no data that shows
642 that small and medium-sized enterprises are gaining as a
643 result of the GDPR.

644 The data shows a consistent lag in the small to medium-
645 sized business segment particularly for them to modernize
646 their websites and market outside their own E.U. country.
647 Now this outcome isn't necessarily surprising. As a Nobel
648 Prize economist, George Stigler, observed 40 years ago,
649 regulation is acquired by industry and operated for its
650 benefit. A number of large companies have come out in
651 support of the GDPR. It doesn't surprise me either, that is
652 because it cements their market position. They don't need
653 permissionless innovation anymore, but they don't have a
654 problem depriving startups of the same freedom.

655 Now to comply with the GDPR today, an average firm of
656 500 employees will spend about three million dollars. And
657 thousands of U.S. firms have decided that this is not
658 worthwhile including the Chicago Tribune which is no longer
659 visible in the European Union. There are over one thousand
660 American news media that no longer reach Europeans. This is
661 also concerning because the E.U. is the destination of two-
662 thirds of America's digital goods and services.

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663 Now the GDPR might be justified if it created greater
664 trust in the digital ecosystem, but there is no such
665 evidence. After a decade of these kinds of data protection
666 regulations in the E.U., in which users endure intrusive pop-
667 ups and disclosures in every digital site they visit,
668 Europeans report no greater sense of trust online. More than
669 half of the survey respondents in the U.K. alone say that
670 they feel no better since the GDPR took effect and it has not
671 helped them to understand how their data is used.

672 I am skeptical of both the GDPR and the CCPA in
673 California with their laundry list of requirements, 45 in
674 Europe and 77 in California. These are not scientifically
675 tested and there is no rational policy process to vet their
676 efficacy. Now I imagine if we held -- now what would happen
677 if we would hold government to the same standards? Australia
678 tried a "when in doubt, opt out" policy and half a million
679 people left the national healthcare record program. It
680 crashed their system for healthcare.

681 We have another reason to be skeptical of the claims of
682 the E.U. being morally superior with their GDPR. Their
683 networks are not secure because they are built with equipment
684 by dubious Chinese equipment makers. Your data protection
685 standard means little if the Chinese Government can hack your

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686 data through back doors.

687 In any event, Europe's attempt to create a common market
688 for data is something that was actually part of our founding
689 and of our country with our national standard in interstate
690 commerce, which has been discussed, and I support such a
691 national standard for sensitive data consistently applied
692 across enterprises. To leap the Europeans on data protection
693 we need to review the empirical research that the Europeans
694 ignored, namely how privacy-enhancing technologies and user
695 knowledge will promote online trust.

696 The answer is not to copy the E.U., but to build world-
697 class, scientifically superior, privacy-enhancing
698 technologies here in the United States. Congress should
699 incentivize the development of such technologies through
700 grants and competitions and provide safe harbors for their
701 research, development, and practice. There is no consumer
702 protection without consumer education and we should support
703 people to acquire their digital competence so they make
704 informed decisions about the products they use.

705 In closing, please do not fall prey to the European
706 regulatory fallacy which substitutes the bureaucratization of
707 data instead of a natural right of privacy. Increasing the
708 number of agencies and bureaucrats who govern our data does

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709 not increase our privacy. It reduces our freedom, makes
710 enterprise more expensive, and deters innovation. Thank you
711 for your leadership. I welcome your questions.

712 [The prepared statement of Ms. Layton follows:]

713

714 *****INSERT 6*****

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715 Ms. Schakowsky. Thank you.

716 Ms. Zheng, you are recognized for 5 minutes.

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717 STATEMENT OF DENISE ZHENG

718

719 Ms. Zheng. Thank you Chairwoman Schakowsky, Ranking
720 Member McMorris Rodgers --

721 Ms. Schakowsky. Microphone. There you go.

722 Ms. Zheng. Oh, sorry.

723 Chairwoman Schakowsky, Ranking Member McMorris Rodgers,
724 members of the subcommittee, thank you for the opportunity to
725 testify on behalf of the Business Roundtable.

726 Business Roundtable represents more than 200 CEOs of the
727 largest American companies that operate in nearly every
728 corner of the economy including technology,
729 telecommunications, retail, banking, health, manufacturing,
730 automotive, and many other industries. Our companies touch
731 virtually every American consumer. They process 16 trillion
732 in global consumer payments each year and service roughly 40
733 million utilities customers across the country.

734 They fly more than 250 million passengers to their
735 destinations each year and provide wireless communications
736 and internet services to more than 160 million consumers.
737 They sponsor nearly 70 million medical insurance memberships
738 and deliver more than 42 million packages every single day.
739 Data privacy is a major priority for the Business Roundtable

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740 especially as companies that rely on data and digital
741 platforms to deliver products and services to consumers and
742 to conduct day-to-day business operations.

743 That is why CEOs from across industry sectors have come
744 together to call for a federal privacy law that provides
745 consistent consumer privacy protections, promotes
746 accountability, and fosters innovation and competitiveness.
747 We strongly support giving consumers control over how their
748 personally identifiable information is collected, used, and
749 shared.

750 At the same time, it is important to remember the value
751 of data in our economy as well as the enormous benefits that
752 data-driven services provide to our consumers. Data enables
753 companies to deliver more relevant and valuable user
754 experience to consumers. It allows companies to detect and
755 prevent fraud on user accounts and to combat cybersecurity
756 attacks. It creates greater productivity and cost savings
757 for manufacturing to transportation and logistics and it
758 leads to breakthroughs in health and medical research.

759 Innovation thrives in stable policy environments where
760 new ideas can be explored and flourish within a well-
761 understood legal and regulatory framework. So in December,
762 Business Roundtable released a proposal for privacy

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763 legislation. Our proposal is the product of extensive
764 deliberation with the chief privacy officers of our companies
765 and approval from CEOs across industry sectors.

766 We believe that privacy legislation must prioritize four
767 important objectives. First and foremost, it should champion
768 consumer privacy and promote accountability. Legislation
769 should include strong protections for personal data that
770 enhance consumer trust and demonstrate U.S. leadership as a
771 champion for privacy.

772 Second is fostering innovation and competitiveness
773 especially in a dynamic and evolving technology landscape.
774 Legislation should be technology-neutral and allow
775 organizations to adopt privacy protections that are
776 appropriate to the specific risks such as the sensitivity of
777 the data.

778 Third, it should harmonize privacy protections.
779 Congress should enact a comprehensive, national law that
780 ensures consistent protections and avoids a state-by-state
781 approach that leads to disjointed consumer protections,
782 degraded user experience, and barriers to investment and
783 innovation.

784 And fourth, legislation should promote consumer privacy
785 regimes that are interoperable on a global basis and it

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786 should seek to bridge differences between the U.S. and
787 foreign privacy regimes.

788 At the heart of the Business Roundtable proposal is a
789 set of core individual rights that we believe consumers
790 should have over their data, including transparency.
791 Consumers deserve to have clear and concise understanding of
792 the personal data that a company collects, the purposes for
793 which that data is used, and whether and for what purposes
794 personal data is disclosed to third parties.

795 Control, consumers should have meaningful control over
796 their data based upon the sensitivity of the information
797 including the ability to control whether that data is sold to
798 third parties. Consumers should also have the right to
799 access and correct inaccuracies in their personal data about
800 them and they should have the right to delete personal data.

801 A federal privacy law should be comprehensive and apply
802 a consistent, uniform framework to the collection, use, and
803 sharing of data across industry sectors. It should also
804 recognize that there are situations that do justify
805 exceptions such as cases of public health and safety, or to
806 prevent fraud and provide cybersecurity, or when certain data
807 is necessary to deliver a product or a service that the
808 consumer requested, or to ensure First Amendment rights and

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809 to protect the rights of other individuals.

810 Establishing and protecting these consumer rights also
811 requires effective, consistent, and coordinated enforcement
812 to provide accountability and protect consumer rights.

813 Absent action from Congress, we will be subject not only to a
814 growing confusing set of state government requirements, but
815 also to different data protection laws from governments in
816 Europe, countries like Brazil, and elsewhere. Make no
817 mistake, consumers deserve meaningful, understandable, and
818 consistent privacy rights regardless of where they live and
819 where their data may be located.

820 I thank the subcommittee for its leadership in holding
821 this hearing and for encouraging a dialogue and I look
822 forward to the questions. Thank you.

823 [The prepared statement of Ms. Zheng follows:]

824

825 *****INSERT 7*****

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826 Ms. Schakowsky. Thank you.

827 Mr. Grimaldi, you are now recognized for 5 minutes.

828

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829 STATEMENT OF DAVE GRIMALDI

830

831 Mr. Grimaldi. Thank you, Chairman Schakowsky, Ranking
832 Member McMorris Rodgers, and members of the committee. I
833 appreciate the opportunity to testify here today. I am Dave
834 Grimaldi, executive vice president for Public Policy at the
835 Interactive Advertising Bureau which was founded in 1996 and
836 headquartered in New York City. We represent over 650
837 leading media and technology companies that are responsible
838 for selling, delivering, and optimizing digital advertising
839 or marketing campaigns.

840 Today the U.S. economy is increasingly fueled by the
841 free flow of data. One driving force in this ecosystem is
842 data-driven advertising. Advertising has helped power the
843 growth of the internet for decades by delivering innovative
844 tools and services for consumers and businesses to connect
845 and communicate. Data-driven advertising also allows
846 consumers to access these resources at little to no cost to
847 them and it has created an environment where small publishers
848 and start-up companies can enter the marketplace to compete
849 against the internet's largest players.

850 As a result of this advertising based model, U.S.
851 businesses of all sizes have been able to grow online and

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852 deliver widespread consumer and economic benefits. According
853 to a 2017 study, in 2016 the U.S. ad-supported internet
854 created 10.4 million jobs and added 1.1 trillion to the U.S.
855 economy.

856 The study, designed to provide a comprehensive review of
857 the entire internet economy and answer questions about its
858 size, what comprises it, and the economic and social benefits
859 Americans deprive from it, revealed key findings that analyze
860 the economic importance as well as the social benefits of the
861 internet. And, indeed, as the Federal Trade Commission noted
862 in its recent comments to the National Telecommunications and
863 Information Administration, if a subscription-based model
864 replaced the ad-based model, many consumers would not be able
865 to afford access to or would be reluctant to utilize all of
866 the information, products, and services they rely on today
867 and that could become available in the future.

868 The time is right for the creation of a new paradigm for
869 data privacy in the United States. And IAB, working with
870 Congress and based on our members' successful experience
871 creating privacy programs that consumers understand and use,
872 can achieve a new federal approach that instead of bombarding
873 consumers with notices and choices comprehensively describes
874 clear, workable, and consistent standards that consumers,

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875 businesses, and law enforcers can rely upon. Without a
876 consistent federal privacy standard, a patchwork of state
877 privacy laws will create consumer confusion, present
878 substantial challenges for businesses trying to comply with
879 these laws, and fail to meet consumers' expectations about
880 their digital privacy.

881 We ask Congress to standardize privacy protections
882 across the country by passing legislation that provides
883 important protections for consumers while allowing digital
884 innovation to continue to flourish. We caution Congress not
885 to rely on the framework set forth in Europe's General Data
886 Privacy Regulation or California's Consumer Privacy Act as
887 examples of the ways in which a national privacy standard
888 should function.

889 Far from being a desirable model, the GDPR shows how
890 overly restrictive frameworks can be harmful to competition
891 and consumers alike. Less than a year into GDPR's
892 applicability the negative effects of its approach have
893 already become clear. The GDPR has led directly to consumers
894 losing access to online resources with more than 1,000 U.S.-
895 based publishers blocking European consumers from access to
896 online material, in part because of the inability to
897 profitably run advertising.

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898 To that unfortunate end, as was pointed out before, I
899 would note that the Chicago Tribune including its Pulitzer
900 Prize-winning stories on government corruption, faulty
901 government regulation, et cetera, is no longer accessible in
902 Europe due to GDPR. Additionally, the San Fernando Sun
903 newspaper which has been open since 1904 is no longer
904 accessible, and the Holland Sentinel founded in 1896 can no
905 longer be seen in Europe.

906 Small businesses and startups also saw the negative
907 impact of GDPR with many choosing to exit the market.
908 Consent banners and pop-up notices have been notably
909 ineffective at curbing irresponsible data practices or truly
910 furthering consumer awareness and choice. The CCPA follows
911 in the footsteps of GDPR and could harm consumers by impeding
912 their access to expected tools, content, and services, and
913 revealing their personal information to unintended recipients
914 due to lack of clarity in the law.

915 To achieve these goals, IAB asks Congress to support a
916 new paradigm that would follow certain basic principles.
917 First, in contrast to many existing privacy regimes, a new
918 law should impose clear prohibitions on a range of harmful
919 and unreasonable data collection and use practices
920 specifically identified in the law. Consumers will then be

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921 protected from such practices without the need for any action
922 on their part.

923 Second, a new law should distinguish between data
924 practices that pose a threat to consumers and those that do
925 not, rather than taking a broad-brush approach to all data
926 collection and use. And finally, the law should incentivize
927 strong and enforceable compliance and self-regulatory
928 programs and thus increase compliance by creating a rigorous
929 safe harbor process.

930 IAB asks for Congress's support in developing such a
931 framework. We look forward to partnering with you to enhance
932 consumer privacy and thank you for your time today and I
933 welcome your questions.

934 [The prepared statement of Mr. Grimaldi follows:]

935

936 *****INSERT 8*****

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937 Ms. Schakowsky. Thank you.

938 And, Ms. O'Connor, you are recognized for 5 minutes.

939

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940 STATEMENT OF NUALA O'CONNOR

941

942 Ms. O'Connor. Chairwoman Schakowsky, Ranking Member
943 McMorris Rodgers, members of the subcommittee, thank you for
944 the opportunity to testify today. My colleagues and I at the
945 Center for Democracy & Technology are tremendously excited
946 about the prospect of federal privacy legislation. We
947 appreciate your leadership in taking on this challenging
948 issue.

949 Privacy and data over the last several decades have
950 become full of jargon and overly complexified, so I have one
951 basic message today and that is notice and choice are no
952 longer a choice. Any privacy legislation that merely cements
953 the current status quo of the notice and consent model for
954 personal data is a missed opportunity.

955 Let me take a moment to demonstrate why that status quo
956 is not working for individual consumers and companies. If I
957 could respectfully request the members and their staff to
958 take out their phones -- some of you already have them out, I
959 hear them ringing -- and take a look at the home page. Open
960 it up with whatever you use to open up your phone. Mine is
961 my fingerprint and it is not working. Now look at your home
962 page. How many apps do you have? I have 262 apps on my

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963 phone. I had 261 until Saturday night when the kids said,
964 "Mom, we want Chipotle for dinner," and I had to download
965 again the Postmates app, so now it is 262. The average
966 person has around 80 according to current research. You can
967 call me an overachiever or just a working mom.

968 But for each of these 80 or so applications you have
969 already given the company behind it your consent to use your
970 personal data and likely in a variety of ways. For some of
971 those apps you are sharing your location data, others your
972 financial data, your credit card numbers, some of your apps
973 have information about your physical activity, your health,
974 and other intimate information even in real time.

975 Regardless of the types of data, you have received 80
976 notices and 80 different consents have already been given.
977 Do you remember the personal data you agreed to consent to
978 give and do you remember the purposes for which you shared
979 it? Do you have a good understanding of how the companies
980 behind those apps and devices are going to use that
981 information 6 weeks from now, 6 months or 6 years from now?

982 Now let's assume for the sake of this demonstration that
983 each of those 80 companies has even just a modest number of
984 information-sharing agreements with third parties. Back in
985 2015, which is the ancient times of the internet, the average

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986 smart phone app was already automatically sharing data with
987 at least three companies and three different parties. You
988 don't know those companies, you don't have a direct
989 relationship with them, and now they have your personal
990 information because you were given notice and you consented.
991 And that means the average smart phone user has given
992 consent for their data to be used by at least 240 different
993 entities. That doesn't reflect how information is
994 already being shared by the companies with vendors, corporate
995 affiliates, business partners -- in reality, the number is
996 likely much higher and that is just what is on your phone.
997 That 240 number doesn't account for your other devices, the
998 devices in your daily life in your house, in your car, your
999 other online accounts, data initially collected in the non-
1000 digital world, loyalty programs, cameras, paper surveys, and
1001 public records. Does that feel like you have control over
1002 your personal information? But you gave your consent at some
1003 point. Clearly, it is time for a change. Some will say
1004 that the way to fix this problem is just make more privacy
1005 policies, more notices, make them clearer so consumers can
1006 better understand those decisions. More checkboxes will
1007 provide the appearance of choice, but not real options for
1008 consumers. Pursuing legislation like this just doubles down

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1009 on our current system of notice and choice and further
1010 burdens already busy consumers.

1011 There is fundamentally no meaningful way for people to
1012 make informed, timely decisions about the many different data
1013 collectors and processors with whom we interact every day.
1014 Instead, the goal should be to define our digital civil
1015 rights. What reasonable behavior can we expect from
1016 companies that hold our data? What rights do we have that
1017 are so precious they cannot be signed away?

1018 The Center for Democracy & Technology has drafted
1019 comprehensive legislation that is already available and has
1020 been shared with your staffs. I am happy to answer questions
1021 about it today. But most importantly, our bill and any
1022 meaningful privacy legislation must first prohibit unfair
1023 data practices, particularly the repurposing or secondary use
1024 of sensitive data with carefully scoped exceptions.

1025 Two, prevent data-driven discrimination and civil rights
1026 abuses. Three, provide robust and rigorous enforcement.
1027 Reasonable data security practices and individual-controlled
1028 rights, such as the right to access, correct, and delete your
1029 data are obviously essential. Enacting clear comprehensive
1030 rules will facilitate trust and cement America's economic and
1031 ethical leadership on technology.

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1032 Now is the time for real change. You have the
1033 opportunity to shape a new paradigm for data use and you have
1034 the support of the majority of Americans to do so. Thank
1035 you.

1036 [The prepared statement of Ms. O'Connor follows:]

1037

1038 *****INSERT 9*****

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1039 Ms. Schakowsky. Thank you.

1040 So we have now concluded our opening statements and we
1041 now will move to member questions. Each member will have 5
1042 minutes to ask questions of our witnesses and I will start by
1043 recognizing myself for 5 minutes.

1044 So this is a stack of, really, just some of the privacy
1045 policies of the websites, apps, stores, and other services I
1046 interacted with just yesterday and actually not all of
1047 yesterday. I haven't read them all. And I check the weather
1048 on my phone so I have a privacy policy for that app. I flew
1049 into town yesterday. I have the privacy policy for the
1050 airline and for the online travel.

1051 In order to get onto the plane I had to go my phone. I
1052 used the app to book the flight. I went to the drugstore and
1053 used my loyalty card so I have that privacy policy. I
1054 checked the news online so I have a few privacy policies of a
1055 few of the newspaper sites that I visited. I watched TV. I
1056 went online. I used my cell phone. I have a privacy policy
1057 for my cable provider, my internet service provider, my cell
1058 phone manufacturer and the operating system, and that is
1059 still just some of them.

1060 And at that point did I have the option to proceed --
1061 and I didn't have the option at any point to proceed without

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1062 agreeing to the terms. And frankly I think like most
1063 consumers because I am anxious to actually get the job done,
1064 I agree. I agree. So this stack does not include each of
1065 their service providers or affiliates or the data broker that
1066 gets my information from them or a third party advertiser,
1067 advertising company or analytic company or whoever else is
1068 lurking unseen to me and unheard and unknown.

1069 By the way, a lot of these policies are pretty vague
1070 about what they do with my data and who they share it with or
1071 sell it to. This is the limitation of the notice and consent
1072 system that we use right now. A person should not need to
1073 have an advanced law degree to avoid being taken advantage
1074 of. We need to find solutions that take the burden off the
1075 consumer and put some responsibilities on those who want our
1076 data.

1077 So, Ms. Collins-Dexter, can you talk a little bit about
1078 some of the ways that our data is being used by consumers and
1079 then, Ms. O'Connor, if you could follow up.

1080 Ms. Collins-Dexter. Some of the ways in which our data
1081 is being used by consumers?

1082 Ms. Schakowsky. We are talking about -- oh no, being --
1083 I am sorry -- how it is being used by companies. I am sorry.

1084 Ms. Collins-Dexter. Yeah, it is being used in all sorts

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1085 of a number of ways. And I think to your point earlier, I
1086 think even if we know our data is being used in a number of
1087 ways, even if we -- black folks, I think a report was released
1088 last week that said black people are actually more likely to
1089 read the fine print before they sign onto things on the
1090 internet and have long believed that their information and
1091 data was being sold, and yet that hasn't made us particularly
1092 safer. We have still had to experience all sorts of ways in
1093 which our data is being used against us.

1094 Even data points that feel innocuous can be used as sort
1095 of proxies for protected class. I offered some examples in
1096 the document that I shared with you. But another example
1097 comes from the insurance industry in the realm of car
1098 insurance, for example. Auto insurance telematics devices
1099 collect what would be considered, quote unquote, non-sensitive
1100 data such as vehicle speed, the time of day someone is
1101 driving, the miles driven, the rates of acceleration and
1102 braking.

1103 Those devices aren't collecting what we would consider
1104 sensitive data such as location and driver's identity, and yet
1105 that information is being used to like charge people higher
1106 rates for insurance. And it happens at that people most
1107 likely to be driving at night, most likely to be braking, all

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1108 of these things are usually like working, lower-class people.

1109 Ms. Schakowsky. If I could interrupt, and we will get
1110 more of that. But I want to see if Ms. O'Connor wants to add
1111 at least one thing to this.

1112 Ms. Collins-Dexter. Sure.

1113 Ms. O'Connor. Thank you so much.

1114 There is a primary purpose for data. When you give your
1115 data to a company to deliver that yellow sweater they need to
1116 know your name and address. That makes sense. There are
1117 secondary purposes in terms of business processing and
1118 activities that might be legitimate, where we feel in our
1119 draft legislation the secondary purpose for sensitive data,
1120 like, for example, the fingerprint I was using to open my
1121 phone, I want to be able to open my phone with that, I don't
1122 want that sensitive biometric data used for a secondary
1123 purpose by that company or by other companies.

1124 So we would say there is a higher level of sensitivity
1125 around biometric data. Intimate or immutable information
1126 about you deserves a second, a higher level of care. And also
1127 there is sharing, obviously there is your data going from a
1128 first party to an entirely separate third party in the
1129 transaction that would lead to concern and those parties
1130 should be bound by the promises that first party made.

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1131 Ms. Schakowsky. Thank you. And now let me recognize our
1132 ranking member, Cathy McMorris Rodgers.

1133 Mrs. McMorris Rodgers. Thank you, Madam Chair. I
1134 appreciate again everyone being here, and I do believe that
1135 there is bipartisan support to move forward so that we can
1136 ensure strong protection of personal data that will ensure
1137 that we are improving upon consumer trust and demonstrating
1138 U.S. leadership in privacy and innovation.

1139 I am concerned about the patchwork of privacy and
1140 security laws that I see coming at the state level. And we
1141 are moving forward in Washington State, there is a debate
1142 going on as well as other states that are taking action that I
1143 believe are going to lead to higher cost and impact on
1144 consumers. It is actually going to increase their prices and
1145 reduce the options that consumers have.

1146 I would like to start with Dr. Layton and just ask the
1147 question, do you think that it is important for one federal
1148 privacy law to set that national standard and, if so, just
1149 explain some more why.

1150 Ms. Layton. Thank you for the question. I was heartened
1151 to hear our panelists and our representatives agree that we do
1152 need a comprehensive, federal standard.

1153 Because California is such a large economy, if it can go

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1154 forward with its particular rules it can dictate the rules for
1155 the rest of America. We have talked a lot about rights here
1156 on this panel and all of Americans have rights and it isn't
1157 fair that one state gets to dictate for everyone else. We
1158 should certainly look at California and learn from them, but
1159 it is, as I understand, a law that came together in 1 week and
1160 that was their choice about how they did it. So I certainly
1161 agree that we need a national standard.

1162 Mrs. McMorris Rodgers. I would like to ask Mr. Grimaldi
1163 and Ms. Zheng if you also would address this question and if
1164 your members agree with the one national standard.

1165 Mr. Grimaldi. Thank you, Congresswoman, we do. But make
1166 no mistake, we are very much in favor of the concepts of
1167 transparency and accountability and choice which are the
1168 bedrocks of CCPA and the reason that Californians came
1169 together to rally behind a law and the merits in it.

1170 But to echo what Dr. Layton said, that patchwork could
1171 have incredibly negative effects on the American internet
1172 economy because it will force compliance costs not just on
1173 California companies but on all companies in America. It will
1174 imbalance what the larger providers can pay for those
1175 compliance costs and to retrofit their systems and to get
1176 ready to field what will be likely a barrage of lawsuits and,

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1177 quite honestly, just fewer users, meaning fewer advertising
1178 costs once the enforcement of CCPA goes into effect in
1179 January.

1180 And that is not indicative of a good privacy policy that
1181 provides to consumers what they currently enjoy, their
1182 content, their news, their video, and everything else.

1183 Ms. Zheng. I also completely agree. Thank you for that
1184 question, Ranking Member McMorris Rodgers.

1185 I think from the Business Roundtable perspective a
1186 national consumer privacy law should not mean that consumers
1187 get less protections than currently exist, but if we set the
1188 standard at an appropriate level it can mean that every
1189 American across this country has protections that they don't
1190 currently have. So when we developed our proposal we looked
1191 at the California law. We looked at GDPR. We looked at other
1192 state proposals and FTC authority and tried to take the best
1193 practices of each of these individual laws in developing our
1194 proposal.

1195 Mrs. McMorris Rodgers. Great. And just as a follow-up,
1196 I think as we move forward we need to be very concerned about
1197 making sure that we are protecting individuals' privacy but
1198 also ensuring that we are not becoming too regulatory, that
1199 the regulations are not too complex and through the

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1200 regulations actually helping, or like the largest actors can
1201 pay those costs but it will make it harder for our startups
1202 and our innovators to get into the marketplace.

1203 Dr. Layton, would you just address what you have seen
1204 with GDPR to date as far as the impact on businesses or
1205 innovators?

1206 Ms. Layton. Yes. Well, in the case of the European
1207 Union you have a data protection authority in each state and
1208 you have a super regulator overseeing that. And when this has
1209 come into play there was no training, there was no funding to
1210 help the particular agencies to get up to speed. They are not
1211 all equipped with the same set of skills. Some regulators may
1212 have worked there their whole life, other ones may be new.
1213 They have a different set of expertise. So, and each country
1214 had its own particular rules. And this issue and question
1215 around how do they manage this going forward that even the
1216 framers of the GDPR themselves said it will be 2 years before
1217 we have a judgment because of the actual process and how long
1218 it takes and so on.

1219 So in the minds of the Europeans that this was also an
1220 important what they see as a way to empower government that
1221 they are looking to place people in jobs. They expect that
1222 they were going to have 75,000 more bureaucrats working in

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1223 these particular jobs to look over the privacy and so on. So
1224 it is -- they are sort of -- it reflects what is going on in
1225 the E.U. today is a desperation. There are many people
1226 dissatisfied with the European Union. You probably know about
1227 Brexit. And this is a way that the E.U. is trying to respond
1228 to demonstrate to constituents that the E.U. can do something
1229 and it is not, you know, in the U.S. we might say, well, let's
1230 make it better or innovate --

1231 Ms. Schakowsky. If you could wrap up.

1232 Ms. Layton. Yeah. So that was my point. Thank you.

1233 Mrs. McMorris Rodgers. Thank you. I will yield back.

1234 My time is expired.

1235 Ms. Schakowsky. Now the gentlelady from Florida, Kathy
1236 Castor.

1237 Ms. Castor. Thank you. You know, Americans are
1238 increasingly fed up with the violation of their privacy by
1239 online companies. There is just simply a massive amount of
1240 data being collected on each and every person. And then when
1241 that data is used, misused without their permission, or there
1242 is a breach of their financial data or their health data, I
1243 mean that is, it is really outrageous we have let it get this
1244 far. And I think American consumers understand that this
1245 needs to be fixed.

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1246 So I want to thank Chairwoman Schakowsky for calling this
1247 hearing and I look forward to working with her and the other
1248 members on this committee to adopt strong privacy protections
1249 for American families and consumers.

1250 Ms. O'Connor, help us assess the current state of
1251 Americans' online privacy protections. Let me know if you
1252 agree or disagree with these statements. Currently there is
1253 no general federal law that requires online companies to have
1254 privacy policies or protect our privacy. Is that correct or
1255 not correct?

1256 Ms. O'Connor. That is correct.

1257 Ms. Castor. And there is no general federal law that
1258 requires an online company to secure our personal information
1259 or notify a customer if his or her personal information has
1260 been stolen. Is that correct?

1261 Ms. O'Connor. That is correct.

1262 Ms. Castor. And the only way the Federal Trade
1263 Commission is able to examine companies that violate our
1264 privacy is through Section 5, unfair or deceptive acts or
1265 practices authority, which basically means that companies can
1266 do whatever they want with our data as long as they don't lie
1267 about what they are doing. Is that right?

1268 Ms. O'Connor. That is correct.

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1269 Ms. Castor. So is it accurate to say that a bad online
1270 actor can collect all sorts of very personal information such
1271 as your location, your birthday, your messages, your biometric
1272 data, your Social Security Number, political leanings without
1273 your permission and sell it to the highest bidder as long as
1274 they don't lie about what they are doing?

1275 Ms. O'Connor. That is pretty accurate.

1276 Ms. Castor. Well, that is outrageous. And I think that
1277 is why American consumers now have -- there has been an
1278 awakening to what has been happening. They understand this
1279 now and they are demanding strong privacy protections.

1280 One of the areas that concerns me the most, Ms. Collins,
1281 is the data that is collected on children. There is a bedrock
1282 federal law, the Children's Online Privacy Protection Act,
1283 that is supposed to protect kids from data being gathered on
1284 them and being targeted, but it was signed into law over 20
1285 years ago. And think about how much the internet has changed
1286 in 20 years, the apps that are available to kids, the toys
1287 that talk to them and gather data.

1288 Do you agree that COPPA needs to be updated as well?

1289 Ms. Collins-Dexter. Yes, I do. Can I expand on that a
1290 little more?

1291 Ms. Castor. Please. I noticed in your testimony you

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1292 cited a Cal Berkeley study where they identified how many apps
1293 targeted to kids that are probably gathering their data.

1294 Could you go into that in greater detail?

1295 Ms. Collins-Dexter. Yes. Yeah. So I mean, I think a
1296 general -- COPPA is the only federal internet privacy law on
1297 the books and beyond that I think it is a solid blueprint for
1298 what comprehensive privacy legislation could look like with an
1299 opt-in model and placing obligations on companies for adequate
1300 disclosure. But as you point out, it is 20 years old and like
1301 the Civil Rights Act it does not account for the digital
1302 economy we are immersed in today.

1303 So as I mention, a Cal Berkeley study found that
1304 thousands upon thousands of children's apps currently
1305 available on Google Play violate COPPA. The fact that the
1306 market is flooded with data collection apps and devices
1307 targeted at kids like Echo Dot, CloudPets, Furby Connect, and
1308 others should alarm us. More than one-third of U.S. homes
1309 have a smart toy. And so it is really important for us to
1310 like really, you know, think of the implications of that as we
1311 look to modernize that legislation.

1312 Ms. Castor. Because we kind of have an understanding now
1313 that online companies are building profiles on all of us with
1314 huge amounts of data. But they are doing this to our kids

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1315 now, notwithstanding the fact that we have a federal law that
1316 supposedly says you can't do this. Is that right?

1317 Ms. Collins-Dexter. That is correct.

1318 Ms. Castor. Ms. O'Connor, I don't think the average
1319 American parent understands that the apps and the toys that
1320 are provided, you know, for their kids to have fun and play
1321 games are creating these shadow profiles. Is that accurate?

1322 Ms. O'Connor. I work in technology and I have many, many
1323 children and I feel overwhelmed with the choices and the lack
1324 of transparency about not just their online environment, but
1325 as you point out correctly the devices in our daily lives,
1326 even the toys and what they can and cannot collect. And it
1327 doesn't necessarily matter that it is identifiable by name if
1328 it is targeting you based on your habits and preferences and
1329 choices that could close their world view as opposed to open
1330 it up, which is what we would hope the internet would do.

1331 Ms. Castor. Thank you very much. I yield back.

1332 Ms. Schakowsky. I now recognize the ranking member of
1333 the full committee, Mr. Walden, for 5 minutes.

1334 I am sorry? Oh, I am sorry. Was that wrong?

1335 Okay, let me recognize Mr. Upton for 5 minutes.

1336 Mr. Upton. Thank you, Madam Chair. It is a delight to
1337 be here. I know that Mr. Walden is at the other hearing. I

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1338 think he intends to come back.

1339 Ms. Zheng, I think that we all recognize that the
1340 elephant in the room is truly we can have a system that is 40
1341 or 50 with states or we are going to have one standard. What
1342 is the perception from the number of companies that you
1343 represent from the Business Roundtable in terms of how they
1344 would have to deal with maybe as many as 30 or 40 different
1345 standards, as I would figure that a number of states might
1346 join up with and team up with others? What is the reaction to
1347 that? It goes along with what Ms. --

1348 Ms. Zheng. Yeah, we strongly believe that a fragmented
1349 sort of regulatory environment where we pursue a state-by-
1350 state sort of regulatory approach to privacy makes for very
1351 inconsistent consumer protections. It also creates massive
1352 barriers to investment and innovation for companies that have
1353 to operate in all of these different states. It is simply
1354 unworkable.

1355 And so that is why we think it is necessary to have a
1356 single national federal privacy law that preempts state laws.

1357 And I think the assumption that preemption weakens existing
1358 privacy protections is a false assumption. You know, we
1359 strongly believe that a federal consumer privacy law should be
1360 strong and should provide additional protections for consumers

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1361 that are consistent across every state in the country.

1362 As I think, you know, folks here mentioned earlier,
1363 devices, data, people, they constantly move across borders,
1364 across states. A state-by-state approach just simply doesn't
1365 work for this type of domain. And, in fact, even when you
1366 look at California's own privacy law, there is a rather strong
1367 preemption clause in the California law that preempts city,
1368 county, and municipality laws within the state of California,
1369 likely for exact same reason why a federal privacy law should
1370 preempt state laws.

1371 Mr. Upton. And are you aware, is anyone tracking what
1372 the other 49 states might be doing?

1373 Ms. Zheng. We are. I think a lot of folks on this panel
1374 are as well.

1375 Mr. Upton. Yeah. And are any of those states getting
1376 close to something like California has done? I know it is a
1377 new legislative year for many states, but --

1378 Ms. Zheng. There are a number of --

1379 Mr. Upton. -- what is your thoughts on where other
1380 states may be?

1381 Ms. Zheng. Yes. I think there are roughly about 30
1382 different state legislative proposals related to privacy.
1383 They all take, many of them take very, very different

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1384 approaches or regulate certain types of sectors. Some of them
1385 are more general. Some of them may be focused on specific
1386 types of information that are personal. But what it
1387 demonstrates is that there is a ton of interest within the
1388 states and they are not taking a coherent, consistent
1389 approach.

1390 Mr. Upton. And what are your thought -- do you think
1391 that any of these states will actually do anything yet this
1392 calendar year or not? I know that it is early.

1393 Ms. Zheng. It is hard to say, but I think it is highly,
1394 highly likely that a number of states will pass privacy laws
1395 this year.

1396 Mr. Upton. I know I don't have a lot of time left as I
1397 ask my last question, but I thought that Mr. Grimaldi had some
1398 very good comments in his testimony about four different parts
1399 to achieve the goals. One, to have clear prohibitions on a
1400 range of harmful, unreasonable data collection; two, is that
1401 the new laws should distinguish between data practices that
1402 pose a threat to consumers and those that don't; three, that
1403 the law should incentivize a strong and enforceable compliance
1404 and self-regulatory programs; and, finally, that it should
1405 reduce consumer and business confusion by preempting the
1406 growing patchwork of state privacy laws.

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1407 As it relates to the first three, knowing where I think I
1408 know you all are in part four, where are you in terms of your
1409 thoughts as to those first three principles? And maybe if we
1410 can just go down the line and we will start it with Ms.
1411 Collins-Dexter as to whether she thinks that is a good idea or
1412 not, briefly, knowing that I have a minute left.

1413 Ms. Collins-Dexter. Could you repeat that one more time?
1414 Apologies. I was like taking furious notes.

1415 Mr. Upton. So Mr. Grimaldi had three, four points of
1416 which I think that the first three that I would like to focus
1417 on. One, that the clear, have clear prohibitions on a range
1418 of harmful and unreasonable data collection and use practices
1419 specifically identified by the law, these are goals for
1420 legislation. Two, that the new laws should distinguish
1421 between data practices that pose a threat to consumers and
1422 those that don't. And third, that the law should incentivize
1423 a strong and enforceable compliance in self-regulatory
1424 programs.

1425 So I guess now we just have to go to yes or no with 20
1426 seconds left.

1427 Ms. Collins-Dexter. Yes.

1428 Mr. Upton. Dr. Layton?

1429 Ms. Layton. Yes.

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1430 Mr. Upton. Ms. Zheng?

1431 Ms. Zheng. Yes.

1432 Mr. Upton. And Ms. O'Connor?

1433 Ms. O'Connor. Yes.

1434 Mr. Upton. Okay.

1435 Ms. O'Connor. The self-regulation alone is not going to
1436 be enough. That was revolutionary in 1999, but it is no
1437 longer sufficient to protect consumers today.

1438 Mr. Upton. My time has expired. Thank you.

1439 Ms. Schakowsky. I now recognize Mr. Veasey for 5
1440 minutes.

1441 Mr. Veasey. Thank you, Madam Chair. You know, earlier,
1442 in Ms. Collins-Dexter's testimony something really, you know,
1443 concerned me and really hit home for me when she was talking
1444 about, you know, how poor people are being targeted for some
1445 of this marketing and these privacy issues that we are having.

1446 And for a lot of the people that do fall within that
1447 category, it is going to be very important for them that these
1448 services remain, quote unquote, free, whatever free is. And
1449 of course we know that nothing is really free.

1450 And what is so troubling about that is that in our
1451 society obviously we live in an economy that is based on
1452 profit and gain. What is the sweet spot? I would like to

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1453 know maybe from Ms. Zheng or Mr. Grimaldi from a business
1454 standpoint what is the sweet spot? How can you still provide
1455 these services for free for the constituents that I represent
1456 and the people that Ms. Collins-Dexter was talking about, how
1457 do you preserve them being able to access this without them
1458 having to pay additional fees, but the market research and the
1459 other things that go along with these services being free, and
1460 how do you combine all of that? Is there a real sweet spot in
1461 all of this?

1462 Ms. Zheng. So I think -- thank you for that question,
1463 Congressman. It is a really important issue and I am glad
1464 that you raised it and I am glad that Ms. Collins-Dexter
1465 raised it. It is complex. It requires additional attention.

1466 There is significant technical, legal, and ethical
1467 considerations as well. Companies should not be using
1468 personal data about consumers to make discriminatory decisions
1469 in the areas of employment, housing, lending, insurance, or
1470 the provision of services.

1471 But defining that line between using an algorithm to
1472 discriminate against consumers and using it to target, for
1473 example, ads in Spanish to Spanish-speaking consumers is
1474 challenging. So we need to be mindful of some of the more,
1475 these legitimate uses of certain demographic information that

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1476 enable products and services to be better tailored to a
1477 consumer.

1478 But we recognize that this is a really important issue as
1479 is the, you know, differential pricing issue that you raised.

1480 Although we have significant concerns with the particular
1481 approach taken in the California law, we welcome the
1482 opportunity to work with the committee on this issue and
1483 consider different proposals though. Thank you.

1484 Mr. Veasey. For the areas where these companies are
1485 trying to obviously maximize their return on investment where
1486 they need control groups and run tests, can that still happen,
1487 Mr. Grimaldi, with more consumer protection? And obviously
1488 the consumer protection is definitely needed. I think that
1489 you can just listen to just a very few minutes of today's
1490 testimony and realize that.

1491 Mr. Grimaldi. Correct, Congressman Veasey. Associating
1492 myself with Denise's comments, we need to break apart any
1493 discriminatory practices from good practices. And you
1494 mentioned the value exchange that goes on behind consumers
1495 transacting their business on the internet and Chairman
1496 Schakowsky went through a long list of what she has only done
1497 in the last 48 hours going to a store, taking a flight, et
1498 cetera. Those are useful practices that people come to

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1499 accept. However, that information cannot be gamed for reasons
1500 of eligibility, of discrimination, of price discrimination.
1501 Our industry is absolutely against that.

1502 There is a self-regulatory code that our companies adhere
1503 to in the Digital Advertising Alliance, a body that we stood
1504 up, stipulating to what Ms. O'Connor has said in that self-
1505 regulation, the reason that we are here, we need help apart
1506 from self-regulation. We are here to partner with Congress to
1507 say it is past time, we are overdue in a national framework
1508 that speaks to these issues.

1509 But yes, there are good uses. There are harmful uses.
1510 That is what we need to break apart and distinguish.

1511 Mr. Veasey. Madam Chair, I yield back. Thank you.

1512 Ms. Schakowsky. I now recognize the ranking member of
1513 the full committee, Mr. Walden.

1514 Mr. Walden. Thank you, Madam Chair. And as you know we
1515 have another hearing going on upstairs, so having to bounce
1516 back and forth.

1517 In the United States we currently enjoy an environment
1518 that allows small to medium-sized companies to grow, to raise
1519 money and compete and in large part because they do not have
1520 to come to the government to get their business plans approved
1521 and how we have successfully legislated based on well-defined

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1522 risks and harms.

1523 Dr. Layton, if data sharing and privacy is regulated
1524 differently by individual states in the U.S. what will that do
1525 to the American marketplace?

1526 Ms. Layton. So assuming this could pass a court
1527 challenge, because I think it would violate the commerce
1528 clause as we discussed, I don't see how it is possible you can
1529 send products into other states if you are a retailer in Maine
1530 and you have to send your products to 50 different states and
1531 you have to have 50 different ways to do it. I don't see why
1532 you would start that business. I think you would move to
1533 another industry.

1534 Mr. Walden. So how has GDPR impacted Google's market
1535 share in the E.U.?

1536 Ms. Layton. It has increased since it came into effect.

1537 Mr. Walden. And I think that is what we are showing
1538 right here on the slide that nobody could read from afar, I am
1539 sure. Maybe we can put it on the big screen and take me off,
1540 which would be a pleasant experience for everybody. But I
1541 don't have a copy of that here at my desk.

1542

1543 [Slide.]

1544

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1545 Mr. Walden. But I think what you are seeing here is that
1546 small innovators are actually leaving this space, right? And
1547 investment in small entrepreneurs is going down in Europe and
1548 going up in the United States since GDPR was put in place. Is
1549 that accurate?

1550 Ms. Layton. Yes. So this particular graph is looking at
1551 what is, what they are highlighting here is the competitor,
1552 the analytics competitor. So Google Analytics is running on a
1553 lot of websites and depending on the company they may have
1554 multiple competitors to Google Analytics. Retailers have a
1555 set, you know, different sorts of areas.

1556 So essentially some media companies, some larger firms
1557 are kicking off the smaller competitors for their -- they are
1558 kicking them off, so that means that those trackers have not
1559 been firing. That is what this is measuring.

1560 Mr. Walden. Yeah. My understanding shows that shortly
1561 after GDPR was implemented, Google's market share increased by
1562 almost a full percent and smaller ad tech firms suffered
1563 losses of anywhere from 18 percent to almost 32 percent. GDPR
1564 has proven to be anti-competitive and makes it more difficult
1565 for small businesses to compete and just one example of that
1566 negative impact. Now there may be other things going on
1567 affecting these numbers, I will stipulate to that. But

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1568 clearly GDPR has had an effect.

1569 Mr. Grimaldi, since GDPR has been in effect, academic
1570 research shows that investments in startup companies in the
1571 E.U. have dropped by an aggregate of 40 percent, 4-0. Compare
1572 that to the United States, where in 2018 investments and
1573 startups neared 100 billion dollars which is the highest year
1574 since the dot-com boom, protecting consumers including
1575 protecting them from a marketplace devoid of choices so they
1576 are forced to use certain products or services.

1577 What should an American approach to data privacy look
1578 like and that does not hamper small business and investment?

1579 Mr. Grimaldi. Thank you, Chairman. You are correct. We
1580 are seeing that fall off in Europe and it is not because -- I
1581 listed some newspapers at the beginning that are not currently
1582 operating in Europe and it is not because they are not
1583 complying with the law and it is not because they were at
1584 fault. It is because they just can't afford that kind of a
1585 pivot to construct their services that could be at legal risk,
1586 at great legal risk.

1587 This is one of the many things that we are seeing with
1588 CCPA that is going to be a major deterrent, if not a killing
1589 blow, to American companies that can't deal with the labyrinth
1590 in construct of new regulations in California, or other states

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1591 that might force them to take down their online advertising
1592 funding regime for fear that they could be susceptible to a
1593 major lawsuit because they did not classify or categorize data
1594 in a way that could be returned to consumers.

1595 Because they currently, these companies don't have those
1596 structures in place and now in order to do something that
1597 again I stipulate was correct in its founding-transparency,
1598 choice, accountability-is now potentially going to force
1599 companies to say we just can't afford to retrofit all of our
1600 systems and be able to collect that much data, and even if we
1601 do there is a litigation risk that we wouldn't be able to
1602 swallow. So.

1603 Mr. Walden. Could you put that litigation risk in common
1604 person's terms? What are we talking about here if you are a
1605 small business online?

1606 Mr. Grimaldi. Correct. Under CCPA some of the
1607 provisions -- and we are active as I think many in this room
1608 are in dealing with the California Attorney General's Office,
1609 former Congressman Xavier Becerra being that Attorney General.

1610 He is taking a look at the current law and promulgating it to
1611 be enforced in January. The litigation risk could mean that
1612 if a consumer requests their data from a company, if a
1613 consumer reaches out and says, "What do you have on me and how

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1614 is it shared," a company has to be able to provide that in a
1615 certain time frame. And if it doesn't, it is in violation of
1616 the law. That litigation risk you can compound into the
1617 thousands or hundreds of thousands of requests that will
1618 multiply into the millions and billions of dollars. And that
1619 is something that smaller companies would not be able to deal
1620 with.

1621 Mr. Walden. My time has expired. I thank all of our
1622 witnesses for enlightening us in this issue. Thank you.

1623 Ms. Schakowsky. And now I yield to the chairman of the
1624 full committee, Mr. Pallone.

1625 The Chairman. Thank you, Madam Chair. I wanted to build
1626 on your questions. Some uses of our data is certainly
1627 concerning. This committee has explored many of them,
1628 Cambridge Analytica's use of people's data to manipulate their
1629 political opinions and influence their votes, for example.
1630 And we had hearings with Equifax, Facebook, and Twitter.

1631 We can't begin to reveal just how little we all know
1632 about who is collecting our data or what they are actually
1633 collecting. And I think many of us have this vague idea that
1634 everyone is collecting everything and that there is nothing we
1635 can do about it, but in my opinion that is not acceptable
1636 because some data maybe just shouldn't be collected at all.

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1637 So in that vein I wanted to ask Ms. O'Connor, data
1638 collection has become extremely profitable leading some
1639 companies to collect every bit of data they can, but is there
1640 a line that shouldn't be crossed? Should there be some limits
1641 on actual collection?

1642 Ms. O'Connor. It would be our position that yes, at
1643 least as to the most sensitive information there should be
1644 very clear notices and awareness on the part of the consumer,
1645 again the example I used of my fingerprint in my phone being
1646 collected for one purpose, not being used for any other. When
1647 I use a map app they obviously need to know my location. I do
1648 not want that location sold or transferred.

1649 Are there types of data that shouldn't be collected at
1650 all? In our bill, in our proposal we look very seriously at
1651 issues of precise geolocation, biometric information,
1652 children's data, content of communications, and health
1653 information as deserving higher sensitivity and higher
1654 protections.

1655 The Chairman. All right. Let me ask Ms. Collins-Dexter,
1656 how do you think we should be -- well, how should we be
1657 thinking about limits on collection and what about limits on
1658 sharing, sharing with or selling to third parties?

1659 Ms. Collins-Dexter. I echo Ms. O'Connor. I think we

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1660 should be looking at all of this right now. Companies have a
1661 financial incentive to collect as much information as they can
1662 and store it forever with no obligation not to do that. I
1663 think we have to have meaningful data minimization
1664 requirements. I think we have to definitely look at the
1665 various ways in which information is often used as a proxy for
1666 race.

1667 So, for example, we know that Facebook and a lot of big
1668 tech companies actually don't collect explicitly race data.
1669 However, many things around geolocation and daily habits are
1670 able to like put together this data profile in which like
1671 people are able to ascertain race and that is used for
1672 predatory marketing practices.

1673 And so we have to be able to like parse through all of
1674 that information and keep a constant eye on impact, which I
1675 think should be at the core of any legislation that we are
1676 looking at.

1677 The Chairman. Thank you.

1678 Ms. O'Connor, what about limits on sharing with or
1679 selling to third parties?

1680 Ms. O'Connor. Absolutely. We put those in two separate
1681 buckets. First, limits on sharing again for the most highly
1682 sensitive of the categories I mentioned, particularly things

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1683 that are immutable or most intimate about you. On selling we
1684 would also put limitations, or sharing with third parties that
1685 the third parties would have to be bound by whatever promises
1686 the first party made about that data.

1687 So absolutely, we would look very hard and limit
1688 secondary use and third-party sharing.

1689 The Chairman. Thank you. I just wanted to ask about
1690 limits on sharing people's information with affiliates,
1691 because we know that many corporations own multiple affiliated
1692 companies that the average person would not contact, like
1693 YouTube, Android, and DoubleClick are all owned by Google, or
1694 Jet.com and Sam's Club both owned by Walmart. Data collectors
1695 who say they don't sell data to third parties may still want
1696 to share that with their affiliates.

1697 So let me ask Ms. Collins-Dexter, should there be limits
1698 on sharing people's information with these corporate's
1699 affiliates?

1700 Ms. Collins-Dexter. Yes, absolutely. We should
1701 definitely be looking at how these third party companies are
1702 operating as we saw with Facebook last week and as we continue
1703 to see with, as you all have mentioned, Cambridge Analytica
1704 and others. You have these third-party data mining companies
1705 that aren't regulated, aren't looked at. They are gathering

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1706 data, scraping it, selling it to companies for predatory
1707 marketing purposes, selling them to like law enforcement
1708 without our consent and because we don't even know that these
1709 companies are looming in the background it really even further
1710 limits our choice or ability to say no.

1711 The Chairman. And just quickly, Mr. Grimaldi, behavioral
1712 ads, advertising needs data to target as to the most
1713 appropriate audiences. How would limitations on the
1714 collection and retention affect your member companies? Are
1715 there limits that can be established through legislation that
1716 provide reasonable protections to consumers that your member
1717 companies would accept?

1718 Mr. Grimaldi. Sure, thank you. We currently have a very
1719 robust, self-regulatory program that is targeted to consumers
1720 having transparency into their online behavioral advertising
1721 and the ability to click through the ad via an icon in the
1722 upper right corner of every ad that is served over a trillion
1723 times per month that takes you to a page that says, why am I
1724 seeing this ad and how can I stop seeing it?

1725 There is tremendous uptake in terms of people going
1726 through that ad up to the tune of about 70 to 80 million
1727 unique impressions. So we offer that control. One of the
1728 messages today before you is as much as we are trying to

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1729 educate consumers on that there is still a need for a federal
1730 program that can help us distinguish what kind of advertising
1731 is working, what is considered harmful and what do consumers
1732 need to know.

1733 Again before they click on something it could be
1734 something that is very much tailored to what they are looking
1735 for, an ad that speaks to them. We have much research that
1736 shows that consumers prefer targeted behavioral advertising
1737 rather than generic advertising, but we want to make sure
1738 consumers have those controls so that they can stop seeing
1739 those ads and again that could be enshrined.

1740 The Chairman. Thank you.

1741 Ms. Schakowsky. And now I yield to Mr. Latta, the former
1742 chair of this subcommittee and my friend.

1743 Mr. Latta. Well, thank you very much. If I could ask
1744 just a quick point of personal privilege and congratulate the
1745 chair on assuming the gavel. So congratulations, it is a
1746 great subcommittee.

1747 And Madam Chair, before I begin I would also like
1748 unanimous consent to enter into the record excerpts from the
1749 WHOIS report from the Department of Justice Attorney General's
1750 cybersecurity task force.

1751 Ms. Schakowsky. Sorry. Without objection, so ordered.

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1752 [The information follows:]

1753

1754 *****COMMITTEE INSERT 10*****

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1755 Mr. Latta. Thank you, Madam Chair, if I could reclaim
1756 about 30 seconds there.

1757 Last Congress, the Energy and Commerce Committee held
1758 nearly a dozen hearings discussing privacy and security
1759 issues. That includes much publicized hearings where we heard
1760 from the CEOs of Facebook and Twitter about how the companies
1761 collect, safeguard, and use data. From those hearings it was
1762 clear that while these companies provide a service that
1763 Americans like, consumers aren't always clear about what
1764 happens with their personal information.

1765 With the California law slated to take effect at the
1766 beginning of next year, time is of the essence. In divided
1767 government it is not always easy to tackle the tough problems,
1768 but I believe the time is right to work together on a federal
1769 data privacy solution. Both consumer groups and business
1770 organizations have come onboard in calling for a national
1771 standard. We all agree that consumers should have
1772 transparency and accountability and that we want to ensure
1773 that the United States stays the prime location for innovation
1774 and technology.

1775 Dr. Layton, if I could ask you, I have been hearing from
1776 many groups regarding the loss of access to information about
1777 domain name registration or the WHOIS data and the role it

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1778 plays in protecting consumers. Would you explain how WHOIS
1779 increases online transparency so that consumers may have a
1780 better understanding of who they are interacting with online?

1781 Ms. Layton. Right. So the WHOIS database for just lack
1782 of a better way would be a sort of address book for the
1783 internet, who is registered, who owns what particular domain.

1784 Mr. Latta. And following up, would you want to comment
1785 on how the GDPR is creating challenges to accessing that data?

1786 Ms. Layton. Absolutely, so one of the key problems is
1787 that because of its ability to retract information, that
1788 people are -- that the domain name registers are masking their
1789 identity. This is making it very difficult for law
1790 enforcement to find out perpetrators of crimes. It is also an
1791 issue to if you need to contact things where intellectual
1792 property, for example.

1793 So there are many concerns with this and this reflects,
1794 you know, our historical view of privacy of prioritizing the
1795 right to know. We believe that the public has a right to know
1796 about these things.

1797 Mr. Latta. Well, could you go into a little more depth
1798 about on how, you know, that information helps in identifying
1799 those bad actors and those criminals that are out there and
1800 that law enforcement needs to be able to find those

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1801 individuals and bad actors?

1802 Ms. Layton. Right. Well, in just the same way that if
1803 you looked at a phone book and you would see, well, you know,
1804 a certain address and this place, who lives at that address, I
1805 mean that is a key function of law enforcement. So if you are
1806 taking that away for the internet for global, for law
1807 enforcement everywhere that it is a serious problem.

1808 Mr. Latta. And if you could list your top three concerns
1809 for the GDPR and also the CCPA which is the California law?

1810 Ms. Layton. Sure. Well, I would say the first concern
1811 from the U.S. perspective would be First Amendment free speech
1812 concerns that the level of government requirements is so high
1813 that it reduces expression. That would be number one. I
1814 would certainly say safety would be number two with regard to
1815 just what you described. You have other issues with people
1816 who have committed crimes in the European Union who are asking
1817 that their records be erased or removed that have committed
1818 murders, child molestation, and so on. That is a serious
1819 problem.

1820 And I would say thirdly, the sort of a dumbing down of
1821 consumers that there is creating a false sense of security
1822 that somehow that regulators have the answer on what to do, it
1823 doesn't allow consumers to take responsibility for when they

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1824 go online. And I would add number four, which is I think that
1825 you are freezing in place technologies and you don't let them
1826 evolve.

1827 So, for example, the E.U. will require using certain
1828 kinds of data protection technologies, but we can actually
1829 make them better. So if you require a company to do
1830 technology A today, I can invent technology B tomorrow and I
1831 am not allowed to upgrade to it. So that is a major problem
1832 as well.

1833 Mr. Latta. All right, I appreciate it very much and I
1834 yield back the balance of my time.

1835 Mr. O'Halleran. [Presiding.] Next will be Mr. Lujan,
1836 New Mexico.

1837 Mr. Lujan. Thank you very much, Mr. Chairman, for this
1838 important hearing. Let me jump into this.

1839 In 2000, the FTC recommended that Congress enact a
1840 consumer internet privacy legislation. That was 19 years ago.

1841 This subcommittee held a hearing after the Equifax breach in
1842 2017. We had Mark Zuckerberg before the full committee in
1843 April 2018. The 115th and previous Congresses failed to pass
1844 meaningful privacy protections even though there were
1845 commitments made to the American people.

1846 So as we jump into this, Ms. O'Connor, an entire economy

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1847 based on data has been built but we didn't stop to consider
1848 the risks and potential downsides companies collecting data
1849 have put consumers at risk.

1850 Mr. Grimaldi, in your testimony you say that the law
1851 should incentivize strong and enforceable compliance and self-
1852 regulatory programs by creating a safe harbor process, but I
1853 am concerned that incentives won't be enough. We need some
1854 accountability. So what one of the ideas that we have is to
1855 require companies to conduct risk assessments, if you want to
1856 process data for consumer-related uses you need to assess the
1857 foreseeable risks of such uses.

1858 So, Ms. O'Connor, yes or no, should we require risk
1859 assessments so companies factor the risk and potential harms
1860 in their decision making?

1861 Ms. O'Connor. Certainly the concept of risk assessments
1862 or privacy impact assessments has been around since even
1863 before those FTC hearings, which I attended in the year 2000
1864 and before, and certainly that is part of a robust privacy
1865 program. But we do want to be mindful of the burden on small
1866 businesses and make sure that the legislation that is
1867 comprehensive is elegant and efficient. It is simple. It is
1868 streamlined and easy for a small, a medium, and a large
1869 company to know what the rules are and to abide by them.

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1870 So while I am certainly in favor of and I have
1871 implemented a number of PIAs or risk assessments in my time in
1872 the government and in the private sector, I want to make sure
1873 that the law is simple and clear for consumers and for
1874 companies.

1875 Mr. Lujan. So assuming the same disclaimer holds true to
1876 the next question, yes or no, should we require a privacy
1877 protection officer at companies that collect large amounts of
1878 data who would be responsible for training staff, conducting
1879 audits, working with authorities, and advocating for privacy
1880 with the entity?

1881 Ms. O'Connor. Yes.

1882 Mr. Lujan. There is a great editorial that was authored
1883 in Forbes, January 15th, 2019, titled "2019 Data Privacy Wish
1884 List: Moving From Compliance To Concern." I would ask
1885 unanimous consent to submit it into the record.

1886 Ms. Schakowsky. Without objection.

1887 [The information follows:]

1888

1889 *****COMMITTEE INSERT 11*****

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1890 Mr. Lujan. In it one of the points that was made here is
1891 from a move from privacy compliance to concern and care. That
1892 "rather a philosophy that treats data with extreme care and
1893 with prevention of data breaches in mind," that that is
1894 something that companies should be doing. So that is where I
1895 am thoughtful from a incentive prospective, but what we must
1896 be doing going forward.

1897 Ms. Collins-Dexter, you highlighted in your testimony
1898 some important aspects here. And I am concerned about
1899 implications for access to housing, lending, digital
1900 redlining, and voter suppression as we talked about
1901 information that is shared that is sensitive. Would you agree
1902 that this is a problem?

1903 Ms. Collins-Dexter. Yes. I absolutely do.

1904 Mr. Lujan. Have companies responded when it has been
1905 brought to their attention that their products or services are
1906 having discriminatory effects?

1907 Ms. Collins-Dexter. On the whole, no, it has not. We
1908 have sat at the table. Part of our model is a corporate
1909 accountability model which requires direct engagement in
1910 negotiation. We have sat at many companies, Facebook
1911 included, for many years and have a lot of discussions with
1912 them. And for every policy they develop we tend to find
1913 weeks, days, months later that the problem is really much

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1914 larger than what was initially indicated. And so self-
1915 regulation has not proven to be a viable option.

1916 Mr. Lujan. So with that being said, have the responses
1917 from industry been adequate in this space?

1918 Ms. Collins-Dexter. Have the responses from the
1919 industry?

1920 Mr. Lujan. Been adequate?

1921 Ms. Collins-Dexter. No.

1922 Mr. Lujan. Are there changes companies have made
1923 voluntarily that should be made into law? And we can get into
1924 the details, just yes or no.

1925 Ms. Collins-Dexter. Yeah.

1926 Mr. Lujan. So we would be happy to work with you in that
1927 space.

1928 Mr. Grimaldi, the IAB represents over 650 media and
1929 technology companies that together account for 86 percent of
1930 online advertising in the U.S. You heard the quote that I
1931 referenced from this editorial. Are these companies looking
1932 to protect my privacy when they are making business decisions?

1933 Mr. Grimaldi. Congressman, they are. They are without a
1934 doubt. One of the things again why we are here today is to
1935 ask government to fill in those holes that we can't fill in.
1936 Should there be mandatory components of a privacy policy that
1937 does not let a user accidentally click something to give

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1938 consent? Is there other pieces where we could work with you
1939 on strengthening what we already have put in the market for
1940 consumer controls.

1941 Mr. Lujan. Let me ask a question as my time expires and
1942 I will be happy to submit that to the record so we can get a
1943 response. Would you agree that companies need to shift to a
1944 philosophy that treats data with extreme care with prevention
1945 of data breaches in mind?

1946 Mr. Grimaldi. I think what needs to be defined are those
1947 unreasonable and reasonable uses of data. Again many on the
1948 committee have said we use data, we give our data to certain
1949 apps or to certain programs to help us every day. Is that
1950 data being used for those purposes? Are there harmful uses of
1951 data? I think the absolute answer is yes. Are there
1952 guardrails we can put around it, more self-regulation, more
1953 partnership, yes.

1954 Mr. Lujan. Madam Chair, just as my time has expired and
1955 I thank you for the latitude here, it just seems that we
1956 wouldn't be here today if, in fact, there was an effort to
1957 concern and care versus just compliance. And I think that is
1958 what we are looking for is how can we work on this
1959 collectively and together such that we get to that point. So
1960 I appreciate that time. Thank you, Madam Chair.

1961 Ms. Schakowsky. I recognize for 5 minutes Congressman

1962 Bucshon.

1963 Mr. Bucshon. Thank you, Madam Chairwoman.

1964 I was a healthcare provider before, and health
1965 information is some of the most sensitive information that is
1966 out there and it is also some of the most valuable. So I hope
1967 that whatever we do here in Congress specifically addresses
1968 health information because it is really critical and
1969 important.

1970 As you may have heard, last week it was revealed that
1971 Google's Nest Guard home security device had a microphone
1972 inside the device that consumers did not know about and it was
1973 not disclosed. As I have discussed in prior hearings on data
1974 privacy including with Mr. Zuckerberg, I am concerned about
1975 the inappropriate collection of audio data. And it seems that
1976 everyone denies that that happens, but I think everyone knows
1977 that it probably does.

1978 So Ms. Zheng, can you expand on how the right to privacy
1979 would play into this type of practice and how we would deal
1980 with that?

1981 Ms. Zheng. Thank you for that question, Congressman.
1982 When it comes to audio data if it is personally identifiable
1983 information or personal information and falls within the scope
1984 of a privacy, you know, a new privacy bill, I certainly
1985 believe that transparency, control, access, the right to

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1986 correct it, the right to delete it, should be rights the
1987 consumer should have including for audio data.

1988 Mr. Bucshon. Because that is going to be important
1989 because if we exclude things that you actually type on the
1990 internet but we don't have things in privacy where if you are
1991 talking your phone picks it up and sends a keyword to someone
1992 and they advertise based on that, then we are missing the boat
1993 on that. I want to prevent collection of data without
1994 consumers' knowledge and audio data would be there.

1995 And, Dr. Layton, do current laws cover this type of
1996 omission from Google about a microphone? And second, if we
1997 decide to grant additional authority to the FTC, would you
1998 have any suggestions on how the FTC may play a role on
1999 addressing intrusive data collection policies including audio
2000 data without harming innovation?

2001 Ms. Layton. Thank you, Congressman. I think it is
2002 excellent that you raised the point when you use various
2003 devices in your home, Alexa home and so on, you are having
2004 conversations with your family members. And I think law
2005 enforcement has actually used some of that data in some cases
2006 and with good purposes for it, actually. In terms of the
2007 Federal Trade Commission, they are engaged in this process
2008 now. I don't know if audio is a specific part of their
2009 inquiry. I would have to get back to you on that.

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2010 Mr. Bucshon. Okay.

2011 Ms. Layton. I can't recall at this moment. But I don't
2012 see from a technical perspective why audio would be different
2013 because it would be recorded as the same data. Even though
2014 you are speaking it, it would be transcribed into a data file,
2015 so.

2016 Mr. Bucshon. Okay. The other thing I want to quickly
2017 say and then I have a question for Mr. Grimaldi is that also
2018 we need to address hardware as part of this. Not just an app
2019 but hardware because data, location data is really important.

2020 And there was a local news media here in town who turned off
2021 their phone and did everything they could except take the
2022 battery out. Went all over the city of D.C. and then went
2023 back, plugged it in, and all the metadata everywhere they were
2024 was recorded and as soon as they turned that phone on it all
2025 went out to the internet. So hopefully anything we do on
2026 privacy also includes hardware, not just apps, not just
2027 software. That would be important.

2028 So, Mr. Grimaldi, in your testimony you highlight that
2029 data-driven advertising has helped power the growth of the
2030 internet by delivering innovative tools and services to
2031 consumers. Many constituents including myself, and I am going
2032 along the audio theme here, have concerns about how
2033 conversations when not directly using an app, device, or other

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2034 electronic device appear in a later online ad based on
2035 keywords in the conversation. Can you help me understand how
2036 this is happening?

2037 Mr. Grimaldi. Sure. There is -- and also I think it is
2038 important to understand the difference between personal data
2039 and synonymized data. And that is if you were using, if you
2040 were in your conversation using words that were flagged that
2041 weren't, you know, Congressman Bucshon, but they were an
2042 individual who was into hunting or was into automotive, cars,
2043 you name it, sports, that data could be tagged for you and
2044 used to serve you better targeted ads.

2045 Mr. Bucshon. Can I just interrupt for a second? So I
2046 was having a conversation with my communications director,
2047 this happened about a month ago, talking about a certain
2048 subject and the next day he got ads on his computer
2049 specifically about that particular subject. We happened to be
2050 talking about tennis because he is a tennis instructor, but
2051 nonetheless. So continue.

2052 Mr. Grimaldi. Right. And without intimate knowledge of
2053 how that hardware is constructed, if I were to take that as an
2054 example of just your web browsing those sorts of things could
2055 be flagged in order to serve you ads that are not generic,
2056 that are more tailored to your interests and done in a way
2057 that again the word "synonymized," meaning you are put into a

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2058 category rather than your name, your address, your Social
2059 Security Number, but just your likes and dislikes. And then
2060 that enters a marketplace behind the web where that
2061 information is used to serve you better ads without linking
2062 you personally to your information, your intimate information.

2063 It is another piece of that reasonable and unreasonable
2064 construct we are talking about.

2065 Mr. Bucshon. Okay. My time has expired, but I want to
2066 make sure that whatever we do here in this committee it
2067 includes audio data and also considers location data based on
2068 hardware within a device. Thank you very much. I yield back.

2069 Ms. Schakowsky. I recognize Congresswoman Rochester.

2070 Ms. Blunt Rochester. Thank you, Madam Chairwoman. And
2071 thank you so much for setting the tone of this hearing and
2072 this is a vitally important topic for Delawareans but also for
2073 our nation, and I want to thank the panel as well.

2074 You know, more and more in our daily activities they
2075 involve the use of the internet. Many of us pay our bills,
2076 shop, play games, and keep in contact with friends and
2077 relatives through websites or online applications. However,
2078 with all of these activities taking place online, websites are
2079 amassing more and more personal information. This presents
2080 serious privacy concerns.

2081 Large-scale data breaches are becoming more common and

2082 consumers have a right to know what is being collected, how it
2083 is being used, and should be notified when a breach has
2084 occurred. Most of you on the panel today have discussed the
2085 need to give consumers more control over their own
2086 information, to get more control over their own information
2087 and should it be, you know, how it should be collected and how
2088 it should be used.

2089 And I want to drill down just a little bit deeper on that
2090 and ask Ms. Zheng, the Business Roundtable's privacy framework
2091 promotes the idea of giving the right to access the correct,
2092 and correct inaccuracies in the information collected about
2093 them. So can you talk a little bit about what you mean by
2094 information collected about them and does that just refer to
2095 data points collected or does it also include any inferences
2096 made based on that data?

2097 Ms. Zheng. Congressman, that is a good question and it
2098 is a very specific and detailed question that to be honest
2099 with you we still need to discuss within our membership.
2100 Right now as we drafted our proposal, our framework, the right
2101 to access, correct, and delete your data does apply to your
2102 actual personal data. So, but to answer your further question
2103 I would need to follow up with you.

2104 Ms. Blunt Rochester. And I am going to ask a few other
2105 people questions around this as well. I mean I think a lot of

2106 us are familiar with, you know, the story of the individual at
2107 Target who got the coupons, came to the father's house for a
2108 pregnant teen, and again it was inferences.

2109 And so I want to ask Ms. Collins-Dexter, what are your
2110 thoughts on access and correction and should consumers be able
2111 to see and correct inaccurate inferences made about them? And
2112 I want to start with you.

2113 Ms. Collins-Dexter. Yes, absolutely. We think that
2114 people should, similar to a credit report, have an opportunity
2115 to challenge and correct information. One of the things that
2116 we have even seen with some of our work around voting records
2117 and purges that have happened across the country is that there
2118 is a lot of data collected and based on like inaccurate names
2119 or misspelled names that allow for voters to be purged from
2120 files across the country.

2121 I think, you know, as we think about all of the various
2122 data points and all of the mistakes that happen, again we are
2123 finding the people that tend to be most impacted are low-
2124 income communities of people of color, people who aren't able
2125 to actively challenge and correct the record on themselves.
2126 So I would say it is extremely important on a number of
2127 different fronts that we are allowed to do that and any
2128 privacy legislation should allow for that.

2129 Ms. Blunt Rochester. Thank you.

2130 And, Mr. Grimaldi, you didn't really talk about
2131 consumers' right to access and correct information collected
2132 in your testimony, but how do you think giving those rights to
2133 consumers would affect your member companies?

2134 Mr. Grimaldi. Thanks, Congresswoman. To echo what some
2135 of my co-panelists have said, consumers have a right to delete
2136 their data and I think there are things to explore with those
2137 rights. There are obviously fraud, misuse, other components
2138 that could negatively affect either a consumer's online
2139 experience or their just life experience, and we are seeing
2140 that contemplated in Europe and we are seeing that
2141 contemplated in California. There are problems though I would
2142 point out that could come about when consumers request their
2143 data to be deleted and the authentication of those consumers
2144 requesting it.

2145 One of the major pitfalls that we are currently working
2146 on with the California law is if somebody could have their
2147 data deleted, how do they authenticate themselves to make sure
2148 it is them? If somebody can request their data, how do we
2149 know it is them and it is not somebody stalking them or
2150 somebody meaning to do them harm. Those are really important
2151 questions.

2152 Ms. Blunt Rochester. You know, I want to kind of close
2153 out my comment by just saying that why this is so important is

2154 because I think a lot of people do feel that it is a fait
2155 accompli. This is the world that we now live in. And that is
2156 really what the role of Congress is, is to make sure consumer
2157 protection going back to what our chairwoman said. Thank you
2158 so much. My time has expired.

2159 Ms. Schakowsky. I now recognize for 5 minutes,
2160 Congressman Carter.

2161 Mr. Carter. Thank you very much, Madam Chair, and thank
2162 you, all of you for being here. This is an extremely
2163 important subject and we want to do the right thing, so that
2164 is why we got you here. You are the experts. You are the
2165 ones we want to learn from and hopefully build upon.

2166 Dr. Layton, I want to start with you. First of all,
2167 earlier, one of my colleagues mentioned the WHOIS database.
2168 Can you explain that very briefly what that is exactly?

2169 Ms. Layton. Well, I just use the address book for the
2170 internet, you know, those who registering the names that they
2171 have to disclose who they are.

2172 Mr. Carter. Well, it is clear through your testimony as
2173 well as your background that you have a good grasp of GDPR and
2174 the impact that this had. It is my understanding that the
2175 WHOIS, or ICANN is the governing agency over WHOIS, that they
2176 have actually run into problems with this and they have
2177 actually said that they are not going to be collecting that

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2178 data anymore?

2179 Ms. Layton. So, no. They have actually for some, for
2180 quite a long, at least a year they have been trying to work
2181 with the officials in the European Union to highlight to them
2182 the problems and to find a resolution. And the pressure from
2183 the, you know, extreme privacy advocates in the European Union
2184 are not letting them come to a resolution. So as I understand
2185 today, I don't have the most up-to-date, but I think there is
2186 an impasse right now because it is not resolved. So the
2187 information is not available.

2188 Mr. Carter. Well, this is the kind of thing that we want
2189 to learn from. I mean we don't want to make the same kind of
2190 mistake that obviously they have made and because it is my
2191 understanding that WHOIS data is very important particularly
2192 to law enforcement. Has that been your experience?

2193 Ms. Layton. Yes. Well, absolutely. I mean it is a
2194 major issue for law enforcement, intellectual property rights
2195 holder, you know, people in the public who may need to do
2196 research and so on. I think the lesson learned here is, you
2197 know, we have heard before the way to hell is paved with good
2198 intentions. I think everyone has had good intentions and they
2199 have overreached. They went too far. They didn't have a
2200 process to test the various provisions. Everybody got to tack
2201 on what they thought made sense and then they just bring it

2202 over the finish line and we have to live with it.

2203 Mr. Carter. What do you think we could learn from that?

2204 I mean how could we make it better?

2205 Ms. Layton. Well, at least one of the things I would say
2206 in terms of how we are ahead in this respect, in the United
2207 States we have a transparent policy process. When we are
2208 submitting anything to the Federal Trade Commission, as part
2209 of what they are doing you have to disclose your name, who you
2210 are, you are conducting this hearing today.

2211 The policy process now in the E.U. because of this rule
2212 means you can mask your identity. So you can submit into a
2213 regulatory hearing, you don't have to say your name. You
2214 don't have to say who you are, for privacy reasons. So what I
2215 would encourage Congress to do is keep with our tradition for
2216 the public's right to know, to continue in this vein as you
2217 are having the hearings today, and to, you know, to take these
2218 steps to look at where it hasn't worked and to not make the
2219 same mistakes.

2220 Mr. Carter. Let me move on. Earlier we talked about
2221 market share particularly as some of the companies have grown
2222 in market share and at the expense of others as a result of
2223 the GDPR. What is the primary reason for the change in market
2224 share for some of these companies?

2225 Ms. Layton. So, well, in many respects there are, it is

2226 because a number of firms have exited the market. They have
2227 decided they are no longer going to operate, so in many
2228 respects that the advertising market has shrunk in the sense
2229 that there are fewer properties on which to conduct
2230 advertising that would be one thing. The other issue is that
2231 when those other smaller players leave it just means that
2232 people visit the larger players more.

2233 Mr. Carter. Has this had an impact, obviously it has had
2234 an impact on the exports to Europe of various content and
2235 digital goods?

2236 Ms. Layton. Right. Well, so for me when I am sitting in
2237 my office in Copenhagen and I try to go to Chicago Tribune, I
2238 cannot open it. I just see a white page that says sorry, we
2239 are not delivering our content. And, you know, that is
2240 unfortunate for me, I can't see the information. It is too
2241 bad for the advertiser, they can't put the advertisement on
2242 the page. It is sad for the one million Americans that live
2243 in the E.U.

2244 Mr. Carter. I was about to say it obviously has an
2245 impact on them and they are not able to get the information.

2246 Ms. Layton. Right. So, but I think as Mr. Grimaldi, he
2247 pointed it out very well and I think his testimony makes it
2248 very clear it is not that they don't want to do it, but it
2249 costs too much money and there is a regulatory uncertainty.

2250 The legal risk is so high because it is not just -- it is so
2251 new, this rule, so we don't know how they will be interpreted
2252 and it is a whole value chain that all of the partners who
2253 might be working with Chicago Tribune or whomever may also be
2254 liable. So they don't want to take the risk.

2255 Mr. Carter. Well, again I want to thank all of you for
2256 being here. I think there are important lessons that we can
2257 learn from the experiences about the European Union as well as
2258 what we are trying to do in California. Obviously what we
2259 don't need is 50 different sets of rules governing. We need
2260 one set of rules here in America.

2261 And hopefully, and I have always said I don't want to
2262 stifle innovation so that is one thing I hope we keep in mind
2263 in this committee as we move forward. Thank you, Madam Chair,
2264 and I yield back.

2265 Ms. Schakowsky. Thank you. And now I welcome the vice
2266 chair of this committee, Mr. Cardenas.

2267 Mr. Cardenas. Thank you very much, Madam Chair, and
2268 thank you for holding this very important matter before the
2269 public. And to the ranking member as well, thank you.

2270 Ms. O'Connor, would you like to shed maybe a little bit
2271 of light on the dialogue that we just witnessed over the last
2272 3 or 4 minutes about the E.U. and maybe the mistakes they made
2273 and things that we could learn and the cross reference between

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2274 innovation and privacy?

2275 Ms. O'Connor. Thank you so much, sir. I think it is
2276 fairly certain that we in the United States will pass a United
2277 States law that reflects our values and our cultural
2278 traditions and our unique opportunity here as the birthplace
2279 of Silicon Valley. But I think there are also our shared
2280 values, values of respect and dignity, values of customer
2281 trust that our companies, our U.S.-bred companies can
2282 certainly adhere to.

2283 I think privacy and security are a form of corporate
2284 social responsibility in the digital age and are essential to
2285 doing business in a thriving U.S. economy and around the
2286 world. Yes, it is important to get to a federal standard, but
2287 it is important that that standard be strong and be
2288 understandable by small, medium, and large enterprises in the
2289 United States and, most importantly, be one that customers can
2290 trust, that consumers and citizens of this country can have
2291 certainty that their information is being treated fairly, that
2292 they are not being discriminated against, and that they
2293 understand the consequences of the bargains that they strike
2294 with companies.

2295 Mr. Cardenas. Well, one thing that I enjoy the most is
2296 being able to go back to my district and I am blessed that my
2297 two grandchildren live in my district, so I can drive 5

2298 minutes, jump on the carpet and roll around with them and play
2299 with them and know that when they grab a toy -- like my 6-
2300 month-old, she is at that age where everything goes in her
2301 mouth -- know that consumer protection is something that we
2302 take for granted in this country. We didn't do that back in
2303 the day maybe decades ago, but at least today I know that
2304 there is a 99.999 percent chance that that toy is not going to
2305 hurt my little granddaughter.

2306 Speaking of children, under the CCPA businesses are
2307 supposed to provide an opt-in mechanism for children 16 and
2308 under to allow companies to sell their personal information as
2309 defined by the CCPA. How do they know whether the children
2310 are 16 and under, under any system?

2311 Ms. O'Connor. Well, that is such a great point because
2312 it requires more authentication and more knowledge in order to
2313 know who your consumer is. I think you have identified one of
2314 the very compelling gaps in our coverage right now, the above
2315 COPPA but below majority age group in our country. I have
2316 several of those people living in my house right now and they
2317 are a challenging age on the internet to say the least. And
2318 it certainly bears consideration of what we should do going
2319 forward to consider whether COPPA is working adequately and
2320 what to do with that in-between age group.

2321 Mr. Cardenas. What is the mechanism to get parental

2322 consent for children under 13?

2323 Ms. O'Connor. It is somewhat complicated and requires
2324 several steps of the parent self-authenticating and providing
2325 phone numbers or email addresses or the like. I seem to do
2326 this every single day on my computer for my youngest child.
2327 But it still is fraught with some peril that the child may be
2328 providing inaccurate information or that the data may be used
2329 in a way that is unanticipated by the parent or the child.

2330 Mr. Cardenas. Under the federal law COPPA companies must
2331 obtain parental consent before collecting personal information
2332 online from children under the age of 13. How do companies
2333 verify parental consent and how does the FTC enforce this?

2334 Ms. O'Connor. The parent often has to respond to an
2335 email verifying that they are the parent or that they have
2336 authorization. The FTC has taken some cases and I think there
2337 is concern in the marketplace about whether the enforcement
2338 mechanisms have really fully grasped the complexity of the
2339 issue both in the online world and as you point out in the
2340 Internet of Things world.

2341 Mr. Cardenas. What seems to be the logic or the history
2342 on the difference between a 12-year-old and a 13-year-old and
2343 why is that the cutoff point?

2344 Ms. O'Connor. I am sorry. I can't speak to the
2345 legislative history on why that number. It certainly is one

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2346 that bears a relevance in a number of cultural traditions.
2347 But I think we all know that one 13-year-old is not the same
2348 as another in many households and there is a large age group
2349 between again 13 and 18 that we should be thinking about as
2350 well.

2351 Mr. Cardenas. How do we expect a 13-year-old to do, wade
2352 through this without parental consent or somebody, an adult
2353 helping them?

2354 Ms. O'Connor. I totally agree. I think kids, teenagers,
2355 and grownups in this country deserve greater supports and
2356 protections around their personal data online and off.

2357 Mr. Cardenas. I think it would be naive for us to
2358 believe that there isn't a motivation out there with the
2359 largest corporations in the world and getting more dominant
2360 and larger for them not to look at our children as consumers.

2361 If you look at the bandwidth of a consumer power of a
2362 teenager and a 20-some year old and a 30-some year old, et
2363 cetera, there is tremendous motivation for individuals to
2364 abuse the information of our children. And I think it is
2365 important that -- thank you for the confidence that you gave
2366 that you believe that Congress is actually going to pass
2367 something. I hope that we do. Thank you for that confidence.
2368 I yield back.

2369 Ms. Schakowsky. And now I yield 5 minutes to Mr.

2370 Gianforte.

2371 Mr. Gianforte. Thank you. And, first, I would like to
2372 thank the chairwoman and ranking member for welcoming me to
2373 this committee. Thank you. I look forward to serving and I
2374 am encouraged by the conversation today. I think there is
2375 some good bipartisan common ground here to find solutions.

2376 The internet has removed geographic barriers from many
2377 our rural areas that previously prevented small companies in
2378 rural towns from competing globally. Concerns about data
2379 misuse are warranted, but creating an overburdensome
2380 regulatory environment would have devastating effects for this
2381 coming new prosperity we are seeing in rural America.

2382 I think we all agree and we have heard it in the
2383 testimony today that consumer data must be secured and that we
2384 need more transparency and accountability in all of our
2385 practices and we need a national standard. Our job is to find
2386 a balance between these overly prescriptive laws like GDPR and
2387 versus a patchwork of 50 different laws in different states.

2388 Trying to comply with either would devastate small businesses.

2389 We have heard that in the testimony today, while increasing
2390 market share for some of the largest companies we see and this
2391 is what has caused the concern.

2392 The burdensome top down approach taken by GDPR can stifle
2393 innovation and lead to less information simply because it is

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2394 too costly to comply. It is imperative then we adopt one
2395 national standard and that clearly defines the
2396 responsibilities of consumers and businesses and I think we
2397 have unanimity on the panel today, so I appreciate that.
2398 Consumer concerns over their data can be attributed back to a
2399 lack of transparency and misunderstanding of how their
2400 information is being collected and used. Bad actors should be
2401 punished. We have seen many of them pursued by the FTC and
2402 also through the loss of consumer confidence.

2403 The market tends to enter in here. In our internet
2404 business my wife and I started in our home, over 15 years it
2405 grew to one of the top 100 websites in the world. We had
2406 about eight million consumers a day and we were entrusted with
2407 the data for nearly 2,000 organizations around the world.
2408 Protecting customer data was paramount in our business. We
2409 knew that the safety of our customers' data which we protected
2410 in the cloud was the key to continued viability of our
2411 business. The stakes and the consequences could not have been
2412 higher. We had to protect our customer data or face going out
2413 of business. It is difficult to regulate a dynamic industry
2414 and hastily rushing to draft legislation could have more
2415 unintended consequences than solutions. We have seen that in
2416 GDPR and in the California regs. As debate over consumer
2417 protection continues we should pursue one national standard

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2418 that increases transparency and accountability while
2419 protecting small business and innovation.

2420 I have a couple of questions. Dr. Layton, with all of
2421 this in mind and in light of the light regulatory touch we
2422 have taken in the U.S., historically, can you please discuss
2423 what you believe are the best way to guard against entrenching
2424 larger companies and disadvantaging smaller business?

2425 Ms. Layton. Well, in two words, permissionless
2426 innovation. I mean I think that that has been one of the most
2427 important things about our economy was that we allowed
2428 companies to try. Just as you, yourself, you didn't have to -
2429 - I doubt that you went to Washington and said may I try this
2430 website, and you just got going.

2431 Mr. Gianforte. Yeah. Okay, thank you.

2432 And, Mr. Grimaldi, we heard from Ms. O'Connor and her
2433 litany of 260 applications -- very impressive -- and the
2434 intractability of complying with them all. And in your
2435 testimony I thought it was very helpful you recommended moving
2436 from these disclosures and checkboxes to prohibited practices.

2437 Can you give us a couple of examples of prohibited practices
2438 that you would put on that list if we were to draft
2439 legislation with that approach?

2440 Mr. Grimaldi. Sure. Thank you, Congressman. I think
2441 Ms. Collins-Dexter has an unbelievable list in her testimony.

2442 Eligibility, improper targeting because of eligibility, and
2443 discrimination, the use of sensitive information which would
2444 need to be defined, we have spoken a lot about it today that
2445 consumers don't anticipate and would never want to share and
2446 would never want to be used. I would say even if it is
2447 synonymized and not linked to their personal data along the
2448 lines of healthcare providers or addresses, et cetera. I
2449 think that is all important.

2450 Mr. Gianforte. Do we need to differentiate between the
2451 types of data that is being collected and how would you
2452 suggest we do that?

2453 Mr. Grimaldi. Absolutely. I think that is again Europe
2454 should not dictate what our national law should be. I don't
2455 think one state should either. I think this body and the
2456 Senate is the best representation of what consumer sentiment
2457 is around these issues. My industry needs trust or else we
2458 don't have people logging on to our websites, we don't have
2459 people clicking on our ads. The whole internet economy is
2460 built on that. These are the things, these are the important
2461 conversations.

2462 Mr. Gianforte. Okay, thank you. I want to thank the
2463 panel for your testimony today. It is very helpful. And with
2464 that I yield back.

2465 Ms. Schakowsky. And now a belated happy birthday and I

2466 call on for 5 minutes on Mr. Soto.

2467 Mr. Soto. Thank you, Madam Chairwoman. I believe most
2468 Americans have a basic understanding that their personal data
2469 is being used, but there are certain expectations of privacy
2470 that I think are reasonable for users to be able to have
2471 throughout the United States that their personal data be kept
2472 secure and not be stolen in a cyber breach, that their health
2473 data be protected so that it couldn't just be acquired without
2474 their permission, or that we avoid a society where government
2475 monitors all of our data in some big brother type of situation
2476 that we are seeing now in China and in Russia.

2477 You know, we have heard some complaints about states
2478 getting involved in this and the Supreme Court has gotten
2479 involved in it, which I will get into in a second. Really,
2480 the internet is a part of interstate commerce, but it is this
2481 committee's lack of action in legislating that has created
2482 this vacuum for states to act.

2483 First, I want to just point out that the Supreme Court
2484 has already stated we some right to privacy for our personal
2485 data. In the recent Carpenter v. United States case, they at
2486 least applied the Fourth Amendment to say that government
2487 cannot get personal data from our cell phones without a
2488 warrant and I wouldn't be surprised by a 5-4 majority or more
2489 that that is extended to other rights. So the Supreme Court

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2490 is already acting. States have already stepped up.

2491 There has been a lot of talk, first, about a duty of
2492 care. That has mostly been in the purview of academia, but it
2493 is something that we ought to consider, cybersecurity
2494 protections, proper use of data consistent with disclosures,
2495 and handling requests and complaints for use of data. A
2496 second big issue we saw Delaware tackle with requiring privacy
2497 policies to be conspicuously available on websites. I don't
2498 think that is much to ask since we have that for a lot of
2499 contracts.

2500 And then, thirdly, is really sort of the big question on
2501 privacy in general. California passed the Consumer Privacy
2502 Act of 2018 where there is a right to request businesses to
2503 disclose data collected, right to request businesses delete
2504 personal information, and then a right to opt-out without
2505 being discriminated against. And I think that is the multi-
2506 trillion dollar question in the room today and that is where I
2507 want to start by asking our panel.

2508 Starting with Ms. O'Connor, do you think that you should
2509 be able to opt out of these sites' ability to collect data
2510 without being discriminated against, basically denied use of
2511 service?

2512 Ms. O'Connor. Certainly. And as I mentioned before,
2513 there is a primary purpose and a primary data collection for

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2514 the transaction. So to send me the book or the yellow sweater
2515 you have to know my address, but I do think individual
2516 consumers deserve more, not only agency but control over their
2517 data and the data lifecycle to access, correct, and delete
2518 data if they want to as well.

2519 Mr. Soto. Thank you for your input.

2520 And, Ms. Collins-Dexter, do you think you should be able
2521 to opt out without discrimination?

2522 Ms. Collins-Dexter. Yes. I think opt-in forces -- well,
2523 rather, I think when you set an opt-in framework it forces
2524 companies to make the case for why data is needed for desired
2525 use and why consumers should consent to that. I think,
2526 however, even in an opt-in framework, I think as we have heard
2527 examples over the day, companies will do all sorts of tricky
2528 things to get consumers to consent to things that they want to
2529 do.

2530 And so I think legislation has to really move beyond a
2531 choice framework and really focus on prohibiting harmful use
2532 of data, establishing baseline norms and obligations such as
2533 data minimization and purpose limitation.

2534 Mr. Soto. Thank you.

2535 And turning to innovation on this aspect, Ms. Zheng, do
2536 you think it would be a viable alternative that people can
2537 charge a user fee should they want to opt out of data

2538 collection? Would that still embrace the kind of innovation
2539 that you have been talking about?

2540 Ms. Zheng. Thank you for that question. I think if the
2541 companies choose to do that or choose to adopt that approach
2542 that would make sense, but I am not sure that mandating it in
2543 statute would make any sense. It would certainly hurt
2544 innovation.

2545 Mr. Soto. And, Mr. Grimaldi, on this sort of choice
2546 should you be able to opt out without discrimination or would
2547 it be appropriate to potentially charge the user fee in the
2548 alternative or deny a service altogether?

2549 Mr. Grimaldi. Thanks, Congressman Soto, a couple things.
2550 We see that not in terms of data for shopping data, for other
2551 use, but we see that in terms of just the value of exchange on
2552 if you want to access a certain subscription website and view
2553 their content you have to pay a fee. That is that value
2554 exchange.

2555 To your question of should you be able to opt out and not
2556 receive those services, I think that is another thing that
2557 needs serious contemplation because I don't think a one-fits-
2558 all approach would work here just in terms of that being a
2559 defined right and the massive disruption that could cause to
2560 websites large, small, Google, Amazon, a small yogurt shop, if
2561 you opt out of giving your data can those companies survive.

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2562 Are they monetizing it in a way that a consumer knows about
2563 that has that policy in their face or the opt-out mechanism in
2564 their face. We supply that as I mentioned earlier via a large
2565 multi-stakeholder regime.

2566 So there are tools out there. Could they be stronger? I
2567 think that is a great question.

2568 Mr. Soto. Thanks. My time has expired.

2569 Ms. Schakowsky. Now I am happy to yield to Congresswoman
2570 Matsui.

2571 Ms. Matsui. Thank you very much, Madam Chair. And I
2572 want to thank the panel for being here today. This has been a
2573 very enlightening discussion. And I just want to make a
2574 comment about the elephant in the room, although I don't
2575 really regard it that way. As you can tell I am from
2576 California and there has been a lot of comment about the
2577 California law.

2578 But may I just say about California there has not been
2579 much action on the federal front, we all know that. And
2580 California being California with its myriad of businesses both
2581 big and small and its diversity, we have rural areas, urban
2582 areas, and suburban areas and it is not something that -- we
2583 are not a small state, we have a myriad of opinions. And we
2584 are also a very innovative state, the home of many of the
2585 large companies that actually testified last spring.

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2586 So I just will tell you this. There are ways that I know
2587 Mr. Grimaldi saying he is already working with the state of
2588 California, I think that is really very important, but I must
2589 say also that it is something to be considered that it is a
2590 state that is large enough to really be able enact a law but
2591 also to bring in many of the stakeholders too. So that is my
2592 piece on California.

2593 I want to talk about advertising. Advertising supported
2594 models generate revenue through user provided data. Many
2595 platforms have broad statements that claim what is yours is
2596 yours, you own your content. I appreciate that. But I want
2597 to understand more about that. To me that means users ought
2598 to have some say about if, how, and when it is used.

2599 But online platforms have an evolving set of rules for
2600 how partners can interact with the user content and how the
2601 platform may modify or adapt this content as it is
2602 distributed. The hearings this committee has held demonstrate
2603 that the real crux of the issue is how content is used and
2604 modified to develop assumptions and inferences about users to
2605 better target ads to the individual.

2606 I want to ask, how should a federal privacy law ensure
2607 consumers have a meaningful say about how their data is used
2608 even when that data has modified use to develop inferences
2609 supplemented by additional data or otherwise? And I will

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2610 start with you, Ms. O'Connor.

2611 Ms. O'Connor. Thank you so much for that question. We
2612 would believe that there should be limitations on the
2613 secondary use of data that you have provided for a particular
2614 service and obviously transparency around the operations of
2615 the company and their intended use. I think your question
2616 gets to the heart of the matter, which is that individuals do
2617 not want to be discriminated online or offline and they want
2618 to know how the decisions that are being made about them are
2619 affecting their daily lives.

2620 So we would absolutely want to look at issues of
2621 discrimination again in the online-offline world based on the
2622 data that is collected and allow the individual greater agency
2623 and control over that data.

2624 Ms. Matsui. Thank you.

2625 Now it has been noted that advertising is less concerned
2626 with identifying the individual, per se, than with the
2627 activity of the users to predict and infer consumer behavior.

2628 But I wonder if that is becoming a distinction without a
2629 difference even when user content isn't associated with that
2630 user's name, precise information can and is gathered through
2631 metadata associated with messages or tweets. For instance,
2632 online platforms often are offered geospatial metadata that
2633 they provide by parsing messages for location names of

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2634 interest including nicknames. This metadata could then be
2635 associated with other publicly available social media data to
2636 re-identify individuals.

2637 Ms. O'Connor or Mr. Grimaldi, so even though advertising
2638 itself may not be considered with identifying the individual
2639 in the context of the federal privacy law, how do we ensure
2640 data is not being used by others to do so?

2641 Mr. Grimaldi, first.

2642 Mr. Grimaldi. Sure. Thank you, Ms. Matsui. And I think
2643 that those are very important questions that a potential, new,
2644 strong oversight regime would contemplate. A number of folks
2645 have mentioned the Federal Trade Commission. They have
2646 brought 500 cases or more on issues around these types. And
2647 while they are incredibly capable and very strong, they don't
2648 have the resources right now, I think, that would allow them
2649 to play a role in a massive part of the American economy.

2650 So I think that that is up for discussion as to whether
2651 or not a new paradigm, the one that we are contemplating could
2652 bring new oversight and new enforcement and that is part of
2653 what we are discussing now. A moment ago I think it was Mr.
2654 Soto or Mr. Cardenas mentioned the jurisprudence in the past
2655 around these issues. And I think it would -- I was a staffer
2656 on this committee when long after the 1996 act was passed and
2657 there was much discussion about why that was never updated,

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2658 why there was never momentum behind that to update it. And I
2659 think it is because getting in the way of innovation and
2660 getting in the way of consumers enjoying what they want and
2661 the services they are provided is a sticky thing. But in
2662 terms of more oversight and new powers to protect consumers, I
2663 think we are at a place right now where we need to seriously
2664 think about that and make it happen.

2665 Ms. Matsui. Okay, thank you. I am out of time. I yield
2666 back.

2667 Ms. Schakowsky. And next, also from California,
2668 Congressman McNerney.

2669 Mr. McNerney. There is a lot of us from California.
2670 Thank you.

2671 Ms. Matsui. Big state.

2672 Mr. McNerney. Thank you. I want to thank the witnesses
2673 for your perspectives on this. It is an important subject and
2674 it is complicated. It is not something you can get your hands
2675 around easily, so thank you very much.

2676 My first question goes to all the witnesses and please
2677 just answer yes or no. Is it important that any law that we
2678 draft be able to adapt to technological innovation and
2679 advancements over time? Starting with Ms. Collins.

2680 Ms. Collins-Dexter. Yes.

2681 Ms. Layton. Yes.

2682 Ms. Zheng. Absolutely, yes.

2683 Mr. Grimaldi. Yes.

2684 Ms. O'Connor. Yes.

2685 Mr. McNerney. Unanimous. Well, that makes my point.

2686 In order for comprehensive privacy laws created by this
2687 slow-moving Congress to meet the current challenges and to be
2688 able to adopt the new circumstances, I believe it is critical
2689 that we give the FTC APA rulemaking authority for privacy and
2690 data security. I have called for this over time and I expect
2691 to see that in our policy.

2692 My next question will go to Ms. Collins-Dexter. When
2693 Facebook CEO testified before this committee I asked him if I
2694 could download all of my data that Facebook had and he said an
2695 unqualified yes. And then later in the hearing after being
2696 advised by his staff that that wasn't correct he corrected his
2697 statement. Now, Ms. Collins-Dexter, if a CEO of a major
2698 company that deals in data, that is their business, isn't sure
2699 what data they make available to its users, can we have any
2700 confidence at all that these companies will actually make
2701 their data available to users when requested?

2702 Ms. Collins-Dexter. No, we can't.

2703 Mr. McNerney. Well, good. And clearly it is important
2704 that the comprehensive data privacy legislation grant
2705 consumers the right to access their data and to correct it if

2706 it is wrong.

2707 You are not raising your hand to make a statement, I
2708 don't think.

2709 Ms. Layton. No, I agree.

2710 Mr. McNerney. Thank you.

2711 Again Ms. Collins-Dexter, can you explain the risks that
2712 location tracking poses for low-income Americans like so many
2713 of my constituents?

2714 Ms. Collins-Dexter. Yes. I also, if I may, want to sort
2715 of take us back again. I think there has been like a lot of
2716 conversation around patchwork legislation. And while I think
2717 there is certainly issues with GDPR, there is improvements to
2718 be made with California legislation.

2719 I think one thing that I think came up in the testimony
2720 with Mark Zuckerberg that I think we should identify as really
2721 part of the issue of coming here is really an issue around
2722 tech monopolies and how they are consolidating power. And so
2723 I really think that it is important for us to maintain that
2724 even as we are looking at the ways in which they are
2725 collecting innocuous data points such as geolocation in order
2726 to ascertain things around race and come and use that as an
2727 opportunity to use predatory payday advertising, junk food
2728 marketing, and all sorts of sort of harmful advertising
2729 targeted at communities in different locations.

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2730 Mr. McNerney. Thanks for that comment. Well, I think it
2731 is important that we limit the use of data location
2732 information and that is something that I will be working with
2733 members across the aisle on.

2734 Again Ms. Collins-Dexter, in your written testimony you
2735 mention that algorithms work as kind of a black box to drive
2736 exclusionary practices and you need to raise, need to ensure
2737 that fairness in automated decisions. What do you think are
2738 some of the challenges that companies face in this today?

2739 Ms. Collins-Dexter. Yeah. I think part of what we are
2740 looking at or thinking about is this proposition of kind of
2741 garbage in-garbage out, right. And so I think there is a lot
2742 of presumptions that algorithms can't be biased or that tech
2743 is neutral. And what we find is history, a long, you know,
2744 history of systemic inequities are actually being and put in
2745 from data points and then replicating models of discrimination
2746 free from accountability.

2747 And so I think, you know, one of the things that we want
2748 to look at is kind of the algorithm, distribution of
2749 advertisements related explicitly to education, employment,
2750 and housing opportunities, algorithmic distribution of
2751 political advertisements in communications, and algorithmic
2752 determinations of product prices and same-day shipping. These
2753 are examples of some of the things in which I think we need to

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2754 see more intelligence and information on.

2755 Mr. McNerney. Thank you.

2756 Finally, Ms. O'Connor, I am worried about data security
2757 as well as data privacy. Would you agree with that?

2758 Ms. O'Connor. Yes, sir.

2759 Mr. McNerney. What is the relationship between privacy
2760 and security?

2761 Ms. O'Connor. They are inexplicably linked. They are
2762 two sides of the same coin. In our draft proposal we copy
2763 some of Congresswoman Schakowsky's language about thresholds
2764 and best practices and it is an essential part of a privacy
2765 program for any company large or small.

2766 Mr. McNerney. Thank you. And I just want to say I was
2767 shocked by your earlier statement, Ms. Collins-Dexter, that
2768 discriminatory technology is lucrative to identify ethnicity.
2769 In other words it is a lucrative technology used nefariously.
2770 Thank you. I yield back.

2771 Ms. Schakowsky. And now Mr. O'Halleran for 5 minutes you
2772 are recognized.

2773 Mr. O'Halleran. Thank you, Madam Chair. And I thank too
2774 the witnesses also that are appearing before us today.

2775 You know, I am all for a national policy but it has to be
2776 balanced. And it has to be balanced for the good of the
2777 people of America and their privacy. We have to recognize

2778 that there is, you know, not only are these changing times but
2779 the speed at which technology is changing has to be taken into
2780 account. I was a former investigator and I have to tell you,
2781 I would love to be an investigator in these times because of
2782 the speed of information that I could get that used to take me
2783 maybe a month to get, I could get in minutes maybe.

2784 So we have to be very concerned about these issues. And
2785 this is a national dialogue on how to enhance the data privacy
2786 of consumers. This is a debate that it is important not only
2787 to the people in my district in Arizona, but the American
2788 people. I have to kind of thank California and thank Europe
2789 for getting us pushed. Do I agree with necessarily about what
2790 they want to do? No. But do I think it has allowed us to be
2791 pushed in the right direction in a timely fashion? Yes, we
2792 should have done this much sooner.

2793 As members of this committee across the aisle, we must
2794 take seriously our duty to closely examine how to ensure
2795 consumer privacy remains protected in today's increasingly
2796 connected global economy.

2797 Ms. Zheng, as you know my rural district in Arizona is
2798 home to many small businesses who constantly strive to compete
2799 in a modernizing economy and internet ecosystem. Under
2800 current law, the Federal Trade Commission serves as the
2801 primary enforcer for internet privacy as prescribed by the FTC

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2802 Act. Taking into consideration the FTC's mandate to combat
2803 unfair and disruptive trade practices, deceptive trade
2804 practices against consumers, what privacy framework do you see
2805 as striking the right balance between protecting the rights of
2806 consumers and helping ensure regulatory certainty for small
2807 businesses?

2808 Ms. Zheng. Thank you for that question, Congressman. I
2809 would note that in a number of laws as well as legislative
2810 proposals, lawmakers have contemplated an exception for small
2811 or medium-sized businesses. I assume that is something that
2812 this body will also contemplate. You know, as the Business
2813 Roundtable we do represent large American companies, but many
2814 of our companies do business with small companies as their
2815 clients or as their suppliers so we certainly care about the
2816 well-being of the small business community.

2817 I think, you know, there are different types of
2818 thresholds you could look to in considering a possible small
2819 business exception including potentially the number of records
2820 held or the annual revenue. But I am not certain that the
2821 Business Roundtable is really the best organization to
2822 pontificate on what specifically that threshold ought to be.

2823 Mr. O'Halleran. And probably the reason for my question
2824 is because I want to see that there is a protection for
2825 businesses across the entire spectrum, not just for those with

2826 large business concerns.

2827 Ms. O'Connor, in your testimony you state that existing
2828 privacy regimes rely too heavily on the concept of notice and
2829 consent which you state place an untenable burden on
2830 consumers. As we all know, consumers often overlook the
2831 extremely dense language -- here I am -- in user agreements
2832 and simply accept in order to use internet applications and
2833 services.

2834 Under any new consumer privacy statute how could privacy
2835 notices be simplified for consumers whether they are
2836 technologically experts or novices to better and more
2837 meaningfully understand how their information is being stored,
2838 used, and, if applicable, shared after accepting privacy
2839 agreements? And I will say I believe the chairwoman was
2840 correct in her stack, it is probably a much bigger stack. And
2841 we have to design something that works for the American
2842 people. Please.

2843 Ms. O'Connor. Thank you, sir. That is exactly right.
2844 The number of hours and the number of words we would all have
2845 to read on a daily or weekly or monthly basis to stay up-to-
2846 date on the choices we are making online and off about how our
2847 data flows are staggering and overwhelming to any busy
2848 consumer. I think there should be things that are in bounds,
2849 again for the furtherance of the transaction, so the primary

2850 purpose of the deal.

2851 There should be things that are simply out of bounds like
2852 taking biometrics for purposes that are far afield from the
2853 primary purpose of the transaction, and then you could limit
2854 notices to that middle ground of things that are less clear
2855 but that consumers might want that are related to the
2856 transactions that they have at hand or their relationship with
2857 the company. They definitely need to be shorter, clearer, and
2858 more to the point. But notice and choice alone do not get us
2859 where we need to go.

2860 Mr. O'Halleran. Thank you, and I yield. Thank you,
2861 Madam Chair.

2862 Ms. Schakowsky. Now I am happy to yield to my colleague
2863 from Illinois, Mr. Rush.

2864 Mr. Rush. I certainly want to thank you, Madam Chair,
2865 and I want to thank all the witnesses who have appeared before
2866 this subcommittee today. I chaired this subcommittee back in
2867 2007. I introduced a data bill back in 2007, and we are still
2868 here today discussing data and data security and a data bill.

2869 And I hope that under this current chairman that we are able
2870 to finally come up with a bipartisan bill and that will pass
2871 in Congress and then the President will sign. I certainly
2872 look forward to it and I have been pretty patient about it.

2873 I reintroduced my data protection, data privacy bill,

2874 H.R. 1282, that had one provision that dealt with this specter
2875 of data brokers. And I just wanted to know am I off-base, Ms.
2876 Collins? Am I off-base trying to rein in this specter of data
2877 brokers? How big is that problem and as it relates to
2878 protection of consumers' data?

2879 Ms. Collins-Dexter. Yeah. I think that you are right to
2880 be concerned. I think there is like so much work we have to
2881 do. I think one of the things that I tried to articulate in
2882 my comments I think is super important is that 50 years ago as
2883 a country we made a sort of social, legislative, and legal
2884 contract that is that certain things would no longer be
2885 accepted in our society. Kids being turned away from
2886 Woolworth's counter was not acceptable. People hanging signs
2887 that said no Jews, dogs or blacks allowed were no longer
2888 acceptable. And we didn't throw our hands up at that time and
2889 say don't go to that restaurant, right. We took an ethical
2890 and moral stance.

2891 And not just that, it was about knowing that if we could
2892 compete globally and thrive economically we had to ensure that
2893 we had more taxpaying members of our community, more people
2894 able to have opportunity and be economically mobile. And so
2895 part of what we are looking at with this like privacy
2896 legislation is basically looking at stopping Jim Crow online.
2897 It is around simply bringing, you know, looking at our online

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2898 activities and ensuring that there is -- that those same laws
2899 that we created 50 years ago to prevent discrimination apply
2900 to what we do online.

2901 Mr. Rush. Thank you.

2902 Ms. O'Connor, what should we do to regulate data brokers?

2903 Ms. O'Connor. Thank you, sir. And I think underpinning
2904 so many of the questions today is the issue of opaque or
2905 surreptitious surveillance or data collection. And that is
2906 the position again, and I just want to associate myself with
2907 Ms. Collins-Dexter because she is so right that these are
2908 issues of fairness, of transparency, of accountability, and of
2909 equality for all Americans.

2910 Data brokers really came up because of the Fair Housing
2911 Act and the Equal Opportunity Act and the fundamentals of
2912 providing fair credit to all Americans. They served at that
2913 time a purpose. Right now the opaque and surreptitious
2914 behind-the-scenes data collection by third parties that
2915 Americans do not understand is fundamentally untenable going
2916 forward.

2917 So, and I think the CEO of one of those companies is
2918 actually directly across the hall right now, so maybe we could
2919 go ask him some of these questions. But they do serve a
2920 purpose. And to the previous comments, we need to reform, we
2921 need transparency, and we need greater control and

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2922 accountability over these third parties.

2923 Mr. Rush. In your testimony you discuss how the CDT's
2924 draft legislation -- well, I quote you, "would direct the FTC
2925 to promulgate rules addressing unfair advertising practices,
2926 particularly those that result in unlawful discrimination in
2927 violation of civil rights law." Describe for this committee
2928 what should these rules look like?

2929 Ms. O'Connor. There are good laws on the books as we all
2930 know about unfair discrimination and what that looks like in
2931 the offline world. However, intimate and immutable and real-
2932 time decisions can be made about us in the online world even
2933 prior to knowing who we are based on inferences, based on
2934 patterns of surfing and habits. We would simply want to make
2935 sure that each individual's world view is not prescribed and
2936 limited by judgments that are made about them by companies
2937 that they are not aware of. That a child in one part of the
2938 country is not seeing ads for educational opportunities or a
2939 grownup is not seeing credit opportunities that another person
2940 is being served based on judgments companies are making about
2941 them without their knowledge.

2942 Mr. Rush. Thank you, Madam Chair. I yield back.

2943 Ms. Schakowsky. Now it is my pleasure, last but not
2944 least, to call on Representative Kelly also from Illinois.

2945 Ms. Kelly. Madam Chair, Illinois is holding it down for

2946 you or with you. Thank you, Madam Chair, for holding this
2947 hearing today.

2948 As we have heard, repeated news stories about breaches
2949 and data collection malpractice have shown that it is time for
2950 federal privacy legislation. As the founder of the Tech
2951 Accountability Caucus, I want to follow up on the discussion
2952 of use of limitations.

2953 Ms. O'Connor, in your testimony you discuss two buckets
2954 of use limitations, the first of which you refer to as unfair
2955 data practices. The CDT draft legislation prohibits secondary
2956 uses of certain sensitive data like biometric information and
2957 health information. Can you clarify something for me? Other
2958 than the specific exceptions listed, is it your intention in
2959 the draft that these seven unfair categories are just not
2960 permitted?

2961 Ms. O'Connor. That is correct, ma'am, that the secondary
2962 use of those categories of data would not be permitted. Each
2963 individual would have to enter into a separate contract or
2964 agreement for a separate service or a separate device.

2965 Ms. Kelly. I know we talked about during this hearing
2966 about opting in and all of that, but a company cannot even
2967 seek opt-in consent for their uses; is that correct?

2968 Ms. O'Connor. It would have to be an entirely separate
2969 transaction. That is right.

2970 Ms. Kelly. Okay. How did you decide the types of data
2971 that necessitated the extra protections?

2972 Ms. O'Connor. The Center for Democracy & Technology
2973 worked over the last several years and we have stood for and
2974 been in favor of omnibus federal privacy legislation for the
2975 entire 25 years of CDT's existence. But we have re-energized
2976 this debate internally and worked with academics across this
2977 country and really around the world, business partners, other
2978 advocates in civil society and looked at the research and the
2979 consumer polling, the consumer research in this area, and that
2980 is where we ended up with the list that we created.

2981 Ms. Kelly. Okay, thank you. And to the panel, are there
2982 certain types of data that shouldn't be collected or used at
2983 all? We can just run down from Ms. Collins-Dexter.

2984 Ms. Collins-Dexter. Yes, I think there is certain pieces
2985 of like personal identifying data, geolocation, things like
2986 that that I think should not be collected and kept in use.

2987 Ms. Kelly. Dr. Layton? Just your opinion, are they any
2988 types of data that shouldn't be used at all or collected?

2989 Ms. Zheng. Thank you, Congresswoman, for that question.
2990 I think that the question deserves a little bit of nuance.
2991 What we are talking about here is, is there data that deserves
2992 an opt-in consent standard and I think the answer to that is
2993 likely yes. For example, a precise geolocation data, the

2994 FTC's current guidance right now is you acquire opt-in consent
2995 for precise geolocation data.

2996 What the Business Roundtable proposal recognizes is that
2997 there are sensitive categories of data that do absolutely
2998 deserve heightened protections and obligations including
2999 potentially opt-in consent.

3000 Ms. Kelly. Thank you.

3001 Mr. Grimaldi. Congresswoman, I would chime in by saying
3002 in order for the entire online ecosystem to work there has to
3003 be data to render a website to provide services, et cetera.
3004 And so in addition to some of the prohibited pieces that we
3005 have heard today that we all agree on, how do we expand that
3006 list to include other things in the marketplace that as my co-
3007 panelists have mentioned are just getting such blowback or are
3008 just on their face too personal, too off limits to be used by
3009 our companies, by other companies, I think that is important.

3010 And we need to make sure that the value that consumers are
3011 getting from their online experience can still be reaped even
3012 as we expand that list and we would love to work with you on
3013 that.

3014 Ms. Layton. Congresswoman, I just wanted to come back.
3015 I didn't want to take a position on this because I know, I
3016 actually know of important health and academic studies that
3017 under today's circumstances in the GDPR the data could not be

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3018 collected. But data that had been collected in the past has
3019 been used today to make very important conclusions for health
3020 questions. So I only urge -- I just want to put a note of
3021 caution, I understand that we have these concerns. But we
3022 don't necessarily know in the future how the data may be
3023 available.

3024 So I would tend to fall on the side of where we can
3025 identify that it is sensitive and have a higher standard, but
3026 not necessarily to outlaw it altogether. I am just concerned
3027 about the future because I have seen these studies that, you
3028 know, going forward we won't be able to do these important
3029 health outcome studies in the E.U.

3030 Ms. Kelly. Okay, thank you. Anything else? I will
3031 yield back the balance of my time. Thank you.

3032 Ms. Schakowsky. So, in closing, first let me request
3033 unanimous consent to enter the following documents into the
3034 record: 1) Public Citizen Framework from Privacy and Digital
3035 Rights for All; 2) a letter from the Americans for Prosperity;
3036 3) a letter from Computer and Communications Industry
3037 Association; 4) a letter from the ACLU and 42 other civil
3038 rights organizations; 5) a letter from Main Street
3039 Association; 6) a letter from Consumer Technology Association;
3040 7) NGEN consumer privacy comments; 8) letter from NGEN; 9) a
3041 letter from American Bankers Association; 10) the NRF letter;

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3042 11) NRF comments; 12) Electronic Transactions Association
3043 letter; 13) 21st Century Privacy Coalition letter; 14) ACA
3044 International letter; 15) Representative Eshoo's opening
3045 statement for the record. You can see the kind of broad
3046 spread interest.

3047 I want to thank our ranking member, the staff that worked
3048 so hard on all of this, thank you, and especially our
3049 witnesses for your participation today in this very first
3050 hearing of the session dealing with this issue of data privacy
3051 which is clearly going to go forward. I encourage you to also
3052 keep in touch as we move forward. We welcome your input.

3053 I remind members that pursuant to committee rules they
3054 have 10 business days to submit additional questions for the
3055 record to be answered by the witnesses who have appeared. I
3056 ask each witness to respond promptly to any such requests that
3057 you may receive.

3058 Oh, there is more. Okay. So we will have a letter from
3059 the American Action Forum to put in the record; a letter from
3060 the Council for Citizens Against Government Waste; a letter
3061 from consumer tech -- oh, I see -- a letter from the Coalition
3062 for Secure Transparent Internet; a letter from R Street
3063 Institute; a letter from United Chamber of Commerce; a letter
3064 from Digital Liberty; a letter from the Internet Association;
3065 DOJ Cyber-Digital Task Force; a letter from Google.

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3066 Is that it? There is more? Okay, a lot of interest.
3067 Okay. Still, I had the Public Citizen, I think. But Public
3068 Citizen framework from privacy and digital rights for all; the
3069 Electronic Transaction Association letter; the letter from the
3070 National Association of Mutual Insurance Companies; a letter
3071 from Information Technology and Innovation Foundation, and
3072 along with the others I ask unanimous consent to put these in
3073 the record. So ordered.

3074 [The information follows:]

3075

3076 *****COMMITTEE INSERT 12*****

3077 Ms. Schakowsky. And now I think at this time the
3078 subcommittee is adjourned.

3079 [Whereupon, at 12:51 p.m., the subcommittee was
3080 adjourned.]