

1 Diversified Reporting Services, Inc.

2 RPTS GONZALEZ

3 HIF165170

4

5

6 HEARING ON PROTECTING AMERICA'S CONSUMERS:

7 BIPARTISAN LEGISLATION TO STRENGTHEN

8 DATA PRIVACY AND SECURITY

9 TUESDAY, JUNE 14, 2022

10 House of Representatives,

11 Subcommittee on Consumer Protection and Commerce,

12 Committee on Energy and Commerce,

13 Washington, D.C.

14

15

16 The subcommittee met, pursuant to call, at 10:32 p.m.,

17 in Room 2123, Rayburn House Office Building, Hon. Jan

18 Schakowsky, [chairwoman of the subcommittee], presiding.

19 Present: Representatives Schakowsky, Rush, Castor,

20 Trahan, McNerney, Clarke, Cardenas, Dingell, Kelly, Soto,

21 Rice, Craig, Fletcher, Pallone (ex officio); Bilirakis,

22 Upton, Latta, Guthrie, Bucshon, Dunn, Pence, Lesko,

23 Armstrong, and Rodgers (ex officio).

24 Also present: Eshoo, Rochester, Burgess, and Walberg.

25 Staff present: Katherine Durkin, Policy Coordinator;

26 Lisa Goldman, Senior Counsel; Waverly Gordon, Deputy Staff

27 Director and General Counsel; Jessica Grandberry, Staff
28 Assistant; Tiffany Guarascio, Staff Director; Perry Hamilton,
29 Clerk; Ed Kaczmariski, Policy Analyst; Zach Kahan, Deputy
30 Director Outreach and Member Service; Mackenzie Kuhl, Digital
31 Assistant; Jerry Leverich, Chief Counsel, Communications and
32 Technology; David Miller, Counsel; Kaitlyn Peel, Digital
33 Director; Caroline Rinker, Press Assistant; Chloe Rodriguez,
34 Clerk; Andrew Souvall, Director of Communications, Outreach,
35 and Member Services; Michele Viterise, Counsel; C.J. Young,
36 Deputy Communications Director; Sarah Burke, Minority Deputy
37 Staff Director; Michael Cameron, Minority Policy Analyst,
38 CPC, Energy, Environment; Nate Hodson, Minority Staff
39 Director; Emily King, Minority Member Services Director;
40 Bijan Koohmaraie, Minority Chief Counsel, O&I Chief Counsel;
41 Tim Kurth, Minority Chief Counsel, CPC; Brannon Rains,
42 Minority Professional Staff Member, CPC; and Michael Taggart,
43 Minority Policy Director.
44

45 *Ms. Schakowsky. The subcommittee on Consumer
46 Protection and Commerce will now come to order. Today we
47 will be holding a hearing entitled "Protecting American
48 Consumers Bipartisan Legislation to Strengthen Data Privacy
49 and Security."

50 Due to the COVID-19 public health emergency, we are
51 still -- members can participate both here in our room, and
52 also remotely via online videoconferencing in accordance with
53 the updated guidance from the attending physician. Members,
54 staff, and members of the press can be present in this room
55 without wearing a mask.

56 For members participating remotely, your microphones
57 will be set on mute for the purpose of eliminating
58 inadvertent background noise. Members participating remotely
59 will need to unmute your microphone each time that you wish
60 to speak. Please note that, once you do unmute yourself,
61 anything that you will say on Webex will be able to be heard
62 over the loudspeaker in the committee room and subject to be
63 heard on Livestream and on CSPAN.

64 Since members are participating from different locations
65 at today's hearing, we will recognize members such as for
66 questioning, et cetera, by seniority within the subcommittee.

67 Documents for the record can be sent to Ed Kaczmarek at
68 the email that has been provided through your staff, and all
69 documents will be entered into the record at the conclusion

70 of the hearing.

71 Before I begin with opening statements, and I will be
72 first, I just want to ask for a moment of personal privilege.

73 *Voice. Absolutely.

74 *Ms. Schakowsky. Yeah. I just wanted to acknowledge
75 that we all hold in our hearts our colleague and friend, Sean
76 Casten, who is my colleague from Illinois who lost his 17-
77 year-old daughter yesterday, and I want you to know that the
78 family has asked for privacy.

79 Sean has not issued a statement yet, and the family has
80 asked for privacy, but I want all of us to hold him and the
81 family in our hearts and send really all of our prayers to
82 the family. So thank you very much for that moment.

83 So let me begin with five minutes of opening statements.

84 So today is really a big significant day and a long-
85 awaited day for our subcommittee, the Consumer Protection and
86 Commerce Committee.

87 We will be considering the bipartisan draft of the
88 American Data Protection and Privacy Act. This is a pitiful
89 -- not pitiful -- but a pivotal, an important, moment in our
90 journey to ensure that online privacy rights are there for
91 all Americans, and we are definitely on our way.

92 There are so many people to thank for this. I want to
93 thank the chairman of the full committee, Frank Pallone, for
94 all of his support and leadership on this. I want to thank

95 the ranking member, Congresswoman Rodgers, and we go back
96 quite a long way even before you were the ranking on the full
97 committee working on this and talking about this, and Gus
98 Bilirakis, the ranking member on our subcommittee, for his
99 tireless work.

100 I also just really want to thank the staff that has put
101 in so much time and energy making this all happen, both the
102 personal staff that we have and the committee staff, for all
103 their great work and for members within the subcommittee
104 outside in the Energy and Commerce Committee and throughout
105 the Congress for input.

106 The road has been long and sometimes quite bumpy, and we
107 had COVID in between, but here we are today, and we had a
108 wonderful process. I wanted to mention the six roundtables
109 that were put together bringing together all different
110 stakeholders and experts from government, advocacy groups,
111 industry, think tanks, technology experts, and more to meet
112 in these roundtables face-to-face to begin to work out the
113 process, and so this has been super important, and I thank
114 all the participants.

115 Americans have been demanding that we act. They have
116 often felt helpless online, but now, we are going to be able,
117 I hope, to pass a bill that, on the very first day, we will
118 be able to protect them from the take-it-or-leave-it kind of
119 terms, so that they are able to get what they want, so that

120 they can access all of their data, that they can correct,
121 delete, and transfer their data, that we will provide
122 certainty for the data for the business community, and that
123 we will have space for innovation and protection for small
124 businesses.

125 We will, hopefully, on day one, be able to increase
126 protection for children, and I want to say a special shout
127 out to Congresswoman Castor for the work that she has done on
128 improving safety for children online, and especially one item
129 anyway, raising the age of protection from 13 to 17.

130 We want to protect civil rights, and I want to thank
131 Congresswoman Yvette Clarke for her work to help assure that
132 -- by making sure that we end discrimination by algorithms,
133 and we are going to make sure that we have accountability for
134 the bad actors. There will be enforcement.

135 I could go on, but I want to give the remainder of my
136 time to Congresswoman Anna Eshoo.

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

138

139 *****COMMITTEE INSERT*****

140

141 *Ms. Eshoo. Thank you, Madam Chairman.

142 In 2019, Congresswoman Lofgren and I introduced the
143 Online Privacy Act that academicians have called the most
144 comprehensive privacy bill in Congress. I have a commitment
145 to ensuring that Congress passes strong and enforceable
146 privacy legislation that secures user data, requires
147 companies to minimize collection of personal data, and gives
148 users access to and control of their data.

149 Federal privacy legislation cannot undermine
150 California's groundbreaking privacy laws and should include
151 protections for small businesses.

152 So I look forward to working with all of the members on
153 both sides of aisle to produce the strongest privacy
154 protections for the American people. They have waited a long
155 time for it, and I hope that this is the moment where we
156 produce, and I thank you for yielding to me.

157 [The prepared statement of Ms. Eshoo follows:]

158

159 *****COMMITTEE INSERT*****

160

161 *Ms. Schakowsky. So before I yield to my ranking member
162 for his five minutes, let me again for the record, thank all
163 our witnesses for coming today for participating in this
164 hearing, for being here in person, and for us to be able to
165 have time to ask you questions as we move forward.

166 I am looking forward to a rapid increase in our activity
167 and to get something passed as soon as possible; and at this
168 point, let me yield, now, five minutes for his opening
169 statement to ranking member, Mr. Bilirakis.

170 *Mr. Bilirakis. Thank you, Madam Chair. Appreciate it.
171 Good morning, everyone.

172 Thank you, Madam Chair, for holding this important
173 legislative hearing and to our witnesses for your testimony
174 today.

175 This is an exciting day for the subcommittee as it marks
176 the first time a bicameral, bipartisan comprehensive privacy
177 and data security deal is considered on the congressional
178 docket. This topic has had its ups and downs to get to this
179 point, but I am proud to be here with my colleagues on both
180 sides of the aisle to discuss and improve the America Data
181 Privacy and Protection Act.

182 I want to thank the chairman of the full committee, of
183 course, the ranking member of the full committee, and of
184 course, my colleague, the chairman of the subcommittee.
185 Thank you very much for giving me the opportunity to have as

186 much input as possible, and I know we are going to go
187 forward.

188 As a reminder, what we have before us, of course, is a
189 discussion draft which means we should spend our time today
190 learning how we can make it better. And thank you to the
191 witnesses because I know we can make it better. But to be
192 clear, again, this is historic, and we need to keep moving
193 together and build upon a constructive feedback while
194 rejecting tactics that may seek to derail our bipartisan
195 work.

196 This draft establishes a delicate balance for putting
197 control data back into the hands of everyday Americans while
198 providing businesses with fair rules of the road and
199 preserving their ability to innovate.

200 I know from my vantage point in Florida, that the travel
201 and tourism industry encounter countless transactions from
202 their visitor interactions, but we know we must be sensitive
203 to those small- and medium-size businesses since they are
204 only using a fraction of data that Facebook or Google do who
205 have legions of lawyers to manage compliance.

206 For years, I have heard the calls for Congress to
207 urgently enact an national privacy law, so I have a level of
208 skepticism now that, when I hear "Let's take a pause or do it
209 next year," I won't buy that. This is the best committee by
210 far on Capitol Hill in my opinion, and we are up to the

211 challenge.

212 So hopefully, today's hearing helps shine a light on how
213 this legislation is designed to operate and how we can
214 continue moving the process forward with consensus from both
215 sides of the aisle and both chambers.

216 We have a broad scope of witnesses for this hearing that
217 can speak to different aspects of the bill, from small
218 businesses and startup technologies to consumer advocates. I
219 know we can bridge any divide we have, and I am thankful for
220 you all being here today.

221 Today's discussion draft threads the needle, as I said,
222 on many challenges that have acted as barriers to passing a
223 comprehensive privacy and data security bill, including
224 preemption, individual rights to courts, and the role of the
225 FTC; however, just as importantly, this legislation also
226 addresses meaningful policy issues that have been priorities
227 for many members of the Congress on this committee.

228 Every member on this committee can point to small and
229 mom-and-pop stores in their districts. They can enjoy
230 visiting whether, of course, they can enjoy visiting whether
231 it is a great restaurant with authentic cuisine or a local
232 boutique shop selling homemade goods.

233 We recognize these businesses don't have infinite
234 resources but still need to collect data in order to make it
235 in today's economy which is very difficult which is why the

236 draft agreement excludes small businesses from certain
237 requirements to lessen the potential burdens they would face,
238 and it provides additional resources for them to help with
239 compliance. I know I don't have too much time here.

240 The legislation also takes a leap forward in protecting
241 children from malicious online practices. Our draft would
242 ban targeted advertising to children under the age of 17 and
243 show large data holders like Big Tech regularly assess how
244 their algorithms impact and harm children online and classify
245 all data belonging to children under the age of 17 as
246 sensitive covered data which is subject to heightened
247 protections and requirements.

248 I am pleased to see the language in this draft as
249 protecting children's privacy has long been -- this is a
250 priority of mine and other members of the committee, and I
251 want to recognize Congressman Walberg, in particular. He has
252 been working tirelessly on this, and I recognize his
253 bipartisan efforts on this front; and because I don't have
254 any more time, Madam Chair, I will yield back, and I look
255 forward to hearing from the witnesses.

256 Take care. Thank you.

257 [The prepared statement of Mr. Bilirakis follows:]

258

259 *****COMMITTEE INSERT*****

260

261 *Ms. Schakowsky. Thank you. The gentleman yields back,
262 and now, I recognize the Chair of the full committee, Mr.
263 Pallone, for his opening statement.

264 *The Chairman. Thank you, Chairwoman Schakowsky.

265 Today, this subcommittee is taking the significant step
266 of putting consumers back in control of their data and
267 protecting their privacy.

268 Over the years, the subcommittee, as the chairwoman
269 mentioned, has discussed major breaches and scandals
270 involving the misuse and unauthorized sharing of people's
271 data. We have also talked about how emerging technologies
272 can be used by companies in unintended and potentially
273 harmful ways, including targeting our children.

274 Our privacy is something we must confront on a daily
275 basis. Almost every company we interact with is conducting
276 surveillance on us. When we visit a single website, many
277 companies are tracking our actions on that site, and we all
278 visit many sites every day.

279 And that is why there is [inaudible] universal agreement
280 that a national data privacy and security law is urgently
281 needed to protect consumers. More than half of all U.S.
282 adults now say they have declined to try a product or service
283 because they feared how their data might be used or abused if
284 they did so.

285 And there is simply no real choice when consumers must

286 trade their personal data to use essential services. People
287 cannot navigate the modern world without their smartphone or
288 email address, and with the minimal protections that apply
289 today, most Americans have little reason to think that their
290 data won't be used in unanticipated ways.

291 Comprehensive national privacy legislation is necessary
292 to limit the excesses of Big Tech and ensure Americans can
293 safely navigate the digital world. For far too many years,
294 Congress has tried and failed to advance comprehensive
295 federal privacy protections; but today, with the American
296 Data Privacy and Protection Act, we have a real chance to
297 begin doing what many in Washington have said was impossible.

298 So this proposal is the first serious bipartisan,
299 bicameral comprehensive national privacy bill that directly
300 confronts the sticking points which derailed earlier efforts.

301 The bill presents a fundamental shift in how data is
302 collected, used, and transferred. It rejects the corrosive
303 notice and consent system that has totally failed to protect
304 Americans' data, privacy, and security; and at its core, the
305 draft legislation requires relevant uses of personal data to
306 be reasonably necessary, proportionate, and limited to the
307 services that consumers are requesting.

308 The bill adds individual rights that allow people to
309 control their data, opt out of targeted advertising, and stop
310 the data from being sold without their permission. Our kids

311 will be protected from abusive advertising and data transfers
312 and businesses will be required to protect consumer data or
313 face real consequences.

314 I also believe that data privacy rights are civil
315 rights, and this draft legislation ensures that online
316 discrimination is prohibited. It also requires the largest
317 companies to conduct impact assessments on their algorithms,
318 including whether they may harm protected classes.

319 So to ensure innovation continues, and Big Tech players
320 are not cemented in place, this discussion draft imposes
321 different obligations on different kinds of businesses to
322 reflect their roles in the internet ecosystem. Steps are
323 taken to limit the compliance burden on small- and mid-size
324 businesses without sacrificing consumer protections.

325 Large data holders like Big Tech face additional
326 requirements and obligations, and data brokers that profit
327 from buying and selling your data are brought out of the
328 shadows.

329 The bill also provides for robust enforcement by the
330 FTC, state attorneys general, and individuals. It takes a
331 balanced thoughtful approach to existing laws by setting up a
332 strong national framework and preserving room for states to
333 continue protecting their residents where the bill's
334 protections stop.

335 While Congress is stalled on privacy, the rest of the

336 world has not. The European Union and even China have passed
337 comprehensive privacy laws. American companies have
338 continued to innovate while the federal government has
339 struggled to keep pace, and this bill would immediately reset
340 the global landscape.

341 So I want to thank Ranking Member Rodgers, Senator
342 Wicker, the Subcommittee Chair Schakowsky, and Ranking Member
343 Bilirakis for their relentless commitment, and it has been
344 relentless to coming to a bipartisan consensus on this
345 discussion draft. I also thank many members of the
346 subcommittee for their tireless efforts as this legislation
347 includes so many proposals from our members over the years.

348 So today's hearing comes after many hearings and
349 roundtables focusing on protecting our privacy online. The
350 draft legislation is the culmination of all that work. I
351 look forward to continuing that process today and keeping the
352 momentum going to finally pass this critical privacy
353 legislation; and with that, Madam Chair, I yield back.

354 [The prepared statement of The Chairman follows:]

355

356 *****COMMITTEE INSERT*****

357

358 *Ms. Schakowsky. The gentleman yields back.

359 And now, I recognize for five minutes, Mrs. Rodgers, the
360 ranking member of the full committee.

361 *Mrs. Rodgers. Thank you, Madam Chair.

362 One of my top priorities, when I served as the
363 Republican leader of this subcommittee, was enacting a
364 federal privacy standard. This bipartisan, bicameral draft
365 bill, the American Data Privacy and Protection Act, includes
366 policies that have been in the public and received comment
367 over several years.

368 This is about protecting people from Big Tech,
369 especially our kids, and strengthening America's position in
370 setting global standards. Not China or Europe. It's about
371 promoting American innovation and next generation
372 technologies like AI and AVs.

373 We must remain focused on creating the best possible
374 standard to protect people's privacy and promote American
375 leadership. This is closest we have come to establishing a
376 national standard, a standard that many said for a long time,
377 is urgently needed. It's the product of years of
378 discussions, negotiations, drafting, stakeholder feedback,
379 and now, committee process, and our work will continue.

380 Here is a brief overview of the extensive process that
381 has led us to today:

382 In early 2019, I released my four principles for privacy

383 legislation. Later, Energy and Commerce released a
384 bipartisan staff draft. I was pleased to do that at the time
385 when I was serving with the, now Chairwoman, Jan Schakowsky,
386 and began extensive staff-led conversations to receive
387 feedback.

388 We've engaged stakeholders through bipartisan
389 discussions and through Republican and Democratic draft
390 bills. That's not to mention the Senate's work and the draft
391 proposals from industry and advocacy groups or the work of
392 the last 20 years. Our draft is the culmination of all this.

393 I want to join in thanking the chairman, Chairman
394 Pallone, Senator Wicker, Consumer Protection and Commerce
395 leaders, Chairwoman Jan Schakowsky, and our Ranking Member,
396 Gus Bilirakis, for the hard work everyone has done to make it
397 possible. A bicameral, bipartisan draft is finally here, and
398 the door remains open for constructive feedback.

399 As I said in my 2019 principles to protect privacy and
400 promote innovation, there needs to be one national standard
401 first and foremost. This draft stops an unworkable patchwork
402 of state laws, ensures protections don't change across state
403 lines, and provide certainty to Americans and businesses.

404 We also need to target data practices from bad actors
405 that cause people harm, for example, because people should
406 know how their data is being collected and shared, this draft
407 requires companies to specify when they are transferring or

408 storing people's data in countries like China, Russia, Iran.

409 Why are we making sure to target bad actors and
410 practices? Because companies sitting on massive troves of
411 American's data become vulnerable to breaches, hacks, and
412 exploitation.

413 Instead, we must allow for safe data practices and new
414 innovations that people like. That includes innovations that
415 improve people's lives by saving money and time like real-
416 time updates to avoid traffic and better customer service
417 products.

418 This principle to prevent real harms from bad actors is
419 especially important for protecting our children and minors
420 no matter where they live. If Big Tech can't target our
421 kids, they can't exploit our kids. Our bill addresses this
422 with heightened requirements for how data of our children is
423 handled, shared, and used.

424 Additionally, we need to foster stronger and improved
425 data security practices. The American Data Privacy and
426 Protection Act focuses on requiring companies to only keep
427 information they need while encouraging them to take steps to
428 better secure data that is retained.

429 Finally, a national standard must be workable for small
430 businesses and startups. As we have learned by Big Tech,
431 gaining market share in Europe, large companies can navigate
432 a complicated privacy standard like GDPR or a patchwork of

433 state laws. But smaller businesses cannot afford high-
434 compliance costs and more ineffective regulations, especially
435 with all the challenges they have been facing from the
436 pandemic and inflation.

437 We're leading the way in this draft bill to unleash the
438 power of small businesses and entrepreneurs, the engines of
439 America's economy. As Chairman Pallone, Senator Wicker, and
440 I said when we released this draft, this is a critical
441 milestone that was years in the making. This is the best
442 opportunity we have had to pass a federal data privacy law in
443 decades.

444 I look forward to all our continued work together.
445 Let's keep building on these principles and make progress on
446 this draft, so people can trust how their data is being
447 collected and used, and so America wins the future in
448 technological innovations that raise our standard of living
449 and improve people's lives all across the globe.

450 Thank you. I yield back.

451 [The prepared statement of Mrs. Rodgers follows:]

452

453 *****COMMITTEE INSERT*****

454

455 *Ms. Schakowsky. Thank you. The gentlelady [audio
456 malfunction] -- perfect. The gentlelady yields back.

457 And now, the Chair would like to remind members that,
458 pursuant to committee rules, all members' written opening
459 statements shall be made part of the record.

460 And now, I would like to introduce our witnesses for
461 today's hearing. We have Bertram Lee, who is the senior
462 policy counsel data decider -- is that right? -- data
463 decider. Let's see. There it is -- data decision maker.
464 That's good. And oh, boy. I have reading issue here. What
465 is this?

466 *Voice. Artificial intelligence.

467 *Ms. Schakowsky. I'm sorry.

468 *Voice. It's artificial intelligence.

469 *Ms. Schakowsky. Okay. Artificial Intelligence and
470 Future Privacy Forum. Did I get it? Thank you.

471 Okay. John Miller, who is the senior vice president of
472 policy and general counsel at Information Technology
473 Industry. We have Caitriona Fitzgerald, the deputy director
474 at the -- what is it?

475 *Voice. Electronic [inaudible].

476 *Ms. Schakowsky. Oh, Electronic Privacy Information
477 Center, EPIC.

478 We have Douglas Kantor who is the general counsel at the
479 National Association of Convenience Stores. We have Jolina

480 Cuaresma who is the senior counsel, privacy and technology
481 policy at Common Sense Media.

482 We have the Honorable Maureen Ohlhausen -- I get that --
483 Ohlhausen -- who is the co-chair of 21st Century Privacy
484 Coalition; Graham Dufault -- no -- yes, Dufault -- sorry --
485 who is the senior director for public policy at ACT The App
486 Association; and we have David Brody, who is the managing
487 attorney, digital justice initiative at the Lawyers'
488 Committee for Civil Rights Under the Law.

489 So at this time, the chair will recognize each of the
490 members for five minutes, but before we begin, I want to make
491 sure some of you are experienced in testifying here, and I
492 just want to explain the clock system for our witnesses.

493 There is a timer on your -- well not on your screen --
494 but right in front of you. There is a -- so as the time
495 winds down to one minute, you will see a yellow mark, and I
496 hope that you will begin to conclude your remarks.

497 So first, Mr. Lee, you are recognized for five minutes.
498

499 STATEMENT OF BERTRAM LEE, JR., SENIOR POLICY COUNSEL, DATA
500 DECISION MAKING, AND ARTIFICIAL INTELLIGENCE FUTURE OF
501 PRIVACY FORUM

502

503 *Mr. Bertram. Chairwoman Schakowsky, Ranking Member
504 Bilirakis, Chairman Pallone, and Ranking Member McMorris
505 Rodgers, thank you for inviting me today to testify.

506 My name is Bertram Lee, and I senior policy counsel for
507 Data Decision Making and Artificial Intelligence representing
508 the Future of Privacy Forum.

509 We commend the committee for holding this hearing and
510 for introducing bipartisan, bicameral privacy legislation. I
511 would like to make four key points:

512 One, federal privacy legislation is urgently needed.
513 Two, the American Data Privacy and Protection Act, or ADPPA,
514 is more comprehensive in scope compared to the recently
515 enacted privacy laws in five states; and for your
516 consideration, we have included a chart comparing these state
517 laws to the ADPPA and our written testimony for you today.

518 Three, the ADPPA compares favorably to global
519 frameworks, including Europe's General Data Protection
520 Regulation, GDPR. And fourth, work remains to be done on
521 specific provisions to ensure that individuals are protected,
522 the bill is workable for business, not for profits and
523 researchers, and that it is harmonized with federal laws.

524 We are delighted that this committee has produced
525 bipartisan, bicameral federal privacy legislation. We urge
526 Congress to move quickly and thoughtfully as five states have
527 already passed comprehensive federal privacy legislation with
528 likely more to come.

529 Although state regimes differ, they share several
530 similarities that are important to Congress in pursuit of
531 federal privacy legislation. There is a clear trend. States
532 are making privacy rules whether Congress moves forward or
533 not.

534 Additionally, key dates are on the horizon for several
535 state laws with both California and Colorado looking to
536 implement rulemaking by July 1, 2023.

537 Our analysis shows, however, that the ADPPA is more
538 comprehensive in scope than recent state proposals. The
539 ADPPA, compared to its state counterparts, expands civil
540 rights protections against algorithmic discrimination,
541 includes corporate accountability mechanisms not found in
542 state laws, such as the requirement of designating privacy
543 and data security officers as well as executive
544 certifications of compliance, mandates that large data
545 holders provide shortform privacy notices to better inform
546 individuals of how their data will be used, provides pathways
547 for individual redress of privacy violations, creates new
548 data protections for young people 17 and under, as well as

549 broader prohibitions against harmful uses of data, and
550 requires that businesses incorporate privacy-by-design
551 principles in the development of their data processing
552 activities.

553 The ADPPA also compares favorably to Europe's GDPR in
554 five ways: One, comprehensiveness in terms of data covered,
555 the types of processing covered, and cross-sectoral
556 applicability. Two, individual rights including access,
557 correction, deletion, and portability, as well as a limited
558 right to object. Three, the recognition of special
559 categories of data that merit enhanced safeguards due to
560 their sensitive nature. Four, data minimization for all
561 processing of covered data, including collection and
562 transfers. And five, the ADPPA contains identical standard
563 to the GDPR for what is considered valid consent.

564 While the ADPPA would be a monumental step forward in
565 ensuring privacy regulations for all Americans, there is
566 still work to be done. We suggest Congress look to add:
567 one, additional funding for the FTC, so that it can fulfill
568 the full mandate of this bill. Two, add more space for
569 iterative processes within the ADPPA, so that it can keep
570 pace with evolving technologies. And three, take a closer
571 look at the intersection of the ADPPA with other federal
572 laws. And four, add more definitional clarity to certain
573 terms in the text.

574 Again, thank you for this opportunity to testify, and I
575 look forward to your questions.

576 [The prepared statement of Mr. Lee follows:]

577

578 *****COMMITTEE INSERT*****

579

580 *Ms. Schakowsky. Thank you.

581 And now, Mr. Miller, I recognize you for five minutes.

582

583 STATEMENT OF JOHN MILLER, SENIOR VICE PRESIDENT OF POLICY
584 AND GENERAL COUNSEL, INFORMATION TECHNOLOGY INDUSTRY COUNCIL
585

586 *Mr. Miller. Chairwoman Schakowsky, Ranking Member
587 Bilirakis, Chairman Pallone, Ranking Member McMorris Rodgers,
588 and distinguished members of the subcommittee, on behalf of
589 the Information Technology Industry Council, or ITI, thank
590 you for the opportunity to testify today.

591 As senior vice president of policy and general counsel,
592 I lead ITI's trust data and technology policy team, including
593 our strategy and advocacy on privacy, cyber security, and
594 data policy globally.

595 ITI represents 80 leading global companies from every
596 corner of the information and communications technology
597 sector, and privacy has been a longstanding policy priority
598 for ITI and our members as foundational to establishing
599 consumer trust.

600 ITI commends Chairman Pallone, Ranking Member McMorris
601 Rodgers, and Senator Wicker for your work on the American
602 Data Protection and Privacy Act discussion draft. We have
603 for several years shared your goal of an acting comprehensive
604 privacy legislation in 2019 releasing our fair privacy
605 framework to serve as a roadmap for a federal law.

606 Today, multiple U.S. states and over 140 countries have
607 passed privacy legislation, while until now, we have

608 continued to lag in making appreciable progress at the
609 federal level. ITI recognizes maintaining this current path
610 is unsustainable, and we are hopeful the draft can provide
611 the much-needed impetus to change this trajectory.

612 In terms of both its scope and potential impact, the
613 draft could foreshadow an inflection point on par with
614 Europe's General Data Protection Regulation or the California
615 Consumer Privacy Act due not only to the robust protections
616 it aspires to achieve for Americans, but also for its wide
617 ranging and potentially disruptive impact on companies across
618 every sector of the U.S. economy, including longstanding
619 business models that have helped fuel the internet's
620 development and corresponding economic growth.

621 This draft deserves to be thoughtfully considered by all
622 stakeholders as the most credible bipartisan and bicameral
623 effort yet to advance comprehensive federal privacy
624 legislation in the United States, and we look forward to
625 continuing to constructively engage with the subcommittee as
626 the bill moves forward, but a clear-eyed view should
627 acknowledge the bill is not perfect and needs improvement in
628 several key areas.

629 First, the definition of "sensitive covered data" is
630 overly broad in numerous respects. Perhaps the most
631 problematic subsection appears to subject all online activity
632 relating to individuals to opt-in consent rendering many

633 critical internet functions difficult if not impossible to
634 perform in areas ranging from routine browsing to preventing
635 cyber-attacks.

636 Sensitive covered data is also very [inaudible] defined
637 in several other respects, including sweeping in telephone
638 numbers, texts, emails, and voicemails also subjecting these
639 and other data categories to express opt-in consent. The
640 definition should be recalibrated to better align it with
641 other privacy laws.

642 Second, the draft does not carefully distinguish between
643 the different types of entities that use data or their
644 obligations. In particular, the draft does not clearly
645 differentiate the responsibilities of covered entities or
646 data controllers and service providers or data processors.

647 This so-called controller processor distinction is made
648 clear not only in the GDPR, but in all five state laws.
649 Given the complex and variable relationships between entities
650 using data, it is essential to clearly delineate between the
651 roles and responsibilities of controllers and processors for
652 a privacy law to function effectively, including to apportion
653 potential liabilities, and the draft should be modified to
654 more clearly define these entities, rather than lumping them
655 in their obligations together.

656 Third, we have concerns that, as presently drafted, the
657 definition of "targeted advertising" would prevent the ad-

658 supported internet business model from continuing. Any
659 federal privacy law should protect the privacy of Americans,
660 but also, seek to preserve data innovation in the business
661 models that have helped power the growth of the internet
662 economy.

663 We suggest changes to bring the definition of "targeted
664 advertising" more in line with the definitions included in
665 recent state privacy laws which struck the right balance to
666 enable internet companies to reasonably advertise to users on
667 their own sites while protecting their privacy interests.

668 My written testimony also suggests revamping other
669 provisions including as related to algorithms and cyber
670 security.

671 With respect to the approach to enforcement, the draft
672 contains multiple prongs providing strong redress and
673 enforcement, including robust FTC rulemaking, enforcement
674 authorities, and resources as well as enforcement by state
675 attorneys general.

676 In light of the already strong FTC and AG enforcement
677 provisions in the draft, it is reasonable to ask whether
678 including a private right of action is necessary to ensure a
679 robust enforcement. While we appreciate the efforts to
680 narrow the PRA, our members remain concerned the provision
681 remains too broad and misses the mark as currently drafted.
682 Amongst other reasons, the combination of unclear definitions

683 with the availability of attorneys' fees, it seems like a
684 recipe for a flood of lawsuits.

685 Finally, regarding preemption, we appreciate the draft
686 expresses the intent to preempt state privacy laws covered by
687 the provisions of the bill, [inaudible] questions regarding
688 how the draft rationalizes its execution of preemption given
689 the lengthy savings clause include some laws that appear to
690 be covered by the draft, but not others.

691 We all agree we need to get privacy legislation done,
692 but we should also agree we need to get privacy legislation
693 right.

694 Thank you for the opportunity to testify today, and I
695 look forward to your questions.

696 [The prepared statement of Mr. Miller follows:]

697

698 *****COMMITTEE INSERT*****

699

700 *Ms. Schakowsky. Thank you.

701 And now, I recognize Ms. Fitzgerald for five minutes for
702 your statement.

703

704 STATEMENT OF CAITRIONA FITZGERALD, DEPUTY DIRECTOR,
705 ELECTRONIC PRIVACY INFORMATION CENTER

706

707 *Ms. Fitzgerald. Chairwoman Schakowsky, Ranking Member
708 Bilirakis, Chairman Pallone, and Ranking Member McMorris
709 Rodgers, members of the subcommittee, thank you for your
710 leadership on the American Data Privacy and Protection Act,
711 for holding this important hearing, and for the opportunity
712 to testify today.

713 I am Caitriona Fitzgerald, deputy director at the
714 Electronic Privacy Information Center, or EPIC. EPIC is an
715 independent non-profit research center established in 1994 to
716 protect privacy, freedom of expression, and democratic values
717 in the information age.

718 For over 20 years, EPIC has been calling on Congress to
719 pass comprehensive federal privacy legislation.
720 Unfortunately, for the past two decades, powerful technology
721 companies have been allowed to set the terms of our online
722 interactions. These companies have more economic and
723 political power than many countries.

724 In the absence of a federal privacy law, they have been
725 allowed to deploy commercial surveillance systems that
726 collect and can modify every bit of our personal data.
727 Through a vast opaque system of databases and algorithms, we
728 are sorted into winners and losers based on who we are, where

729 we go, what we made, what we search for, and more.

730 These monitored surveillance systems are too complex and
731 opaque for the vast majority of Americans to understand or
732 control. We do not need any more evidence that self-
733 regulation doesn't work. It has put us in this crisis, and
734 it is just going to get worse and worse until a strong
735 privacy law is passed, and the longer Congress delays, the
736 harder it will get to reign in these harmful business
737 practices.

738 And the investigative journalists at The Markup have
739 exposed some of the worst data abuses happening today. For
740 example, when they scanned hundreds of sensitive -- of
741 websites on sensitive topics -- they discovered an alarming
742 amount of tracking, including a state agency page on how to
743 report child abuse was sending data about its users to ad
744 tech companies.

745 The Mayo Clinic was using keylogging to capture health
746 information that individuals typed into forms for
747 appointments or clinical trials. Even if they closed out the
748 form without hitting submit, that was saved in a folder that
749 was titled "webforms for marketers."

750 Buzzfeed recently reported that users of the app
751 pray.com were surprised to learn that the company was
752 releasing information about them to third parties including
753 Facebook. They knew they could be targeted with ads based on

754 the content they engaged with on pray.com and users rightly
755 felt that this went against the private personal nature of
756 prayer.

757 Nearly every week, there is new story about location
758 data being packaged and sold. A top catholic church official
759 was recently forced to resign after a catholic media site
760 outed him using cell phone data to show that the priest was a
761 regular user of Grindr and visited gay bars.

762 Trackers collect millions of data points each day that
763 are then sold or transferred to data brokers who combine them
764 with other data sources linked to us to build invasive
765 profiles which are then made available for sale.

766 Often, these profiles are used to target people with ads
767 that stalk them across the web; and in other cases, the
768 profiles are fed into secret algorithms that are used to
769 determine interest rates on mortgages and credit cards or
770 deny jobs, depriving people of opportunities and perpetuating
771 structural inequalities.

772 Even our children are not safe from unfettered data
773 collection and processing or profiling. The Markup recently
774 released an extensive investigation of software used in K to
775 12 schools, and one company PowerSchool was found to be using
776 algorithms that relied on free and reduced lunch status to
777 predict a student's future success and provide teachers with
778 graduation risk scores as early as seventh grade.

779 These industries and systems have gone unregulated for
780 more than two decades and this is where it has left us. The
781 system is broken. Technology companies have too much power,
782 and individuals too little, but it does not have to be this
783 way. We can have a strong technology sector in the United
784 States while protecting personal privacy. We need to retake
785 control of our personal information from the entities that
786 want to hoard our data and monetize it.

787 And the American Data Privacy and Protection Act does
788 this by focusing on data minimization which shifts the
789 obligation to protect privacy away from individuals, and
790 instead, requires companies to limit their collection and use
791 of personal data.

792 Now, the U.S. is in data privacy crisis. You all know
793 that. There is work to be done on the bill, but the American
794 Data Privacy and Protection Act presents Congress with the
795 opportunity, right now, to reclaim privacy as a meaningful
796 right and reestablish America as a global leader on privacy.
797 We need Congress to move strong privacy legislation forward
798 this session to stop the very real harms that are happening
799 online every minute of every day.

800 It is time to change the business models that have led
801 to today's commercial surveillance systems. Please do not
802 let this moment pass. The time to act is now.

803 Thank you for the opportunity to testify today, and I

804 look forward to your questions.

805 [The prepared statement of Ms. Fitzgerald follows:]

806

807 *****COMMITTEE INSERT*****

808

809 Ms. Schakowsky. Thank you.

810 And now, Mr. Kantor, I recognize you for five minutes.

811

812 STATEMENT OF DOUG KANTOR, GENERAL COUNSEL, NATIONAL
813 ASSOCIATION OF CONVENIENCE STORES

814

815 *Mr. Kantor. Well, thank you for having me on the panel
816 today. Thank you all, and I, in particular, want to thank
817 the chairs and ranking members of the full and subcommittee
818 for your dedication to finding a compromise on this issue.
819 It is one that has bedeviled generations of law makers and
820 generations of outside groups trying to find a national
821 privacy law, and it is a significant moment that we have a
822 bipartisan compromise.

823 I am here on behalf of the National Association of
824 Convenience Stores as well as the Main Street Privacy
825 Coalition. I represent lots of regular old brick and mortar
826 businesses. I think, I am the only person at the table who
827 does.

828 One of the things that we urge in the midst of these
829 discussions is, that our focus on the internet and on
830 technology companies not distract us from the fact that any
831 legislation in this area will regulate everyone, including
832 those boring old brick and mortar businesses, and it needs to
833 work for everyone.

834 That's a difficult thing to do given how incredibly
835 different the business model of a corner convenience store is
836 from the largest most defistocated (sic) technology companies

837 in the nation and in the world that this bill will get at.

838 One of the ways that is really important, and this was
839 pointed out by ITI in their testimony as well, is figuring
840 out that relationship between covered businesses, many of
841 them brick and mortar businesses like I represent, and
842 service providers in the bill. That is often the big
843 technology companies.

844 We think there are some innovations in this bill that
845 are extremely helpful that is, it spells out in statute what
846 the various responsibilities are of those entities. Some
847 previous bills had left those things to contract, and that is
848 just a prescription for saying, "The bigger company with more
849 market power will decide who is liable and how these
850 responsibilities get doled out."

851 We appreciate that you have avoided that pitfall. We do
852 think that there is more that can be done in this bill to
853 spell out those responsibilities, so that it is clear
854 everybody needs to comply with each part of the bill, and in
855 particular, sections 203 and 204 which spell out consumer
856 rights.

857 There are ways in which some of these big technology
858 companies as service providers will not need to fulfill those
859 responsibilities and that responsibility may fall on the
860 brick and mortar business or other consumer-facing business
861 and that liability, we don't think is right; and frankly, we

862 don't think for consumers that they should be put in the
863 position of not getting the rights that it looks like they
864 should have in the bill because those service providers can
865 hide behind the customer-facing business.

866 A similar area that we worry about a lot is the need to
867 cover a group of entities that are outside of the
868 jurisdiction of this committee. That is financial services
869 companies, and we exchanged data -- our members do -- with
870 financial services companies of all kinds millions of times
871 every day. Just the convenience store industry does a
872 hundred and sixty-five million transactions a day. That is a
873 lot of data.

874 To make sure people are protected, those financial
875 services companies need to be covered by the bill, and we
876 urge the committee to work with the financial services
877 committee and eventually with the Senate banking committee to
878 make sure those companies are covered, otherwise, we can't do
879 our job fully to work with them and make sure that all of
880 those types of data -- some of which is the most sensitive
881 data we have -- is covered by the bill, and people's rights
882 are afforded there.

883 We also think there is more that we can do with respect
884 to the preemption provision of the bill. Courts are loathed
885 to preempt state laws, and one of the reasons they often in
886 the case law don't preempt state laws is where there are a

887 lot of exceptions to a preemption provision, and we think
888 there is case law that can give good guidance to show how to
889 make it follow what we believe is the author's intent to
890 preempt state privacy laws.

891 We are also concerned like many business folks about
892 private rights of action, and in particular, I will note how
893 that might interplay with other parts of the bill here like
894 the pricing loyalty provision of the bill that appears to try
895 to save customer loyalty programs.

896 Lots of our folks like these programs. Their customers
897 love them -- buy five cups of coffee, get one free, get a
898 free ice cream on your birthday. Everybody likes that stuff.
899 We don't want to get rid of those, and we are concerned that,
900 in particular, based on the lawyers committee testimony in
901 reading of the Private of Action provisions, some of those
902 programs and other just discounts in sales could be put at
903 risk.

904 So we look forward to working with you on all of those
905 items and appreciate all the work that has gotten us here
906 today.

907 Thank you.

908 [The prepared statement of Mr. Kantor follows:]

909

910 *****COMMITTEE INSERT*****

911

912 *Ms. Schakowsky. Thank you so much for your testimony.

913 And now, Ms. Cuaresma, you are recognized for five

914 minutes.

915

916 STATEMENT OF JOLINA CUARESMA, SENIOR COUNSEL, PRIVACY AND
917 TECHNOLOGY POLICY, COMMON SENSE MEDIA

918

919 *Ms. Cuaresma. Good morning, Chair Pallone, Ranking
920 Member McMorris Rodgers, Chair Schakowsky, and Ranking Member
921 Bilirakis, and of course, the members of the subcommittee.
922 Thank you for inviting me here today to testify on this
923 bipartisan and bicameral legislative proposal to strengthen
924 data and privacy security.

925 I am Jo Cuaresma, Senior Counsel for Privacy and Tech
926 Policy at Common Sense Media, America's leading organization
927 dedicated to helping kids and families harness the power of
928 media and technology as a powerful force in kids' lives.

929 I have a 20-year legal career spanning private practice,
930 the government, and academia. I focus at the intersection of
931 administrative law, technology, and consumer protection.
932 Most importantly, I am a mom to a teenager in high school.
933 On behalf of Common Sense and its cofounder and CEO, Jim
934 Steyer, I strongly urge this committee, your counterpart in
935 the Senate, and this Congress, this year to pass a strong
936 data privacy bill, one that includes strong protections for
937 minors.

938 All consumers, but especially our kids and teens,
939 deserve privacy and protection from online harms. Tech firms
940 should be constrained in their wild west data collection

941 practices and be required to provide clear and conspicuous
942 notices, so that individuals can make real choices about
943 their online activities without penalty. Companies should
944 also know that they will be held accountable for violating a
945 national privacy law.

946 The American Data Privacy Protection Act draft lays the
947 groundwork for achieving these goals. It establishes
948 important data protections with regards to civil rights, and
949 it seeks to minimize the collection and sharing of data which
950 we have long maintained as the very first step to reducing
951 online harms to our kids and teens.

952 We understand that this draft is a compromise as it must
953 be. At the same time, we do urge this committee to seriously
954 consider the changes that we are proposing. Internet
955 regulations are long overdue. Current law fails to protect
956 children.

957 Youths spend increasing amounts of time on sites that
958 automatically capture data. Our research shows that screen
959 use is up 17 percent for tweens and teens just since the
960 pandemic. At the same time, youth are pressured to share
961 sensitive data about themselves on platforms by their own
962 peers.

963 The APPA draft contains much needed consumer
964 protections. For example, it prohibits firms from
965 collecting, processing, and transferring sensitive covered

966 data without first obtaining an individual's opt-in consent.

967 It also mandates that tech firms minimize their data
968 collection to what's reasonable. It grants the FTC and state
969 AGs the authority under the statute, and it establishes a
970 private right of action. It raises the age of covered
971 children to under 17. It bans behavioral advertising to
972 minors, and it establishes the Youth Privacy and Marketing
973 Division.

974 Still, there are changes needed to help achieve your
975 goals. We need to cover all minors under the draft's privacy
976 protections. We need to substantially increase FTC's staff
977 and its funding.

978 And lastly, and most importantly for children, we need
979 to change the knowledge standard by closing the loophole
980 enabling companies to evade complying with children's
981 protections. Firms should have the legal obligation to use
982 the information they have, not just in their marketing
983 departments, but also, in their legal divisions.

984 I would, however, want to think the bipartisan leaders
985 for this draft to not including the knowledge standard in the
986 data and kids' data given the definition in 204 -- sorry --
987 given the definition in 204 for "sensitive covered data."

988 I want to thank you, and I look forward to your
989 questions.

990

991 [The prepared statement of Ms. Cuaresma follows:]

992

993 *****COMMITTEE INSERT*****

994

995 *Ms. Schakowsky. Thank you so much.

996 And now, let me recognize Ms. Ohlhausen for your five

997 minutes.

998

999 STATEMENT OF MAUREEN K. OHLHAUSEN, CO-CHAIR, 21ST CENTURY
1000 PRIVACY COALITION

1001

1002 *Ms. Ohlhausen. Great. Chair Schakowsky, Ranking
1003 Member Bilirakis, Chair Pallone, Ranking Member McMorris
1004 Rodgers, and other distinguished members of the subcommittee,
1005 thank you for the opportunity to testify at this important
1006 hearing.

1007 My name is Maureen Ohlhausen, and I am the co-chair of
1008 the 21st Century Privacy Coalition and a partner at the law
1009 firm Baker Botts. I also had the pleasure of serving as an
1010 FTC commissioner and acting chairman, and I am testifying
1011 today on behalf of the coalition.

1012 I would like to begin by commending the authors of this
1013 bipartisan, bicameral discussion draft. The coalition has
1014 advocated for comprehensive national privacy legislation for
1015 nearly a decade, and we have always believed that such
1016 legislation needs to be bipartisan to be successful.

1017 This discussion draft shows that there is potential for
1018 a bipartisan path forward on this urgently needed
1019 legislation. The discussion draft incorporates a number of
1020 elements that the coalition perceives as foundational in
1021 privacy legislation.

1022 First, it is stronger and more comprehensive than
1023 existing state laws addressing issues such as transparency,

1024 consent, and other consumer rights, data security, and civil
1025 rights protections.

1026 Second, the legislation does abase the FTC as the
1027 principal agency responsible for enforcing the new law with
1028 the assistance from state attorneys general.

1029 Third, it provides a national framework that preempts
1030 state laws, regulations, and other requirements. In the
1031 absence of such a framework, consumers and businesses today
1032 are required to navigate a tangled web of confusing and often
1033 inconsistent data privacy requirements from various levels of
1034 government.

1035 Fourth, the discussion draft, at least partially,
1036 recognizes not only that the FTC is the agency with the
1037 greatest experience to enforce this new law, but that legacy
1038 privacy requirements in the Communications Act must be
1039 preempted.

1040 It embraces a more holistic and modern approach to
1041 protecting consumer privacy based upon the type of
1042 information collected, used, or shared rather than the legacy
1043 regulatory history of the entity collecting, using, or
1044 sharing such information.

1045 We believe, however, that the draft needs to be improved
1046 before any additional action is taken on the legislation.
1047 The draft raises several concerns that warrant further
1048 consideration.

1049 First, though the draft would preempt the FCC's privacy
1050 and data security authority with respect to broadband and
1051 video services. It stops short at preempting the same
1052 authority with respect to voice services.

1053 Congress should provide a holistic set of requirements
1054 governing the privacy associated with voice-related
1055 information whether through traditional voice or over-the-top
1056 services. It does not benefit consumers to impose different
1057 requirements that depend upon an entity's legacy regulatory
1058 history.

1059 Second, while the bill appropriately seeks to replace
1060 the FCC's traditional oversight of video privacy requirements
1061 with equivalent protections that would be enforced by the
1062 FTC, the language used in the bill far exceeds the
1063 requirements of the Cable Act and equivalent satellite
1064 protections as well as the reasonable obligations and
1065 standards incorporated into recent state privacy laws.

1066 These requirements have worked well for over five
1067 decades to protect consumers while fostering innovation for
1068 cable customers. The same is true for voice information, and
1069 the bill should be revised to permit consumers to benefit
1070 from the high level of service and customized packages they
1071 have come to expect.

1072 Third, the bill should better reflect a risk-based
1073 approach based on the nature of the relevant information and

1074 how it is used. We are concerned that the bill creates
1075 uncertainty for routine operational uses of information that
1076 are necessary to serve customers and operate a business.

1077 Fourth, the draft seemingly provides broad state
1078 preemption, but includes various exemptions that may unduly
1079 limit its application. In past hearings before Congress,
1080 witnesses from industry, academia, and civil society have
1081 urged the adoption of a national privacy standard that would
1082 prevent an inconsistent patchwork of state regulation.
1083 Permitting states to adopt privacy-specific laws even after
1084 this law passes would be highly problematic.

1085 Thank you, again, for the opportunity to participate in
1086 today's hearing. It is critical that Congress enact privacy
1087 legislation this year to address the growing patchwork of
1088 state laws, that we also urge the committee to keep working
1089 to improve the bill, especially in the areas I have addressed
1090 in my testimony.

1091 Thank you.

1092 [The prepared statement of Ms. Ohlhausen follows:]

1093

1094 *****COMMITTEE INSERT*****

1095

1096 *Ms. Schakowsky. Thank you.

1097 And Mr. Dufault, you are recognized for five minutes.

1098

1099 STATEMENT OF GRAHAM DUFAULT, SENIOR DIRECTOR FOR PUBLIC
1100 SAFETY, ACT -- THE APP ASSOCIATION

1101

1102 *Mr. Dufault. Thank you, Chairwoman Schakowsky, Ranking
1103 Member Bilirakis, Chairman Pallone, Ranking Member McMorris
1104 Rodgers.

1105 My name is Graham Dufault, and I am senior director for
1106 public policy at ACT, The App Association. The App
1107 Association is the leading trade group representing small
1108 software and mobile device companies in the app economy which
1109 accounts for about \$6.3 trillion globally and supports about
1110 5.9 million jobs here in the U.S. alone.

1111 We applaud this subcommittee and its counterparts for
1112 bringing us closer than we have ever been to a federal
1113 privacy law.

1114 Consumers want to leverage software and connectivity to
1115 access better services from healthcare and education to
1116 payments and productivity, but we have heard loud and clear
1117 that consumers are sick of finding out that their data has
1118 been misused for unexpected and ulterior purposes and that
1119 harms accrue from those misuses.

1120 This draft takes us one step closer to a federal regime
1121 that enables consumers to access digital tools that they want
1122 in the manner they expect.

1123 For our member companies, a federal privacy law must

1124 accomplish two overarching goals: Number one, the bill must
1125 enhance consumers' trust in software-driven goods and
1126 services, so the requirements must be meaningful; and number
1127 two, the bill must provide legal certainty for small
1128 companies like our members.

1129 The draft bill we consider today, the American Data
1130 Privacy and Protection Act, provides the framework we need to
1131 achieve these goals at this moment -- and I trust measures
1132 are pending in both chambers -- that could threaten to
1133 completely undo the current data privacy and security
1134 protections that consumers enjoy in the mobile space, so this
1135 privacy draft is an especially welcome developed.

1136 But even though this effort is one we encourage; we urge
1137 the subcommittee to consider the following:

1138 First, the private right of action or PRA. This
1139 enforcement mechanism in the draft is a powerful one. It
1140 authorizes private litigants to seek injunctions against
1141 covered entities for all but a few violations of the Act, but
1142 appropriately, there are safeguards.

1143 A litigant must first notify the FTC and their state AG
1144 before bringing a claim, and then, issue a demand letter
1145 clearly identifying the violation at issue. Then, the way we
1146 understand it is that, the target generally has the right to
1147 cure the violation within 45 days. These protections help,
1148 but we urge the negotiators to work with us to perfect this

1149 language.

1150 Second, the preemption provision. The overarching
1151 paragraph preempts state laws that are covered by the
1152 provisions of the Act. Then, there are 16 or so exemptions
1153 to the main paragraph, and these make the Court's job more
1154 complicated when interpreting Congress's intent in this
1155 space. So on this, we hope to work with negotiators to
1156 finetune that language as well.

1157 Third, the compliance programs. The draft appropriately
1158 authorizes the FTC to approve small business compliance
1159 programs that meet or exceed the requirements in the draft.
1160 Small software and connected-device companies want to comply
1161 with strong privacy and data security laws, and they can.

1162 Compliance programs help ensure that they have the
1163 resources to do so, and they send a signal of quality to the
1164 market.

1165 Fourth, data minimization and consumer rights. We have
1166 been calling for Congress to provide rights for consumers to
1167 access, delete, and correct data about themselves, and we
1168 also support sensible limits on collection and processing.
1169 We believe these consumer protections would benefit small
1170 businesses as well, and we think the negotiators have struck
1171 a reasonable balance on these sections of the draft.

1172 But compromise for the sake of compromise is
1173 meaningless. What are really trying to accomplish with the

1174 privacy bill? From our perspective, a privacy bill is
1175 necessary to ensure people's data works for them, not against
1176 them, and our member companies need a straightforward federal
1177 regime that makes way for an innovation on privacy.

1178 Take Tampa Bay's Thinkamingo, for example. Thinkamingo
1179 serves student-age kids from all over the country with apps
1180 that help their creative writing and other skills. It would
1181 be subject to the draft bill in its commonsense updates
1182 regarding adolescents aged 13 to 17, but also, the Children's
1183 Online Privacy Protection Act as a service for children,
1184 limitations on cross-app tracking, and parental control -- or
1185 it benefits from device-level privacy features like on-device
1186 processing and limitations on cross-app tracking and parental
1187 controls, and we want to make sure the federal law supports
1188 these innovations.

1189 Inevitably, the world under the draft would be complex
1190 for our members, but that's true of the status quo too and
1191 imagine how much worse it would be with 50 different
1192 iterations of these moving pieces.

1193 This is why we need a federal privacy law to be as clear
1194 as possible. It must limit openings for opportunists to take
1195 advantage of and profit from our member companies confusion;
1196 but above all, a federal privacy law must support and enhance
1197 the trust consumers have in the software that increasingly
1198 powers healthcare, financial services, education, and

1199 entertainment and so many other aspects of our lives.

1200 We urge Congress to seize this moment confidently but
1201 carefully. We appreciate being a part of this process, and I
1202 look forward to your questions.

1203 [The prepared statement of Mr. Dufault follows:]

1204

1205 *****COMMITTEE INSERT*****

1206

1207 *Ms. Schakowsky. Thank you.

1208 And now, last, but not least, Mr. Brody, you are

1209 recognized for five minutes.

1210

1211 STATEMENT OF DAVID BRODY, MANAGING ATTORNEY, DIGITAL JUSTICE
1212 INITIATIVE, LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1213

1214 *Mr. Brody. Thank you, Chair Schakowsky, Ranking Member
1215 Bilirakis, Chair Pallone, Ranking Member McMorris Rodgers and
1216 members of the committee. Thank you for the opportunity to
1217 testify today on bicameral, bipartisan legislation to
1218 strengthen data privacy and civil rights.

1219 My name is David Brody, and I lead the Digital Justice
1220 Initiative at the Lawyers' Committee for Civil Rights Under
1221 Law. The Lawyers' Committee uses legal advocacy to achieve
1222 racial justice fighting inside and outside the courts to
1223 ensure that black people and other people of color have
1224 voice, opportunity, and power to make the promises of our
1225 democracy real.

1226 Our Digital Justice Initiative works at the intersection
1227 of racial justice, privacy, and technology to address
1228 predatory data practices, discriminatory algorithms, and
1229 other online harms that disproportionately affect people of
1230 color.

1231 If a business posts a sign that says, "Whites only," it
1232 should not matter if it is written in ink or pixels, the
1233 discrimination is the same, the harm is the same, and the
1234 legal consequences should be the same.

1235 We care about data privacy because it ensures that who

1236 we are cannot be used against us unfairly. Privacy rights
1237 are civil rights. Every individual deserves the full measure
1238 of freedom in their engagement with an online- and data-
1239 driven world -- both freedom to and freedom from -- freedom
1240 to define yourself, freedom to organize and advocate for what
1241 you believe, freedom to learn, freedom to play, freedom to
1242 start a business or find new opportunities, freedom to be let
1243 alone.

1244 Advancing racial justice and equity in the digital world
1245 also requires ensuring freedom from discrimination. Everyone
1246 has a right to engage in online economy free from algorithmic
1247 bias, digital redlining, and pervasive surveillance.

1248 Passing comprehensive privacy legislation such as the
1249 American Data Privacy and Protection Act would significantly
1250 advance these freedoms. The proposed bill includes many
1251 strong and protective provisions as well as some areas where
1252 we hope the legislation can be improved.

1253 First, the bill would prohibit discriminatory uses of
1254 personal data and require companies to test their algorithms
1255 for bias. Online and offline restricting access on the basis
1256 of protected characteristics should not be allowed.
1257 Algorithms are not magic. They are the product of the humans
1258 who build them and the quality of their data inputs.

1259 The data fed into an algorithm -- where someone lives,
1260 their job and credit history, their associations, their

1261 wealth, and their health -- these data are themselves
1262 intertwined with generations of discrimination in housing,
1263 employment, education, banking, insurance, and criminal
1264 justice.

1265 Absent responsible design and safeguards, an algorithm
1266 can mistake the consequences of racial discrimination and
1267 equality for the preferences of the user and produce digital
1268 redlining. The provisions in this bill would promote the
1269 responsible use of algorithms.

1270 Second, the bill would require companies to collect and
1271 use only as much personal data as is reasonably necessary and
1272 proportionate to provide the services that consumers expect,
1273 reducing the amount of unnecessary personal data floating
1274 around online, reduces the potential risks from abuse, data
1275 breaches, and other harms.

1276 Identify theft and fraud, for example,
1277 disproportionately impact communities of color; and for this
1278 reason, I agree with my colleague, Mr. Kantor, that financial
1279 services should be covered by this bill.

1280 However, there are parts of the bill that need
1281 improvement. Most importantly, the narrow private right of
1282 actions severely curtails the ability of individuals to have
1283 their day in court if their rights are violated.

1284 Almost every major civil rights law includes a robust
1285 private right of action, so that individuals can vindicate

1286 their own rights in recognition that, historically,
1287 governments have not always protected everyone equally. The
1288 bill has procedural hurdles that will punish everyday
1289 consumers trying to get relief or sometimes even ask for a
1290 refund. If we are to have the rule of law, we must allow the
1291 law to rule.

1292 In addition, Federal Communications Commission
1293 displacement should be limited to provisions directly related
1294 to privacy and ensure that it doesn't break other aspects
1295 that are important to the functioning of the FCC.

1296 Decades ago, we decided as a nation that our polity is
1297 stronger when everyone has a fair chance, and Congress passed
1298 the Civil Rights Act of 1964 to prohibit segregation in
1299 interstate commerce. Since then, the internet and other
1300 novel technologies have created the risk of new forms of
1301 redlining and discrimination.

1302 It's time to build upon our civil rights infrastructure
1303 to ensure that everyone has equal opportunity on the internet
1304 and fair access to the information, goods, and services it
1305 enables. Let's work together and get this done.

1306 Thank you.

1307 [The prepared statement of Mr. Brody follows:]

1308

1309 *****COMMITTEE INSERT*****

1310

1311 *Ms. Schakowsky. Thank you.

1312 We have concluded, now, with the witnesses' opening
1313 statement. At this time, we will move to member questions.
1314 Each member will have five minutes to ask a question and to
1315 get the answer, and I will begin.

1316 Let me just first share a couple of visions of what the
1317 world will be like after this privacy bill gets passed, and I
1318 want to thank our witnesses both for the encouragement that
1319 you have given us, but also, the recommendations that you
1320 have made.

1321 But what I am looking for is on day one, that consumers
1322 will have, certainly, in general, control over their personal
1323 data. That they won't have to read stacks of privacy
1324 policies and be a lawyer to understand their rights and what
1325 they are agreeing to.

1326 Companies will only be able to collect the minimum
1327 amount of data that is necessary for that transaction, and
1328 that data won't be sold to data brokers and anyone else
1329 without expressed consent from consumers.

1330 Mr. Lee, I want to begin with you, and I am wondering if
1331 you, briefly, could just say how does this bill on day one
1332 make the internet a safer place for consumers across the
1333 country?

1334 *Mr. Lee. Thank you for the question, Chairwoman
1335 Schakowsky.

1336 And the ADPPA would make the internet safer for people
1337 day one by doing four things: One, mandating data security
1338 requirements for companies. Right now, that is not a
1339 mandate, and mandating data security requirements helps with
1340 a litany of other data harms that we're seeing across the
1341 board.

1342 Two, including corporate accountability mechanisms such
1343 as designating privacy and data security officers. Three,
1344 creating significant protections from marginalized
1345 communities through the civil rights and algorithmic impact
1346 assessments. And lastly, requiring that business incorporate
1347 privacy-by-design principles for the development of their
1348 data processes and activities.

1349 And none of these four points that I have made are in
1350 any other state provision or any other state bill and would
1351 go so far beyond what we currently have right now.

1352 *Ms. Schakowsky. Thank you. And Mr. Lee, this bill
1353 protects children, people of color, and other marginalized
1354 communities online. Can you explain those protections a
1355 little bit?

1356 *Mr. Lee. Chairwoman, I would love to.

1357 The bill would make the internet safer for marginalized
1358 communities and really all Americans by prohibiting
1359 discriminatory practices, mandating algorithmic impact
1360 assessments, particularly, for large data holders which is

1361 incredibly important as we currently do not understand, and I
1362 think, a lot of the large data holders don't really fully
1363 understand the impact that their algorithms have,
1364 particularly, on all communities.

1365 And just for reference, for civil rights, civil rights
1366 protects the majority of Americans, and we need to think
1367 about that when we're thinking about what the impact of these
1368 algorithms are having on all Americans. And the FTC showed
1369 that identify theft disproportionately impacts marginalized
1370 communities. Data minimization plays a key role in making
1371 sure marginalized communities are safer online.

1372 And lastly, there is broad consensus that AI and
1373 algorithms, when not tested, were designed with marginalized
1374 communities in mind, can have deleterious effects on broad
1375 communities at large, and really, it is intersectional
1376 because it is not just the protected classes of communities
1377 highlighted in the bill, but there are carryover effects,
1378 particularly, in communities where there is high rates of
1379 disability, communities where there is high rates of
1380 economically disadvantaged people.

1381 This is true across the board, and AI has an impact on
1382 all of those communities.

1383 *Ms. Schakowsky. Thank you.

1384 Mr. Brody, kind of along the same lines, this bill makes
1385 promises to Americans about the privacy of their data. Can

1386 you explain the enforcement mechanisms that will ensure
1387 consumers are protected and that the companies live up to
1388 their promises?

1389 *Mr. Brody. Absolutely. Thank you for that question.

1390 This bill has a three-legged stool of enforcement. So
1391 first, it empowers the FTC with a range of authorities
1392 including a new privacy bureau and a new kids division as
1393 well as some rulemaking authorities and broad enforcement
1394 power for the FTC.

1395 Second, it provides state attorneys general with the
1396 ability to fully enforce the law which is extremely important
1397 because state AGs tend to be more connected to their
1398 communities and the needs of their citizens of their state,
1399 and they can fill gaps when the FTC, due to limited
1400 resources, may not be able to address all the issues.

1401 And third, it includes a private right of action which
1402 is especially important for individuals to be able to
1403 vindicate their rights and have their day in court.

1404 The FTC and state AGs are not always going to have the
1405 resources or ability to get to every single harm, and that's
1406 why it is important for individuals to be able to go to court
1407 and seek relief. It's especially important for civil rights
1408 violations as almost every major civil rights law has a
1409 private right of action in recognition that people of color
1410 and marginalized communities need to be able to go to the

1411 judicial branch for relief.

1412 *Ms. Schakowsky. Thank you. And my time has expired,
1413 and now, I recognize the ranking member for his five minutes
1414 of questions.

1415 *Mr. Bilirakis. Thank you, Madam Chair. I appreciate
1416 it very much.

1417 As I mentioned in my opening statement, I am pleased to
1418 see this draft established meaningful protections for
1419 children while they navigate on the online ecosystem;
1420 however, I understand one job remains in how we determine
1421 whether an online user is an adult or a child.

1422 Thinking in terms of fantasy football league, I used to
1423 play quite a bit. I don't have time anymore. How do you
1424 determine someone is a child versus an adult? You could be
1425 age 15 or 55 and have the same interest here. Of course, the
1426 kids beat us every time. I am concerned about how much and
1427 what kind of information we may condone to guess a user's
1428 age.

1429 So Mr. Dufault, what is your opinion on an actual
1430 knowledge standard for covered entities when prohibiting
1431 certain practices like targeted advertising or transferring
1432 sensitive data as opposed to a constructive standard?

1433 *Mr. Dufault. Well, thank you for the question, Ranking
1434 Member Bilirakis.

1435 I think that the actual knowledge standard is one that

1436 can be workable. I think, it is a reasonable compromise, and
1437 the problem becomes one of evidence as you highlighted
1438 whether or not you have the right evidence to show whether or
1439 not a company knew for sure that somebody was under a certain
1440 age.

1441 Under COPPA, under a certain age, a company will have to
1442 get verified parental consent that they have permission to
1443 collect data about that child and the way that is
1444 accomplished is a few different ways. Oftentimes, the
1445 company will have the user go through a certain test that
1446 only an adult would reasonably know what the answers are to,
1447 and there are other ways in which they try to accomplish
1448 that, like, having the adult send a credit card number or
1449 call an 800 number or things of that nature.

1450 That kind of evidence can be a little bit difficult to
1451 collect in a way that doesn't cause a whole lot of friction,
1452 and so it becomes an issue of trying to figure out whether or
1453 not that person is under a certain age with specificity and
1454 constructive knowledge could actually sort of exacerbate that
1455 question because it would bring in other kinds of concepts
1456 and whether or not other sort of pieces of evidence might be
1457 offered.

1458 So I think, we have to first figure out what kinds of
1459 evidence qualify for actual knowledge before we think about
1460 expanding it, and I think, technology has helped us do a

1461 little bit better job, figure out whether or not somebody is
1462 of a certain age, and parental controls at the platform level
1463 have been very helpful in identifying parents and children
1464 and those relationships that exist.

1465 And I think that the law just probably needs to keep up
1466 with those innovations and those methods by which you can
1467 check somebody's age.

1468 *Mr. Bilirakis. Thank you very much.

1469 *Mr. Dufault. Yeah.

1470 *Mr. Bilirakis. Mr. Kantor, your businesses have many
1471 types of customers, and I would be interested in your insight
1472 here. There certainly is a difference between kids' data
1473 that small local stores may receive, and kids' data that
1474 TikTok or Instagram collects.

1475 Do you see this as an area that should only be reserved
1476 for the largest data holders. Please -- and try to be as
1477 brief as you can, too, but I know this is a very important
1478 topic. Please. Thank you.

1479 *Mr. Kantor. So actually, our view is that we got to
1480 make the bill work for everybody. We don't, actually, think
1481 segregating by size is something that is necessary if you do
1482 this right. I completely agree with Graham with respect to
1483 the idea that actual knowledge is an important standard here
1484 because you often don't know who you are dealing with online,
1485 and that may be misleading in certain ways.

1486 Every spring, I used to shop online for little league
1487 baseball bats. Was I an adult? Was I a kid? I loved it,
1488 but -- so those things can sometimes lead us to incorrect
1489 conclusions.

1490 So we think, as long as you do it right, our members can
1491 comply whether they are small or large but getting it right
1492 is tough.

1493 *Mr. Bilirakis. Thank you very much.

1494 Next question is for Ms. Ohlhausen. I would greatly
1495 appreciate your insight on this question of course, so give
1496 me your opinion on this particular topic. In addition, I
1497 want to ask you about the new bureau and office of business
1498 mentorship championed at the FTC and the language is in the
1499 draft.

1500 Can you elaborate on how a new bureau with an office
1501 specifically dedicated to business mentorship will allow for
1502 greater instruction and compliance amongst covered entities.
1503 In my opinion, it's a win/win. But please, if I can get your
1504 opinion quickly, I would appreciate it.

1505 *Ms. Ohlhausen. Yes. So the FTC has a long history of
1506 engaging in business education, and it has been a very useful
1507 investment by the agency because really everyone is better
1508 off if that business knows how to comply with the rules, and
1509 they comply with it, and then, consumers aren't harmed, and
1510 the FTC doesn't have to use enforcement resources.

1511 So I think it's a very excellent investment that will
1512 pay a lot of dividends for the FTC to have an office that
1513 really continues this mission that it has done an excellent
1514 job pursuing previously.

1515 *Mr. Bilirakis. Very good. Thank you. I yield back,
1516 Madam Chair. Thank you for the extra time.

1517 *Ms. Schakowsky. The Chair recognizes Chairman Pallone
1518 for five minutes.

1519 *The Chairman. Thank you, Chairwoman.

1520 Our bill has strong data minimization as a base along
1521 with important data protections for individuals, kids, and
1522 small businesses layered on top. So in this way, our bill
1523 goes further to protect consumer privacy online than the
1524 notice and consent regimes that, you know, seem to be more --
1525 that are more common right now.

1526 So I want to ask a series of questions, but if you
1527 could, you know, maybe, limit your response to a minute.

1528 Ms. Fitzgerald, as you point out in your testimony, the
1529 concept of data minimization has been around for some time,
1530 but why is it important to include data minimization in any
1531 comprehensive privacy bill?

1532 *Ms. Fitzgerald. Yeah. Thank you, Chairman Pallone.

1533 Data minimization is absolutely critical because it
1534 makes privacy the default. You know, it takes the onus off
1535 individuals to protect their privacy, and instead, requires

1536 companies to be the one to think about how to limit the
1537 collection and use of personal data, and that means that a
1538 collection and use will warrant, you know, it will better
1539 align with what consumers expect.

1540 *The Chairman. And from the consumer perspective, how
1541 is this distinguished from a structure that relies primarily
1542 on notice and choice?

1543 *Ms. Fitzgerald. Notice and choice doesn't protect
1544 privacy. You know, just requiring companies to tell us about
1545 all the ways they have used our data in a long privacy policy
1546 that no one reads doesn't protect privacy, and a lot of these
1547 services have become so central to our lives that there is no
1548 choice but to, you know, accept the terms and opt in.

1549 Data minimization instead requires the companies to
1550 limit the data that is -- you know, limit their collection to
1551 what's reasonably necessary for the service.

1552 *The Chairman. Yeah. And I agree. I mean, notice of
1553 choice basically is just you give notice, and then you go and
1554 do what you want.

1555 *Ms. Fitzgerald. Right.

1556 *The Chairman. How this bill's data minimization
1557 provision is more privacy protective than other privacy laws
1558 and proposals that you have seen?

1559 *Ms. Fitzgerald. Yeah. The ADPPA's, you know, focus on
1560 data minimization is what really sets it apart from state

1561 laws that have recently been passed, you know, many of the
1562 proposals we have seen in Congress over the last few years,
1563 it really just sends that strong message that privacy is the
1564 default going forward.

1565 For users, it means that privacy doesn't mean this pop
1566 up that, you know, says, "Accept," and everyone just clicks
1567 it to make it go away. It means, that the onus is on the
1568 company, and that surveillance is no longer the norm.

1569 *The Chairman. All right.

1570 Now, this bill is also the first of its kind in that it
1571 includes strong civil rights protections to prohibit
1572 discrimination online.

1573 So let me ask Mr. Brody, how would the civil rights
1574 protections in the bill help to protect Americans against
1575 discrimination online?

1576 *Mr. Brody. So this bill has very strong civil rights
1577 protections. First, it has a antidiscrimination provision
1578 that prohibits covered entities from processing personal data
1579 in a manner that discriminates in the provision of goods and
1580 services on the basis of protected characteristics, things
1581 like race and sex, religion.

1582 And then, it also has robust algorithmic bias assessment
1583 requirements. So large companies will be required to assess
1584 their algorithms to test what kinds of impacts they are
1585 having to see if they are causing disparate impacts on the

1586 basis of protected characteristics or impeding access to
1587 critical services like housing, jobs, credit.

1588 They will also be required to evaluate the design of
1589 their algorithms before they are deployed, and that is key.
1590 We need to make sure that the test subjects are not the
1591 general public, and that algorithms are tested to make sure
1592 they are safe and effective before they are deployed.

1593 *The Chairman. Thank you. Now, let me get one more
1594 question. This is to Ms. Cuaresma. In the State of the
1595 Union Address, the President specifically talked about
1596 protecting children and teens online noting how this group
1597 has been negatively impacted by the conduct of social media
1598 companies.

1599 So if I could ask you how does this legislation address
1600 some of the difficulties for teens using online social media?

1601 *Ms. Cuaresma. Sure. Thank you, Chair.

1602 So it does it in two ways. They are both in sections
1603 204 and 205. The definition of "sensitive covered data," it
1604 includes children under the age of 17.

1605 So I want to thank this committee for not including the
1606 actual knowledge standard under the [audio malfunction] the
1607 sections with respect to sensitive data.

1608 The other section is in 205 which talks about targeted
1609 advertising. So we are going -- as long as you pass this
1610 bill, which I hope you will, we are going to be able to

1611 prohibit companies from advertising to our kids under the age
1612 of 17; however, we do need to fix the actual standard
1613 knowledge in that, and I do understand how difficult it is to
1614 know how old somebody is.

1615 And here is the thing. As Common Sense Media, we don't
1616 want you to ask us or ask our children for more information.
1617 All we are saying is, "Look, if you have it, and you are
1618 using it as part of your marketing proposals in saying, 'Hey,
1619 you want to use our platform','" -- because we know that our
1620 audience watches videos targeted to them, and you know what?
1621 You should also have to use it in your legal divisions.

1622 Thank you for your question.

1623 *The Chairman. All right. Thanks so much. Thank you,
1624 Madam Chair.

1625 *Ms. Schakowsky. The gentleman yields back, and now, I
1626 recognize the ranking member of the full committee, Mrs.
1627 Rodgers.

1628 *Mrs. Rodgers. Thank you, Madam Chair.

1629 Before I start, I would like to insert into record
1630 previous coalition letters from a range of groups that have
1631 written us over the past three years to act on comprehensive
1632 privacy legislation.

1633 *Ms. Schakowsky. Without objection.

1634 *Mrs. Rodgers. Thank you.

1635

1636 [The information follows:]

1637

1638 *****COMMITTEE INSERT*****

1639

1640 *Mrs. Rodgers. Ms. Ohlhausen, one of my priorities
1641 serving as Republican leader of this committee is to promote
1642 innovation in a level playing field; and as you are aware,
1643 the discussion draft moves a numbers of FCC authorities to
1644 the FTC, so there is parity when it comes to online services;
1645 however, it stops short on other categories such as video and
1646 phone services. I don't believe such a dual regulatory
1647 regime between the FTC and the FCC makes much sense.

1648 Can you speak to the consequences of such a regime
1649 addressing phone services different than Google Voice or
1650 video programming different than a service like Netflix?

1651 *Ms. Ohlhausen. Certainly. For consumers, they are not
1652 paying attention to these regulatory legacy regulations.
1653 They don't see a difference between traditional voice
1654 services or over-the-top services when they are collecting
1655 essentially the same types of information. So I think, it's
1656 important to have the same protections in place and have the
1657 same regulator, the FTC, overseeing that.

1658 On video, as I mentioned briefly in the testimony, there
1659 are good strong and balanced protections in the Cable Act and
1660 in the Satellite Act or preceding Communications Act that
1661 should be transferred over to the FTC to preserve what
1662 consumers -- the protections they have and the benefits that
1663 they enjoy already from these providers which with whom they
1664 have had a long relationship, and I think, understand the

1665 benefits of what they are getting.

1666 *Mrs. Rodgers. Thank you. On a related note, Mr.
1667 Kantor raises an example in his testimony of a internet
1668 service provider tracking someone's online traffic and is
1669 concerned that a small business using their broadband service
1670 could face responsibility under this legislation for such a
1671 practice. What would you say to him?

1672 *Ms. Ohlhausen. What I would say is that no one should
1673 be liable for someone else's violation of this Act, so each
1674 player has certain obligations under this Act; and if they
1675 engage in behavior that is a violation, that entity should be
1676 liable.

1677 *Mrs. Rodgers. Okay. Thank you. I appreciate that.
1678 Mr. Dufault, in the United States of America, a big part
1679 of our success and our advancement has been around innovation
1680 and entrepreneurship. It is what makes the United States
1681 unique and has done more to lift people out of poverty, raise
1682 the standard of living. There is no country in the world
1683 that values startups like the way that we do.

1684 I think, it is important that we learn from some of the
1685 mistakes of GDPR and CCPA and its impact on small businesses.
1686 How does this legislation compare to GDPR in terms of
1687 encouraging a competitive environment for startups?

1688 *Mr. Dufault. Well, thank you, Ranking Member McMorris
1689 Rodgers. I would agree. I think, the United States can

1690 improve upon what we have learned from GDPR. I think, there
1691 are two ways in which I think this draft that we are
1692 considering here today is a little bit more thoughtful when
1693 it comes to younger companies and small companies.

1694 The first I would point to is that, GDPR includes sort
1695 of a blanket ban on processing unless you can point to a
1696 specific lawful basis for processing; and if you are a
1697 startup, and you are just getting your company off the
1698 ground, and you are going through the first couple of stages
1699 of growth, you are looking at that legitimate basis, and you
1700 know that your business is going to have to be a little bit
1701 nimble and respond to consumer demand and changes in the
1702 market, and you are wondering whether or not you are going to
1703 have to shift.

1704 I think, the difficulty with the GDPR approach is that,
1705 if you start with a presumption of it is illegal to process
1706 data, that presents some uncertainties, especially for
1707 companies that are trying to figure out exactly what their
1708 business is going to be and what it is going to do and how it
1709 is going to benefit people.

1710 And the second thing I would point to is, the way that
1711 the draft provides for compliance programs, it doesn't
1712 completely blanket accept small companies, I think,
1713 appropriately so. I think, we have been calling for this
1714 subcommittee and others to ensure that there are ways that

1715 small companies can comply because our member companies want
1716 to do that, and they compete with much bigger companies.

1717 And so the compliance program provides resources for
1718 small companies to do so.

1719 *Mrs. Rodgers. Thank you. I appreciate that, and I
1720 have more questions, but I am running out of time. I want to
1721 thank all the witnesses for being here, and I want to note,
1722 it has taken us over 20 years to reach this moment because
1723 there is difficult issues that require tradeoffs.

1724 Our goal is to continue to get both member and
1725 stakeholder feedback to ensure that this bill is in the best
1726 position possible while preserving the compromise that we
1727 struck in ensuring these strong protections. And that is why
1728 your constructive feedback is so important to find the right
1729 balance, and I just appreciate the leadership and the
1730 commitment to getting to a place where we can pass a bill,
1731 and I yield back.

1732 *Ms. Schakowsky. The gentlelady yields back.

1733 And now, I recognize remotely my colleague from
1734 Illinois, Bobby Rush, for his five minutes of questions.

1735 *Mr. Rush. I want to thank you, [audio malfunction]
1736 Schakowsky for holding this important hearing today. I would
1737 also like thank the full committee Chair Pallone, and the
1738 ranking member Rodgers for their important work in conducting
1739 this discussion [] and also subcommittee Chairman Bilirakis.

1740 As many have heard me discuss before, I am a small
1741 component [inaudible]. In simple terms, these are companies
1742 that make a profit from buying, compiling, and selling
1743 information about individuals like you and I. They do this
1744 in an environment where the individual has no control over
1745 who possesses information about them or what is done with
1746 that same information.

1747 So our data [inaudible] reaches the consumers suffer,
1748 and that is why I am so pleased to see that this discussion
1749 draft includes regulations of their [inaudible] referred to
1750 as third-party collecting entities in the legislation
1751 language that would turn control of consumers' information
1752 back to the [inaudible] consumer.

1753 Furthermore, this discussion draft empowers consumers by
1754 requiring in the FTC create a [inaudible] a sensible registry
1755 of third parties collecting entities that allow individuals
1756 to look up information, including their contact information,
1757 and creates a necessary mechanism similar to the Do Not Call
1758 List by which consumers may submit a single request to all
1759 these third-party collecting entities to have all current
1760 data about them [inaudible] within 30 days.

1761 Ms. Fitzgerald, can you please discuss why reigning in
1762 these nationally third-party collecting agent entities better
1763 known as "data brokers" is so very important for the average
1764 consumer? Can you, please, also discuss the impact the

1765 creating of a central registry of third-party collecting
1766 entities would have on the self [inaudible] consumers?

1767 *Ms. Fitzgerald. Thank you, Congressman Rush.

1768 As you know, data brokers are some of the worst
1769 offenders in the online space, particularly, because they
1770 don't have a direct relationship with the individuals whose
1771 data they are harvesting. You know, users don't expect that
1772 their online activity will be sent to these parties who then
1773 combine it with other data and make decisions about us and
1774 sell it to the highest bidder.

1775 So EPIC strongly supports the substantive limits in the
1776 bill that we think will curtail a lot of the data broker
1777 industry, but the creation of a registry is an important step
1778 because it just -- it shines light on who these companies
1779 are. We have seen that in Vermont, California, states that
1780 have data broker registries.

1781 So I think, it is an important piece of the bill.

1782 *Mr. Rush. Thank you very much.

1783 Mr. Brody, in previous hearings, I have repeatedly
1784 brought up businesses of tech companies abusing our current
1785 system to [inaudible] the protections afforded by decades old
1786 civil rights laws. We have given them ample opportunity to
1787 write these laws over and over and over again, and they have
1788 failed to do so at this moment.

1789 In many ways, the terrible practice of redlining when

1790 the original form of discrimination using algorithms. The
1791 civil rights community seem to recognize this and has
1792 repeatedly said that privacy rights are civil rights. Can
1793 you, please, elaborate on that, specifically, what is more
1794 important than civil rights [audio malfunction]?

1795 *Mr. Brody. Thank you, Congressman.

1796 As you mentioned, algorithmic discrimination is nothing
1797 new. Redlining was a form of a discriminatory algorithm, and
1798 we are still reckoning with the consequences of that today.

1799 So we have a society where there are people who live in
1800 certain places, have certain levels of education, have
1801 certain job and credit opportunities as a result of past
1802 segregation and redlining, and this systemic inequity creates
1803 the data that is now fed into algorithms used by companies to
1804 make decisions.

1805 As I said earlier, algorithms aren't magic. They are
1806 built by people, people that have biases, and they are
1807 trained on data that comes from society; and if that societal
1808 data is itself infected with bias, it is going to produce
1809 discriminatory effects as well, and that is why the
1810 algorithmic assessment provisions in this bill are so
1811 important.

1812 *Mr. Rush. Thank you. And I yield --

1813 *Ms. Schakowsky. Thank you. The gentleman's --

1814 *Mr. Rush. -- back.

1815 *Ms. Schakowsky. Yeah. The gentleman's time has
1816 expired.

1817 And now, Mr. Latta, you are recognized for five minutes.

1818 *Mr. Latta. Well, thank you, Madam Chair, and thanks to
1819 our witnesses for being with us today. Thanks for your
1820 testimony today, and I also want to thank our leadership on
1821 both sides for their hard work on this legislation so thanks
1822 very much.

1823 A preemptive national privacy and data security bill
1824 clearly is a priority for consumers, for economy, and to
1825 maintain U.S. competitiveness. I believe that we can
1826 continue to work in a bipartisan manner in this committee to
1827 ensure that this legislation will protect consumer data,
1828 provide certainty for businesses, small and large, and
1829 continue to foster technological innovation.

1830 [inaudible] so my questioning is with you, acting chair,
1831 welcome back to the E and C Committee. It is nice to see you
1832 again. In your testimony, you mention how the bill does not
1833 preempt the Federal Communications Commission's privacy and
1834 data security authority related to voice services.

1835 In section 222 of the 1996 Act exclusive -- is the
1836 section 222 of the 1996 Act exclusive of privacy regulation?

1837 *Ms. Ohlhausen. Yes, Congressman. That is what I was
1838 referring to. There is privacy regulation in the
1839 Communications Act for voice and the coalition believes that,

1840 that privacy oversight should be transferred to the FTC for
1841 voice services for the reasons that I gave about giving
1842 consistent approach to consumers.

1843 *Mr. Latta. Let me follow up. Is it clearly being used
1844 for any other purposes by the FCC?

1845 *Ms. Ohlhausen. I am not aware of that, but we can
1846 certainly get back to you on that issue.

1847 *Mr. Latta. Okay. I appreciate that. Also, based on
1848 your experience at the FTC, would you speak to how completing
1849 rulemakings works versus issuing guidance?

1850 *Ms. Ohlhausen. Yes. So if Congress has given the FTC
1851 authority under a bill like COPPA to engage in APA
1852 rulemaking, the commission puts rules out for comment, gets
1853 public comment, enacts a rule, and then, it can enforce it
1854 and get penalties for the violation.

1855 The FTC also issues guidance which is merely the FTC's
1856 interpretation of its organic unfair and deceptive acts or
1857 practices authority. Violating guidance is not subject to a
1858 fine. It would have to be prosecuted by the FTC as a
1859 violation of the FTC Act which gives it much more limited
1860 redress authority or fining authority.

1861 *Mr. Latta. Well, thank you very much.

1862 Mr. Miller, I believe that we must treat sensitive data
1863 such as health information and government-issued identifiers
1864 with the utmost protection. I appreciate this bill makes

1865 that distinction. From consumers' points of view, this data
1866 is what they hold most dear and are the most uncomfortable
1867 with being transferred or sold.

1868 In your testimony, you raised concerns about some of the
1869 sections of the sensitive covered data, in particular, the
1870 term "individual's online activities over time or across
1871 third-party websites or online services," I really thought
1872 were fairly broad.

1873 Would you expand on why you believe that definition
1874 should be narrowed and what should be the practical
1875 implications of how it currently reads?

1876 *Mr. Miller. Thank you, Congressman Latta, for the
1877 question.

1878 Yeah. As I explained in my testimony, that provision
1879 can be read extremely broadly because, again, you know, it is
1880 under the sensitive data definition as you point out, and
1881 online tracking activity, I mean, it is possible that the
1882 drafters intended to get at things like search histories, but
1883 the way that the provision functions, it would actually
1884 prevent lots of very ordinary activities because information
1885 related to search activity would include things like IP
1886 addresses, and you know, other identifiers that are related
1887 to that activity the way that, that is broadly drafted.

1888 So I mean, it is something that we think is critical to
1889 fix in the bill and just to narrow the provisions [crosstalk]

1890 --

1891 *Mr. Latta. What would happen?

1892 *Mr. Miller. Well, one of the things that could happen
1893 is that it would actually make it very difficult for an
1894 individual to use a search engine for instance. You know,
1895 the individual would have to give their consent every time it
1896 appears that they are just typing a search into, you know,
1897 any common search engine, and that would, you know,
1898 potentially be problematic.

1899 I think, even more problematic would be the potential
1900 impacts on security, you know, for security prevention which
1901 is not exempted in the bill. You know, there is all types of
1902 data telemetry and analytics that security companies do to
1903 process data that does relate to online activity, in that
1904 they would not be able to do that.

1905 So even though the bill has robust data security
1906 protections, there are other provisions that potentially
1907 could undermine security.

1908 *Mr. Latta. Well, thank you very much.

1909 Madam Chair, my time has expired, and I yield back.

1910 *Ms. Schakowsky. The gentleman yields back.

1911 And now, I recognize Representative Castor for five
1912 minutes.

1913 *Ms. Castor. Well, thank you, Madam Chair and thank you
1914 for the great bipartisan work by Chairman Pallone and Ranking

1915 Member McMorris Rodgers, and the staff. Thank you to the
1916 witnesses for being here.

1917 This is very important for us to be working on a
1918 comprehensive data privacy bill. I mean, everything we do in
1919 our lives these days is tracked online. We are surveilled.
1920 Every internet search, everything we buy, where we go, we are
1921 all surveilled, and it is time to kind of -- for a reset, and
1922 it is particularly important for children.

1923 We have learned here through our hearings the extent of
1924 harm to the wellbeing of kids driven by online platforms.
1925 There has been an extensive expose in The Wall Street
1926 Journal. We have the Facebook Whistleblower here, Frances
1927 Haugen. There is a study that comes out just about every
1928 week on the extensive data that has been collected on our
1929 kids even though we have had a Children's Online Privacy
1930 Protection Act.

1931 So I am very excited that the important provisions from
1932 my kids privacy act and the KIDS Act were incorporated, but I
1933 know that many of you said it's a starting point, and we can
1934 make some improvements.

1935 Ms. Cuaresma, for Common Sense, you have also provided
1936 us with a list of key sections that must be strengthened.
1937 Can you go through a couple of those? You say, maybe, the
1938 age at 17 or under is not the right one. Maybe, it is for
1939 all minors 18 and under?

1940 *Ms. Cuaresma. Sure. Thank you for the question.

1941 First, let me be clear. On day one, we will be able to
1942 ban companies from processing, from collecting, and sharing
1943 data about children under the age of 17 because section 204
1944 clearly prohibits any company from doing that unless a parent
1945 provides affirmative express consent. So I think, that is
1946 fantastic.

1947 As to other provisions about under 17, I think, it, from
1948 a compliance standpoint, makes a lot of sense to just cover
1949 anyone under the age of 18. It just is easier. I would hate
1950 for small businesses to have to figure out: "What should I
1951 do for somebody who is under 17? What should I have to do
1952 for someone under 18? And what should I have to do for
1953 someone under 13?'"

1954 So at the end of the day, let's make it all minors,
1955 especially if we are going to talk about knowledge standards,
1956 right? It is really easy right now to get confused about
1957 whether somebody is 14 or if somebody is 17, right? My
1958 daughter has a pretty mature voice, and she can often pass
1959 for me.

1960 And so I would like to make sure that we are not
1961 creating burdens for small companies in having all of these
1962 different ages within a bill.

1963 *Ms. Castor. And it is important also in your testimony
1964 you say the new Youth Division at the Federal Trade

1965 Commission so that, over time, they can keep up with the
1966 innovations regarding our youth and protecting kids online.

1967 But I am so glad that my colleague, Mr. Bilirakis,
1968 raised that the actual standard versus constructive knowledge
1969 standard, because under the current COPPA, Children's Online
1970 Privacy Protection Act, that actual knowledge -- requiring
1971 actual knowledge has been a huge loophole for Big Tech
1972 companies to claim ignorance, that they didn't know they were
1973 kids online. They just assumed they were adults.

1974 And it is appropriate, as you said, that it is being
1975 addressed in part, but this clearly is an area that there is
1976 room for improvement in the draft if we are serious about
1977 protecting kids online.

1978 Can you give us some examples of how some of the Big
1979 Tech companies are using it to claim ignorance. They know
1980 kids are there, but they say, "No. This is really for an
1981 adult.''

1982 *Ms. Cuaresma. Sure. Here is the thing. The FTC has
1983 incredibly limited resources. On top of that, Congress has
1984 already asked them to enforce 82 statutes. That is crazy.
1985 So the youth division can better do its job if we ensure that
1986 there is appropriate funding and staffing for it.

1987 As somebody who has co-taught law school students and
1988 MIT computer science students, I understand how important it
1989 is that we have experts on staff providing explanations to

1990 the lawyers. I have watched the students think that they
1991 each understand one another, and that is not the case at all,
1992 especially given that we are about to enter the metaverse.
1993 It's incredibly important that our youth division understands
1994 exactly the technology that is driving what we are dealing
1995 with on a day-to-day basis.

1996 *Ms. Castor. My time is up, but you highlighted a very
1997 important point on virtual reality and what meta proposes to
1998 do. I know they have recently rolled out "Well, we are going
1999 to propose some privacy protections for kids.'" That is not
2000 totally inadequate, and that is why we need a strong privacy
2001 law to protect our kids and everyone online.

2002 So I look forward to working in the coming days. Thank
2003 you. I yield back.

2004 *Ms. Cuaresma. Thank you.

2005 *Ms. Schakowsky. The gentlewoman yields back.

2006 And now, I recognize Mr. Guthrie for five minutes.

2007 *Mr. Guthrie. Thank you, Madam Chair. I appreciate it.

2008 Mr. Default, when we look at -- are thinking about this
2009 -- we often think about Big Tech and so forth, but this bill
2010 will effect businesses, small retailers, Mr. Kantor, in our
2011 districts as well.

2012 And so kind of in that context, would you talk about how
2013 the limited private right of action in the underlying
2014 legislation impacts these kind of businesses, and can you

2015 talk about how a more expansive private right of action that
2016 includes statutory (sic) or punitive damages would impact
2017 small businesses in this country? And then, if Mr. Kantor
2018 would like to comment on that as well.

2019 *Mr. Dufault. Absolutely. I think one of the things
2020 that we are worried about is that a private right of action,
2021 in the process of trying to better protect consumers and
2022 better enable them to seek the redress that they should be
2023 getting for privacy harms, that we don't create a sort of a
2024 sue-and-settle business model that we have seen crop up in
2025 other contexts like with patent trolls in other situations.

2026 Those kinds of activities -- and I am not speaking about
2027 broadly folks that need redress; I'm talking about folks that
2028 are sort of taking advantage of what the law provides -- tend
2029 to target small businesses because small businesses, they
2030 don't have legal departments, and it costs a lot of money to
2031 hire an attorney.

2032 And so they are, in many cases, more willing to just
2033 settle and make the issue go away even if it is a violation
2034 that may be inadvertent and not necessarily result in harm to
2035 a large class of folks.

2036 So that is why we think it is really important for some
2037 safeguards to be in place, and that the redress be sort of
2038 calibrated to what the kinds of harms that we are dealing
2039 with here with data security and privacy.

2040 *Mr. Guthrie. Okay. Thank you.

2041 Mr. Kantor?

2042 *Mr. Kantor. Thank you, Congressman, for that question.

2043 We are concerned. Look, this is a complex area, and
2044 complying with everything in this bill is going to be
2045 difficult. It is going to be new for everyone across the
2046 country, and so the idea that there can be litigation without
2047 some additional safeguards here is worrisome.

2048 And I would note in particular, one piece of this. In
2049 the private right of action, it provides for compensatory
2050 damages. Now, that concept in the law is actually different
2051 than what it sounds like in just common parlance.
2052 Compensatory damages includes, not just actual damages, which
2053 is another standard that could be set, but things like mental
2054 anguish, inconvenience, loss of enjoyment of life, loss of
2055 opportunity.

2056 There is a lot of things that lawyers can jam into that
2057 concept to make dollar values get pretty high. In addition
2058 too, there is also attorneys' fees here. So there is a lot
2059 of motivation for these lawsuits, and so we worry that plays
2060 into all aspects of this bill in trying to really be careful
2061 that we get things right because folks are going to be on the
2062 line.

2063 *Mr. Guthrie. [Inaudible] point out where it is
2064 absolutely necessary to protect data and the American

2065 consumers, but also the small businesses in our district are
2066 going to have to do the same thing that the big mega
2067 companies have to do. So we need to -- I just want to point
2068 that out.

2069 Mr. Miller, you talked about, in your testimony, about
2070 the importance of digital advertising, and your testimony
2071 highlights some concerns with the current definition in the
2072 draft. Can you talk about preserving digital advertising and
2073 opt-out impacts -- how preserving digital advertising and
2074 opt-out impacts -- effects small businesses, and then,
2075 specifically, I think, you cited some states that had
2076 definitions better that would be more appropriate, and if you
2077 would talk about that.

2078 *Mr. Miller. Thank you very much for the question,
2079 Congressman Guthrie.

2080 Yes. You know, as I pointed out in the testimony, the
2081 definition of targeted advertising when combined with the
2082 sensitive data definitions and some of the other definitions
2083 in the bill here, in particular, is very restrictive, you
2084 know, I think we have heard testimony from other witnesses
2085 about very various different players in the online ecosystem,
2086 dictative brokers and others.

2087 But as written, it would really appear to restrict
2088 targeted advertising even from a company through its own
2089 digital customers, if you will, and consumers that are

2090 interacting with its websites without express opting consent,
2091 I think, you know, every time because of that definition I
2092 was discussing with Congressman Latta, online activity, you
2093 know, and so on.

2094 So -- yeah. I mean, in the privacy laws passed by
2095 Virginia, Colorado, Utah, and Connecticut, there is a
2096 different balance in those laws that does provide the ability
2097 for companies to reasonably advertise to users on their own
2098 sites and the specific -- yeah.

2099 And so I'll just leave it there, but again, it is
2100 important to note that effects companies of all sizes.

2101 *Mr. Guthrie. Okay. Thank you. My time has expired.
2102 I yield back.

2103 *Ms. Schakowsky. The gentleman yields back.

2104 And now, I recognize Congresswoman Trahan for five
2105 minutes.

2106 *Mrs. Trahan. Well, thank you, Madam Chair, and I would
2107 like to thank my colleagues on both sides of the aisle for
2108 reminding Americans that when it comes to protecting
2109 consumers, thoughtful compromise is still possible.

2110 To say that we need a comprehensive policy privacy
2111 legislation now is an understatement. Today, when a consumer
2112 makes a purchase, types their symptoms into a browser, or
2113 applies for a job, they check "I agree" next to an
2114 unreadable privacy policy and hope that their personal data

2115 and sensitive information is only being used for the services
2116 they expect.

2117 But as we all know, that is often not the case. Opaque
2118 and often discriminatory data practices have resulted in a
2119 loss of human autonomy needed in a healthy democracy.

2120 This draft text represents a strong first step towards a
2121 data protection model in which consumers can trust that their
2122 data is being used in the ways they expect. I am
2123 particularly, happy to see provisions in line with ideas in
2124 the bipartisan TLDR Act, the DELETE Act, and my office's Tech
2125 Oversight staff draft released last summer.

2126 You know, as a mother of two elementary school-age
2127 daughters, I want to echo Representative Kastor's call for
2128 strong enforcement of the child protection provisions in the
2129 text. Today, when parents send their children to school, or
2130 as experienced during the pandemic, sit them in front of a
2131 screen, they not only put their trust in educators, but
2132 increasingly in software.

2133 I have spoken to several educators and parents who speak
2134 highly of many of these tools, and I am certainly grateful
2135 that children are becoming familiar with technology.

2136 But absent guard rails, student data rights are under
2137 threat. For example, researchers with Human Rights Watch and
2138 the Signal Network analyzed 164 educational apps and Websites
2139 and found that nearly 90 percent of the educational tools

2140 were designed to send the information they collected to ad
2141 technology companies.

2142 Purchases are not the only things that student data is
2143 used to predict. Some ed tech companies attempt to process
2144 facial expressions, bodily gestures, and keystrokes to
2145 predict cheating or student engagement.

2146 AI researchers emphasize that this technology is
2147 susceptible to faulty predictions and puts children in a
2148 state of constant surveillance.

2149 Ms. Fitzgerald, can you speak to why the Family
2150 Educational Rights and Privacy Act, or FERPA, has proven
2151 insufficient to protect students from this kind of software?

2152 *Ms. Fitzgerald. So I thank you for the question,
2153 Congressman Trahan.

2154 This gets back to the central problem with the state of
2155 privacy law in the United States right now. It only gets to
2156 be in certain spheres. So FERPA covers educational records,
2157 which are, you know, grades, attendance records, discipline
2158 records.

2159 But it does not cover at all the data collected from the
2160 new Website and that my second graders use in the classroom
2161 now.

2162 *Mrs. Trahan. That is right. Thank you for that.

2163 And I wonder if you can speak to how provisions in the
2164 draft text, such as the Office of Youth Privacy and Marketing

2165 Division, privacy by design, algorithm impact assessments,
2166 could support the FTC in their efforts to protect student
2167 data rights?

2168 *Ms. Fitzgerald. So yes. So oversight and enforcement
2169 are just so critical when it comes to privacy, and the fact
2170 that those algorithm impact assessments will have to be
2171 submitted to the FTC will help them conduct that oversight.

2172 They will be able to look at the assessments, make sure
2173 that these tools, you know, being used in the educational
2174 setting are fair.

2175 I did note in my testimony I think that those should be
2176 a little more prescriptive than what is included in those
2177 impact assessments, and I think that is important to
2178 strengthen FTC oversight, and I look forward to working with
2179 the committee on that.

2180 *Mrs. Trahan. I could not agree more.

2181 Can you lastly speak to additional actions this division
2182 may be able to take, such as offering clarity and guidance to
2183 ed tech companies or other provisions, such as those proposed
2184 in the U.K.'s age-appropriate design code?

2185 *Ms. Fitzgerald. Yes. I would hope that with
2186 concentrating experts on youth privacy in a division in the
2187 FTC, they will be able to offer guidance to ed tech companies
2188 and maybe even to school districts.

2189 You know, I have seen it in my own school district. It

2190 is overloaded and they have to sign these contracts, and I am
2191 not sure even the district understands the amount of student
2192 data we are seeing funneled to these companies and how it is
2193 being used.

2194 *Mrs. Trahan. Thank you.

2195 With my remaining 40 seconds I just want to zero in on
2196 the Youth Division. Ms. Cuaresma, you spoke a little bit
2197 about the resources that would be needed, but in your
2198 testimony, you highlighted that the formal division's
2199 authority may not be clear or withstand judicial scrutiny
2200 under non-delegation.

2201 Can you just speak that a bit more?

2202 *Ms. Cuaresma. Sure. Thank you.

2203 Under the non-delegation doctrine, Congress members
2204 would have to write extremely detailed statutes for anything
2205 to get done, right? So we trust our administrative agencies
2206 to fill in the details.

2207 In order to be able for the FTC to fill in the details
2208 of what the statutory program is, they need resources, not
2209 even additional resources. They needed resources yesterday.

2210 And so without actually providing additional resources
2211 to the Youth Division, it is completely powerless. So I
2212 strongly recommend that we provide resource for it or else
2213 this is just one more thing that is going to go on some
2214 enforcement attorney's list of things to do.

2215 Thank you.

2216 *Mrs. Trahan. Thank you, Madam Chair. I yield back.

2217 *Ms. Schakowsky. The gentlewoman yields back.

2218 And, Mr. Dunn, you are recognized for five minutes.

2219 *Mr. Dunn. Thank you very much, Madam Chair. I
2220 appreciate the opportunity to discuss the importance of
2221 enacting a bipartisan, bicameral national privacy and
2222 security bill.

2223 You know, a national standard is necessary to get
2224 consumers the certainty that their data is protected from
2225 abuses and to provide clear regulatory guidance for industry
2226 to follow without stifling American innovation and
2227 competition.

2228 But it must be carefully crafted because this is
2229 wickedly complex stuff. Mr. Miller, to begin my questioning,
2230 I want to speak to the opportunity we have in Congress to
2231 protect the American people.

2232 We know the Communist Party and other state actors are
2233 intent on attacking our digital system specifically to steal
2234 intellectual property and collect Americans' personal
2235 sensitive data, which can advance their agendas on several
2236 fronts, including military capabilities.

2237 So even data that we think, we tend to believe is not
2238 sensitive can become sensitive when aggregated in the
2239 individualized.

2240 So currently there is no requirement for big tech
2241 companies to tell Americans if they're transferring or
2242 storing their personal data in China, Russia, Iran, and North
2243 Korea, and even Chinese companies in America can be coerced
2244 into sharing sensitive data with the Chinese government.

2245 So my question is small and medium businesses are often
2246 the only retail outlet. I am sorry. I skipped one.

2247 How important is it to you that the national data
2248 privacy law mandates transparency and requires a covered
2249 entity to report to users if their data is transferred to one
2250 of these state bad actors?

2251 *Mr. Miller. Thank you for the question, Congressman
2252 Dunn.

2253 You know, I think that the provision you are referring
2254 to speaks to a very important national security issue that I
2255 think has been, you know, front and center in a variety of
2256 different policy measures even beyond the scope of this bill,
2257 and that involves, you know, potential access to data
2258 including sensitive data of Americans by foreign governments.

2259 So I mean, I think that the provision here and also I
2260 should add that the principle of transparency and letting
2261 consumers know what is happening with their data is certainly
2262 one that I agree with as well.

2263 We have not really heard too much feedback from members
2264 on that particular provision, but you know, I must say that

2265 it does seem like a reasonable provision.

2266 *Mr. Dunn. We hear about it a lot up here, I promise
2267 you. Thank you for that answer.

2268 I want to move on to the effects of small business, Mr.
2269 Kantor.

2270 Small and medium businesses are often the only retail
2271 outlets that provide groceries, consumer goods,
2272 pharmaceuticals in rural areas of my district. These
2273 businesses are often family owned, may not have resources to
2274 comply with complicated privacy regulations.

2275 So given the differing sizes and sophistications of
2276 these companies if this legislation is passed, how important
2277 is it to small businesses that data privacy law is clear and
2278 consistent through all 50 States?

2279 *Mr. Kantor. So we do think it is really important
2280 because not only does the law apply to them, but these
2281 businesses have to deal with these much larger technology
2282 companies and others that are in the category of service
2283 providers or banking institutions, et cetera, in order to
2284 conduct business.

2285 And so having them on a level playing field where those
2286 legal responsibilities are clear and you cannot have
2287 contracts that put the liability back onto the small and
2288 medium size business is really important here.

2289 *Mr. Dunn. So specifically, this financial transaction

2290 exclusion for small businesses which you referenced in your
2291 written testimony, but they could end up being categorized as
2292 a large data holder simply because their business model
2293 depends on having a large amount of small dollar
2294 transactions.

2295 If you can, expand on that a little. How long would it
2296 take and what would the burden be for a convenience store to
2297 collect the sensitive data of, say, 100,000 individuals
2298 through that practice?

2299 *Mr. Kantor. Yes, that does concern us because a corner
2300 gas station on a pretty good corner can have 100,000
2301 customers in a year, and so without having payment due to
2302 exclude it there, we expect a huge number of our members will
2303 be considered large data holders.

2304 Interestingly, there is the small data exception in the
2305 bill which does take into account that payment data should be
2306 treated differently, and so we actually think unless we work
2307 these things out, we will have a lot of members who are both
2308 in the small data exception and large data holders under the
2309 bill.

2310 *Mr. Dunn. My time has expired, but I want to encourage
2311 all of the panel members to give us your suggestions as we
2312 are drafting this because this is, as I said earlier, complex
2313 stuff.

2314 Thank you, Madam Chair. I yield back.

2315 *Ms. Schakowsky. The gentleman yields back.

2316 And, Mr. McNerney, you are recognized for five minutes.

2317 *Mr. McNerney. I thank the chair.

2318 I thank the witnesses.

2319 You all seem to say it is about time we are doing this,
2320 but there are a lot of things that you need to improve. So I
2321 appreciate your insights, and on both sides of the aisle, we
2322 are going to take that into consideration.

2323 My first question regards the security. Ms. Ohlhausen,
2324 would this bill ensure that the covered entities adequately
2325 protect personal data, and would it be possible for the
2326 Federal Trade Commission to define effective encryption
2327 standards if it has the resources?

2328 *Ms. Ohlhausen. The bill has security protections built
2329 into it. The FTC has not traditionally been a technical
2330 agency. So for it to actually define data encryption
2331 standards, I think it would have to draw on outside expertise
2332 for that.

2333 *Mr. McNerney. Thank you for that answer.

2334 Ms. Fitzgerald, Section 203 gives the FTC the
2335 rulemaking authority to establish provisions for individual
2336 data ownership and controls, including not keeping data
2337 indefinitely.

2338 Do you think it would be helpful to have data deletion
2339 standards?

2340 *Ms. Fitzgerald. A very good question. There is
2341 actually a pretty good standard for data deletion. It does
2342 not say "deletion.'" It says in the data security section
2343 that deleting data must mean permanently erasing it or
2344 modifying it to make it permanently unreadable.

2345 But, of course, you know, I think technology changes
2346 after (inaudible) --

2347 *Mr. McNerney. With the cloud and all, it is really
2348 hard to know if the data is really deleted.

2349 *Ms. Ohlhausen. Right.

2350 *Mr. McNerney. There must be some standards that can
2351 define that.

2352 Thank you.

2353 As chair of the Artificial Intelligence Caucus, I want
2354 to see continuing development of artificial intelligence to
2355 help address some of our biggest challenges and issues. But
2356 I want to ensure that the companies that conduct impact
2357 assessments examine how the AI may be harming people at the
2358 same time.

2359 Mr. Lee, would the algorithm impact assessments outlined
2360 in this bill capture those effects of artificial
2361 intelligence?

2362 *Mr. Lee. Thank you, Congressman, for the question.

2363 And I think it would. And I also think it is important
2364 to keep in mind that with the E.U. AI Act and the algorithmic

2365 assessments that have been highlighted in this bill, what we
2366 have are really global standards and global acknowledgement
2367 that we do need to understand the impact that AI can have,
2368 particularly on individuals and hybrid systems and also on
2369 protected opportunities.

2370 So we have done an analysis at Privacy Forum that shows
2371 kind of there is a broad overlay of protected characteristics
2372 that are in the E.U. of Convention on Human Rights and also
2373 with U.S. civil rights law and also a lot of the high-risk
2374 categories with the E.U. AI Act and a lot of the protected
2375 classes and protected categories of AI use that we have seen
2376 with respect to protected opportunities like housing,
2377 employment, education, so on and so forth. There is broad
2378 overlap.

2379 And so between pre-deployment E.U. AI Act and post
2380 deployment with the ADPPA, you have broad coverage of an
2381 algorithm's lifecycle and a better understanding of how
2382 algorithms and particularly artificial intelligence are
2383 impacting our lives.

2384 *Mr. McNerney. Thank you for that.

2385 Mr. Kantor, you mentioned more than once really that we
2386 need more distinction between the covered entities, more
2387 definition there. Given that the large companies are having
2388 difficulty protecting data, how can we assure that smaller
2389 businesses will be able to implement effective, sufficient

2390 data security practices?

2391 *Mr. Kantor. This is where I really think, you know,
2392 the FTC is instructed in the bill to take into account the
2393 size of the entity, but then there are a series of mandatory
2394 requirements that have to be part of data security, and that
2395 we worry might not be appropriate to size.

2396 We think it is better left with a reasonable standard, a
2397 reasonable missed standard that is set in the bill for data
2398 security rather than setting those specifics because,
2399 frankly, the specifics can be too difficult for small and
2400 medium size businesses, but also likely laughably fall short
2401 of what the big, sophisticated businesses should do.

2402 So we do not think that they are doing the proper work
2403 that, I know, confuses the FTC's job here in setting that
2404 reasonableness standard and taking into account how large the
2405 businesses are and what kind of data they handle, too.

2406 *Mr. McNerney. Thank you.

2407 I have a lot of really great questions, but I am out of
2408 time. So I am going to yield back to the chair.

2409 Thank you.

2410 *Ms. Schakowsky. The gentleman yields back.

2411 Mrs. Lesko, you are recognized for five minutes.

2412 *Mrs. Lesko. Thank you, Madam Chair.

2413 And I want to thank both the Republicans and Democrats
2414 on this committee for working on this legislation. I think

2415 it is a bipartisan issue. I do not care if it is Republicans
2416 or Democrats. People are concerned about the misuse of their
2417 private information.

2418 My first question is for Ms. Cuaresma, and it is on
2419 Section 205, and I am going to read the section that I am
2420 talking about. It is Section 205(b).

2421 "Data transfer requirements related to minors. The
2422 covered entities shall not transfer the covered data of an
2423 individual to a third party without affirmative expressed
2424 consent from the individual or the individual's parent or
2425 guardian if the covered entity has actual knowledge that the
2426 individual is between 13 and 17 years of age."

2427 I think that that may need clarification just because
2428 you could read it, and I think some of the staff that I have
2429 talked to has read it, that the individual, meaning the
2430 minor, could give consent to opt out.

2431 And so I was wondering if you share my concern or had
2432 any concerns.

2433 *Ms. Cuaresma. Thank you for the question.

2434 I do have concern about how that could be read. I
2435 definitely would not want my child to be able to
2436 affirmatively consent, given the definition here.

2437 I will note that the definition of individual and minor
2438 is not provided in the statute. However, I do think there is
2439 widespread recognition in the law that individuals under 18

2440 cannot contract.

2441 And so I think it is okay, but this is something that
2442 would end up having to be litigated. We would not want to
2443 tie up court resources litigating something as easy as just
2444 defining and clarifying this section.

2445 *Mrs. Lesko. Thank you.

2446 My next question is for both Mr. Lee and Ms. Ohlhausen,
2447 and it is on Section 207, and I am just going to read part of
2448 the summary instead of the bill itself.

2449 It says, "This section also requires large data holders
2450 that use algorithms to assess their algorithms annually and
2451 submit annual algorithms' impact requirements to the FTC.
2452 These assessments must describe steps the entity has taken or
2453 will take to initiate potential harms from the algorithms,
2454 including any harms specifically related to individuals under
2455 17.

2456 These assessments must also seek to mitigate algorithmic
2457 harms related to advertising for housing, education,
2458 employment, health care, insurance, and credit, access to or
2459 restrictions on places of public accommodation and any
2460 disparate impact on the basis of an individual's race, color,
2461 religion, national origin, gender, sexual orientation, or
2462 disability status.'"

2463 I have many constituents on the conservative side that
2464 are concerned that algorithms are used against people with

2465 certain political viewpoints. Do you think that political
2466 viewpoints should be added to this?

2467 Mr. Lee.

2468 *Mr. Lee. Thank you for the question, Congresswoman.

2469 I think there may, from what I understand, and I am not
2470 an expert in kind of First Amendment speech with respect to
2471 this, but there may be First Amendment concerns with respect
2472 to including political class as a protected category, maybe.

2473 But I am not particularly sure, but we would love to get
2474 back with your office about that.

2475 *Mrs. Lesko. Ms. Ohlhausen.

2476 *Ms. Ohlhausen. Thank you, Congresswoman.

2477 I think that is an area outside the FTC's expertise,
2478 you know, political viewpoint discrimination. So we would
2479 need to get back to you.

2480 But I would mention the definition of algorithm is also
2481 rather broad, and so the Coalition has some concerns about
2482 the sweeping and very routine kinds of business activities.

2483 *Mrs. Lesko. Well, good. I want to thank all of the
2484 people that are here testifying today. I think this is very
2485 important legislation that needs to be done, and I hope we
2486 can come to a consensus.

2487 And with that, I yield back.

2488 *Ms. Schakowsky. The gentlewoman yields back.

2489 And now I recognize Ms. Clarke for five minutes.

2490 *Ms. Clarke. Thank you, Chairwoman Schakowsky and
2491 Ranking Member Bilirakis, for convening this important
2492 hearing on data privacy.

2493 Thank you also to our very distinguished panel of
2494 witnesses for your testimony here today.

2495 To put it simply, our Nation desperately needs
2496 comprehensive Federal privacy protections. Our personal data
2497 is currently collected and sold under a patchwork of
2498 regulations that do little to actually protect the consumer.

2499 And these impacts are felt most acutely by vulnerable
2500 populations, including communities of color who are
2501 frequently targeted and preyed upon.

2502 That is why I am thrilled to be discussing the draft of
2503 this bipartisan, bicameral American Data Privacy and
2504 Protection Act.

2505 I am also very pleased to see that this draft includes
2506 large pieces of my Algorithmic Accountability Act, which I
2507 reintroduced this Congress, along with Senators Ron Wyden and
2508 Cory Booker.

2509 These crucial pieces of my legislation, now part of this
2510 larger privacy package, will direct companies to perform
2511 impact assessments on their algorithms, including those
2512 derived from machine learning, to catch and eliminate
2513 potentially dangerous flaws that often lead to biased and
2514 discriminatory outcomes in the real world.

2515 In the absence of common-sense oversight and
2516 regulations, these automated systems will continue to
2517 perpetuate systemic injustices by operating off algorithms
2518 that reinforce broader societal discrimination against women
2519 and people of color.

2520 So under the American Data Privacy and Protection Act,
2521 covered entities are required to submit annual algorithmic
2522 impact assessments that describe what steps they have taken
2523 or will take to mitigate potential harm from algorithms that
2524 are already being used to make critical decisions about
2525 people's lives.

2526 Ms. Fitzgerald, could you please elaborate on why impact
2527 assessments of algorithmic discrimination are a critical part
2528 of the comprehensive consumer data privacy legislation?

2529 *Ms. Fitzgerald. Thank you for the question,
2530 Congresswoman, and thank you for your longtime leadership on
2531 this issue.

2532 It could be algorithms can change over time. You learn
2533 from more and more data. It is important to do those regular
2534 checks to make sure that the inputs and outputs are thorough,
2535 equitable, and effective.

2536 *Ms. Clarke. Thank you.

2537 Under this draft privacy legislation, covered entities
2538 would also be required to evaluate algorithms during their
2539 initial design phase for potential harmful impacts as well as

2540 consult with independent auditors or researchers.

2541 Mr. Lee, why are algorithms design evaluations at the
2542 front end not crucial for protecting the public against
2543 discriminatory uses of data, especially for marginalized
2544 individuals?

2545 *Mr. Lee. Thank you for the question, Congresswoman.

2546 And algorithmic I would say design principles are really
2547 important to keep in mind, particularly when we are thinking
2548 about data. As Mr. Brody and Ms. Fitzgerald have said both
2549 in their testimony and in front of us today, a lot of the
2550 systems and the data sets that we use are based on the
2551 historical concept of discrimination.

2552 And so in a lot of contexts and in a lot of cases,
2553 whether it is like a resume trolling machine or whether it is
2554 kind of like who is more likely to be able to get a business
2555 loan, the historical data behind that is not necessarily
2556 representative of where America is in its full diversity and
2557 full capacity.

2558 This is a way in which to think about that from an
2559 algorithmic perspective. Using that and looking at that data
2560 for potential impacts that it might have on marginalized
2561 communities and how can we potentially avoid those in the
2562 data and design space.

2563 Similarly, why are external, independent auditors and
2564 researchers essential for the process of algorithmic impact

2565 assessments and design evaluations as opposed to internal
2566 company auditors?

2567 I think one way to think about independent assessments
2568 and independent auditors is that there has been a lot said
2569 already about what kind of algorithmic harms have already
2570 happened to marginalized communities over at least the past
2571 decade.

2572 A way in which to think about how to prevent that is to
2573 think about using independent auditors as a means by which to
2574 do so. Well, there are pros and cons to both.

2575 The inclusion of both, there is an argument to be said
2576 that some may think that it would be too intrusive, but also,
2577 there has to be a way for us to be able to check and ensure
2578 that businesses are actually doing the checks that this bill
2579 requires and making sure that compliance exists.

2580 And one way to do that is through the independent
2581 auditing systems.

2582 *Ms. Clarke. I thank you for your response.

2583 And I thank all of you for testifying here today.

2584 I yield back, Madam Chair.

2585 *Ms. Schakowsky. The gentlewoman yields back.

2586 And now I recognize Mr. Pence for five minutes.

2587 *Mr. Pence. Thank you, Chairwoman Schakowsky and
2588 Ranking Member Bilirakis.

2589 And thank you, all the witnesses, for being here today.

2590 I am encouraged by the bipartisan recognition of a
2591 problem that exists with opaque data collection practices.
2592 As our committee continues improving the bill through our
2593 legislative process, I urge my colleagues on both sides of
2594 the aisle to remain focused on allowing the consumer to
2595 rightfully control their data.

2596 Like my colleagues have discussed today, our
2597 increasingly digital world leaves Hoosiers and all Americans
2598 in the dark about who has access to their information. It is
2599 striking how little consumers know about how personal details
2600 of their lives are collected, shared with third parties, and
2601 monetized without their informed consent.

2602 Just as truth in lending and banking was enacted to
2603 protect consumers from bad actors manipulating a complex
2604 financial industry, Congress needs similar protections for
2605 Internet platforms that are becoming all but required to
2606 participate in modern society and here in Congress as well.

2607 Consumers deserve to be informed in plain English as to
2608 how their information is collected, used, and shared.
2609 Provisions in this legislation like clear, conspicuous notice
2610 of privacy rights and express consent requirements will begin
2611 to empower consumers to control their own data and the data
2612 of their children.

2613 We should make sure that these requirements are explicit
2614 enough to inform consumers exactly how platforms or third-

2615 party data brokers are using their information, whether it
2616 is being monetized or used for marketing activities and
2617 whether their collection practice is materially related to
2618 the services they are providing and what is the value of this
2619 information.

2620 Ms. Fitzgerald, I brought up in past hearings the extent
2621 to which big tech is manipulating the addictive qualities of
2622 their platforms. Unfortunately, this growth at any cost
2623 mindset has led to more divisive interactions online, as we
2624 have all experienced over and over.

2625 There is nothing wrong with making money. I am a
2626 businessman, spent most of my career making money, but it
2627 seems to me that user information has become the bedrock of
2628 their business model and excuses are everywhere as to
2629 covering that that fact exists.

2630 In my view users ought to be compensated for the value
2631 that they choose to bring to these big tent platforms.

2632 Ma'am, do you believe that it is feasible to consider
2633 opportunities, compensate individual users in exchange for
2634 the data they provide to platforms, and create a contractual
2635 relationship between a user and the platform?

2636 *Ms. Fitzgerald. Thank you, Congressman Pence.

2637 I think it is a concrete concept because we do not want
2638 to set up a system where only the rich can afford privacy.
2639 We do not want to set up incentives where, you know, lower

2640 income folks accept the terms and accept --

2641 *Mr. Pence. Maybe I was not clear. Is there a way for
2642 me to be compensated for the data that is being collected by
2643 big tech on the platforms?

2644 Do you foresee a possibility of that?

2645 *Ms. Fitzgerald. I just think it might set up a system
2646 where folks with needs say, "I can do without it.'" And then
2647 it would go for --

2648 *Mr. Pence. That is certainly a choice.

2649 Mr. Kantor, the retailers or the data collectors that
2650 you represent, do they get compensated for the data they
2651 collect and then are sent on to platforms or are processed by
2652 platforms, which are then sold to others?

2653 *Mr. Kantor. So there are a lot of roads data gets
2654 exchanged. Some of it is just somebody pays for something.
2655 Like you send that data along.

2656 There are times when there are compensation
2657 arrangements, and there are lots of times when data is used
2658 for advertising, and there is a lot of that.

2659 Look. While a lot of us get annoyed about advertising,
2660 might not like it, it is really important to our economy. It
2661 is important to --

2662 *Mr. Pence. So just in the interest of time here, so
2663 you do have a contractual, in some cases, relationship where
2664 you are compensated for the data that is being garnered from

2665 you or you are providing through the transactions at your
2666 location, correct?

2667 *Mr. Kantor. There are times.

2668 *Mr. Pence. Why, as a user, do I not have that choice
2669 in this system?

2670 And with that, Madam Chair, I yield back.

2671 *Ms. Schakowsky. The gentleman yields back.

2672 And now I recognize Representative Kelly for five
2673 minutes.

2674 [No response.]

2675 *Ms. Schakowsky. I understand that Ms. Kelly is not
2676 there. So I recognize Representative Soto for five minutes.

2677 *Mr. Soto. Thank you so much, Madam Chair.

2678 And what an exciting and historic day today when I think
2679 about how we as Americans value our privacy in our daily
2680 lives and then how the Internet has become such an integral
2681 part of them.

2682 The calls for privacy have reached a fever pitch across
2683 the Nation.

2684 I am really excited about the bipartisan nature of the
2685 bill before us and looking forward to many more opinions from
2686 you all.

2687 But I want to share with a lot of folks back in
2688 Florida's Ninth Congressional District a little bit of the
2689 scope. So first of all, we are narrowing what companies can

2690 use with your data. There is a duty of loyalty, something
2691 that has been needed for a long time, that companies can only
2692 collect and use data as reasonably necessary, that is
2693 proportionate.

2694 So they cannot take data from one thing and sell it
2695 across the universe when it only needs to be collected for
2696 what they need to use and for the product and service request
2697 within the scope of the products that so many people already
2698 have assumed is the way it goes.

2699 But the point I want to bring to the greatest attention
2700 is the sensitive data, the sensitive covered data section.
2701 While it is a modest name, it is nothing short of an Internet
2702 bill of privacy rights that we are establishing.

2703 Can you imagine some of these things getting public? We
2704 are going to take a stand for it, such as protecting your
2705 Social Security numbers, passport numbers, and driver's
2706 licenses.

2707 Protecting past, present, and future physical health,
2708 mental health, disability, health care treatment.

2709 Protecting the financial account numbers of your debit
2710 cards, credit cards, and other security items.

2711 Protecting biometric information, something I know so
2712 many people are worried about, along with genetic information
2713 so that people cannot just sell this throughout the Internet.

2714 Protecting our geolocation information to reveal where

2715 we have been and where we are.

2716 Protecting our individual private communications, like
2717 our voice mails, our emails, our texts, our direct messages,
2718 mail, and other things identifying our communications
2719 Account and device login credentials.

2720 Information related to American's race, ethnicity,
2721 national origin, religion, and union membership, or non-union
2722 status.

2723 Information identifying sexual orientation or sexual
2724 behavior of an individual. This is actually being added to a
2725 long list that is already prohibited from discrimination,
2726 like race, color, religion, origin, gender, age, disability,
2727 and veteran status. We are adding sexual orientation to that
2728 to make the discrimination statutes, the anti-discrimination
2729 statutes stronger.

2730 Individual's ability to identify their activities on
2731 third party Websites.

2732 Your calendar information that is online, like address
2733 book information, phone and text logs, photos, audio
2734 recordings, videos.

2735 Photography and film depicting folks who are sadly in
2736 the nude. That obviously has been a big issue, as well as
2737 other information identifying and revealing the extent of an
2738 individual's ability to review or access television service.

2739 And lastly and as importantly as all, banning

2740 information outright for folks under the age of 17, and
2741 changing that to constructive knowledge technology standard.

2742 So when we look at what we are doing here today, any of
2743 these things getting out on the Internet would be
2744 catastrophic for a constituent, and in Florida, two years in
2745 a row the Florida legislature has failed to pass privacy
2746 laws.

2747 So you have some States that have very aggressive
2748 privacy laws, but you have others that really have not even
2749 gotten started yet. So when we look at how Floridians are
2750 vulnerable, it is really important.

2751 I wanted to briefly ask a question to Ms. Ohlhausen and
2752 Ms. Cuaresma about are we missing any rights there or should
2753 there be other specific privacy rights added there.

2754 We will start with you, Ms. Ohlhausen.

2755 *Ms. Ohlhausen. The bill is extremely comprehensive.
2756 As we heard, it puts together a number of other proposals,
2757 and it is then iterated over time. So nothing comes to my
2758 mind right now that is not covered.

2759 *Mr. Pence. Okay. Thanks.

2760 *Ms. Cuaresma. So those two things I would hope gets
2761 clarified that there is, in fact, a ban on all third-party
2762 advertising to children, given the way the section details
2763 what is not considered third party advertising, and so I
2764 would want those things clarified in the bill.

2765 *Mr. Pence. Thanks so much, and I yield back.

2766 *Ms. Schakowsky. The gentleman yields back.

2767 And now I recognize Mr. Upton for five minutes.

2768 *Mr. Upton. Well, thank you, Madam Chair. Sorry I had
2769 to step away for a little while. So I hope that the
2770 questions that I am going to ask have not been asked, but if
2771 so, tell me.

2772 I want to thank Chair Pallone and Leader Rodgers for
2773 bringing a bipartisan bill to the subcommittee. It is very
2774 important. Internet privacy and data security issues have
2775 been around, yes, forever. There are probably only a couple
2776 of us on the committee who were here when it was not an
2777 issue.

2778 The full House actually passed data security legislation
2779 not once but twice over a decade ago on a bipartisan basis,
2780 and I obviously had to grapple with privacy and security for
2781 my six years as full committee chair.

2782 So I hope that we can get this right. I appreciate the
2783 testimony that all of you provided as well.

2784 Mr. Kantor, your testimony is that NACS is in favor of
2785 the subcommittee moving forward on privacy legislation, but
2786 it did not seem like you were quite there yet with this bill.
2787 You talked a little bit about the preemptive States in your
2788 testimony. I wondered if you might expand on that perhaps a
2789 little bit and whatever suggestions you might have for us.

2790 *Mr. Kantor. Thank you, Congressman.

2791 Yes, we think there are changes that ought to be made
2792 here. Preemption is just one of them where because of the
2793 way the courts have viewed preemption, we do not think the
2794 language in the bill will actually meet the drafters'
2795 intention of preempting all privacy legislation in the
2796 States, in part, because there are so many exceptions.

2797 And I have cited a number of cases, the Geier case and
2798 others, where that has been found to be a reason to move to a
2799 different preemption analysis.

2800 But there are a bunch of other areas. The private right
2801 of action has some things that really concern us, in
2802 particular, as it relates to a pricing and loyalty programs.
2803 The pricing provisions in the bill, and we had testimony
2804 about this today, raise the specter that, in fact, we are
2805 going to have broad pricing regulation unless we deal with
2806 that.

2807 *Mr. Upton. Is that because of the reward program?
2808 When you buy so many cups of coffee, you get a free one after
2809 ten? I mean, it is --

2810 *Mr. Kantor. That is only one part of it. It is not
2811 only that, but Mr. Brody pointed to the possibility of
2812 redlining. Let's say I have two stores. One is in a more
2813 minority-heavy community than the other.

2814 The problem he has brought up is that if I have a sale

2815 on different items in the one store than the other, am I
2816 discriminating? Is that why I am doing it?

2817 That is a real concern where lots of retailers today,
2818 just to keep up with the competition, do use pricing software
2819 to know how to best price their products, and a lot of that
2820 is just based on where certain things are selling versus
2821 other items and how you want to pick up your sales. But if
2822 those neighborhoods are different and suddenly it is a
2823 discrimination issue, that is a real concern.

2824 *Mr. Upton. Thank you.

2825 Mr. Dufault, it is nice to see you again, for sure.

2826 Small and developing businesses in my district in
2827 Michigan rely on data from third party sources to grow their
2828 businesses, reach new customers. The pandemic showed just
2829 how valuable that data was as they shifted their businesses
2830 online.

2831 Section 302 of the bill changes the way that third party
2832 data can be collected, processed, and used. What steps can
2833 small businesses take to access the data that they need to
2834 operate, given the changes in this bill?

2835 *Mr. Dufault. Thank you, Congressman. It is good to
2836 see you, too.

2837 There are a few things that small businesses can do to
2838 make sure that they are accessing data that they need to
2839 continue to access in order to have the market intelligence

2840 and to evolve.

2841 I think one area I would point to is Section 304, which
2842 provides the ability for the FTC to certify, authorize
2843 compliance programs, and these compliance programs, I think,
2844 are going to be very helpful for small companies that meet
2845 certain thresholds to find ways to access data in a manner
2846 that is compliant with the law.

2847 And so it is not just how do I respond to the consumer
2848 request. It is not just how do I take these steps to secure
2849 data. It is also aspects like how do I source data in a way
2850 that is responsible and that meets sort of the spirit of the
2851 law as well.

2852 So I think not relying too heavily on these compliance
2853 programs, but I think they are going to be very valuable
2854 beyond just pure compliance.

2855 *Mr. Upton. Thank you.

2856 I want to say my time is expiring. I really
2857 appreciated, Ms. Cuaresma, your thrust on children and the
2858 impact on children, and I look forward to trying to make sure
2859 that this bill accomplishes many of those same things.

2860 And with that, Madam Chair, I yield back.

2861 *Ms. Schakowsky. The gentleman yields back.

2862 And now I recognize Miss Rice for five minutes.

2863 *Miss Rice. Thank you, Madam Chair.

2864 And I want to echo the sentiments of all of my

2865 colleagues in thanking the full committee chairs, co-chair,
2866 and also Mr. Bilirakis and Ms. Schakowsky for bringing this
2867 incredibly important piece of legislation.

2868 I mean, this is what we all come here to do, to actually
2869 pass laws that impact in a positive way people's lives, and
2870 there has been no business that I can think of that has more
2871 of a negative impact, along with positive, but particularly
2872 negative impact on people in this country.

2873 The social media companies which we hope are going to
2874 be, you know, more honest with how they deal with consumers,
2875 their consumers.

2876 Mr. Brody, the American Data Privacy and Protection Act
2877 includes important provisions that would institute a new
2878 course of responsibility and authorities for the FTC and
2879 State AGs, including the ability to obtain civil penalties
2880 and relief for consumers who have been harmed by abusive data
2881 practices.

2882 The D.C. Attorney General recently brought a suit
2883 against Facebook seeking to hold their CEO, Mark Zuckerberg,
2884 liable for data abuses and for misleading users about their
2885 privacy protections.

2886 Can you speak to any other examples of cases where State
2887 AGs have sought penalties against companies for offenses,
2888 under existing privacy laws?

2889 And what challenges do AGs face for suing these types of

2890 cases without a comprehensive Federal privacy standard?

2891 *Mr. Brody. Thank you for that question. It is a great
2892 one.

2893 So State Attorneys General play a very important role
2894 here in enforcing this bill and augmenting the authority of
2895 the FTC in private rights of action.

2896 For example, the Attorney General of New York has
2897 brought cases against data apps that leaked information that
2898 resulted in really sensitive information being released and
2899 used to harm people, and that is just one example.

2900 What often holds State AGs back though is a lack of
2901 transparency into how companies are using data, and so the
2902 provisions in this bill around transparency, around access,
2903 correction, deletion, around algorithmic assessments, that
2904 should provide State Attorneys General with a lot more
2905 information about what companies are doing and how to address
2906 it.

2907 And the reason that State AGs are so important here is
2908 because they have a really close connection to the
2909 communities they serve and can really connect at a local
2910 level to address harms that might not be national in scope.

2911 *Miss Rice. All right. So can you tell us what
2912 additional resources this bill provides State Attorneys
2913 General to empower them to prosecute cases involving data
2914 abuses or violation of privacy protection?

2915 *Mr. Brody. Under this bill, State Attorneys General
2916 would have full enforcement authority to bring actions for
2917 any type of violation of the Act and to seek injunctive
2918 relief, to seek civil penalties or compensatory damages or
2919 what have you to ensure that citizens are protected and
2920 compensated.

2921 *Miss Rice. Thank you, Mr. Brody.

2922 Mr. Kantor, protecting our Nation's small businesses and
2923 ensuring that they have the tools and resources they need to
2924 compete against large companies is a major priority that many
2925 of us on this committee share.

2926 The ADPPA aims to ensure that more focus and
2927 responsibility are placed on large data holders and includes
2928 certain exemptions for small businesses. For example, the
2929 bill contains exemptions for small and medium size covered
2930 entities that do not meet specified thresholds related to
2931 their revenue derived from transferring, collecting, or
2932 processing covered data.

2933 How would a Federal privacy law help small businesses in
2934 particular?

2935 Would this legislation help to level the playing field
2936 with the larger businesses that small businesses work and
2937 compete with?

2938 *Mr. Kantor. Thank you, Congresswoman, for that
2939 question.

2940 Yes, there are some key things this bill does do and
2941 some things we think it still needs to do to get to that.

2942 The thing it does do is set statutory requirements for
2943 covered entities and service providers to lay out their
2944 different responsibilities, and that is key so that the
2945 larger business cannot just impose things by contract.

2946 One concept that I think is important and Ms. Ohlhausen
2947 spoke to this earlier is that they should make sure these
2948 entities are not liable for the others' activities. They
2949 should both have the responsibilities, whether that is
2950 covered entity, a service provider, and have to follow
2951 through on them, and they need to rely on each other but
2952 should not be liable for the other one's acts of commission
2953 or omission.

2954 And that is especially important for small business. So
2955 having a national standard matters so that these small
2956 businesses cannot be taken advantage of by the big technology
2957 companies.

2958 And as we said, we think there is still more work to do
2959 to get to that point, but the concepts and the way it was
2960 laid out here is a really good starting point to move from.

2961 *Miss Rice. Thank you so much.

2962 Madam Chair, my time is up and I yield back.

2963 *Ms. Schakowsky. The gentlelady yields back.

2964 The chair now recognizes Mr. Bucshon for five minutes.

2965 *Mr. Bucshon. Thank you, Mr. [sic] Chair. Thank you
2966 for calling today's -- I want to thank Madam Chair for
2967 calling today's legislative hearing on what I think is one of
2968 the most significant and pressing needs within our
2969 committee's jurisdiction, modernizing the protections and
2970 acceptable uses of American citizens' data.

2971 Today it is difficult for Americans to go about their
2972 daily lives without some form of data about them being
2973 collected, stored, and used for businesses or government
2974 entities around the world.

2975 Like many of my colleagues, I am glad that this
2976 committee is approaching this issue with the seriousness it
2977 deserves and demands and is considering the American Data
2978 Privacy and Protection Act draft legislation.

2979 I know that Ranking Member Rodgers, Chairman Pallone,
2980 and Ranking Member Wicker and their staffs put together this
2981 legislation using years of experience as well as industry and
2982 user feedback on how we can form safe and appropriate
2983 guidelines for data privacy in the 21st century.

2984 I am pleased that we are following up that work by
2985 debating this draft in a regular order process that ensures
2986 users and industry are able to express their thoughts and
2987 help make this committee take a huge step forward for
2988 privacy.

2989 Over the last ten years we have seen too many instances

2990 of controllers of my constituents' data not having adequate
2991 internal systems and protections for data they use, which is
2992 why I am glad that the draft includes privacy by design
2993 guidelines that account for things such as size of the
2994 company, the types of data, and the risks associated.

2995 Mr. Miller, aspects of privacy by design procedures have
2996 already been implemented across the globe, such as data
2997 protection by design in Europe's GDPR. In your opinion, have
2998 these measures been well received and are they working for
2999 consumers?

3000 *Mr. Miller. Thanks very much for the question,
3001 Congressman.

3002 I think I would answer that question two ways. I mean,
3003 I do think generally speaking that privacy by design concepts
3004 have been very well received by both business and advocates.
3005 You know, many, I think, in industry have been supportive of
3006 the concepts for a very long time.

3007 And I mean, I think the concept as it appears in the
3008 GDPR has also been welcome.

3009 You know, I do think that one question that folks
3010 reasonably have about it is, you know, there is a question
3011 about privacy. I mean, you can have a requirement about
3012 privacy by design, but it does not necessarily explain how to
3013 do privacy by design if you are a company.

3014 So, I mean, I think in the case of -- and we have seen

3015 that in other laws. So you know, the development of
3016 standards, for instance, on that, you know, one of the things
3017 that NIST in the U.S. is doing is they have developed a
3018 privacy framework which has many different standards,
3019 including in that area.

3020 It is something that is very important, and perhaps that
3021 is something that could also be, you know, worked out as the
3022 bill would be implemented, but positively received from my
3023 perspective, but the devil is in the details.

3024 *Mr. Bucshon. Understood. Mr. Dufault, this draft also
3025 includes protections for data users age 13 through 17. As a
3026 father of four, I have seen firsthand how critical it is that
3027 people I represent in this age group use and become more
3028 familiar with the Internet and how to use it.

3029 When done safely, it can lead to them taking a greater
3030 interest in technology, as was the case for my daughter, who
3031 recently graduated from Cornell and began working as a
3032 computer science engineer.

3033 But it should not be the Wild West when it comes to
3034 handling their data, which is why I am glad that the draft
3035 legislation includes new regimes for these young people who
3036 are inevitably exposed to the good, the bad, and the ugly of
3037 the online world.

3038 Do you anticipate your members being willing to work
3039 with the new Youth Privacy and Marketing Division at the FTC?

3040 *Mr. Dufault. Yes, definitely. I think Congress is
3041 right to be focusing on these issues, and I think these are
3042 provisions that we can work with.

3043 *Mr. Bucshon. Great. Are there any additional
3044 guardrails that this committee should consider as part of
3045 this draft to ensure that the division can accomplish its
3046 stated goals?

3047 *Mr. Dufault. Well, that is a good question. I think a
3048 lot of questions have been raised around, you know, what
3049 should be the right age to protect kids.

3050 *Mr. Bucshon. Right.

3051 *Mr. Dufault. I think as you consider further updates
3052 to COPPA, for example, one thing to think about, and it was
3053 brought up earlier, is actual knowledge, a workable standard,
3054 or should we look at something more like constructive
3055 knowledge to protect kids?

3056 And I think one of the things I will point out is that
3057 early in the early 2010s, the ACT Association was encouraging
3058 the FTC to more rigorously enforce COPPA, and we thought that
3059 there were instances where actors out there in online
3060 services were not exactly in compliance with the law even
3061 under the actual knowledge standard.

3062 But we also recognized the FTC had had a lot of
3063 difficulty gathering the right evidence to enforce the actual
3064 knowledge standard, and so one thing I want to point out is

3065 that we have some work to do before we can best enforce the
3066 actual knowledge standard, before we move to broaden that
3067 concept because I know that is in brackets in the draft right
3068 now.

3069 *Mr. Bucshon. Okay. Thank you very much.

3070 I yield back.

3071 *Mr. Soto. [Presiding.] The gentleman yields back.

3072 The chair now recognizes Ms. Kelly for five minutes to
3073 ask questions.

3074 *Ms. Kelly. Thank you, Mr. Chair.

3075 And thank you, Chair Schakowsky and Ranking Member
3076 Bilirakis, for holding this hearing today. It has been a
3077 long time coming.

3078 I am very encouraged by the progress that has been made
3079 for the bill that can pass both chambers and truly strengthen
3080 privacy protections for all Americans.

3081 One issue I have been focused on for a long time is
3082 ensuring that consumers know what they are agreeing to. No
3083 one reads the long privacy policies of today, and neither do
3084 I.

3085 Mr. Lee, can you please explain how the short-form
3086 privacy notices will help consumers better understand how
3087 their data is being used?

3088 *Mr. Lee. Thank you for the question, Congresswoman.

3089 So for too many people, long form privacy notices are

3090 difficult to read. They are even difficult to read for
3091 privacy lawyers in certain circumstances.

3092 The short-form privacy notices give the agency back to
3093 consumers to allow the consumer to better understand how
3094 their data is being used and in what context.

3095 *Ms. Kelly. In this legislation we also take steps to
3096 make sure our processes are more inclusive. In addition to
3097 the discrimination the American Data Privacy and Protection
3098 Act also ensures information is accessible in different
3099 languages when a covered entity is operating in different
3100 languages.

3101 Mr. Brody, can you tell us more about how making privacy
3102 policies available to users in the language they speak when
3103 the services are offered in that language is key to making
3104 services more protective for everyone?

3105 *Mr. Brody. Absolutely. Thank you for that question.

3106 This is a very big country. We have a lot of people
3107 that speak a lot of different languages, and if they are
3108 expected to understand their rights under this Act and how to
3109 effect their rights and enforce their rights, they should be
3110 able to see privacy policies and other important materials in
3111 the language in which they primarily use the service.

3112 I think this is also an area where the new Office of
3113 Business Mentorship at the FTC could play a big role both by
3114 assisting businesses with ensuring language accessibility,

3115 but also by ensuring that the policies, guidelines, and
3116 regulations which the Commission issues to help small
3117 businesses are also available in multiple languages to assist
3118 immigrants, small business owners and others who need help
3119 complying with the Act.

3120 *Ms. Kelly. Thank you for that.

3121 I also think this draft does a lot to protect users, and
3122 even for opt-in choices it protects some manipulation beyond
3123 the strong data minimization protection that stops certain
3124 collection processing and transfer. There is a robust opt-in
3125 requirement for sensitive data that also includes protections
3126 to stop companies from using dark patterns to manipulate
3127 users.

3128 Increasingly, these dark patterns will be in the system
3129 with AI to be more effective and creative in their
3130 manipulation.

3131 Ms. Fitzgerald, why is it so important that we address
3132 dark patterns to ensure deceptive design elements do not
3133 undermine consumer opt-in rights under the bill?

3134 *Ms. Fitzgerald. Thank you for the question,
3135 Congresswoman.

3136 We have all seen these dark patterns, right? The pop-up
3137 shows up, has a big "accept" button and then has a tiny, you
3138 know, or "click here" to confirm your choices and then a big
3139 window comes up with a million choices you have to go through

3140 and folks get about halfway through.

3141 So it is important because it makes the rights
3142 meaningful that are in the bill.

3143 *Ms. Kelly. Thank you.

3144 When I testified before the European Parliament on
3145 transatlantic cooperation or artificial intelligence, I spoke
3146 about the importance of the U.S. and E.U. strengthening
3147 privacy and ensuring AI is a tool that positively benefits
3148 society.

3149 It is my great hope that this bill together with the
3150 E.U.'s efforts will be complementary and create a new
3151 paradigm for trustworthy AI. I look forward to working with
3152 the committee to advance this important legislation.

3153 And with that, I yield back. Thank you.

3154 *Ms. Schakowsky. [Presiding.] The gentlelady yields
3155 back.

3156 And now I recognize Mr. Armstrong for five minutes.

3157 *Mr. Armstrong. Thank you, Madam Chair.

3158 For as long as I have been in Congress, which is not
3159 quite that long yet, we have been talking about a national
3160 privacy group. Big business has come in and said we cannot
3161 do a patchwork of 50 States. Small businesses have said the
3162 same thing, banks, health care, big tech, small tech,
3163 advocacy groups.

3164 And the reason we have not gotten there yet is because

3165 it is really hard, and everybody recognizes we need to
3166 compromise, but we cannot compromise on whichever particular
3167 issue you want to compromise on because platforms will tell
3168 you it breaks the Internet. Small businesses will say you
3169 are passing too much of that cost onto the credit card
3170 machine on a counter.

3171 And you will create censorship. It will be anti-
3172 competitive. We will give too much power to the FTC. We are
3173 not giving enough power to the FTC.

3174 And then users are bombarded with ads on whatever
3175 platform they are in that Congress is trying to break the
3176 Internet as we know it.

3177 And last Congress we get almost to the point, and I was
3178 not on the committee yet and I am not sure I would have been
3179 helpful, and we get stuck on two things, preemption and
3180 private right of action.

3181 So today we are here, and we have a compromise on
3182 preemption and private right of action, and this is more of a
3183 message to everybody who is watching it. It is a neat trick
3184 to go back and tell all of your members, all of your
3185 constituents, all of your consumers that we are working
3186 really, really hard for a privacy bill, but any framework
3187 that comes out we hate.

3188 Be a part of the conversation. That is what this
3189 conversation is about. So guess what I want to talk about

3190 preemption because we are trying to compromise, but I think
3191 our number one job as we are moving through this should be to
3192 provide clarity and decrease litigation.

3193 And as we are dealing in this space, it is always going
3194 to be an evolving field.

3195 So Section 404(b) details the general and specific
3196 statutes that are not preempted by this bill. Specifically
3197 identifying laws that are not subject to express preemption
3198 in a Federal bill is sometimes referred to as anti-
3199 preemption.

3200 An anti-preemption doctrine is actually relatively
3201 undeveloped in Federal court, and notwithstanding any
3202 unsettled questions of law surrounding attempts to remove
3203 State law actions to Federal court, anti-preemption leaves a
3204 number of substantial questions.

3205 And without further clarity, I am worried this is going
3206 to evolve into substantial further litigation and, more
3207 importantly, potentially lack of action by State governments.

3208 For example, the bill specifically did not preempt
3209 Illinois Biometric Information Privacy Act. What happens to
3210 the anti-preemption status provided to that State law if
3211 Illinois subsequently amends it?

3212 What happens if Illinois enacts a minor technical
3213 change, but the date on the legislation changes in Illinois
3214 code?

3215 If the State law is significantly altered, will its
3216 anti-preemption status be subject to a conflicting preemption
3217 challenge?

3218 Will these uncertainties disincentivize Illinois from
3219 considering rational amendments to the law, particularly in a
3220 field that is evolving rapidly and could actually do a lot of
3221 good for the citizens of Illinois?

3222 The same applies to Illinois's Genetic Information
3223 Privacy Act. Will State lawyers in Illinois risk anti-
3224 preemption status granted by this law?

3225 And I understand the compromise because we had to get
3226 here, and several of my colleagues have repeatedly stated
3227 that California's privacy law must be protected, but I wonder
3228 if we are going to extend that protection to subsequent
3229 changes to that State law.

3230 And without guardrails, we leave these issues to certain
3231 States and Federal courts that will one day have to decide
3232 the preemption challenge.

3233 Mr. Miller, do you have any insight on the status of the
3234 preservation of these State laws if they are subsequently
3235 amended?

3236 *Mr. Miller. Thank you for the question, Congressman
3237 Armstrong.

3238 You know, I think you raise a very good point. You
3239 know, one of the things that I recommended in my written

3240 testimony and that is often discussed in this context is, you
3241 know, whether to simply preempt laws that are covered by the
3242 provisions of the Act or all laws relating to the subject
3243 matter covered by the Act.

3244 I mean, with respect to your example and the Illinois
3245 biometric privacy law, I mean, clearly, biometric privacy
3246 seems covered by the provisions of the Act, but yet, you
3247 know, it is preempted, but other State laws like Texas'
3248 biometric law are not.

3249 You know, I think one concern perhaps or at least I
3250 would submit that the bill does seem to freeze these laws in
3251 place, right? So I do not think we have the answer to your
3252 questions, and it actually may just end up leading to more
3253 litigation ultimately.

3254 *Mr. Armstrong. Well, I am going to ask the same
3255 question of Mr. Kantor. I actually am not going to get to it
3256 because I am out of time.

3257 But I want to be clear. I think we have to have these
3258 conversations about enforcement because I think we have to do
3259 the best we can to get the clarity and to decrease that
3260 litigation, and I think it also exists in private right of
3261 action, and that does not mean we should not try because we
3262 should because our constituents are demanding this. Our
3263 business groups are demanding this.

3264 Everybody who is involved in this space is, you know, in

3265 the 21st century that is demanding that.

3266 And with that, I yield back.

3267 *Ms. Schakowsky. The gentleman yields back.

3268 And now I recognize Congresswoman Fletcher for five
3269 minutes.

3270 *Mrs. Fletcher. Thank you so much, Chairwoman
3271 Schakowsky. And thanks to you and Ranking Member Bilirakis
3272 for convening this hearing to discuss the American Data
3273 Privacy and Protection Act.

3274 You know, as we have heard throughout the day, we have
3275 an opportunity to advance privacy rights for Americans
3276 through bicameral and bipartisan collaboration. That is
3277 certainly what my constituents would like to see more of in
3278 Washington, and I am really glad to hear you all want to move
3279 this bill forward and have this hearing today and to hear
3280 from our witnesses.

3281 I really want to thank all of you for taking the time to
3282 testify and provide your insight and be a part of these
3283 important conversations.

3284 Just listening to Mr. Armstrong talk about the
3285 enforcement provisions with you and understanding there are
3286 still so many important parts that we need to work through
3287 and really do all we can to protect the privacy of our fellow
3288 Americans, I know this is something that is important in
3289 many, many contexts, and it is certainly important here when

3290 we talk about our data.

3291 And one of the places I just want to focus with the time
3292 I have right now is on the heightened protection for
3293 sensitive data. It is a lot of data that, frankly, a lot of
3294 people may not realize is being shared and certainly would
3295 want to protect.

3296 So this sensitive data, which includes biometric and
3297 genetic information, Social Security numbers certainly, bank
3298 account and credit card numbers, health diagnosis,
3299 disability, treatment information.

3300 Kind of on a separate track, I have a lot of concerns
3301 about how much of this data is actually available for sale
3302 and the detail that you can find, and I think we have a lot
3303 of work to do in that area.

3304 But I think what I want to do is ask Ms. Fitzgerald if
3305 you can talk a little bit about the health data, which I know
3306 is so important to so many of my constituents, and why that
3307 should be considered sensitive data and why it is not
3308 sufficiently protected by HIPAA in an online ecosystem.

3309 If you could share that with us, then I have another
3310 question for you as well on geolocation data.

3311 *Ms. Fitzgerald. Yes, thank you, Congresswoman.

3312 People feel that their health data is sensitive. They
3313 assume it is covered by HIPAA because it is alarming that it
3314 is not, right? HIPAA goes back to, like I said before, the

3315 problem with having these sectoral laws. HIPAA only covers
3316 interactions you have with your doctor's office, with your
3317 health insurer and the health exchanges that they use.

3318 It does not cover the health data that we put into ACT.
3319 So that is why we need a comprehensive privacy law, so that
3320 that health data is covered no matter who is collecting it.

3321 *Mrs. Fletcher. Thank you for that.

3322 And I could not agree more, especially now where we see
3323 tracking of a lot of our own personal data. I am really
3324 concerned about access to women's reproductive health data,
3325 and it is something that we will be working on more in the
3326 coming days.

3327 But I do want to ask you in the time I have left, just
3328 under two minutes, kind of connected to this, you have
3329 probably seen, as a lot of folks have, I am sure, that people
3330 are able to get geolocation data.

3331 And, in particular, there is an article that we were
3332 just looking at about people being able to purchase
3333 geolocation data that would show where people have been, for
3334 example, to particular health clinics or searching online for
3335 particular services.

3336 But geolocation data is also considered sensitive data,
3337 and can you just talk a little bit about why it is important
3338 to place heightened restrictions on this type of data,
3339 especially with regard to how it can be used by these data

3340 brokers who are looking to profit from this geolocation data
3341 and why we need to protect that?

3342 *Ms. Fitzgerald. Yes. So this goes back to people's
3343 expectations. You expect that your weather app is going to
3344 collect your location data to give you the weather. You do
3345 not expect that they are then going to sell it to data
3346 brokers so it can be used to build profiles about you.

3347 But unfortunately, for a few thousand dollars a month,
3348 you can get access to two years of raw location data from
3349 millions of phones.

3350 And the fact that it is anonymized is a lie. It can be
3351 linked back to an individual. That is what happened, you
3352 know, with the Catholic priest I noted in my opening
3353 statement where they tied his location data back to him and
3354 outed him.

3355 So that is why this data is particularly sensitive.
3356 There is a huge market for it because it can be reidentified,
3357 and we need to stop that.

3358 *Mrs. Fletcher. Well, thank you so much for sharing
3359 that.

3360 I could not agree with you more. There are times that I
3361 think it is best to have a right to privacy in [audio
3362 malfunction] as well as others, but certainly in their data.

3363 And we come together now. As I said, at least we have
3364 with this bill to take steps to protect the privacy of

3365 Americans.

3366 So with that, I am out of time, but I thank you all very
3367 much for being here today.

3368 And, Madam Chair, I yield back.

3369 *Ms. Schakowsky. The gentlelady yields back.

3370 And now I want to welcome as a waive-on to this
3371 committee someone who has been very involved in these issues
3372 and to close us out, I recognize you for five minutes, Mr.
3373 Walberg.

3374 *Mr. Walberg. Thank you, Madam Chair.

3375 Are you saying this is the last word?

3376 *Ms. Schakowsky. This is the last word.

3377 *Mr. Walberg. Well, thank you.

3378 And thanks to the panel for sitting here for a long time
3379 today.

3380 After years of negotiating, it has been said I am glad
3381 that we are holding a hearing on one of our country's most
3382 pressing needs, the comprehensive national privacy and data
3383 network security framework.

3384 It is amazing that we have such a tool. The technology
3385 is unbelievable. The abilities that are in tech are so
3386 important to us, but I continue as an adult feeling more and
3387 more violated all the time as I use the resources, almost the
3388 same feeling I get when I am in a Beijing hotel at times,
3389 knowing that I am probably being overwatched.

3390 We need to keep the platforms but figure some way to
3391 deal with the privacy.

3392 And so, Ms. Ohlhausen, earlier this year I reintroduced
3393 the bipartisan PROTECT Kids Act with my friend,
3394 Representative Rush, which would update and modify COPPA.

3395 This has been a longstanding issue for me and many
3396 members of the committee, and while the draft does not
3397 directly amend COPPA, it does provide broad new protections
3398 for minors under the age of 17.

3399 It also requires the FTC to update their COPPA rules to
3400 reference additional requirements for covered entities under
3401 Section 406.

3402 Can you briefly explain how this increases protections
3403 for children?

3404 *Ms. Ohlhausen. Yes. Thank you, Congressman.

3405 The Children's Online Privacy Protection Act is now more
3406 than 20 years old, and it was kind of a watershed moment
3407 early on in the consumer-focused Internet, but it needs to
3408 catch up to new technologies, new risks, new ways of doing
3409 business.

3410 So I believe taking a look at what COPPA tests and how
3411 it can be strengthened and additional protections that may be
3412 necessary is a very good step forward.

3413 *Mr. Walberg. As you know, COPPA uses an actual
3414 knowledge standard for companies that determine the age of a

3415 child. Do you think this standard works well?

3416 And why is it important as opposed to a constructive
3417 knowledge standard, especially if the age is raised to under
3418 17?

3419 *Ms. Ohlhausen. When COPPA was enacted, my
3420 understanding of why the actual knowledge standard was
3421 adopted was the fact that there are large -- whether at the
3422 time it was Websites; now it could be a whole host of things
3423 that attracted a very broad audience, and you could presume
3424 that there were probably children in that audience.

3425 And there were concerns about essentially putting
3426 obligations on based on the fact that you might have some
3427 children in the audience.

3428 So what the FTC did was focus on things that were
3429 particularly targeted towards children, things that had like
3430 cartoon characters and things like that, and they have
3431 actually brought an enforcement case also where a company's
3432 contracting and proposals made it clear that they did have
3433 actual knowledge of the children in the audience. So that is
3434 the way the FTC has tried to address it.

3435 There was a law called COPA, C-O-P-A, that was actually
3436 struck down on First Amendment grounds as being over-
3437 inclusive in sweeping in too many adults. So that may also
3438 have been one of the areas of concern that the actual
3439 knowledge standard was trying to address.

3440 *Mr. Walberg. Okay. Mr. Dufault, what type of
3441 obligations would small app developers have if the knowledge
3442 standard was changed to constructive?

3443 *Mr. Dufault. Well, one of the concerns that we have is
3444 that they would have to potentially collect more data if they
3445 do not already have all kinds of metadata or direct data
3446 associated with an individual. Then they might have to
3447 collect more to figure out whether or not, you know, they put
3448 together a picture of constructive knowledge.

3449 So that would be potentially an issue, and then there is
3450 just sort of a broader universe of services that might be
3451 swept in by constructive knowledge, and even in services that
3452 maybe we do not intend to include.

3453 So that would be a couple of concerns that we would
3454 have.

3455 *Mr. Walberg. Okay. Ms. Fitzgerald, I believe there
3456 are benefits to certain targeted advertisements. They allow
3457 small companies and start-ups easier entry into the
3458 marketplace, often dominated by household names.

3459 Section 205 of this legislation would prohibit targeted
3460 advertising to any individual under 17. How do you think
3461 this prohibition will impact the mental health of our
3462 Nation's children?

3463 *Ms. Fitzgerald. Thank you for the question,
3464 Congressman.

3465 It is so important because kids are still developing
3466 critical thinking skills. They often cannot distinguish
3467 advertisements from non-commercial content. So that ban is
3468 necessary to protect them as they develop those skills.

3469 *Mr. Walberg. Okay. Well, I see my time has ended, and
3470 I yield back.

3471 *Ms. Schakowsky. Thank you, Mr. Walberg.

3472 I spoke too soon. Congressman Cardenas has come online,
3473 and so I want to yield five minutes to him.

3474 Mr. Cardenas.

3475 *Mr. Cardenas. Thank you, Madam Chairwoman. And also,
3476 I would like to thank the ranking member.

3477 I thank the witnesses very, very much for helping to
3478 clarify before the people of our great country as to what is
3479 going on and what would be some good things that we should be
3480 doing as Congress to protect and create a balanced
3481 environment, especially when it comes to these apps that are
3482 being used by tens and tens and tens of millions of people in
3483 our country.

3484 Americans are very concerned about how the data is being
3485 collected and spread online, and it is clear that an
3486 overwhelming majority of the public agrees that individuals
3487 should have control over their personal information and how
3488 it is used on the Internet.

3489 It is important that we have this hearing today not only

3490 to discuss the sections that this bill brings to the table,
3491 but to shine a light on ways that our personal information is
3492 spread, monetized, and in some cases abused by many of the
3493 organizations, corporations, and applications that Americans
3494 are handling every single day.

3495 Mr. Brody, there are countless examples of mobile phone
3496 applications collecting more data about consumers than they
3497 need to function on the app. Facebook Messenger, for
3498 example, an app designed for messaging and video calls,
3499 collects health and fitness information, financial
3500 information, and location data, none of which are necessary
3501 to facilitate communication with your friends or your family.

3502 Can you explain why these apps and Websites collect so
3503 much data on it and what they do with that data if they do
3504 not need it to function on the app?

3505 And how would this legislation address this situation?

3506 *Mr. Brody. Thank you for that question.

3507 Put simply, the apps collect that much data because they
3508 can and because they can monetize it by either using it
3509 themselves for advertising and other purposes or selling it
3510 to other companies who can find other ways to monetize it.

3511 This bill has really strong data minimization provisions
3512 that would ensure that when you are using an app, that app is
3513 only collecting and using and transferring as much
3514 information as is reasonably necessary and proportionate to

3515 the services providing you and your expectations based on
3516 your engagement with that app.

3517 This is incredibly important to ensure that there is not
3518 superfluous, extra information floating around that could be
3519 highly sensitive and that can be abused either by predatory
3520 actors or that could be leaked in a data breach.

3521 And so the data minimization framework in this bill is
3522 extremely strong and central.

3523 *Mr. Cardenas. Thank you. Thank you very, very much.

3524 There are so many questions I want to ask you, but now I
3525 am going to go to Jolina Cuaresma.

3526 Ms. Cuaresma, this bill rightfully focuses attention on
3527 enhancing protections for individuals 17 years of age and
3528 younger. Children and teens go through phases of development
3529 in which they gradually develop their critical thinking
3530 skills, those to distinguish ads from content.

3531 How does this make children and teens uniquely
3532 vulnerable to privacy harm?

3533 *Ms. Cuaresma. I am sorry. I think you cut out for
3534 about five seconds there, and I missed the question.

3535 *Mr. Cardenas. When it comes to the bill would protect
3536 our teens, how is it that the way a young brain develops, how
3537 will this bill help make sure that teens, who are uniquely
3538 vulnerable, how would this bill help with their private data?

3539 *Ms. Cuaresma. Thanks for the question.

3540 So we have known for quite some time now that the human
3541 brain is not finished developing until perhaps around their
3542 mid-20s, and this means right now that my child, who is in
3543 high school, is still very susceptible to all sorts of images
3544 and online content that can influence her sense of self.

3545 And so what I am really appreciative of about this Act
3546 is the Section 205 about targeted advertising. That is going
3547 to put a ban on advertising for children under 17, and it
3548 clearly co-bans third party advertising on its face, except
3549 under Section 226(b) (I) through (III). What happens is there
3550 is now an exclusion to what targeted advertising means.

3551 So first part advertising, fine, that is well and good.
3552 That is going to be allowed, but in (I) and (III),
3553 advertising or marketing to an individual in response to any
3554 ask, that can include third party advertising.

3555 So there is a loophole here in which third party
3556 targeted advertising can come in. And given what we all know
3557 about developing brains, we want to make sure that we close
3558 that loophole.

3559 *Mr. Cardenas. Thank you very much.

3560 My time has expired, Madam Chair.

3561 *Ms. Schakowsky. The gentleman yields back.

3562 And so at this point as we close this hearing, I want to
3563 really thank each and every one of our witnesses.

3564 We do not usually have this many as we had today, eight

3565 witnesses, but this has been such a robust and useful
3566 conversation, and every one of you made such important
3567 contributions. I am so grateful to all of you.

3568 I want to remind members, but also alert witnesses that
3569 pursuant to committee rules, that members have ten days to
3570 submit additional questions for the record, to be answered by
3571 the witnesses, the designated witness.

3572 What we are asking for is not a particular date, but we
3573 ask each witness to respond promptly to any question that
3574 might come your way, and there probably will be more because
3575 there were so many important issues that were brought up.

3576 So before I close, let me say that I request unanimous
3577 consent to enter into the record the 22 documents that have
3578 been reviewed by Democrats and Republican staff and enter
3579 those into the record.

3580 *Mr. Bilirakis. Without objection; no objection.

3581 [The 22 documents follow:]

3582

3583 *****COMMITTEE INSERT*****

3584

3585 *Ms. Schakowsky. So let me just make one closing
3586 statement.

3587 You know, Congresswoman Rice said this is why we are
3588 here, to actually get together in a bipartisan way and
3589 address issues that consumers, that businesses, that
3590 Americans really care about. And I just feel so happy today
3591 that we, I believe, have made such important steps forward.

3592 We have introduced this bipartisan, bicameral
3593 legislation. There are some things that I think we can do
3594 better and make it even better, but we have taken such
3595 important steps in this journey.

3596 I want to thank all of our witnesses for contributing to
3597 that, all of our members, and the leaders for bring us to
3598 this point.

3599 And let me yield for just a closing statement to Mr.
3600 Bilirakis.

3601 *Mr. Bilirakis. Thank you, Madam Chair.

3602 I want to thank the chairman and the ranking member of
3603 the full committee and, of course, Madam Chair, yourself as
3604 well. This is how we legislate. This is regular order.
3605 That is what we want.

3606 I think we have a good draft. We can improve the bill
3607 and move it forward.

3608 So, again, I praise you, Madam Chair and the entire
3609 committee and, of course, especially the staff because they

3610 have done an outstanding job, and thank you to the presenters
3611 as well. We are going to make the bill even better.

3612 Thank you. I yield back.

3613 *Ms. Schakowsky. Thank you, Mr. Bilirakis.

3614 And the committee is now adjourned.

3615 [Whereupon, at 1:55 p.m., the subcommittee was
3616 adjourned.]