

June 13, 2022

Chairman Frank Pallone
House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, D.C. 20515

Ranking Member Cathy McMorris Rodgers
House Energy and Commerce Committee
2322 Rayburn House Office Building
Washington, D.C. 20515

Chairwoman Jan Schakowsky
Consumer Protection and Commerce
Subcommittee
House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, D.C. 20515

Ranking Member Gus Bilirakis
Consumer Protection and Commerce
Subcommittee
House Energy and Commerce Committee
2322 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairs Pallone and Schakowsky, and Ranking Members McMorris Rodgers and Bilirakis,

The Consumer Technology Association (CTA)® commends your efforts and leadership in seeking to reach a bipartisan, bicameral comprehensive privacy bill.

As the Committee convenes its June 14th legislative hearing to discuss the American Data Privacy and Protection Act, CTA welcomes the opportunity to provide feedback based on the core principles for federal privacy legislation we articulated during the 116th Congress.

Thanks to a legislative and regulatory philosophy that has emphasized flexible but clear rules of the road, U.S. technology companies have flourished, becoming the envy of the world. Federal privacy legislation that enables innovators to continue building new and creative products without fear of frivolous lawsuits or compliance with complex regulatory schemes is key to American innovation and entrepreneurship.

As CTA outlined in 2019, this foundation begins by having a clear national privacy standard. By exempting a wide range of state and local laws, the discussion draft provides what could be perceived as 'preemption' in name only. Small companies, (80% of CTA's membership) will struggle to balance rapid growth and job creation with compliance and complex regulatory burdens, under the many exempted conflicting and ambiguous state and local laws. Indeed, creating a new federal framework while largely maintaining liability for state and local mandates could create a "worst of both worlds" scenario.

Similarly, we ask you not burden industry and federal courts with a new private right of action. We appreciate the process and notice to state AGs and opportunity to cure, and the four-year delayed effective date, but this simply

postpones the inevitable: a rush of lawsuits that will slow the pace of innovation and embolden trial lawyers seeking to take advantage of a litigious environment under the guise of helping consumers. We have seen this scenario before in the patent context, where so-called "patent troll" trial lawyers barrage small businesses and startups with costly and non-meritorious shakedown lawsuits. CTA asks that any privacy legislation exclude a private right of action provision. Our businesses and economy already pay the world's highest lawyer tax and creating a new private federal cause of action would further disadvantage American businesses.

With the draft just having been publicly circulated, we find several provisions that would benefit from further review by industry and advocates alike. Our trading partners will also assess the bill against US international commitments. Particularly, definitions within the baseline text should be reviewed and understood before moving forward. Further, certain provisions would impose broad new regulatory mandates on developers and users of artificial intelligence systems and tools. Apart from the imposition of potential new liability for claims, the bill requires developers and users of such systems to undertake annual impact assessments and design evaluations, and to disclose the results to the FTC and Congress. The impact of these mandates on this dynamic new sector of the tech industry should be carefully scrutinized and evaluated before any final Committee action.

CTA members' initial feedback includes concerns about mandating changes in corporate reporting structure to elevate the role of chief privacy officers; the expanding FTC rulemaking authority; and ambiguous privacy-by-design requirement. Additionally, the lack of a risk-based framework results in mandated impact assessments and evaluations on all systems, even low (or no) risk systems; and the duty to file these assessments is also overbroad and can be narrowed to apply only where a violation of law has occurred.

Ultimately, CTA understands that consumer trust must be a central tenet of the products and services developed by our industry. It is earned when companies are good stewards of their consumers' data. We believe a well-informed, balanced approach will ensure consumer data is protected and enable businesses to grow and innovate.

These are complex issues, and we recognize that Congress has been grappling for years with how to effectively structure a federal privacy law. It is an important and critical undertaking, and we appreciate the opportunity to help improve upon the current draft to ensure that it does not harm small businesses and innovators and protects consumers.

A strong privacy bill focused on a federal approach would clarify consumer expectations and rights and affect almost all American businesses. It should not burden new market entrants and require new bureaucracies. It should value consumer privacy and encourage economic growth. We stand ready and willing to provide our continued feedback to the Committee.

Thank you,



Gary Shapiro
President and CEO
Consumer Technology Association

Cc: Members of the House Energy and Commerce Committee
Ranking Member Roger Wicker, Senate Commerce Committee