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6 LEGISLATIVE SOLUTIONS TO PROTECT KIDS ONLINE

7 AND ENSURE AMERICANS' DATA PRIVACY RIGHTS

8 WEDNESDAY, APRIL 17, 2024

9 House of Representatives,

10 Subcommittee on Innovation, Data, and Commerce,

11 Committee on Energy and Commerce,

12 Washington, D.C.

13

14 The subcommittee met, pursuant to call, at 10:00 a.m.,

15 in Room 2123 Rayburn House Office Building, Hon. Gus

16 Bilirakis [chairman of the subcommittee] presiding.

17

18 Present: Representatives Bilirakis, Bucshon, Walberg,

19 Duncan, Lesko, Armstrong, Fulcher, Harshbarger, Cammack,

20 Obernolte, James, Rodgers (ex officio); Schakowsky, Castor,

21 Dingell, Kelly, Soto, Trahan, Clarke, and Pallone (ex

22 officio).

23

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24 Also present: Representatives Miller-Meeks; and
25 Schrier.

26

27 Staff present: Kate Avery, Digital Director; Sarah
28 Burke, Deputy Staff Director; Michael Cameron, Professional
29 Staff Member; Nick Crocker, Senior Advisor and Director of
30 Coalition; Sydney Greene, Director of Operations; Jessica
31 Herron, Clerk; Nate Hodson, Staff Director; Tara Hupman,
32 Chief Counsel; Emily King, Member Services Director; Tim
33 Kurth, Chief Counsel; Brannon Rains, Professional Staff
34 Member; Teddy Tanzer, Senior Counsel; Hannah Anton, Minority
35 Policy Analyst; Keegan Cardman, Minority Staff Assistant;
36 Waverly Gordon, Minority Deputy Staff Director and General
37 Counsel; Daniel Greene, Minority Professional Staff Member;
38 Tiffany Guarascio, Minority Staff Director; Lisa Hone,
39 Minority Chief Counsel; Francella Ochillo, Minority IDC
40 Fellow; Joe Orlando, Minority Junior Professional Staff
41 Member; Phoebe Rouge, Minority FTC Detailee; Andrew Souvall,
42 Minority Director of Communications, Outreach and Member
43 Services; and C.J. Young, Minority Deputy Communications
44 Director.

45

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46 *Mr. Bilirakis. Good morning, everyone. The
47 subcommittee will come to order. The chair recognizes
48 himself for an opening statement.

49 Again, good morning and welcome to today's legislative
50 hearing to examine solutions to protect kids online and
51 safeguard Americans' data privacy rights. First I want to
52 welcome our new members, our new subcommittee members,
53 Representative Obernolte and Representative James. I am not
54 sure _ they are here somewhere. Okay, very good.
55 Excellent. All right, perfect timing, perfect timing.

56 With business acumen, they are a very, very _ and they
57 have a lot of technical expertise, very knowledgeable in
58 these areas. These esteemed members will bring new ideas,
59 in my opinion, to the subcommittee. They will add greatly
60 to our subcommittee. So welcome. I am looking forward to
61 working with both of them.

62 During the 118th Congress, our subcommittee held
63 multiple hearings to examine the need for federal data
64 privacy and security law. These hearings illustrate the
65 need to provide certainty for Americans to know their rights
66 online and for businesses to know their obligations on a
67 consistent basis throughout the country. It will also help

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68 cement America's global leadership and ensure we remain
69 competitive in this evolving landscape.

70 The bipartisan work has culminated with a discussion
71 draft, the American Privacy Rights Act, which is a
72 comprehensive privacy and data security standard. This
73 bipartisan, bicameral bill gives Americans the right to
74 control their personal information, including how and where
75 it is being used, collected, and stored. This legislation
76 establishes a national standard, one national standard, long
77 overdue. It preempts the patchwork of state laws so when
78 consumers and businesses cross state lines, there are
79 consistent rights, protections, and obligations.

80 The discussion draft creates requirements for companies
81 contributing to the data ecosystem while protecting small
82 businesses trying to provide for their customers. The bill
83 also directs strong data security standards that minimize
84 and protect against data being used by bad actors and
85 provides Americans notice of their data is being transferred
86 to a foreign adversary like China, but it allows consumers
87 the choice to opt out. Very important. We are also
88 discussing proposals that require age verification for
89 certain websites and social media companies, streamline

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90 terms of service labeling, and allow third party software
91 providers to make social networks safer.

92 There are also two bills that received significant
93 attention in the Senate: Representative Walberg's Childrens
94 and Teens' Online Privacy Protection Act, or COPPA 2.0, and
95 my bill, the Kids Online Safety Act, or KOSA. I am proud to
96 collaborate on these kids' privacy and online safety
97 measures with our subcommittee vice chair, Representative
98 Walberg, and I thank him for his longstanding leadership in
99 this space. I also am grateful to my fellow Floridian and
100 colleague, Representative Castor. On a bipartisan basis we
101 have worked on these particular bills and I appreciate her
102 cooperation.

103 I am looking forward to continuing to work towards
104 passage of these critical safety measures. We know that Big
105 Tech has failed, ladies and gentlemen, to prioritize the
106 health and safety of our children online resulting in a
107 significant increase in mental health conditions, suicide,
108 and drug overdose deaths. We have heard stories over and
109 over and over again in our respective districts, and it is
110 just awful. We have got to do something about it. It is
111 time for Big Tech to be held accountable for facilitating

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112 this activity and manipulating our kids to keep them
113 addicted to their screens for longer than ever before.

114 I am glad to have Ava Smithing. Ava, we had a
115 conversation, she is so impressive. Ava is from the Young
116 People's Alliance here to share her personal story about the
117 harms she experienced as a young woman related to social
118 media. Ava, again thank you so much for being here.

119 I am also looking forward to hearing from Kara
120 Frederick who can share her experience as a team lead for
121 Facebook. She understands how these companies operate and
122 how to curtail the harms of their products.

123 In closing, I want to thank our witnesses for their
124 testimony in advance, and I want to thank our great
125 chairperson, Representative Mrs. Rodgers, for her historic
126 bipartisan proposal. She has done such an outstanding job
127 on this and I know it is a priority for her. It is a
128 priority for me and all of us here on the committee. It is
129 true. And then, of course, the ranking member who has
130 worked with her.

131 We passed this similar bill last year out of full
132 committee. We are going to get this done this year. So _
133 and then I want to thank my ranking member, Mrs. Schakowsky

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134 for her cooperation, all she has done.

135 Let's get this done together for the sake of all
136 Americans, especially our children.

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

138

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

140

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141 *Mr. Bilirakis. So I will now recognize the gentlelady
142 from Illinois, Ms. Schakowsky, for her five minutes to give
143 her opening statement. You are recognized.

144 *Ms. Schakowsky. Well, thank you so much, Mr.
145 Chairman. Let me just say, I think this is a really good
146 day. You know, there may be a lot of differences that we
147 may have across the aisle that show up all too frequently,
148 but this is not one of those days. I am really happy today
149 because we are finally getting back to the bipartisan
150 business of protecting consumers online, so this is really
151 an important day.

152 I know that there are 10 bills that we are going to be
153 talking about. I am going to focus on the one that I have
154 really spent a lot of time on along with Gus Bilirakis,
155 along with the chairman and the ranking member of this
156 committee, to talk about how we are going to get back to
157 legislation to protect Americans' data privacy.

158 This is, you know, this is an opportunity that we have
159 that is long overdue. Americans have been feeling the
160 threats that they have as consumers, as business people, and
161 certainly for our children for far too long. We were able
162 _ you know, we have a history now of bipartisanship. We

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163 were able to pass legislation out of this committee in the
164 last Congress, and I want again to thank all of the
165 participants on both sides of the aisle that made this
166 happen.

167 But right now still consumers find that companies are
168 tracking their, you know, their _ all of their data that _
169 where they go and who they talk to. All of these things are
170 an open book right now because of Big Tech. The _ let's
171 see.

172 You know, once that data is out, then you have data
173 brokers who buy and sell this information. You ask people
174 on the street, do you know what a data broker is, I
175 guarantee you nobody has really heard of that, and they
176 don't know that this is part _ that their data is part of a
177 business and profit making. And most people don't know also
178 that almost 80 percent of people around the world are
179 protected by national privacy laws, but the United States is
180 not, so it is definitely time to act.

181 Just since 2002, we have seen that 12 states now have
182 gone ahead and moved on data privacy, so we need a national
183 law, there is no question. And this bipartisan legislation,
184 the American Privacy Rights Act, who _ that has been

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185 introduced now by Chairman Rodgers and I think lots of
186 cosponsors who will be getting to work on this bring us to
187 the right place that we need to go. The bill builds on our
188 privacy work over the last several years now and this has
189 given, this is now our _ definitely our time to act.

190 Again, back to data brokers, now we know that under
191 this legislation they will not be able to help scammers get
192 the information they need to go after consumers. We know
193 that consumers will be able to opt out for algorithms that
194 could jeopardize their freedom to buy houses and their
195 employment or even their health information. In _ I also
196 want to tell you one thing that is very important to me and
197 that is we want to make sure that we are having strong
198 protections for data like _ what is that?

199 *Voice. Fingerprints or DNA.

200 *Ms. Schakowsky. What is it?

201 *Voice. Fingerprints or DNA.

202 *Ms. Schakowsky. Fingerprints or DNA, which we want to
203 make sure is protected. So we have a good deal of
204 legislation that still needs to be done. And let me just
205 mention that we aren't finished yet, so this legislation is
206 not complete, it is still a work in progress, but we are

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207 making that progress right now.

208 And I am _ I know that when we would have witnesses
209 that would come before us _ to a person _ when the issue of
210 data came up, Republicans, Democrats, experts, people in the
211 business would talk about the need for us to finally get to
212 having in the United States of America a data privacy
213 legislation. So there has really been a unanimity among all
214 the players that we do this.

215 So let me just say I am so grateful to be part of this
216 effort. I know that we are going to run into things that we
217 have to nego _ yet are negotiated, but I am absolutely
218 confident with our chairman, with our ranking member, and
219 all the others that we are going to be able to move forward.

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

221

222 *****COMMITTEE INSERT*****

223

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224 *Ms. Schakowsky. And with that, I will yield back.

225 *Mr. Bilirakis. The gentlelady yields back. Look
226 forward to continue to work with you, it has been a
227 pleasure.

228 Now we will recognize the Chair of the full committee,
229 my good friend, Mrs. Rodgers, for five minutes for her
230 opening statement.

231 *The Chair. Good morning, and thank you, Mr. Chairman.
232 Right now the average American spends nearly seven hours
233 online a day with two-and-a-half hours of that being spent
234 on social media platforms. The consequences range from
235 increased suicide rates and depression to increased
236 polarization and loss of trust in our institutions. All the
237 while, these companies are collecting nearly every data
238 point imaginable which then they use to control what we see
239 and when we see it.

240 Many of these tools were created with good intentions,
241 to bring us together, but over time they have strayed from
242 their core mission in the interest of more control over our
243 lives. This isn't the American dream. America was built on
244 individual liberty and freedom. Freedom of thought,
245 expression, and speech. Our founders fought for these

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246 freedoms because they were tired of living under the
247 crushing weight of tyranny. They were tired of being told
248 how to think and how to live by a few elites who thought
249 that they knew best and who exploited others for their own
250 power and wealth.

251 Fast forward to today we find ourselves living in a
252 similar modern form of digital tyranny where a handful of
253 companies and bad actors are exploiting our personal
254 information, monetizing it, and using it to manipulate how
255 we think and act. Many companies are using their control
256 over our data to erode people's agency, their thoughts,
257 their rights, their identity. It is time for the status quo
258 to change.

259 Today we will be discussing several pieces of
260 legislation, including the American Privacy Rights Act, to
261 give people the right to control their personal information
262 online and not have it used against them. We are putting
263 people back in control of who they are, what they think, and
264 how they live their lives, and this is especially necessary
265 for our children.

266 As a mom of three school-age children, Big Tech
267 platforms are my biggest fear. The algorithms developed by

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268 these companies are specifically designed to get kids
269 addicted to their platforms and they have been used to
270 target children with content that leads to dangerous life-
271 threatening behaviors. For me and my husband, as well as
272 millions of parents across the country, this is a battle for
273 our kids' development, their mental health, and ultimately
274 their safety.

275 We must build a better future for our children. They
276 are our future. The American Privacy Rights Act is
277 foundational to protecting our kids online. Working
278 together with other important legislation like the Kids
279 Online Safety Act, the Childrens and Teens' Online Privacy
280 Protection Act, and other bills which are also being
281 discussed today, these solutions will ensure the best
282 protections to date for our children.

283 Today we find ourselves at a crossroads. We can either
284 continue down the dangerous path we are on, letting
285 companies and badactors continue to collect massive amounts
286 of data unchecked while they trample on core American values
287 like free expression, free speech, and identity, or we can
288 give people the right to control their information online.

289 Congress has been trying to develop and pass

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290 comprehensive data privacy and security legislation for
291 decades. While the American Privacy Rights Act _ with the
292 American Privacy Rights Act, we are at a unique moment in
293 history where we finally have an opportunity to imagine an
294 internet that will foster massive economic innovation and
295 growth and truly be a force for good.

296 I would like to thank Senator Cantwell for working with
297 me on this landmark draft bill. I would also like to thank
298 Ranking Member Pallone, who has been a trusted partner over
299 the years as we have worked together on privacy. We would
300 not be here today without his tireless efforts and
301 leadership and I look forward to continuing to work with him
302 and strengthening the privacy protections for Americans.

303 I would also like to thank Chairman Gus Bilirakis,
304 Ranking Member Jan Schakowsky, the members of this
305 committee, Republicans and Democrats, who are standing
306 together here today, many who have been involved in these
307 efforts over several Congresses, and I am looking forward to
308 working together on behalf of the American people to get
309 this legislation through Congress and signed into law.

310 [The prepared statement of The Chair follows:]

311

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312 *****COMMITTEE INSERT*****

313

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314 *The Chair. I yield back.

315 *Mr. Bilirakis. Thank you very much. I appreciate it,
316 Madam Chair. I am fired up. We got to get this done, so
317 thank you very much.

318 I am going to recognize the gentleman from New Jersey,
319 the ranking member of the full committee, Mr. Pallone, for
320 five minutes for his opening statement. You are recognized,
321 sir.

322 *Mr. Pallone. Well, thank you, Mr. Chairman, and I am
323 fired up, too. Obviously, we think this bill is very
324 important and we are working on it in a bipartisan way with
325 Chair Rodgers, yourself, and Ranking Member Schakowsky. We
326 do need to get this done.

327 So we are taking a significant step forward today with
328 a strong comprehensive data privacy and data security
329 protection bill. For far too long, Americans have been
330 virtually powerless against Big Tech's unceasing drive to
331 collect, use, and profit from the sale of vast amounts of
332 Americans' personal information.

333 Last Congress, as chair of this committee, I was proud
334 to work with then Ranking Member Rodgers and Subcommittee
335 Leader Schakowsky and Bilirakis to take bold action to

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336 protect Americans' personal information. The American Data
337 Privacy and Protection Act was the first bipartisan and
338 bicameral comprehensive data privacy legislation in decades
339 and was reported out of this committee with a 53 to two
340 vote. And that historic legislation included strong federal
341 data privacy and security standards that put people back in
342 control of their personal data, curbed data collection
343 abuses by Big Tech, reined in the shadowy world of data
344 brokers, and provided important protections to keep kids
345 safe online.

346 So I am pleased that the American Privacy Rights Act
347 discussion draft today adopts many of the key pillars of the
348 ADPPA with data minimization rather than notice and consent
349 as its foundation. Notice and consent as the basis for
350 privacy regime imposes unreasonable burdens on consumers and
351 it simply does not work.

352 By contrast, data minimization limits the amount of
353 personal information entities collect, process, retain, and
354 transfer to only what is necessary to provide the products
355 and services being requested by the consumer, and that means
356 no more flashlight apps collecting and sharing geolocation
357 information, no more dating apps gathering health-related

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358 information to use for targeted marketing, no more wellness
359 apps selling mental health information to data brokers. And
360 this discussion draft combines data minimization with
361 provisions that empower consumers to access, correct,
362 delete, and port their personal data, opt out of targeted
363 advertisements, and prohibit data brokers from collecting
364 their personal information.

365 And there are several key areas where I believe it can
366 be strengthened, starting with the area of children's
367 privacy. I have long said that any comprehensive privacy
368 law must provide heightened privacy protections for
369 children. This new draft recognizes that information about
370 children is sensitive but it does not provide many of the
371 specific protections for children that can be found in the
372 ADPPA.

373 To start, we should explicitly prohibit targeting
374 advertising to children who often cannot distinguish between
375 advertising and non-advertising content. We should also
376 require companies to incorporate privacy by design in their
377 practices and to adopt policies, practices, and procedures
378 that take special care to identify acts, assess, and
379 mitigate privacy risk with respect to children. And we

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380 should also consider establishing a youth privacy division
381 at the FTC to ensure that substantial resources are provided
382 to protect children's privacy.

383 We need to ensure that COPPA 2.0, which is one of the
384 bills under consideration today, provides sufficiently
385 robust privacy protections for children. It provides for
386 data minimization but leaves websites and apps largely free
387 to collect, use, and disclose minors' information after
388 obtaining consent from a teen or the parent of a child.
389 COPPA 2.0 would actually provide children and teens with
390 less robust privacy protection than those provided to adults
391 in the American Privacy Rights Act.

392 We should also explore whether there are additional
393 tools that we can give consumers to control the data in the
394 possession of data brokers. The Chair's discussion draft
395 directs the FTC to create a single mechanism that would
396 allow consumers to opt out of future data collection by all
397 data brokers. ADPPA went one step further and directed the
398 creation of a universal deletion mechanism which would allow
399 consumers to direct all data brokers to delete their
400 information, and without such a provision, consumers who
401 don't want data brokers retaining and selling their data,

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402 would have to visit hundreds of data broker websites and opt
403 out of each one.

404 Furthermore, in a digital society, privacy rights are
405 civil rights. The combination of artificial intelligence
406 and personal data can be weaponized to deprive people of the
407 equal opportunity to find housing, look for a job, or
408 receive information about goods and services. As we advance
409 comprehensive privacy legislation that includes provisions
410 on algorithmic accountability and discrimination, we should
411 examine whether the current legislation adequately reflects
412 what we have learned about AI, particularly generative AI,
413 since ADPPA moved through this committee two years ago.

414 So I look forward to hearing from our witnesses and
415 other stakeholders about ways we can strengthen the
416 discussion draft beyond what I have highlighted. I am
417 optimistic that we will be able to get comprehensive privacy
418 legislation across the finish line and I am committed to
419 working with Chair Rodgers and my colleagues to get it done.
420 And I also want to hear more about the other bills on
421 today's agenda.

422 [The prepared statement of Mr. Pallone follows:]

423

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424 *****COMMITTEE INSERT*****

425

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426 *Mr. Pallone. And with that, I know I am over my time,
427 Mr. Chairman, I yield back.

428 *Mr. Bilirakis. Thank you. I thank the gentleman.
429 The gentleman yields back. And now we will hear from our
430 witnesses.

431 Our first witness is David Brody, Managing Attorney of
432 the Digital Justice Initiative at the Lawyers' Committee for
433 Civil Rights Under Law. You are recognized, sir, thanks for
434 being here. You are recognized for five minutes.

435

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436 STATEMENT OF DAVID BRODY, MANAGING ATTORNEY, DIGITAL JUSTICE
437 INITIATIVE, LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW;
438 MAUREEN K. OHLHAUSEN, CO-CHAIR, 21ST CENTURY PRIVACY
439 COALITION; AVA SMITHING, DIRECTOR OF ADVOCACY, YOUNG
440 PEOPLE'S ALLIANCE; KARA FREDERICK, DIRECTOR, TECH POLICY
441 CENTER, THE HERITAGE FOUNDATION; SAMIR C. JAIN, VICE
442 PRESIDENT OF POLICY, CENTER FOR DEMOCRACY & TECHNOLOGY; AND
443 KATHERINE KUEHN, MEMBER OF BOARD OF DIRECTORS AND CISCO-IN-
444 RESIDENCE, NATIONAL TECHNOLOGY SECURITY COALITION

445

446 STATEMENT OF DAVID BRODY

447

448 *Mr. Brody. Chair Bilirakis, Ranking Member
449 Schakowsky, and members of the subcommittee, thank you for
450 the opportunity to testify today. My name is David Brody,
451 and I am the Managing Attorney of the Digital Justice
452 Initiative at the Lawyers' Committee for Civils Rights Under
453 Law. The Lawyers' Committee uses legal advocacy to achieve
454 racial justice, fighting inside and outside the courts to
455 ensure that black people and other people of color have
456 voice, opportunity, and power to make the promises of our
457 democracy real.

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458 We care about privacy because it ensures that who we
459 are cannot be used against us unfairly. Privacy rights are
460 civil rights. The lack of a federal privacy law enables
461 discrimination and other harms. Data about black
462 communities and other historically-marginalized groups often
463 reflect the history of inequality and segregation in this
464 country. Tech companies that collect that data feed it into
465 algorithms and use it to make life-altering decisions.

466 Attached to my testimony is an appendix documenting
467 hundreds of examples of how these practices lead to
468 discriminatory harms and unequal access to goods and
469 services. Consumer data also fuel disinformation campaigns
470 by foreign adversaries that seek to undermine American
471 democracy. That is why we are encouraged by the bipartisan
472 and bicameral American Privacy Rights Act. I would like to
473 thank Chair Rodgers and Senator Cantwell for producing this
474 impressive achievement. The Lawyers' Committee looks
475 forward to working with both chambers to strengthen it.

476 The American Privacy Rights Act would establish
477 building codes for the internet. Strong data protection
478 rules are the infrastructure for American leadership and
479 online commerce. This foundation includes data

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480 minimization, civil rights and consumer protections,
481 transparency, data security, individual control, and multi-
482 layered enforcement.

483 The act has several key improvements over past bills.
484 It prohibits forced arbitration of claims involving
485 discrimination. It provides the right to have major
486 decisions made by a human instead of AI. It has stronger
487 protections for health data. And it prohibits dark patterns
488 that undermine individual autonomy.

489 The bar for federal legislation has risen in the last
490 two years as states enact more privacy and civil rights
491 protections. California continues to strengthen its privacy
492 laws and regulations. Maryland, Maine, and Vermont are
493 advancing comprehensive privacy bills based on this
494 committee's work. Washington enacted protections for health
495 data. Federal legislation must be at least as strong as the
496 state laws to justify preemption.

497 But while residents of some states may enjoy data
498 protections, they are the minority. Many state laws, such
499 as Virginia's and its copycats, are inadequate. Other
500 states have no laws at all. Nationwide, most people are
501 being left behind. We cannot afford to wait.

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502 The American Privacy Rights Act represents an imperfect
503 but needed bargain to protect everyone's rights. First, the
504 bill would prohibit discriminatory uses of personal data and
505 require companies to test their algorithms for bias.
506 Algorithmic decisions should not _ should be based on
507 individual merit, not stereotype shortcuts. Expediency is
508 no excuse for segregation.

509 However, the current civil rights provision contains an
510 exception which could allow advertising that segregates
511 based on protected traits. This could allow the return of
512 whites only solicitations. Fixing this provision is easy
513 but important.

514 Second, the bill would require companies to collect and
515 use only as much personal data as is necessary,
516 proportionate, and limited to provide the services the
517 consumers expect. The bill also provides transparency and
518 individual rights to access, correct, delete, and port
519 personal data. These protections build consumer trust to
520 help uncover discrimination and reduce the risk of fraud,
521 theft, and deceptive practices which disproportionately
522 impact communities of color. However, service providers for
523 government entities need to be covered by the bill as they

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524 were in ADPPA.

525 Third, we applaud the enforcement authority that this
526 bill vests in federal, state, and individual actors. The
527 ability to bring a private lawsuit is particularly important
528 for communities of color that historically could not rely on
529 the government to vindicate their rights. However, we are
530 concerned that this bill has backtracked from ADPPA by
531 narrowing the private right of action for violations
532 involving sensitive data.

533 Lastly, the bill gives important new responsibilities
534 to the FTC. The FTC, however, has been underfunded for
535 decades and needs new resources. In addition, the
536 displacement of the Communications Act is vague and
537 overbroad. This could endanger the FCC's consumer
538 protection authorities and its work to combat illegal
539 robocalls.

540 It is time for Congress to act. The internet is not
541 coded on a blank slate. The future of equal opportunity
542 depends on whether we prevent today's data-driven economy
543 from replicating the mistakes of the past. The promise of
544 the internet and the Democratic aspiration imbued in its
545 creation depend on it. Thank you.

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

547

548 *****COMMITTEE INSERT*****

549

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550 *Mr. Bilirakis. I thank the gentleman for his
551 testimony. I now recognize our next witness, Maureen
552 Ohlhausen, Co-Chair of the 21st Century Privacy Coalition.
553 You are recognized for five minutes.
554

This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.

555 STATEMENT OF MAUREEN K. OHLHAUSEN

556

557 *Ms. Ohlhausen. Chair Bilirakis, Ranking Member
558 Schakowsky, Chair McMorris Rodgers, Ranking Member Pallone,
559 and members of the subcommittee, thank you for the
560 opportunity to testify at this important hearing on
561 legislative solutions to protect kids online and ensure
562 Americans' data privacy rights.

563 I am Maureen Ohlhausen, Co-Chair of the 21st Century
564 Privacy Coalition and a partner at Wilson Sonsini. I also
565 had the honor of serving as an FTC Commissioner and Acting
566 Chairman. I am testifying today on behalf of the Coalition.

567 We commend Chair McMorris Rodgers and Senate Commerce
568 Chair Cantwell for the release of the American Privacy
569 Rights Act discussion draft. The Coalition, which has
570 advocated for comprehensive national privacy legislation for
571 a decade, believes that this draft shows potential for a
572 bipartisan path forward on this urgently needed legislation
573 and we look forward to engaging with you as it moves ahead.

574 All of us share a strong desire for strong consumer
575 privacy protections that apply uniformly throughout the
576 Nation based on the sensitivity and use of data and which

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577 allow consumers to continue to benefit from countless
578 services and technologies. Consumers' personal information
579 should not be subject to varying protections because of the
580 state they are in or the entity collecting such information.

581 Federal legislation should also provide strong
582 enforcement against the misuse or disclosure of consumer
583 data that could result in harm while also allowing companies
584 to develop innovative products. The draft incorporates a
585 number of foundational elements for privacy legislation.
586 First, it is strong and comprehensive, addressing issues
587 such as transparency, consent, and other consumer rights,
588 data security, and the relationship between companies,
589 vendors, and third parties. Second, the draft designates
590 the FTC as the federal enforcer and permits state attorneys
591 general to assist the FTC with enforcement.

592 Third, and as a former Acting Chair of the FTC, I
593 particularly appreciate that the draft provides the FTC with
594 several useful enforcement tools to protect consumers from
595 privacy harms such as civil penalty authority for a first
596 violation, limited APA rulemaking authority, consumer
597 restitution, and jurisdiction over common carriers. Such
598 tools should also be accompanied by appropriate guardrails

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599 to ensure that the FTC does not exceed its authority.

600 Fourth, the draft provides a national privacy and data
601 security framework that generally preempts state laws and
602 regulations. American consumers and businesses deserve the
603 clarity and certainty of a single federal privacy _ a
604 federal standard for privacy.

605 Fifth, the discussion draft recognizes that legacy
606 privacy requirements in the Communications Act must be
607 preempted. This would allow a holistic approach to consumer
608 privacy under FTC oversight based upon the type of
609 information collected rather than the legacy regulatory
610 history of the entity collecting it.

611 We believe, however, that the draft raises several
612 concerns that warrant further consideration and discussion.
613 First, although the draft would preempt FCC privacy and data
614 security authority, it stops short of preempting the FCC's
615 data breach notification authority. To facilitate a
616 consistent approach to the bill's privacy and data security
617 requirements, the FCC's authority should be eliminated.

618 Second, the draft appropriately seeks to replace the
619 Communications Act provisions addressing video privacy
620 requirements with equivalent protections enforced by the

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621 FTC, but the draft language could unintentionally cause
622 significant disruption to common and beneficial practices in
623 the TV marketplace.

624 Third, the bill should better reflect a risk-based
625 approach based on the nature of the relevant information and
626 its usage. While we appreciate that first party marketing
627 is included as a permissible purpose, we are concerned that
628 sensitive information is not included in this exception to
629 the bill's data minimization requirement. Given how broadly
630 the discussion draft defines sensitive data, the draft would
631 undermine the ability of communications providers to tailor
632 offerings to existing customers based on how they use our
633 services.

634 Fourth, while the draft seemingly provides broad state
635 preemption, it includes exceptions that may unduly limit its
636 application. Permitting states to adopt privacy specific
637 laws would be problematic as would allowing plaintiffs to
638 invoke broad types of claims to circumvent the bill's
639 prohibition on privacy-specific laws, and we would be glad
640 to engage with you further on this proposed provision.

641 Fifth, by adopting an overly broad definition of the
642 term substantial privacy harm, the draft would abrogate

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643 arbitration agreements while inviting class action lawsuits
644 that would undermine compliance with the legislation.

645 Thank you again for the opportunity to participate in
646 today's hearing and I look forward to your questions.

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

648

649 *****COMMITTEE INSERT*****

650

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651 *Mr. Bilirakis. I thank the gentlelady. Our next
652 witness is Ava Smithing, Director of Advocacy at the Young
653 People's Alliance. You are recognized for five minutes.
654

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655 STATEMENT OF AVA SMITHING

656

657 *Ms. Smithing. Chair Bilirakis, Ranking Member
658 Schakowsky, Chair McMorris Rodgers, and Ranking Member
659 Pallone, members of the subcommittee, it is an honor to
660 testify before you today. I hope to strengthen your
661 understanding of the issues we are discussing with my own
662 personal story.

663 *Mr. Duncan. Do you mind pulling the mic a little
664 closer to your mouth, please?

665 *Ms. Smithing. Yes. Is that better, y'all? All
666 right, perfect.

667 I hope to strengthen your understanding of the issues
668 we are discussing today with my own personal story and the
669 knowledge and experience of the young people I have the
670 privilege of representing through the Young People's
671 Alliance. My name is Ava Smithing, and I was one of the
672 teenage girls on Instagram with an eating disorder. I say
673 this all the time, I have said it to many members of your
674 staff, but there are no words I could use that would
675 describe in full the dehumanization that comes with valuing
676 your appearance over your health and wellbeing or the pain

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677 and anger that comes from knowing this was inflicted on me
678 for profit.

679 I first downloaded social media when I was 10 or 11
680 years old. There was a brief moment when the platforms did
681 as they promised and peacefully connected me to my friends
682 and new ideas. Then Facebook bought Instagram and
683 everything changed. We could have never imagined what would
684 happen and what would have been ushered onto social media in
685 the coming years along with algorithm-recommended content
686 and targeted advertising.

687 Soon after this change, between photos of my friends
688 and my family, appeared advertisements of women with
689 unrealistic bodies. My natural tendency to compare and
690 therefore inclination to pay attention to these posts was
691 taken by Instagram as an invitation for more like them.
692 Companies' ability to track engagements, such as the
693 duration of time I looked at a photo, revealed to them what
694 would keep me engaged. My own insecurity.

695 They stored my insecurity as data and linked it to all
696 of my accounts across the internet. They used my data to
697 infer what other types of ads and content I might like
698 leading me down a pipeline from bikini advertisements to

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699 exercise videos to dieting tips and finally to eating
700 disorder content. I have a very specific memory of one post
701 titled Ballerina Diet suggesting that the daily intake of
702 only a black coffee, an orange, and 16 almonds would keep me
703 thin. In a sea of photos of unrealistically thin women,
704 this Ballerina Diet was my life raft.

705 The data they collected represents my greatest
706 vulnerability. I wasn't thin enough. I interacted with one
707 picture of one thin girl one time and that is all I was ever
708 able to see. For 10 years I was trapped inside this echo
709 chamber where social media takes a classic American beauty
710 standard and puts it on a loop in front of my face while
711 also showing me in real time the huge number of likes and
712 comments of adoration these posts were getting and reminding
713 me the limited number of posts and likes mine was getting.

714 Societal validation through thinness in my specific
715 case is the carrot. Instagram, Pinterest, and TikTok are
716 the stick and I, along with the rest of America's youth, am
717 the donkey.

718 None of this would have happened to me if we had a
719 national data privacy standard that ensured data
720 minimization and gave me the ability to correct these ill-

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721 informed inferences. None of this would have happened to me
722 if we had the Kids Online Safety Act that ensured companies
723 exercise reasonable care to mitigate harm to me. None of
724 this would have happened to me if I had the option to opt
725 out of algorithms that use my data to target me with harmful
726 content, or better yet, if these algorithms had been
727 defaulted off.

728 I harbor no resentment. I understand the unprecedented
729 nature of social media made it impossible for us to know
730 what was coming and to properly act to prevent these harms
731 and I am grateful for the progress we have made this far,
732 but we desperately need to pass legislation like the Kids
733 Online Safety Act to protect against downstream harms caused
734 by specific design features. We need to pass COPPA 2.0 to
735 update that old, tired privacy law and we need to pass
736 comprehensive data privacy to protect all Americans.

737 Whatever steps we take to protect kids alone will
738 eventually prove fruitless if the democracy they grow up
739 into is too fractured to function. Data privacy will
740 protect users from the harm and polarization caused by
741 social media upstream by limiting the information platforms
742 can collect on them and use to sort them into echo chambers.

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743 Data privacy will ensure that future iterations of
744 exploitation of our data are protected against and create a
745 framework for which we can regulate artificial intelligence.

746 I promise you that passing legislation like the bills
747 we are talking about today will make your jobs easier and
748 uncloud the heavily polarized discourse that are happening
749 about these issues online. Thankfully, there is a growing
750 movement of young people dedicated to advocating for my
751 generation. Our partnership with the Design It For Us
752 Coalition underscores this as I see more young people every
753 day joining this fight.

754 Ultimately, this is about more than data privacy and
755 protecting kids online. It is about establishing a
756 precedent for how we react to technology when it endangers
757 us and our humanity and demonstrating to younger generations
758 that their futures are our priority.

759 Thank you all for your time and work this far and I
760 look forward to answering your questions.

761 [The prepared statement of Ms. Smithing follows:]

762

763 *****COMMITTEE INSERT*****

764

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765 *Mr. Bilirakis. I thank the gentlelady, appreciate it
766 very much. Very powerful testimony. Our next witness is
767 Kara Frederick, Director of the Tech Policy Center at the
768 Heritage Foundation. You are recognized for five minutes.
769

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770 STATEMENT OF KARA FREDERICK

771

772 *Ms. Frederick. Thank you, sir. Chair Bilirakis,
773 Ranking Member Schakowsky, Chair McMorris Rodgers, Ranking
774 Member Pallone, distinguished members of the subcommittee,
775 thank you for the opportunity to testify today. I firmly
776 believe the issue before us, data privacy, is the lynchpin
777 upon which every piece of tech policy legislation will
778 hinge.

779 I used to develop digital patterns of life for a
780 living. My perspective is informed by my time as a
781 practitioner using technology to build profiles of Al Qaeda
782 terrorists for the United States intelligence community
783 where I was a targeter supporter special operations units in
784 Afghanistan. I then led a counter-terrorism analysis team
785 at Facebook headquarters in Menlo Park, California.

786 But most importantly, I am a new mom to a one-year-old
787 little girl. I am here for her. I want to leave her with a
788 world that does not see her as a valuable but untapped
789 commodity to abuse in the service of some big corporation's
790 bottom line. I want to protect her from the predations of
791 these companies and especially those controlled by hostile

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792 foreign adversaries and their unconstrained data mining and
793 exploitation of the next generation of citizens, the
794 consequences of which we are only beginning to understand
795 today.

796 Working for a Big Tech company, I saw firsthand how
797 these big businesses harvest and exploit user data while
798 hiding behind their opaque terms of service, their arcane
799 algorithms, and internal tools that they build and ship on
800 the daily. Because of these features and their data
801 collection practices, the capabilities of these companies
802 often far exceeded the high speed U.S. military command that
803 I worked under.

804 To illustrate the reach of these companies, I would
805 offer the conclusions of one German researcher who in 2019
806 installed 14 applications on his phone in a day only to
807 discover over 7,000 data transmissions to over 600 servers
808 in that timeframe with 64 percent of those transmissions
809 occurring while his screen was locked and 18 percent taking
810 place when he was asleep. TikTok's invasive data collection
811 practices include gathering users' IP addresses, content,
812 contacts, images, microphone access for voice prints,
813 biometric information, networks, device identifiers, screen

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814 resolution, file names and types, along with key stroke
815 patterns and rhythms.

816 Now why would a little video company like TikTok need
817 to know exactly how you strike the keys on your phone? It
818 is to create a multimodal profile of every individual user.
819 My mouth would have watered at the prospect of such a
820 fulsome digital dossier to use while hunting Al Qaeda
821 operatives in the field. And without comprehensive data
822 privacy, they can do this to our children.

823 We know the race to the bottom is in full swing when it
824 comes to companies recruiting younger and younger users to
825 chase growth and add revenue. According to the Wall Street
826 Journal, Facebook even formed a team to study preteens,
827 create products specifically for them, and discover what
828 business opportunities they offer. We are talking nine to
829 11 year olds. And we and these companies know exactly the
830 effects of children using social media and how devastating
831 they are.

832 In 2023 neuroscientists at UNC concluded that habitual
833 social media use effectively rewires the brains of children
834 as young as 12. Further it goes that nowadays when you give
835 your kid a smartphone, you are not giving your kid access to

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836 the world, you are giving the world access to your kid.

837 At the heart of all of this is the privacy question. I
838 submit that the incentives of private companies to blow past
839 fines, forego privacy enhancing technologies and age
840 verification, and recruit kids would be curtailed if we had
841 a national data protection framework. Such a privacy regime
842 would insulate all Americans young and old from the worst to
843 come.

844 The American Privacy Rights Act does this. These
845 policies put Americans back in charge of their data and
846 reduce incentives to abuse the American consumer and our
847 kids. Most importantly, they have the teeth to put Big Tech
848 and enemy-controlled platforms like TikTok on notice. It is
849 time to let them know that their gravy train, often used in
850 contravention to American values and yet built on the backs
851 of our citizens and our kids, is over. The reckoning is
852 here today.

853 I look forward to your questions.

854 [The prepared statement of Ms. Frederick follows:]

855

856 *****COMMITTEE INSERT*****

857

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858 *Mr. Bilirakis. I thank the gentlelady. And our next
859 witness is Samir C. Jain, Vice President of Policy at the
860 Center for Democracy and Technology. You are recognized for
861 five minutes.

862

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863 STATEMENT OF SAMIR C. JAIN

864

865 *Mr. Jain. Thank you, Chair Bilirakis, Ranking Member
866 Schakowsky, and Chair McMorris Rodgers, and Ranking Member
867 Pallone of the full committee for the opportunity to testify
868 today about the urgent need for Congress to finally pass a
869 meaningful privacy law that protects all individuals,
870 including children, that creates certainty for businesses
871 and restores trust in the digital ecosystem.

872 I am Samir Jain, Vice President of Policy for the
873 Center for Democracy and Technology, a nonprofit nonpartisan
874 organization that advocates for civil rights, civil
875 liberties, and democratic values in the digital age. For
876 years now CDT has advocated for a national federal privacy
877 law, and this committee, to its great credit, has done
878 tremendous work to advance us toward that goal.

879 The American Privacy Rights Act, or APRA, that we will
880 be discussing today, builds on that prior work on both a
881 bipartisan and bicameral basis and presents a renewed
882 opportunity to finally finish the long overdue job of
883 passing a federal privacy law. The need for such a law is
884 clear. As numerous congressional hearings have established,

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885 today's data ecosystem is out of control. The explosive
886 emergence of artificial intelligence has only accelerated
887 the need for a privacy law as the need for large training
888 data sets provides just yet another reason for companies to
889 assemble and collect large amounts of information about all
890 of us.

891 A comprehensive privacy law is also a national security
892 imperative. Today, adversary nations can easily collect and
893 process detailed information about Americans, use that data
894 to advance their own AI models or to target Americans with
895 harmful, personalized content like disinformation. APRA
896 provides a sound framework for the comprehensive privacy law
897 that we will need. I will touch on a few of its critical
898 elements.

899 First, data minimization is essential for an effective
900 privacy law. For too long we have relied on a regime of
901 notice and consent premised on the fiction that individuals
902 spend hundreds of hours they would literally need to review
903 the various privacy policies they encounter in a single
904 year. The time has come to shift the primary privacy burden
905 away from individuals and to the companies that collect and
906 profit from our data. APRA's data minimization provisions

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907 would do just that by requiring companies to justify their
908 data collection and processing as necessary, proportionate,
909 and limited to the product or service requested by the
910 individual or for a list of other permissible purposes.

911 Second, nondiscrimination. Increasingly, AI systems
912 that leverage large amounts of data are being used to make
913 decisions about employment, lending, and other settings that
914 can dramatically affect people's lives. APRA would prohibit
915 using that data in a way that creates or exacerbates
916 discrimination, whether a black person searching for a job,
917 a woman seeking a loan to start a business, or a veteran
918 with a disability trying to find housing.

919 Third, APRA would finally start to rein in the well-
920 established harms caused by data brokers. It would give
921 individuals greater visibility and control by establishing a
922 data broker registry through which a person could submit a
923 request for data brokers to no longer collect data about
924 them. Another bill under consideration at the hearing
925 today, the Delete Act, would go a step further and establish
926 a centralized mechanism through which individuals could seek
927 the deletion of their information.

928 In addition, the House will soon be voting on the

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929 Fourth Amendment is Not for Sale Act, which would prohibit
930 law enforcement and intelligence agencies from collecting
931 certain information by purchasing it from data brokers
932 instead of the legal process that would otherwise be
933 required. We urge Congress to pass this law as an initial
934 but critically important step.

935 While APRA's basic framework is strong, it will need
936 further refinement as it moves through the legislative
937 process. For example, a comprehensive privacy law that
938 establishes baseline protections for everyone is also the
939 right context in which to consider what additional
940 protections are needed for kids. ADPPA would have provided
941 explicit protections for children, including a ban on
942 targeted advertising for those under 17 and on transfers of
943 children's data without consent. These types of bipartisan
944 reforms would provide meaningful and important protections
945 for children.

946 Some of the requirements in other proposals, such as
947 the Kids Online Safety Act, while well-intentioned and
948 pursuing an important goal, do raise some concerns.
949 Legislation that restricts access to content because
950 government officials deem it harmful can harm youth and

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951 present significant constitutional issues. Further,
952 requirements for strong incentives to adopt age verification
953 systems to identify children often require further data
954 collection from children and adults alike and thereby can
955 undermine privacy and present their own constitutional
956 concerns.

957 CDT is encouraged by the release of the bipartisan,
958 bicameral draft of APRA and thanks this committee for the
959 work to advance comprehensive privacy legislation. We look
960 forward to working constructively with you to make any
961 necessary changes to APRA and help to move it forward
962 through the legislative process and finally into law.

963 Thank you, and I look forward to your questions.

964 [The prepared statement of Mr. Jain follows:]

965

966 *****COMMITTEE INSERT*****

967

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968 *Mr. Bilirakis. I thank the gentleman. The gentleman
969 yields back. Our final witness is Katherine Kuehn, Member,
970 Board of Directors and CISO-in-Residence at the National
971 Technology Security. You are recognized for five minutes.
972

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973 STATEMENT OF KATHERINE KUEHN

974

975 *Ms. Kuehn. Thank you. Chair McMorris Rodgers,
976 Ranking Member Pallone, Chairman Bilirakis, Ranking Member
977 Schakowsky, and members of the committee, thank you for the
978 opportunity to testify today on the American Privacy Rights
979 Act of 2024.

980 My name is Katherine Kuehn, and I am a member of the
981 National Technology Security Coalition Board of Directors
982 and serve as their CISO-in-Residence. Established in 2016,
983 the National Technology Security Coalition is a nonprofit,
984 nonpartisan organization that serves as the preeminent
985 advocacy voice for the chief information security officer,
986 chief privacy officers, and the senior security technology
987 executives.

988 The CISO is the senior technology risk executive who is
989 responsible for the information and data security of an
990 enterprise. We are charged with protection of the
991 enterprise from information security risks, be it from
992 nation states, cybercriminals, hacktivists, or unknowing
993 employees committing non-malicious violations of the
994 organization's policy. The CISO is on the front line of

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995 serving our Nation's data and securing individual's private
996 information and our Nation's critical infrastructure.

997 I sit before the committee today with over 25 years of
998 experience leading and advising cybersecurity, technology,
999 and innovative AI, artificial intelligence strategies and
1000 teams to help the public and private sectors achieve more
1001 informed risk decisions. I have strived in my career to
1002 maintain a comprehensive understanding of all facets of the
1003 cybersecurity ecosystem, acting in numerous capacities both
1004 on the practitioner and operator side.

1005 My career as a risk executive actually started here in
1006 Washington. I was an intern 30 years ago for Senator Tom
1007 Harkin. One of my responsibilities was to create his first
1008 website. I was given a book, HTML for Dummies, and told to
1009 build his first site.

1010 I remember when we launched the first page that I was
1011 concerned about the security and wondered while we were so
1012 proud of it, would there be ways in the future to take the
1013 data we provided, the people we highlighted on the site, and
1014 would it be used in negative ways. It was the first time I
1015 had ever had a concern about the bright future the still
1016 very new internet had, promising achieving amazing things

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1017 for us but still concerning about the security around it.

1018 My career in cyber was born.

1019 All these years later, now a mother of five, twin 15-
1020 year-old daughters, a 14-year-old son, an 11-year-old
1021 daughter, and a two-year-old son, COVID surprise, I still
1022 believe that the future looks bright, but I am concerned
1023 about the digital revolution we have witnessed and what will
1024 the future my children face considering privacy, where the
1025 future of the internet goes. It gives me pause for concern.

1026 As a career risk executive, it is not a surprise the
1027 complexity of consumer privacy, data privacy has brought us
1028 here today. In a recent study, it was highlighted that nine
1029 out of ten Americans consider their online privacy to be an
1030 important issue, with 85 percent of global adults wanting to
1031 do more to protect their online privacy.

1032 I reflect on a comment made by Vint Cerf, widely
1033 accepted as one of the fathers of the internet and my
1034 mentor. In 2013 he said that privacy may be an anomaly. I
1035 remember disagreeing with the comment then and now, over 10
1036 years later, with the rapid acceleration of social media,
1037 data mining, and targeted influence campaigns, it is clear
1038 to me that privacy with respect to our data cannot be

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1039 anomaly and must be protected.

1040 Today, American consumers and corporations navigate a
1041 complex landscape of state-specific privacy laws. These
1042 state laws, while pioneering, create a patchwork of
1043 disparate regulations that can be confusing for consumers
1044 and burdensome for businesses. 17 states have enacted
1045 privacy laws and regulations with another 18 states actively
1046 pursuing various pieces of legislation. In the absence of
1047 federal privacy law, the average consumer has little to no
1048 understanding of the protections state offers, with one in
1049 four Americans being asked to agree to a privacy policy
1050 every day and the potential ramifications of their privacy
1051 differing from state to state.

1052 In addition, there is a risk that states could compete
1053 by offering looser regulations to attract business
1054 investment leading to a race to the bottom in terms of rapid
1055 adoption of privacy standards. This introduces new areas of
1056 risk, especially with the rapid adoption of generative AI
1057 both in the consumer and business space. States trying to
1058 offer more comprehensive consumer data privacy could end up
1059 being penalized for trying to do the right thing. While the
1060 state level protections are noble in thought, inaction from

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1061 the Federal Government has the potential to hurt both
1062 American consumers and businesses, potentially the states
1063 themselves. Individual data protections are not equally
1064 created.

1065 One of the most significant advantages of APRA is the
1066 centralization of privacy standards. Under the current
1067 systems, businesses must adapt to the varying requirements
1068 of different state laws, which can be inefficient and
1069 costly. This fragmentation not only affects businesses but
1070 also leaves gaps in protections for consumers, depending on
1071 their state of residence.

1072 With two-thirds of global consumers feeling that tech
1073 companies have too much control over their data, a federal
1074 standard under APRA would be a big step forward in ensuring
1075 that all American consumers receive the same level of
1076 privacy protection regardless of where they live. This
1077 uniformity helps simplify the legal framework for
1078 businesses, particularly small and medium size enterprises
1079 that might lack the resources to navigate regulatory
1080 environments.

1081 The National Technology Security Coalition supports the
1082 American Privacy Rights Act of 2024 as it marks a

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1083 significant improvement for the landscape of consumer
1084 privacy protections in the United States. As you continue
1085 to work on the federal privacy standard, please consider the
1086 National Technology Security Coalition a resource moving
1087 forward.

1088 Thank you for the opportunity to appear before you
1089 today.

1090 [The prepared statement of Ms. Kuehn follows:]

1091

1092 *****COMMITTEE INSERT*****

1093

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1094 *Mr. Bilirakis. Thank you so very much, I appreciate
1095 it.

1096 Now I will recognize myself for five minutes of
1097 questioning.

1098 Ms. Smithing, thank you for sharing your personal story
1099 with us. Each of us here welcomes your perspective and
1100 insights into how we can protect our kids online. As you
1101 know, I recently introduced the House companion to KOSA
1102 along with my cosponsor _ prime cosponsor, Kathy Castor,
1103 alongside several _ really several of my colleagues. Can
1104 you speak to how design obligations could have spared you so
1105 much harm? And I know that you touched upon this, but I
1106 wanted to give you more time, it is so very important,
1107 please.

1108 *Ms. Smithing. Yes, of course. Thank you, sir, for
1109 the question.

1110 *Mr. Bilirakis. Yes.

1111 *Ms. Smithing. I believe design specific legislation
1112 is incredibly important because while data minimization
1113 could have limited the amount of information they had on me,
1114 features such as likes, which led me to negatively compare
1115 myself to other people, aren't covered by that legislation

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1116 and could have spared me a world of hurt.

1117 There is also specific provisions in there that would
1118 limit things like beauty filters, which are incredibly
1119 harmful for young women. I know sometimes celebrities will
1120 even post pictures with these beauty filters on, save the
1121 photo to their phone, and then reupload them so there is no
1122 tag that the beauty filter is there, which is setting an
1123 absolutely unrealistic and unfair standard for young girls
1124 who look up to these women, and design features like this
1125 are necessary to be covered, and it does so in KOSA.

1126 *Mr. Bilirakis. Thank you, I appreciate it.

1127 Ms. Frederick, thank you for your testimony today. You
1128 have been a tremendous voice in showcasing the harms
1129 perpetrated by Big Tech. We appreciate that. With respect
1130 to KOSA and the American Privacy Rights Act, how will these
1131 bills curb the power and subsequently give control back to
1132 the American people?

1133 *Ms. Frederick. Well, first and foremost, as a general
1134 theme, they hue towards self-governance, which is what
1135 Americans _ how we operate and how we want to live our
1136 lives. We are _ at the Heritage Foundation are big
1137 advocates of transparency, especially when it comes to the

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1138 harms, the legitimate harms that Big Tech companies can
1139 visit on consumers and their children specifically. So what
1140 it does, it drives that transparency, but I think critically
1141 it provides that teeth that I talked about in my opening
1142 statement.

1143 And this is very important because if you want to get
1144 the attention of executives in these Big Tech companies, you
1145 have to have some sort of enforcement mechanism, those
1146 private rights of action that are internal to the American
1147 Privacy Rights Act. That is absolutely critical because you
1148 have to let them understand that what they care about the
1149 most, their bottom line, will be at stake should they
1150 continue to have that gratuitous imbalance between the
1151 consumer and these Big Tech companies themselves.

1152 So I think that accountability mechanism following
1153 transparency is absolutely critical to put the Big Tech
1154 companies on notice.

1155 *Mr. Bilirakis. Thank you very much. Okay,
1156 comprehensive data privacy has been a major issue over the
1157 last 20 years, as you know. I fear our time is running out
1158 to get something done. We have got to get it done now.

1159 So very quickly down the panel, we will start over

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1160 here. Yes or no. Do you think this is the best chance we
1161 have to getting something done on comprehensive data
1162 privacy? We will start from here, please.

1163 *Mr. Brody. Yes.

1164 *Mr. Bilirakis. Thank you.

1165 *Ms. Ohlhausen. Yes.

1166 *Mr. Bilirakis. Yes.

1167 *Ms. Smithing. Yes.

1168 *Ms. Frederick. Yes.

1169 *Mr. Jain. Yes.

1170 *Ms. Kuehn. Yes.

1171 *Mr. Bilirakis. Oh, it is unanimous. We appreciate
1172 that. So I know _ listen, we have a lot of work to do, but
1173 we have got a great start thanks to our chairperson and let
1174 me tell you, the staff has been outstanding. So let's work
1175 together, let's work together to get this done.

1176 And I am going to go ahead and yield back.

1177 I recognize the ranking member, Ms. Schakowsky, for her
1178 five minutes of questioning.

1179 *Ms. Schakowsky. Thank you so much to the witnesses.

1180 The American Privacy Rights Act is finally _ it feels like
1181 it is close and we are finally going to be able to protect,

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1182 I hope and believe, the data privacy of Americans.

1183 But I want to ask you, Mr. Brody, why is it so
1184 important that we do this and that we do this now?

1185 *Mr. Brody. We are at an inflection point for the
1186 future of the internet. As AI and other advanced tools
1187 emerge, we can't afford to replicate the mistakes of the
1188 past. Every single day we are seeing new data breaches.
1189 Every single day we are seeing new research showing how this
1190 tool, or this algorithm, or this thing is disadvantaging one
1191 group or excluding people from opportunities. There is
1192 endless reports of people being denied equal opportunity in
1193 housing, employment, education, credit. We are dealing with
1194 people being exposed to stalking, and identity theft, and
1195 fraud, and we are facing threats of disinformation from
1196 hostile actors. We can't afford to wait.

1197 *Ms. Schakowsky. Thank you. Also another question for
1198 you. The discussion draft has _ talks about protections for
1199 data like fingerprints and DNA, so if you could talk to me
1200 about why we should especially look at that.

1201 *Mr. Brody. So biometric and genetic information is
1202 some of the most sensitive information we have. It is
1203 immutable. If it is compromised, you can't change it, you

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1204 can't get it back under control, and so we have to be
1205 extremely protective of it and make sure that it gets
1206 treated in the appropriate way.

1207 We have also seen that this information is often used
1208 in discriminatory ways, so particularly when we are talking
1209 about facial recognition technology repeatedly over and
1210 over, it has been shown to be less accurate and
1211 discriminatory against women and people of color, and as
1212 that technology is increasingly being used in places of
1213 public accommodation like retail stores and sports arenas,
1214 it poses a serious threat.

1215 *Ms. Schakowsky. Thank you. Then also we know that
1216 scammers can buy suckers lists from data brokers or use data
1217 that is out there illegally right now, and I wanted to ask
1218 Mr. Jain how does this draft that we are working on right
1219 now address this problem of scammers?

1220 *Mr. Jain. Thank you for the question. Well, first of
1221 all, I think the data minimization requirements that
1222 restrict both the initial collection of a lot of data and
1223 that restrict the transfer of that data except for
1224 permissible purposes or except when necessary to provide the
1225 product and service is going to make a lot of less of this

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1226 data flowing through the ecosystem where data brokers can _
1227 today data brokers can essentially purchase anything that
1228 they want, any data that they want from anyone because there
1229 are very restrictions so they can buy data about your online
1230 activities, what you read, what you watch, they can buy data
1231 about your purchases.

1232 And they can put all of this together into profiles
1233 that enable them to assemble lists like what you are talking
1234 about, you know, seniors who are vulnerable to scams or, you
1235 know, seniors who have Alzheimer's disease. And it is that
1236 kind _ and then they can turn around and sell those, right,
1237 to businesses, to advertisers who can then use them to
1238 target ads in a really harmful way.

1239 And so by having data minimization, by having some of
1240 the other protections here, the ability of consumers to say,
1241 hey, data brokers, don't collect my information anymore.
1242 Those kinds of protections will really help rein in some of
1243 these really harmful activities from data brokers.

1244 *Ms. Schakowsky. The more we can take away
1245 opportunities for the scammers, the better we are going to
1246 be. And you are right, a lot of seniors, they get asked for
1247 things like their Social Security Number or whatever, and if

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1248 we could cut back through minimization, we could really help
1249 reduce the scamming. So thank you very much.

1250 And with that, I yield back.

1251 *Mr. Bilirakis. Agreed. Thank you very much. The
1252 ranking member yields back and we will recognize the
1253 chairman of the full committee, Mrs. Rodgers, for her five
1254 minutes of testimony.

1255 *The Chair. Ms. Smithing, you are an inspiration to me
1256 and my daughters, who are 10 and 13, as well as millions of
1257 other young women across the country. Thank you for being
1258 here, thank you for sharing your story. Appreciate your
1259 advocacy for KOSA but also for a national data privacy
1260 standard in our Nation, and you highlighted that we need
1261 both, we need a path so that these protections work
1262 effectively.

1263 In aligning your testimony, you referenced that we had
1264 _ there is an arsenal of data being used against you. Would
1265 you just speak to the American Privacy Rights Act and how
1266 you believe that would have helped stop this ammunition
1267 being used to target you and how it is an effective
1268 complement to KOSA and protecting kids online?

1269 *Ms. Smithing. Yes. Thank you, Chairwoman, for this

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1270 question. I think there is a lot of provisions in the act
1271 that would have helped, specifically the data minimization,
1272 which would have prevented them from building this arsenal
1273 on me in the first place, especially how in data
1274 minimization sensitive covered data, which covers data for
1275 minors, you have to expressly consent for that data to be
1276 transferred to third parties. This would have been
1277 incredibly helpful and would have helped these poor examples
1278 of content from following me across the internet.

1279 Also the ability to opt out of targeted advertising is
1280 incredibly important. Targeted advertising is one of the
1281 most harmful things we see here on the internet and if we
1282 had the option to opt out of that, it would be great. I
1283 will note that not all children have the ability to make the
1284 best decisions for themselves, and I think it is important
1285 that targeted advertising for minors specifically be
1286 defaulted off or banned as it is currently proposed in COPPA
1287 2.0 just because they don't always have the full story.
1288 These companies aren't being honest with how they are using
1289 their data so it is best that it is opted out for them.

1290 *The Chair. Thank you, thank you.

1291 Ms. Frederick, welcome back. Heritage is a respected

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1292 conservative voice and I know we have had many conversations
1293 about why a draft like APRA is reflective of conservative
1294 values. Transparency is important to us. I know we also
1295 share issues about government regulating speech, but do you
1296 see why Big Tech shouldn't be subject to algorithm
1297 assessments and design evaluations? Wouldn't it be good
1298 that we require a company to give thought to the impact on
1299 Americans in the decisions that they make?

1300 *Ms. Frederick. Precisely. And what I think
1301 conservatives in particular have learned in the past few
1302 years is that private companies shouldn't be considered
1303 sacrosanct. They are just as capable on infringing on
1304 Americans' God-given rights as the government and often do
1305 so hand in glove, so that new history of conservatives
1306 should inform the way that we look at specific strictures on
1307 private corporations in particular.

1308 And I will tell you from my experience, these
1309 companies, they say they are transparent but you, the
1310 American public only sees what they want you to see. So
1311 there are times when those enforcement mechanisms need to be
1312 utilized in order for these tech companies to promote self-
1313 governance among American citizens.

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1314 *The Chair. Thank you.

1315 Ms. Kuehn, really appreciate you being here. You have
1316 tremendous experience, 25 years protecting data, advancing
1317 new technologies. Your insights are important. You
1318 mentioned I think that the International Association of
1319 Privacy Professionals estimate that 80 percent of the world,
1320 79 percent is covered by a form of a national data privacy
1321 law. Would you speak to the importance of a uniform federal
1322 standard when it comes to American leadership on the global
1323 stage and whether this bill would be burdensome to
1324 implement, and can you elaborate on the terms of how
1325 important data portability provision is? And many others on
1326 the panel are very supportive of that as well.

1327 *Ms. Kuehn. The need for a national standard is
1328 critical. So from an implementation standpoint, this would
1329 actually be a simplification for a lot of American
1330 corporations and for international organizations trying to
1331 do more business within the United States. One of the
1332 issues today is with so many disparate state laws, it is
1333 very difficult to make sure that they are maintaining proper
1334 privacy regulation between the states.

1335 So creating a national standard, one, gives us better

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1336 parity of what international counterparts, if you think
1337 about the EU, if you look at GDPR, what is happening, it is
1338 very similar from that perspective.

1339 *The Chair. Thank you.

1340 *Ms. Kuehn. So, one, it is an advancement forward.
1341 Two, from a protection standpoint, it simplifies as a risk
1342 practitioner what I have to do as far as maintaining privacy
1343 standards.

1344 *The Chair. Thank you, thank you.

1345 *Ms. Kuehn. That is critical.

1346 *The Chair. Thank you. Thank you.

1347 Commissioner Ohlhausen, would you share with us the
1348 members of the 21st Century Privacy Coalition?

1349 *Ms. Ohlhausen. Yes. So the members of the 21st
1350 Century Privacy Coalition are AT&T, Comcast, Cox
1351 Communications, CTIA, DirectTV, T-Mobile, and U.S. Telecom.

1352 *The Chair. It is interesting to me that you are just
1353 now raising data breach in the context of comprehensive
1354 privacy legislation. I am sure that had nothing to do with
1355 one of those members recently being in the news for a breach
1356 of seven million customers and 65 million former account
1357 holders.

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1358 I yield back.

1359 *Mr. Bilirakis. I thank the chair and now recognize
1360 the ranking member of the full committee, Mr. Pallone, for
1361 his five minutes of questioning.

1362 *Mr. Pallone. Thank you, Mr. Chairman. In today's Big
1363 Tech era, powerful social media companies, app developers,
1364 Ed Tech companies, and video game creators treat children's
1365 most sensitive data as a valuable commodity to be collected,
1366 used, and sold all to online their pockets _ all to line
1367 their pockets I should say. The result is invasive
1368 commercial surveillance practices that can have a damaging
1369 effect on children's wellbeing, and as we draft a
1370 comprehensive privacy bill, we have to ensure that our
1371 Nation's youth are provided robust privacy protections
1372 stronger than those provided to adults.

1373 My questions are all for you, Mr. Jain. Can you expand
1374 on your recommendation that this committee add robust
1375 privacy protection for children into APRA?

1376 *Mr. Jain. Sure. I think in thinking about this it is
1377 important to think about why is it that children need
1378 additional protection. As you noted in your opening
1379 statement, one reason is is that children are _ it is much

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1380 more difficult for children to distinguish between
1381 advertising and editorial content. Children are unable to
1382 provide meaningful consent. We have heard from Ms. Smithing
1383 in such eloquent testimony about the kind of harms that
1384 advertising can do to children, and I think with those mind
1385 we can think about, you know, what are the additional
1386 protections that are necessary.

1387 So, one, let's just stop targeted advertising to kids
1388 because we know that it causes so much different kinds of
1389 harm. Let's make sure that we are able to bar transfers of
1390 children's information without parental consent. Kids can't
1391 give meaningful consent. They don't understand or
1392 appreciate what happens when the data goes into data
1393 brokers' hands and the ways they may be victimized, so let's
1394 say children can't consent to that, you really just need
1395 parental consent.

1396 I think the provision that was in an APRA previously
1397 about creating a specific youth marketing division within
1398 the FTC makes a lot of sense. There is a lot of research
1399 going on right now about what is it exactly about social
1400 media and other companies that causes harm to kids, what are
1401 the steps that can be taken to protect them. And I think

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1402 creating expertise at the FTC about that issue will enable
1403 us to make better policy down the road.

1404 *Mr. Pallone. I have a bunch of questions, so let me
1405 go quickly. In your opinion, would a comprehensive privacy
1406 bill that provides protections to all Americans better
1407 protect children's privacy than kids specific privacy
1408 legislation?

1409 *Mr. Jain. I think it is a good context in which to
1410 protect kids' privacy because I think once we establish a
1411 baseline that protects comprehensive privacy for all,
1412 including kids, so for example, the prohibition on dark
1413 patterns, which I think is particularly important for kids,
1414 then we can think about, okay, what additional protections
1415 do we build on top. And in doing that we can make sure that
1416 we are doing that in a way that provides consistency, that
1417 we are not inadvertently creating lower standards for kids
1418 in some cases, and that we can put it together as an entire
1419 package. So I do think that makes a lot of sense.

1420 *Mr. Pallone. Now I mentioned COPPA 2.0 in my opening,
1421 and I think it relies primarily on notice and consent regime
1422 to protect kids privacy. So let me go to Mr. Brady. Is
1423 notice and consent an effective way to protect the privacy

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1424 of children and teens?

1425 *Mr. Brody. No, it is not. We have known for a long
1426 time that notice and choice just doesn't work. You know,
1427 how many people in this room have actually read all the
1428 privacy policies that you are subjected to? I haven't and I
1429 do this for a living. And particularly if you are talking
1430 about parents, it is just there is too many things to be
1431 done.

1432 And so, you know, look, I just want my kid to be able
1433 to watch Bluey. I am not consenting to someone building a
1434 dossier about them before they learn to read.

1435 *Mr. Pallone. All right.

1436 *Mr. Brody. So it doesn't work. We _ in other areas
1437 of consumer protection, we just require products to be safe.

1438 *Mr. Pallone. And let me go back to Mr. Jain. Does
1439 the data minimization provision in COPPA 2.0 adequately
1440 protect kids' privacy?

1441 *Mr. Jain. No, I don't think it does because although
1442 there is a data minimization provision, (a), it primarily
1443 applies to just the collection of information. Whereas, in
1444 APRA it would apply to both the processing, transfer, and
1445 other aspects of data used, so I think that is important.

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1446 Two, I think the standard is actually stronger in APRA
1447 because the standard in COPPA would be relationship-based,
1448 it allows you to cross collect data sort of based on the
1449 relationship. And it says including when it is necessary to
1450 provide the service or product that the individual
1451 requested, but by that language it is _ it makes clear that
1452 it is actually broader than just that. Whereas, APRA would
1453 just limit it to when it is necessary to provide the product
1454 or service or for another _ you know, the list of
1455 permissible purposes.

1456 So I think that APRA is _ actually has a stronger
1457 standard and I think it illustrates the point you were
1458 raising earlier which is that is why it is helpful to
1459 actually have this all in one place because we don't want to
1460 inadvertently protect kids less than we do adults.

1461 *Mr. Pallone. All right. Let me get a data brokers
1462 question here. Mr. Jain, under APRA, how would a consumer
1463 delete all of their personal information held by data
1464 brokers, and do you think that Congress should provide a
1465 centralized deletion mechanism for consumers who want all
1466 data brokers to delete their data?

1467 *Mr. Jain. Yes. Unlike ADPPA, APRA doesn't at this

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1468 point contain a centralized deletion mechanism, which means
1469 that as an individual you would literally have to go data
1470 broker by data broker to request their deletion, and that is
1471 really difficult because in many cases you don't even know
1472 what data brokers have collected information about you and
1473 so you wouldn't know how to do that. Whereas, if we create
1474 a centralized registry, a one place, one stop shop basically
1475 where consumers can go and say, hey, I want all data brokers
1476 to delete information about me, that puts more control into
1477 the hands of consumers, and so I do think that would be a
1478 welcome addition to APRA.

1479 *Mr. Pallone. Thank you.

1480 Thank you, Mr. Chairman.

1481 *Mr. Bilirakis. The gentleman yields back. Now I will
1482 recognize Dr. Bucshon from the great State of Indiana. I
1483 believe you are a cosponsor of KOSA.

1484 *Mr. Bucshon. Yeah.

1485 *Mr. Bilirakis. I will recognize you for five minutes.

1486 *Mr. Bucshon. Thank you, Chairman Bilirakis, for
1487 calling today's hearing. Today examples of Hoosiers' data
1488 being captured and used without their consent are all too
1489 common. Every day that passes it becomes clearer that

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1490 families and businesses need clear rules of the road for how
1491 their data is used online. The American Privacy Rights Act
1492 is a huge step forward accomplishing that, and I appreciate
1493 the work that Chair McMorris Rodgers and her team did to get
1494 us to this point, as well as the ranking member.

1495 As a practicing physician who ran a medical practice
1496 for years before coming to Congress, I know that data-driven
1497 biomedical research is the lifeblood of clinical research
1498 and privacy legislation must strike the right balance to
1499 avoid stifling biomedical research conducted for the
1500 benefits of patients. Indiana's privacy law includes a
1501 comprehensive research exception that allows clinical trial
1502 and other medical research data to be used by companies as
1503 necessary to develop new and better treatments for patients
1504 in need. It even states there must be a research exception
1505 for when the expected benefits of research outweigh the
1506 privacy risks.

1507 Ms. Kuehn, do you believe that our privacy legislation
1508 must be tailored to avoid the unintended consequences
1509 potentially of stifling biomedical research conducted for
1510 the benefit of patients?

1511 *Ms. Kuehn. No, I do not. So what I believe is as we

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1512 looked at _ you know, we have talked about the opt in and
1513 being able to opt in to different types or being able to
1514 have control of your data. I think it actually will help
1515 get more information in to areas from a health perspective
1516 because it gives more Americans the ability to be active in
1517 biomedical research if they would choose to be.

1518 *Mr. Bucshon. Okay, fair enough. Anybody else have an
1519 opinion on that? No.

1520 Ms. Frederick, are there other lessons and policies
1521 that states have already enacted such as differentiating
1522 between first and third party data for the treatment of
1523 customer loyalty programs that this legislation should
1524 incorporate?

1525 *Ms. Frederick. I think in terms of third parties,
1526 given what we have seen with TikTok and states that have
1527 moved out on banning TikTok, you know, obviously you need to
1528 layer some sort of comprehensive data privacy on that.

1529 *Mr. Bucshon. Sure.

1530 *Ms. Frederick. But when it comes to SDKs and third
1531 parties, that is absolutely critical because they can make
1532 end run. So making sure that that third-party data
1533 transfer, that is absolutely critical.

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1534 And then age verification for social media. You know,
1535 Florida has done some version in HB 3. That is something
1536 that I think it very, very excellent when it comes to social
1537 media, not just porn.

1538 *Mr. Bucshon. Okay, great. In the 26 years since
1539 COPPA was enacted by Congress, the protections provided by
1540 that law failed to keep up with the changes in the ways that
1541 online platforms operate and the way that millions of young
1542 Americans interact with the internet. The incentive to keep
1543 a user on a platform has led children to be fed content that
1544 keeps their attention.

1545 Sometimes this content can even promote suicide. I had
1546 a constituent that did the near hanging type thing from
1547 online media and died. Sometimes this content can promote
1548 that. Suicide, alcohol and tobacco use, eating disorders,
1549 and more as has been described.

1550 As a father of four who have _ my kids have grown up
1551 through this era, I empathize with parents that struggle to
1552 keep up and monitor what their kids are doing with the
1553 newest trend or app, and it is hard. This has led to
1554 permanent and sometimes deadly results for children. That
1555 is why I am a proud original cosponsor of the Kids Online

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1556 Safety Act introduced by Chairman Bilirakis and COPPA 2.0
1557 Act introduced by Representative Walberg that will help
1558 protect our children from the dangers that they currently
1559 face online. I know the bills still need work and that is
1560 why we have hearings, but I am glad that they are under
1561 consideration today.

1562 Ms. Smithing, I am glad that we are considering
1563 legislation that will help protect young Americans from
1564 online harms but also think that it is important that
1565 regulation does not bar children from participating in on _
1566 in the online world since digital literacy is necessary to
1567 succeed in the 21st century. How do you think about the
1568 tradeoffs between protecting young people from harm while
1569 still allowing exploration and preparation for their adult
1570 lives in the digital world? It is a delicate balance,
1571 right?

1572 *Ms. Smithing. Yes. Yes, Congressman, it certainly
1573 is. I believe that if we put the onus on these companies to
1574 properly design these platforms, we won't have to bar young
1575 children from them and they will be a safe place for
1576 everyone to be and there won't necessarily be trade-offs if
1577 we design these platforms with young people in mind as

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1578 opposed to profit.

1579 *Mr. Bucshon. Okay. And, Ms. Frederick, I have 34
1580 seconds. Do you think these pieces of legislation strike
1581 that balance, that this _ these pieces of legislation?

1582 *Ms. Frederick. I do.

1583 *Mr. Bucshon. Strike the balance?

1584 *Ms. Frederick. I do.

1585 *Mr. Bucshon. Okay, fair enough.

1586 Yield back.

1587 *Mr. Bilirakis. Thank you. And now I will recognize
1588 Representative Castor from the great State of Florida who is
1589 the prime cosponsor on the Democrat's side of KOSA, and we
1590 have been working on these issues for several years, so _

1591 *Ms. Castor. We have.

1592 *Mr. Bilirakis. _ I appreciate all your patience but
1593 also your cooperation. Thank you, and I will give you five
1594 minutes for questioning.

1595 *Ms. Castor. Thank you. Thank you, Mr. Chairman, and
1596 I want to thank the Chair McMorris Rodgers and just express
1597 my appreciate for her years of work on this and congratulate
1598 you on the breakthrough on the American Privacy Rights Act
1599 along with Ranking Member Pallone and all of the advocates

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1600 here today because Americans value their personal privacy
1601 and it is past time for Congress to act.

1602 We have got to rebalance the scales because right now
1603 they are overweighted, they are weighted too heavily in tech
1604 platform's favor. They track everything we do online, where
1605 we go, what we buy, and then they use that information to
1606 manipulate us and exploit it. And it _ this is particularly
1607 harmful to children and adolescents whose brains are not
1608 fully developed. Kids are lucrative, ripe targets for a
1609 wide range of online actors from child sexual abuse, cyber
1610 bullies, drug dealers, and scam artists; and parents and
1611 kids need help.

1612 Children ages eight to 12 spend an average of over five
1613 hours per day on their screens while teenagers spend eight _
1614 about eight hours every day. Big Tech uses every method
1615 possible to keep them online and addicted so they can pocket
1616 huge profits. The mental health repercussions for our kids
1617 are staggering. Almost half of U.S. teens have experienced
1618 bullying or harassment online. Between 2010 and 2019, teen
1619 depression rates doubled with teenage girls seeing the
1620 sharpest increase. In 2021, almost a third of girls said
1621 they are seriously considering attempting suicide.

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1622 This committee has heard directly from Facebook
1623 whistleblower Frances Haugen and others that the platforms
1624 know that their platforms are causing harm but the kids are
1625 just too lucrative for them to change how they do business,
1626 so it is long past time for Congress to step in. So I want
1627 to thank Rep. Walberg, Rep. Bilirakis for helping to lead
1628 privacy protections and an age-appropriate content neutral
1629 design code. But I want to especially thank the parents and
1630 the advocates, mental health professionals, the
1631 pediatricians who have educated Congress.

1632 Ms. Smithing, thank you so much. You _ I agree, your
1633 testimony was _ is eloquent. You state that it is vitally
1634 important that we do both things, that we have privacy
1635 protections and that we address the design code. Why are
1636 both important? Because you have got a KOSA bill that is a
1637 design code, you have got a COPPA 2.0 that is privacy, it is
1638 outdated. But why do we need to marry these up in a modern
1639 bill that can protect kids online?

1640 *Ms. Smithing. Yes, ma'am, thank you for the question.
1641 The Kids Online Safety Act will address design features that
1642 are not addressed by data privacy. While data privacy is
1643 important because it will limit the amount of data they have

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1644 to work with to make their platforms more dangerous and
1645 target us in harsher ways, this _ these data privacy
1646 provisions alone cannot address the design features that are
1647 harmful, such as likes, endless scroll, beauty filters, and
1648 other things that keep us on platforms for longer. So both
1649 of these in combination will successfully solve the problem
1650 from two ends, the upstream version, data privacy and the
1651 downstream version, the kids' online safety.

1652 *Ms. Castor. And you are with a group called Young
1653 People's Alliance. There is another youth-led group, Design
1654 It For Us. Why are young people helping to lead the charge
1655 here? Your generation has pressed Congress for years to act
1656 and it must be frustrating. Why have you stuck with it?

1657 *Ms. Smithing. Well, we have stuck with it because it
1658 is incredibly important and we really don't have much other
1659 option. I think that we intuitively understand these
1660 issues. We grew up on them.

1661 The phrase digital native plays really well here
1662 because it helps people understand that we didn't have to
1663 take a class on AI, we didn't have to learn about data
1664 privacy, we just knew it inherently, and that is what makes
1665 us such valuable activists because we can speak to these

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1666 things in ways that are to the point and don't require an
1667 incredible intellectualization of these problems that makes
1668 it hard to reach for people.

1669 *Ms. Castor. It wasn't that long ago that if you asked
1670 members of Congress about this they really had no clue. So
1671 I want to thank you for your advocacy because I think you
1672 can tell here today this is bipartisan. We intend to act.
1673 But there are a lot of barriers in the way and I wouldn't
1674 put it past the Big Tech platforms who have undue influence
1675 here on Capitol Hill to throw up barriers along the way, so
1676 now is the time for everyone to press the Congress to act,
1677 and you have my commitment that we will.

1678 *Ms. Smithing. Thank you.

1679 *Ms. Castor. Thank you. I yield back.

1680 *Mr. Bilirakis. Thank you. The gentleman _ lady
1681 yields back, and now I will recognize the vice chair of the
1682 subcommittee, Mr. Walberg, who is also the prime sponsor of
1683 COPPA so _ 2.0. So in any case, I will recognize you for
1684 five minutes for questioning.

1685 *Mr. Walberg. Thank you, Mr. Chair, and thanks to the
1686 panel for being here, and I wish I could have heard you all
1687 as opposed to just reading. I just came from asking the

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1688 President of Columbia University some very pointed questions
1689 on antisemitism and which makes this even more important as
1690 we discuss this topic, the power, the power that is out
1691 there with our systems.

1692 Our Nation's children, as my colleague and cosponsor,
1693 Representative Castor, said, we are facing tremendous
1694 problems with mental health crises and the challenges that
1695 go with that. Online platforms collect mass amounts of data
1696 about children and teens, and that data is then used to
1697 employ sophisticated recommendation systems that promote
1698 harmful content to young users and keep them glued to their
1699 screens because they know the longer they are glued to the
1700 screens, the more money they make or the more impact it
1701 makes.

1702 Online safety begins with privacy and that is why I
1703 have introduced H.R. 7890, the Children and Teens' Online
1704 Privacy Protection Act, or COPPA 2.0. The legislation
1705 modernizes and strengthens COPPA. It raises the age of
1706 protection from 13 to 16, prohibits companies from
1707 collecting information on our most vulnerable, and bans
1708 targeted advertising to kids and teens. I also want to
1709 mention that this legislation is bipartisan, it is

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1710 bicameral, has 80 parent, teacher, and privacy organizations
1711 support it, 80, that understand the concerns that you have
1712 expressed today.

1713 I want to thank Representative Castor for co-leading
1714 the legislation and Chairs Rodgers and Bilirakis for
1715 including it in our discussion today. I also want to thank
1716 the Chair for her work on APRA. I look forward to
1717 discussing the need for comprehensive privacy legislation.

1718 And to that effect, I ask unanimous consent to enter a
1719 letter from R Street on APRA into the record.

1720 *Mr. Bilirakis. Without objection.

1721 [The information follows:]

1722

1723 *****COMMITTEE INSERT*****

1724

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1725 *Mr. Walberg. Thank you, Mr. Chair.

1726 Ms. Smithing, thank you for being here and sharing your
1727 story. As I said, COPPA 2.0 would prohibit targeted
1728 advertising to minors. For adults, targeted ads can be
1729 helpful, especially for small businesses trying to reach the
1730 right customers, but when it comes to young people, why is
1731 the practice particularly harmful?

1732 *Ms. Smithing. Right. Thank you for the question,
1733 sir. Advertising in and of itself is harmful. Advertising
1734 is predicated on insecurity, right? You have to think
1735 having yellow teeth is bad to want to buy whitening strips,
1736 so this practice itself is not good. But when you add data
1737 to it, it makes it incredibly worse. I will explain with a
1738 story that happened to me.

1739 If I am going to search on Google how to lose ten
1740 pounds in five days, Google is then going to share this
1741 search with my social media platforms and I am going to get
1742 hit with ads from cleanse juices, gym memberships, workout
1743 clothing. All of these things are not only predatory
1744 because my insecurity is going to make me more likely to buy
1745 them, but also it reinforces the negative things I already
1746 thought about myself that I did need to be thin, that I did

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1747 need to work out, so it is really a double-edged sword and
1748 it hurts us both ways.

1749 *Mr. Walberg. Yeah, yeah. Well, let me go on. We
1750 have seen many different children's privacy provisions
1751 through the years. I have introduced related bills in the
1752 past. Why is COPPA 2.0 the right direction when it comes to
1753 protecting young people's privacy online?

1754 *Ms. Smithing. Yes. Well, COPPA 2.0 updates an
1755 existing bill. COPPA 1.0 is going to continue to exist
1756 whether or not we update it, and if we don't update it, it
1757 is going to be a little confusing.

1758 *Mr. Walberg. And expanding opportunities that are out
1759 there, the whole systems. Simple, eloquent statement.
1760 Thank you.

1761 Ms. Frederick, in your testimony you identify how Big
1762 Tech continues to recruit younger and younger users to their
1763 platforms, incentivized by the potential to increase ad
1764 revenue. How should this behavior impact our efforts in
1765 Congress and is it important to include specific privacy
1766 protections and enforcement mechanisms for younger users?

1767 *Ms. Frederick. Absolutely. As has been demonstrated
1768 by almost the entirety of the panel right now, children _

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1769 these tech companies, they are hemorrhaging users on some
1770 platforms, so as I said, there is a race to the bottom.
1771 They are trying to outdo each to get younger and younger
1772 users addicted to their platforms. Tech companies care
1773 about three things: their bottom line, growth, and number
1774 three, avoiding PR fires. So look at those PR fires. I
1775 think that is something Congress can do is expose this, help
1776 Americans understand that.

1777 And then additionally, you know, the _ children's
1778 consciences are not properly formed before these companies
1779 are going at them. Preteens, as I talked about in my
1780 opening statement, nine to 11-year-olds, there are groups
1781 designed to addict and draw in this user, so we have to
1782 think about, we have to get in the heads of these Big Tech
1783 executives and these platforms in order to act and prevent
1784 them from some of the most egregious privacy abuses that Ms.
1785 Smithing here has demonstrated by her very presence in front
1786 of this body.

1787 *Mr. Walberg. Okay, thank you.

1788 Thank you. I yield back.

1789 *Mr. Bilirakis. Thank you. The gentleman yields back.

1790 Now I will recognize the gentlelady from New York, Ms.

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1791 Clarke, for her five minutes of questioning.

1792 *Ms. Clarke. Thank you very much and good morning, Mr.
1793 Chairman. I thank you, Ranking Member, for holding such an
1794 important hearing today and for including my bill, the
1795 Algorithmic Accountability Act. Let me also thank our
1796 esteemed panel of witnesses for joining us today in sharing
1797 your views on how to best safeguard America's right to
1798 privacy online.

1799 Adopting a comprehensive federal data privacy standard
1800 is absolutely essential. This committee has been closely
1801 examining legislation pertaining to artificial intelligence
1802 and data privacy standards is fundamental to any efforts to
1803 establish a regulatory framework around the development and
1804 deployment of AI. I commend Chair Rodgers for putting forth
1805 the bipartisan American Privacy Rights Act, APRA, discussion
1806 draft. And while I don't agree with every provision it
1807 contains, I appreciate this meaningful attempt to forge
1808 consensus and move forward significant data privacy
1809 legislation.

1810 We cannot afford to wait any longer to adopt a federal
1811 data privacy standard. We have already fallen behind much
1812 of the rest of the world, particularly our counterparts in

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1813 Europe. The time to assert American leadership in this
1814 space has arrived and we must move forward together.

1815 First I would like to, excuse me, thank the Chair once
1816 again for including my bill, the Algorithmic Accountability
1817 Act, in today's hearing and for incorporating algorithmic
1818 accountability provisions into APRA. My first question is
1819 directed to Mr. Brody, but other witnesses are welcome to
1820 respond as well.

1821 Mr. Brody, can you tell us why it is so important to
1822 include provisions prohibiting algorithmic discrimination
1823 and requiring algorithmic accountability into a compris _
1824 excuse me, comprehensive privacy bill?

1825 *Mr. Brody. Sure. Thank you for the question. The
1826 provisions in this bill would prohibit the use of personal
1827 information to discriminate in goods and services, and as we
1828 have seen in recent years over and over and over again,
1829 algorithmic products are being rolled out with inadequate
1830 testing and we find out after the fact that people of color
1831 and other marginalized groups are being excluded from
1832 opportunities, are being charged higher rates for insurance,
1833 are being charged higher rates for loans, are being
1834 discounted from job opportunities and school admissions.

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1835 And so it is incredibly important that we put rules of
1836 the road in place to prohibit those types of data uses. And
1837 the other thing that this bill does is it requires entities
1838 to test their algorithmic systems before deployment and then
1839 after deployment to make sure that they are working as
1840 intended, that they are not discriminatory, to see what
1841 disparate impacts are happening because the only way we will
1842 know if people are being judged by their individual merit is
1843 if someone is actually testing and looking at the design of
1844 the system.

1845 *Ms. Clarke. Very well. Does anyone else want to add
1846 _ Mr. Rain (sic)?

1847 *Mr. Jain. I would just add I agree with all of that,
1848 and I think another feature both of your bill and the _ and
1849 APRA is greater transparency into these systems. It is not
1850 _ we as policy makers, as regulators, as advocates, as
1851 researchers, we need to better understand how they are
1852 working, what kinds of harms they may be doing so that we
1853 can identify those so we can figure out what is the right
1854 way to fix them. And so I think the transparency piece is
1855 also another key aspect of this.

1856 *Ms. Clarke. Very well, thank you. I have some

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1857 concerns about the exceptions for targeted advertising based
1858 on status as a member of a protected class. And while I
1859 understand there are certain opportunities that are directed
1860 specifically towards particular communities, I worry that
1861 this carve-out could be used to exclude historically
1862 marginalized communities.

1863 Mr. Brody, what is your view of the exceptions for
1864 civil rights protections, specifically in the case of
1865 targeted advertising? Is protecting companies' ability to
1866 more precisely target certain communities with ads worth
1867 risking possible discrimination or civil rights violations?

1868 *Mr. Brody. I don't think it is. I have very serious
1869 concerns about this provision. Targeted advertising and
1870 advertising generally online is one of the main ways to
1871 learn of opportunities, and we have seen in recent years
1872 many examples where people of color in particular and other
1873 groups have been excluded and redlined in advertising.
1874 Recently the Department of Justice sued Facebook for
1875 propagating discriminatory housing ads and settled that case
1876 recently. But we have also seen it happen in education, in
1877 insurance, and we don't want to go back to an era where
1878 opportunities are only directed to specific groups.

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1879 *Ms. Clarke. Thank you very much.

1880 Mr. Chairman, I yield back.

1881 And, Mr. Jain, I am sorry I mispronounced your name
1882 just recently. Thank you.

1883 I yield back, sir.

1884 *Mr. Bilirakis. Thank you. The gentlelady yields
1885 back. Now we will recognize Mr. Duncan from the great State
1886 of South Carolina. You are recognized for your five minutes
1887 of questioning.

1888 *Mr. Duncan. Thank you, Mr. Chairman, for holding this
1889 important hearing and for your continued work and Chair
1890 Rodgers' important work on this important but very
1891 complicated issue. Legislative bodies all around the
1892 country as well as all around the world are looking at this
1893 same issue and taking actions.

1894 I want to take a little step backwards and ask all the
1895 witnesses starting with Ms. Frederick, for whom should we be
1896 protecting the data of American citizens? Who is the
1897 greatest threat here, is it Russian hackers, Communist
1898 Chinese Party, social media companies, other big American
1899 companies, identity thieves, predators? So briefly, from
1900 your perspective, who is the threat that we as policy makers

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1901 need to focus on the most to protect our citizens,
1902 especially kids and teens? Ms. Frederick?

1903 *Ms. Frederick. I think the low-hanging fruit right
1904 now is the Chinese Communist Party. And you look at that
1905 when it comes to TikTok. You _ they are owned by ByteDance
1906 which is headquartered in Beijing, and they have to adhere
1907 to national intelligence laws which effectively render no
1908 private companies existent in China. They have CCP
1909 officials sitting on the boards of their main domestic
1910 subsidiaries and they have the potential to propagate
1911 information warfare, information operations on this platform
1912 that the majority of young Americans use. That is the low-
1913 hanging fruit, that is the clear and present danger.

1914 And then you take on the Big Tech companies, which are
1915 portals to poison with their products, as again we have
1916 demonstrated here. So CCP first and then you look at the
1917 Big Tech companies.

1918 *Mr. Duncan. Okay. Mr. Jain?

1919 *Mr. Jain. I certainly agree that privacy is a
1920 national security imperative, that we can't _ we shouldn't
1921 be allowing our adversaries to collect data about Americans
1922 and then use that in a way that harms Americans. In

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1923 addition to that and the social media companies, I would add
1924 data brokers to that list. I mean, we have talked a lot
1925 about the ways in which data brokers collect so much
1926 information, compile profiles, and then sell it willy nilly
1927 to anyone who can then use it to harm, to propagate scams,
1928 and so I think data brokers is another entity against which
1929 we are protected.

1930 *Mr. Duncan. Thank you for that.

1931 Ms. Kuehn?

1932 *Ms. Kuehn. So there is four types of threat actors.
1933 You have the hacktivists, you have the nation states, you
1934 have those that are criminals from financial standpoint,
1935 financial gain, and then you have terrorists. The reality,
1936 though, is 49 percent of all breach is actually happening
1937 from unintended, you know, insider threat. So you don't
1938 know what to do with your data, something goes wrong, you
1939 lose your data, it is a problem.

1940 So one in two, 50 percent almost, of all breach comes
1941 from unintended consequences. So us working on data privacy
1942 standards and making sure that we understand and have a
1943 better reality of where our data goes is actually super
1944 critical because we are to some degree our own worst threat

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1945 and we don't understand where our data goes.

1946 *Mr. Duncan. Thank you for that.

1947 Ms. Smithing?

1948 *Ms. Smithing. Thank you for the question. I am not a
1949 national security expert so I will still clear, but the Big
1950 Tech companies have proven time and time again that they
1951 will not be responsible to the people on their platforms
1952 unless we regulate them to do so, and I believe that they
1953 have proved they are bad actors in this situation and
1954 therefore we should protect our data and the data of our
1955 children from Big Tech companies as soon as we can.

1956 *Mr. Duncan. Thank you for your testimony, too, by the
1957 way.

1958 Ms. Ohlhausen?

1959 *Ms. Ohlhausen. Thank you. So strong privacy
1960 protections will give wide protection against threats from
1961 many different vectors. Certainly national security should
1962 be a high level concern and keeping information out of the
1963 hands of bad actors and scammers I think are _ is also an
1964 important benefit of this bill.

1965 *Mr. Duncan. Thank you.

1966 Mr. Brody?

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1967 *Mr. Brody. Thank you. I think we should focus on Big
1968 Tech companies and data brokers because they are the ones
1969 that control and design their own systems and so they are
1970 the ones that have the greatest ability to avoid the harm.
1971 If you design the system in the first place so that it is
1972 safe, so that is secure, so that is nondiscriminatory, so
1973 that the incentives of the business model are aligned with
1974 the best incentives of people, then you can neutralize harms
1975 upstream before the data gets into the hands of bad actors.

1976 *Mr. Duncan. Yeah, thank you. Second question for all
1977 of you if we have time, if Congress were to pass federal
1978 privacy law such as this, what single provision would be the
1979 most essential factor in that new law being successful,
1980 again from your unique individuals perspectives? I am going
1981 to start with Mr. Brody. If you all could be brief, we got
1982 45 minutes.

1983 *Mr. Brody. Sure. I think the data minimization
1984 structure and the civil rights protections are the most
1985 important parts.

1986 *Mr. Duncan. Yeah. Ms. Ohlhausen?

1987 *Ms. Ohlhausen. So data minimization also balanced
1988 with permissible uses of the data, which can bring a lot of

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1989 benefits to consumers and business.

1990 *Mr. Duncan. Thank you for that.

1991 Ms. Smithing?

1992 *Ms. Smithing. Data minimization and also allowing all
1993 American citizens to opt out from algorithms that utilize
1994 their data to target them with information and content.

1995 *Mr. Duncan. Yeah. Ms. Frederick?

1996 *Ms. Frederick. Having an enforcement mechanism.

1997 *Mr. Duncan. Yeah. Mr. Jain?

1998 *Mr. Jain. I am just going to echo, data minimization
1999 and effective enforcement because without that you really _
2000 the rights are meaningless.

2001 *Mr. Duncan. Yeah. Ms. Kuehn?

2002 *Ms. Kuehn. Data minimization and the opt out rights.

2003 *Mr. Duncan. Yeah, thank you. Again, I want to thank
2004 you all for being here. This has been really interesting
2005 and we are learning a lot.

2006 Mr. Chairman, I yield back.

2007 *Mr. Bilirakis. I appreciate it. Thank you _ thank
2008 the gentleman. Next we have the gentleman from the great
2009 State of Florida who is also a cosponsor of KOSA,
2010 Representative Soto. You are recognized for five minutes of

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2011 questioning.

2012 *Mr. Soto. Thank you so much, Chairman. We know with
2013 the internet it has become a fundamental part of our way of
2014 life over the last nearly 30 years using it for information,
2015 commerce, communicating with family and friends, telehealth,
2016 education, entertainment, you name it. And each
2017 transaction, we know it is producing a data point, and when
2018 you aggregate it together paints a really accurate picture
2019 of our lives a disturbing _ to a disturbing level. And I am
2020 _ I appreciate that some states have stepped up, including
2021 my home State of Florida, to put together privacy laws
2022 finally for the internet, but it remains a patchwork.

2023 This is the Energy and Commerce Committee. Interstate
2024 commerce is literally what we do here and I could not
2025 imagine something more related to interstate commerce than
2026 the internet, and so we need a national standard, and a bill
2027 of internet rights. People would be disturbed to know their
2028 DNA, our calendars, our geolocation, Social Security
2029 Numbers, health information can readily be brokered and
2030 there is nothing to stop it. Most Americans would be
2031 shocked about this fact that they are not protected.

2032 So I am pleased that we are _ finally it looks like we

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2033 are going to be acting on this with the American Privacy
2034 Rights Act. It is also time to protect our kids, and when I
2035 talk to parents back home in Central Florida, they are at a
2036 loss. Their kids are being exposed to a house of horrors
2037 due to algorithms. Violence, sex, bullying online. And we
2038 hear it over and over from parents, do something.

2039 And so I am pleased to support Kids Online Safety Act
2040 to require online and video gaming companies to prevent
2041 exposure to these types of harms, provide parents with the
2042 tools to supervise kids' use of platforms, and ban
2043 advertising of age-restricted products. Yesterday I had
2044 pediatricians in and they affirmed what parents have been
2045 telling me and I already know that a lot of these issues are
2046 causing a mental health crisis among our youth across the
2047 Nation.

2048 Mr. Brody, you had mentioned in your opening testimony
2049 that the bill has a backtracking on causes of action for
2050 privacy violations. What did you mean by backtracking?

2051 *Mr. Brody. Sure. So specifically the sensitive
2052 covered data, data minimization provisions, under the ADPPA
2053 there was a private right of action for collection,
2054 processing, retention, and transfer of that information.

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2055 Here there is only a private right of action for transfer,
2056 and so that seems like a very significant change.

2057 *Mr. Soto. Thank you.

2058 Mr. Jain, we had recently an issue with a University of
2059 Central Florida student, Alex Bugay, who is _ someone took
2060 his identity and used it to make defamatory comments against
2061 a Georgie state legislator online and it wrecked his life.
2062 He had nothing to do with the comments and he was stuck
2063 trying to _ he lost his job, he nearly got kicked out of the
2064 university. Is there anything in APRA right now that would
2065 protect folks from having their identities misappropriated
2066 to publish defamatory or harmful statements online?

2067 *Mr. Brody. I think there are quite a few provisions.
2068 First, to the extent that it is your data that is being used
2069 to help facilitate identity theft and the provisions that
2070 minimize data, that protect against data broker practices
2071 help. I think the data security provision in here that we
2072 haven't talked about today is also an important piece of
2073 that by establishing for the first time a national federal
2074 standard for data security, including by social media
2075 companies, so that someone can't, for example, break into
2076 someone else's account and post false statements or that if

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2077 they do so, then there is potential liability both with
2078 respect to the individual who engaged in impersonation but
2079 also because there is a private right of action with respect
2080 to data breaches and the like. So I think there are a
2081 number of different provisions in the statute that could
2082 potentially help with that.

2083 *Mr. Soto. Well, that is great to hear and I am
2084 looking forward to working with the chairman and our ranking
2085 member on really tightening this up so that people's
2086 identities can't be stolen to say terrible things online and
2087 wrecking young people's lives.

2088 Ms. Smithing, thank you for your powerful testimony.
2089 When I spoke to pediatricians yesterday they talked about
2090 all the online body shaming leading to eating disorders
2091 every day. How prevalent do you think this is with our
2092 girls and kids generally online across the Nation?

2093 *Ms. Smithing. I don't know a single young woman who
2094 has not dealt with this and I will extend it past young
2095 women. Young men are struggling with this, too, we just
2096 don't talk about it as much.

2097 *Mr. Soto. Thank you so much. We _ these are the
2098 types of stories that are finally getting the support we

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2099 need together to finally get this done. It has been a long
2100 time coming. So thank you for your testimony.

2101 Ad I yield back.

2102 *Mr. Bilirakis. The gentleman yields back. Now we
2103 will recognize Mrs. Lesko from the great State of Arizona.
2104 You are recognized, we are going to miss you, but _ for your
2105 five minutes of questioning.

2106 *Mrs. Lesko. Thank you, Mr. Chair. First I want to
2107 thank the committee chairman, Kathy McMorris Rodger. She is
2108 passionate about this issue and I have a strong feeling we
2109 are going to get this done this year. I also want to thank
2110 you, Mr. Chairman, for your work on this issue and others
2111 across the aisle as well.

2112 As you may expect, whenever we have a data privacy bill
2113 in front of us there is all kinds of people that come out
2114 and say there is problems with it, right, and so it is hard
2115 for me as a Congress member to know if those are legitimate
2116 problems or if there is somebody just trying to kill the
2117 bill or, you know, whatever the case may be. And so my
2118 questions today, alone I had a couple people tell me some
2119 concerns and I want to see if any of you have any input on
2120 it, if you think it is a concern.

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2121 One of them that I heard today was that the preemption
2122 language is not strong enough, and so do any of you have any
2123 input _ and I am talking about the draft language of the
2124 American Privacy Rights Act. Sorry I didn't clarify that.
2125 Do any of you have any input on that?

2126 *Mr. Jain. I think what I would say is that preemption
2127 is an area that we just know that in order to get this done
2128 there is going to have to be a compromise. You know, left
2129 to our own devices, we would probably say we should let the
2130 federal privacy law set a floor and then let states provide
2131 additional protection, but understand that that isn't going
2132 to be the way that this comes out if we are going to get
2133 this passed.

2134 So I think what APRA does is try to come up with the
2135 right compromise. It sets a preemption but then it
2136 recognizes that there are certain places in which states
2137 have particular expertise or history of working where it
2138 makes sense for them to continue. So, for example,
2139 healthcare. You know, we have a federal privacy law called
2140 HIPAA and we still allow states to legislate in that area,
2141 and so we can _ we have seen examples where co-jurisdiction
2142 between states and federal enforcers can work, and so I

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2143 think APRA in general is moving in the right direction in
2144 terms of a compromise.

2145 *Mrs. Lesko. Anyone else?

2146 *Ms. Ohlhausen. The Coalition in its comments raised a
2147 concern. They said that while the general language is very
2148 good, that some of the exceptions that still allow state
2149 law, you know, for example on tort law or common law, could
2150 be a way to kind of sidestep the preemption and creating
2151 that uniform federal standard that Congress is seeking to
2152 do.

2153 *Mr. Brody. I would just add, it is very difficult to
2154 strike a careful balance on preemption because data touches
2155 everything and there are going to be so many different
2156 categories of state laws that involve the use of data even
2157 if they are not necessarily what Congress is trying to
2158 regulate in this bill, and you want to be very careful not
2159 to break the ability of states to regulate fraudulent
2160 practices, regulate other types of harm, civil harms,
2161 criminal harms that are happening at the state level that
2162 really aren't being anticipated here.

2163 *Mrs. Lesko. Okay. The next _ another concern that I
2164 heard was that I believe in the draft of this language, it

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2165 exempts _ or it applies to companies that sell the data, and
2166 so one of the concerns was, okay, we are a parent company,
2167 we have subsidiaries and we don't really sell the data but
2168 we share the data with our subsidiaries and so now we are
2169 going to have to live by this standard even though we don't
2170 sell the data outside of our subsidiaries. Could anybody
2171 comment on that?

2172 Okay. Well, go ahead.

2173 *Ms. Frederick. I could address it or make an attempt.
2174 I think in terms of the bad sort of outweighs the good if
2175 you let that go. In particular with TikTok, I think it is
2176 really important to talk about software developer kits,
2177 STKs. You know, there are third-party tools that can be
2178 employed by American applications that can send user data to
2179 those companies. So you have, as Mr. Jain said, you have a
2180 whole veritable ecosystem of data transfer that is roiling
2181 about that if you don't put strictures on that, the
2182 companies doing nefarious and noxious things will use those
2183 loopholes.

2184 So I would say you have to cover those loopholes, plug
2185 them, and then you take care of some of the STK and other
2186 data transfer to third party issues.

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2187 *Ms. Kuehn. Yeah, I think the bigger _ the concern you
2188 are talking about here is when you look at parent company
2189 and then subsidiary, it goes into a bigger issue that I _
2190 that you look at called third and fourth party risk. So the
2191 whole ecosystem of the smaller organizations that are taking
2192 a look at the data to the larger organizations like we have
2193 talked about with TikTok, making sure that there is the
2194 right provision across each line for responsible holding of
2195 all of the data, irregardless of the size, where they live
2196 in that ecosystem. That is what I think is concerning.

2197 *Mrs. Lesko. And do you think that in this draft
2198 language that it addresses it?

2199 *Ms. Kuehn. I think it addresses it for the most part.
2200 The only thing I would _ that I _ that raised, you know, a
2201 caution to me was actually the definition of small business
2202 on the dollar cap. And what I mean by that is there is a
2203 number _ as again we have talked about today, AI is a big
2204 concern for us, and as the emergence of AI and generative AI
2205 comes up, there is a lot of small organizations that may,
2206 you know, meet that threshold of small business, they are
2207 utilizing data in a very interesting way that should be
2208 covered here.

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2209 So I would look at the definition, I loved it, of, you
2210 know, 200,000 users, but the dollar cap on it I would be
2211 concerned about as we think of the new AI companies that are
2212 emerging that are going to be looking for data.

2213 *Mr. Walberg. [Presiding.] Thank you. The
2214 gentlelady's time has expired, and I recognize the
2215 gentlelady from Michigan, Mrs. Dingell.

2216 *Mrs. Dingell. Thank you, Mr. Chairman, and thank you
2217 to all _ this committee for holding this important meeting _
2218 hearing today, and to all the witnesses for testifying.
2219 Your input has been important.

2220 Privacy is a fundamental right and I am encouraged by
2221 this opportunity to make real bipartisan progress on this
2222 issue, including the recent developments around the American
2223 Privacy Rights Act. There is still some work to be done,
2224 and I encourage my colleagues on both sides of the aisle to
2225 think about how we can find solutions to further protect
2226 children and their data.

2227 We have made significant progress on several of the
2228 sensitive data categories and data minimization. I know not
2229 everyone will get everything that they want, but I am
2230 encouraged by what we are examining today. It is reassuring

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2231 to see the American Privacy Rights Act discussion draft
2232 include data minimization provisions. Data minimization is
2233 the practice of only collecting, processing, retaining, and
2234 transferring data that is necessary, proportionate, and
2235 limited to provide or maintain a specific product or
2236 service.

2237 Mr. Jain, are our children and consumers at risk
2238 because of the amount of their data that is currently
2239 collected and acquired online?

2240 *Mr. Jain. Absolutely. I mean, I think we have talked
2241 a lot about how data brokers collect data from so many
2242 different sources and then compile them into detailed
2243 profiles that are then used to target ads along the lines
2244 that Ms. Smithing, for example, described. So I think there
2245 is no doubt that there are tremendous amounts of dangers and
2246 harms that are occurring.

2247 *Mrs. Dingell. Today consumers are overloaded with
2248 constant breaches of their privacy and trust. Apps collect
2249 and they sell user's location data to the highest bidder and
2250 data brokers sell information collected from apps on users'
2251 and kids' sensitive data: names, birth dates, email
2252 addresses, GPS location history, purchase history, house

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2253 conditions, and behavioral profiles.

2254 Mr. Jain, in your view, does the American Privacy
2255 Rights Act discussion draft sufficiently address data
2256 minimization?

2257 *Mr. Jain. I think this is an example of where the
2258 data minimization language really builds on years of work
2259 done by this committee and others, and I think the basic
2260 standard is a strong one and does a good job. I think one
2261 place where we do need to look is in some of the permissible
2262 purposes and make sure they are appropriately cabined. I
2263 have in mind, for example, the provision that says you can
2264 collect and process data to prevent fraud.

2265 You know, one level that makes a lot of sense, but we
2266 do know that data brokers, for example, will sometimes say
2267 they are collecting lots of data in an attempt to be able to
2268 detect fraud or to verify identities, and so I want to make
2269 sure that doesn't become a loophole through which data
2270 brokers can then justify their collection of data. So I
2271 think we need to think carefully about some of the principal
2272 purposes, but I think the overall standard is strong.

2273 *Mrs. Dingell. Thank you for that. Something that is
2274 also vital to comprehensive data privacy is privacy by

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2275 design, that is to make privacy considerations central to
2276 the design of their products from the beginning. Forcing
2277 companies to consider their actions before proceeding is an
2278 important structural protection and it is crucial that
2279 usability also remains central to the design.

2280 Ms. Frederick, can you talk about privacy by design and
2281 why you think it is important to include in the American
2282 Privacy Rights Act discussion draft?

2283 *Ms. Frederick. Absolutely. I mean, this is critical
2284 because, you know, when tech companies, their lifeblood is
2285 building and shipping products. If you get into the design
2286 phase, so that building portion of the products, you don't
2287 have to retroactively fit legislation on the back end. You
2288 know, as you said, it will be easier, you pass something
2289 like this, you integrate privacy by design as a requirement
2290 for companies, then we don't have to keep legislating, keep
2291 legislating, because technology always outpaces attempts to
2292 government. You save yourself a lot of pain, all of us a
2293 lot of pain in that process.

2294 And tech companies can do this. You look at AI, we
2295 have talked about AI. There are approaches to machine
2296 learning like federated models of machine learning where

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2297 they can get value out of data without having to personally
2298 identify or take up sensitive information from individuals.
2299 There is ways to do this. They have the best designers and
2300 programmers in the world, they are just not doing it at
2301 times because they don't want to. We got to do it, privacy
2302 by design.

2303 *Mrs. Dingell. Thank you.

2304 Mr. Chairman, I don't have enough time for another
2305 question, so I will yield back. Thank you, all of you.

2306 *Mr. Bilirakis. [Presiding.] Thank you. The
2307 gentlelady yields back. Now I will recognize Mr. Fulcher
2308 from the great State of Idaho. You are recognized for five
2309 minutes of questioning.

2310 *Mr. Fulcher. Great. Thank you, Mr. Chairman, and
2311 thank you to the panel for being here and for your input.
2312 One of the drawbacks of being late in the questioning is
2313 sometimes your questions get asked already, and mine have,
2314 so I am going to wing it just a little bit here.

2315 Ms. Frederick, in general just from a realistic
2316 standpoint, is it possible, realistically possible, to
2317 balance algorithms that target advertise without ultimately
2318 having the misuse of that data, and can you just speak to

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2319 that?

2320 *Ms. Frederick. We have a phrase in the tech policy
2321 community by a former deputy CTO who peddles this, and she
2322 is right, it is if you build it, they will come, and that is
2323 exactly what happens with technology. You know, oftentimes
2324 builders, they will create things for, you know, noble
2325 purposes, as the chair said, but they will always get
2326 corrupted because we are human, right, and human nature, and
2327 that is something that we see when it comes to the Chinese
2328 Communist Party's use of technology specifically. They have
2329 the civil military concept and dual-use technologies. They
2330 make extensive use of those concepts where, you know, you
2331 have a societal use and you have military use that turns
2332 into kinetic action.

2333 So this is absolutely intrinsic to the tech policy
2334 community, so if you build it, they will come, it is always
2335 going to be perverted no matter what.

2336 *Mr. Fulcher. Thank you for that.

2337 I am going to shift gears to Ms. Ohlhausen for a moment
2338 here with your background with the FTC. General question
2339 again here, but I want to just try to get your feedback on
2340 this. Let's talk about service providers for a moment, and

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2341 on this topic of data gathering and the potential misuse of
2342 that data, where does the liability land for them in your
2343 view? What kind of liability should be placed on the
2344 service providers?

2345 *Ms. Ohlhausen. So I think that, you know, the bill
2346 definitely discusses this in a positive way, which is about
2347 having responsibility placed with the party who is most able
2348 to protect the data. So when you have the, you know, the
2349 first party, you know, the responsibility is with them.
2350 With the service provider, if they are processing and, you
2351 know, using the data, that the responsibility is with them,
2352 I do think there are _ the bill also sensibly puts some
2353 responsibility on the first party to say, well, do some due
2354 diligence before you hand it over to the service provider.

2355 *Mr. Fulcher. So in your view, the language in the
2356 bill as you understand it is appropriate for that?

2357 *Ms. Ohlhausen. Yes. So we are generally okay with
2358 that. The Coalition, you know, may have a few comments to
2359 offer, but _

2360 *Mr. Fulcher. All right, thank you for that.

2361 So I am going to move on to Mr. Jain here because you
2362 have been talking about the third-party data brokers a

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2363 little bit, and when it comes to those data broker providers
2364 or data brokers rather, there is often tailoring of
2365 marketing in their messaging and advertisements to different
2366 customers through marketing automation. We have talked
2367 about that and I _ you have talked about that today. Where
2368 do you see the line here on the level of tailoring given
2369 that under the American Privacy Rights Act it keeps the
2370 decision ownership with the consumer? Where is that line
2371 most appropriately drawn when it comes to the tailoring of
2372 these messages?

2373 *Mr. Jain. I think with respect to tailoring and
2374 including, for example, tailoring advertising, I think there
2375 is a balance to be struck in the sense that we know that
2376 today's system is broken because data brokers are collecting
2377 and using so much data, advertising is being targeted in
2378 ways that are really harmful. At the same time, I think
2379 there is a role for, for example, contextual advertising
2380 where you tailor the advertising based on the content that
2381 the user is seeing or there may be roles for first-party
2382 advertising where if you have gone to a store and you have
2383 bought, you know, particular kinds of sneakers in that store
2384 then wants to advertise a similar type of sneaker to you and

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2385 tailor it in that way.

2386 So I _ you know, I think we do want a viable
2387 advertising system, economically viable, because we
2388 certainly don't want to end up in a situation where all
2389 content is behind subscription or pay walls because there is
2390 no advertising to support it. The real key is how do we
2391 figure out, how do we have a privacy protective and
2392 economically viable advertising system. I think APRA moves
2393 us in that direction. It may need some further refinement
2394 on that, but I think there is a balance that we can draw.

2395 *Mr. Fulcher. Thank you.

2396 Mr. Chairman, I yield back.

2397 *Mr. Bilirakis. Thank you. The gentleman yields back.
2398 Now we will recognize Ms. Kelly for her five minutes of
2399 questioning.

2400 Ms. Kelly. Thank you, Chair Bilirakis and Ranking
2401 Member Schakowsky, for holding this morning's hearing, and
2402 thanks to our witnesses for your testimony.

2403 Privacy rights are civil rights because in the area of
2404 big data, personal information can be weaponized for digital
2405 redlining. The harm is already occurring. Studies have
2406 found that mortgage algorithms were 80 percent more likely

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2407 to reject black applicants than white applicants with
2408 similar characteristics. Auto insurance algorithms
2409 increasingly assessed applicants based on socioeconomic
2410 factors and less on their driving behavior. And retailers
2411 used facial recognition technology that erroneously accused
2412 customers of shoplifting and falsely flag women and people
2413 of color at higher rates than of the shoppers.

2414 Mr. Brody, what safeguards are necessary to ensure our
2415 privacy bill does protect our civil rights?

2416 *Mr. Brody. So first and foremost, we need the anti-
2417 discrimination protections that are in this bill that
2418 prohibit discriminatory uses of personal data in depriving
2419 equal opportunity to goods and services. We need the
2420 assessments of algorithms before they are deployed and after
2421 they are deployed. We need access correction and deletion
2422 rights because those are the tools that allow us to uncover
2423 discrimination, fix it when it occurs. And we need really
2424 strong enforcement, and that enforcement has to be three-
2425 tiered. We need a strong federal regulator, we need state
2426 attorneys general so that we have more cops on the beat, and
2427 we need a private right of action because as we have seen
2428 over and over again throughout our history, sometimes

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2429 individuals are the only ones that can vindicate their own
2430 rights.

2431 If you look at the history of major Supreme Court
2432 decisions on civil rights, over and over again they are
2433 brought by individuals, they are not brought by government.

2434 *Ms. Kelly. Thank you. And does collecting,
2435 processing, retaining, and storing sensitive data that is
2436 not necessary to provide a product or service pose an
2437 unacceptable threat to that privacy?

2438 *Mr. Brody. It depends on the circumstances. It can.
2439 We really need to have very carefully tailored data
2440 minimization provisions for that sensitive information to
2441 ensure it is only being used for the reasons that consumers
2442 expect and is not being transferred to third parties without
2443 the proper procedures in place and be very careful with that
2444 information. As we have seen in recent years, there has
2445 been circumstances where people searching for healthcare
2446 online are putting themselves at risk and we need to make
2447 sure that that information is protected.

2448 *Ms. Kelly. Thank you.

2449 And, Mr. Jain, what are the potential consequences if
2450 there is no private right of action against entities

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2451 collecting, processing, retaining, and storing sensitive
2452 data that is not necessary to provide a product or service?

2453 *Mr. Jain. Well, I think as we have talked about a lot
2454 at this hearing, data minimization, particularly with effect
2455 to sensitive data, is really a central feature, in many ways
2456 the foundational feature of this bill. And so I think that
2457 means that we need the strong enforcement around that
2458 provision because if we don't have that, we sort of
2459 undermine the foundation.

2460 And I agree with Mr. Brody that private right of action
2461 is a piece of the enforcement that we need both to allow
2462 individuals to obtain recovery if they have actually been
2463 injured, which is a circumstance in which they can collect
2464 damages under this bill, but also to deter and to encourage
2465 people _ companies to actually in the first place take
2466 privacy protective measures out of _ because they know that
2467 there is a strong enforcement mechanism on the back end.

2468 So I do think it is important and it is one change that
2469 will need _ that we will be advocating for in APRA is to
2470 make sure that the private right of action applies to
2471 minimization, particularly around sensitive data.

2472 *Ms. Kelly. Thank you so much, and I yield back.

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2473 *Mr. Bilirakis. Appreciate it. The gentlelady yields
2474 back. Now I will recognize the gentlelady from Tennessee,
2475 Mrs. Harshbarger, for her five minutes of questioning.

2476 *Mrs. Harshbarger. Thank you, Mr. Chairman, and thank
2477 you to the witnesses for being here today. I am glad we are
2478 working to achieve a federal privacy standard, and I am
2479 thankful to the chairwoman for her leadership, and I am
2480 especially thankful for the increased protection of
2481 children. That being said, I absolutely want to make sure
2482 that we don't go too far and I want to ensure that small
2483 businesses can still reach their customer bases.

2484 Ms. Ohlhausen, one reason why America is the greatest
2485 country in the world is because our private sector
2486 encourages startups and small businesses to establish
2487 themselves and grow, and I am a small business owner, and
2488 this is helpful to our constituents and to our economy. The
2489 APRA treats companies of different sizes differently.
2490 Facebook and Google can comply with almost any law you throw
2491 at them because they have a roomful of attorneys sitting in
2492 a building somewhere.

2493 So my question is, how does small businesses
2494 interaction with Facebook and Google change under APRA?

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2495 *Ms. Ohlhausen. The _ one of the benefits I think of a
2496 federal uniform privacy standard is to small business,
2497 right, it allows them to design, comply, you know, create
2498 systems around a single standard and not having to try to
2499 adapt to a changing landscape. So I think that will be a
2500 benefit for them.

2501 I also think allowing uses of data that are pro-
2502 competitive, that are good for consumers. A lot of
2503 advertising _ some advertising can be problematic, but a lot
2504 of advertising really serves a very beneficial pro-
2505 competitive purpose, so I think this bill strikes a good
2506 balance there to allow small business to compete.

2507 *Mrs. Harshbarger. Okay, okay. I will continue along
2508 with you, ma'am. In the FTC's 2022 through 2026 plan, Chair
2509 Khan deleted language which stated that the FTC would
2510 accomplish its mission without duly burdening legitimate
2511 business activity. In contrast, the APRA includes critical
2512 privacy protections for Americans and small businesses. I
2513 am concerned that if the FTC moves forward on a privacy
2514 standard without Congress, Americans will have weaker
2515 protections and innovators will be unduly penalized.

2516 So my question is, what concerns do you have with the

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2517 FTC's current plan to go it alone?

2518 *Ms. Ohlhausen. I think that the FTC, like going back
2519 to when COPPA first got adopted or _ it gave the FTC really
2520 clear guidance from Congress and some useful tools. So I
2521 think the FTC moving forward in privacy, it has done with it
2522 could with its general authority, but to get these
2523 additional tools and the ability to help protect consumers
2524 better, having that clarify from Congress, that authority
2525 from Congress is really key.

2526 *Mrs. Harshbarger. Yeah, it has to be clear what the
2527 intent of Congress is when they go after this.

2528 I have a question for anyone on the panel. How would a
2529 dual regulatory regime for common carriers reduce
2530 innovation? Anybody can answer. Maybe you don't want to
2531 answer.

2532 *Ms. Ohlhausen. I would be happy to address that. The
2533 FTC has really developed quite a lot of expertise in privacy
2534 and data security and in these areas and I think it has used
2535 it effectively, and this bill would allow it to use it even
2536 more effectively. We see enormous convergence among
2537 competing services now to really sort of being a unified
2538 kind of product in consumer's minds, so I think having that

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2539 FTC oversight and expertise really can benefit a business in
2540 that way, and consumers, too, because then they know, you
2541 know, this is the uniform standard, it is not what is the
2542 legacy regulatory status of whoever is collecting the data.
2543 Gives a different, you know, set of rules.

2544 *Ms. Kuehn. I think it will actually help innovation,
2545 to be honest with you. So when we look at what is coming
2546 from a generative AI perspective and the emergence of a
2547 significant amount, to your point, is startups. Having one
2548 standard that startups can comply with and understand the
2549 rules _

2550 *Mrs. Harshbarger. Yeah.

2551 *Ms. Kuehn. _ the regulatory landscape without having
2552 to try to look state by state by state I think is going to
2553 be an enabler, and it gives a very strong set of guidance
2554 for how we can actually address third and fourth party risk,
2555 which is something I think is a huge concern.

2556 *Mrs. Harshbarger. Okay.

2557 *Mr. Brody. If I could, I would just add with regard
2558 to common carriers, I think it is important, I agree, for
2559 the FTC to have strong powers here, but we also don't want
2560 to squander the expertise of the Federal Communications

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2561 Commission with regard to telecommunications and the many
2562 important things that it does that the FTC would not be
2563 equipped to do.

2564 *Mrs. Harshbarger. Okay. Thank you, sir.

2565 I think with that my time is up and I yield back.

2566 *Mr. Bilirakis. The gentlelady yields back, and now we
2567 will recognize Mrs. Trahan for her five minutes of
2568 questioning.

2569 *Mrs. Trahan. Thank you, Mr. Chairman. I am grateful
2570 to you and Ranking Member Schakowsky for organizing today's
2571 hearing and for your commitment to resuming this committee's
2572 efforts to advance comprehensive privacy legislation. I
2573 would also like to thank Chair Rodgers and Ranking Member
2574 Pallone for their longstanding commitment and years of work
2575 on this issue.

2576 I am proud today that this hearing includes two
2577 bipartisan, bicameral pieces of legislation that I
2578 introduced to address widespread problems facing users
2579 online. The Delete Act, which I introduced with Congressman
2580 Chuck Edwards and Senators Bill Cassidy and John Ossoff
2581 would give every American the right to have data brokers
2582 delete their data and prohibit future collection. This is a

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2583 commonsense proposal that has been discussed before in this
2584 committee because of the national security concerns with the
2585 way data brokers harvest and sell some of our most sensitive
2586 data to the highest bidder, including our foreign
2587 adversaries.

2588 I ask for unanimous consent to submit for the record
2589 this letter from 20 civil society organizations supporting
2590 the bill.

2591 *Mr. Bilirakis. Without objection, so ordered.

2592 [The information follows:]

2593

2594 *****COMMITTEE INSERT*****

2595

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2596 *Mrs. Trahan. Thank you. Provisions of the Delete Act
2597 were included in the privacy package that was advanced
2598 overwhelmingly out of this committee last Congress.
2599 However, I am concerned that some of the changes to those
2600 provisions in the American Privacy Rights Act discussion
2601 draft will not fully meet the needs of American users.

2602 Mr. Jain, how do the data broker provisions and APRA
2603 differ from what is included in the Delete Act and do you
2604 believe that we should be strengthening that part of the
2605 discussion draft?

2606 *Mr. Jain. Yes, I do think that we should strengthen
2607 it, in particular by adding in one of the central features
2608 of the Delete Act, as its name implies, which is the ability
2609 to create a centralized mechanism so that consumers can in
2610 one shot ask all data brokers to delete their data because
2611 otherwise we have to go from data broker to data broker,
2612 which is impossible because most of us don't even know what
2613 the data brokers are.

2614 *Mrs. Trahan. Yeah, right. Thank you. I couldn't
2615 agree more. Under APRA's current draft, a consumer would
2616 have to individually visit 871 data brokers' websites and
2617 affirmatively delete their personal data. That is how many

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2618 have registered in the State of Vermont, and that is just
2619 not feasible.

2620 My second bipartisan bill featured in today's hearing
2621 is the TLDR Act, which would rein in companies that force
2622 users to agree to unnecessarily long and complex terms of
2623 service, or to use an app, or access a website. A 2022 poll
2624 found that nine out of every 10 Americans have agreed to a
2625 company's terms of service without ever reading it. This is
2626 an even bigger issue for companies providing services
2627 directly to our children who are often required to agree to
2628 the same contracts before getting online. That is why the
2629 TLDR Act takes the important step of requiring standardized
2630 short form terms of service summaries that both parents and
2631 young people can understand.

2632 Ms. Smithing, how important is it for Congress to
2633 maintain the portions of the TLDR Act in the privacy package
2634 we are discussing today, particularly with respect to clear
2635 and explainable terms of service for users of all ages?

2636 *Ms. Smithing. Yes, thank you for the question.
2637 Incredibly important. Earlier Mr. Brody said that he, as
2638 the king of data lawyers, does not even read his privacy
2639 policies, and if he can't do it, then I don't think we

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2640 should be expecting children to do it. It would be
2641 incredibly beneficial for kids and help them understand what
2642 is actually going on on these platforms.

2643 I will also add that children are tired. They have to
2644 consent to hundreds of things before they go on their
2645 favorite apps and this leads to fatigue and them paying
2646 little to no attention to the things they are consenting to,
2647 so a policy like this that expressly says in clear and
2648 concise language what is happening would be greatly
2649 beneficial to children.

2650 *Mrs. Trahan. Thank you so much. Well said.

2651 It is essential to privacy and kids' safety online that
2652 large data holders are transparent about their business
2653 practices and are held accountable by third parties. The
2654 best way to do that is to require that qualified researchers
2655 are able to study how the decisions made by powerful online
2656 platforms are complying with the privacy laws that we hope
2657 to pass in this committee and impacting users.

2658 I have been working with Senator Coons on language to
2659 empower researchers to take a look under the hood of
2660 powerful online companies like Meta and Google in a way that
2661 allows them to do their work while protecting user privacy

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2662 and intellectual property. And I would also like to submit
2663 another letter for the record from the American
2664 Psychological Association demonstrating the extent to which
2665 researchers' access to data is jeopardized and the urgent
2666 need for Congress to act to support their work.

2667 *Mr. Bilirakis. Without objection, so ordered.

2668

2669

2670 [The information follows:]

2671

2672 *****COMMITTEE INSERT*****

2673

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2674 *Mrs. Trahan. Thank you.

2675 Mr. Jain, how important is it to protect researchers'
2676 abilities to access the data they need and do researchers
2677 have that access today?

2678 *Mr. Jain. Thank you for the question. I know you
2679 have been a real leader on this issue. It is critical for
2680 researchers to be able to have access to that data,
2681 particularly in the social media context where they have
2682 been the ones who have uncovered a lot of the harms and a
2683 lot of the negative practices that we have seen. And,
2684 unfortunately, we are actually moving in the opposite
2685 direction, we are seeing company after company withdraw or
2686 make less available data that researchers need, so I think
2687 it is very critical that we promote and do that.

2688 Unfortunately, I think APRA probably needs improvement
2689 in that area. I think ADPPA had a specific permissible
2690 purposes around public interest research and the ability to
2691 collect and process data for that purpose, and I think we
2692 should probably add that back in with appropriate privacy
2693 protections to make sure that that kind of public research
2694 can continue.

2695 *Mrs. Trahan. Thank you. We have some work ahead of

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2696 us, but I look forward to advancing a strong bipartisan
2697 comprehensive privacy package.

2698 Thank you, Mr. Chair.

2699 *Mr. Bilirakis. I think we are off to a good start.

2700 Thank you. The gentlelady yields back and now I will
2701 recognize Mr. James, who is our _ the newest member of our
2702 full committee. You are recognized for five minutes, sir.
2703 Look forward to working with you.

2704 *Mr. James. Thank you, Mr. Chairman. First, I would
2705 be remiss if I didn't recognize the grand opportunity I have
2706 been given to serve as a freshman on this committee. I want
2707 to express my sincere gratitude to Chairwoman Rodgers,
2708 Chairman Bilirakis, and my colleagues on Energy and Commerce
2709 for having trust in me and giving me this opportunity.

2710 In parallel, I would like to recognize the grand
2711 opportunity in front of us to pass real, substantial _
2712 substantive public policy to benefit the American people as
2713 it pertains to data privacy and security. This is an issue
2714 that I hear about regularly when I am back home and it is a
2715 testament to the committee's ability to get things done in a
2716 bipartisan way that we are working with the Senate Commerce
2717 Committee on this issue as well.

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2718 I am really glad that my bill, H.R. 6149, the
2719 Protecting Kids on Social Media Act, is also under
2720 consideration and in front of us here today during this
2721 hearing. The damage that social media is doing to our kids
2722 is unconscionable and extremely disturbing. Big Tech, the
2723 social media platforms are making our young people more
2724 depressed and wreaking havoc on mental health, particularly
2725 after the COVID pandemic. As a father of three school-age
2726 boys, the warning signs of social media's impact on kids are
2727 abundantly clear to me. I have said for years, Facebook
2728 Meta is the Philip Morris of our time and now is the time to
2729 take action.

2730 My bill, the Protecting Social Media _ Protecting Kids
2731 on Social Media Act, aims to do exactly this. First, it
2732 establishes the minimum age of 13 for platform use and
2733 prevents Big Tech, Big Government, and strangers from
2734 usurping parental consent from parents of teens. Second, it
2735 reins in abuse by Big Tech using algorithms to target minor
2736 children. And most importantly, the bill empowers parents,
2737 it gives parents a fighting chance to protect their
2738 children, which is why we are here in the first place. I
2739 would appreciate the thoughts of my colleagues and our

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2740 guests here on ways to fine-tune and advance my bill, H.R.
2741 6149, the Protecting Kids on Social Media Act, in _ now and
2742 in the future and on social media _ a social media kids
2743 safety package.

2744 So my time is limited, we have two minutes, 45 seconds.
2745 My first question is to Ms. Kuehn. Here in Washington, as
2746 you know, we are constantly searching for the right balance
2747 when it comes to the size and scope of government. Could
2748 you discuss the _ I am sorry, the potential benefits and
2749 drawbacks, particularly in terms of the role of social media
2750 companies' online platforms versus the role of government in
2751 keeping kids safe online? I am a conservative, I believe in
2752 limited government, not no government, so can you help me to
2753 strike that balance?

2754 *Ms. Kuehn. I think there is going to have to be a
2755 public/private partnership in it. We talked a lot about big
2756 data companies today and how they are _ you know, the
2757 exploitation, but there is also the opportunity for better
2758 coverage, better work together to do the right things,
2759 especially for children. You know, as a mother, I have seen
2760 cases where I personally had my children attacked on social
2761 media and had to engage law enforcement because of a school

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2762 issue. I have had sextortion cases with friends of ours
2763 children. We have been through every single time.

2764 It is a question of there is going to have to be a
2765 public/private partnership on this, so the more we can work
2766 to create better standards, better understanding, simplified
2767 language, the ability for parents to take a more proactive
2768 role. I myself have very tight parameters around our
2769 children's social media. Those are the things.

2770 And take example, too, from international opportunities
2771 to look at best practices, like the child helpline that they
2772 have in the UK. No questions asked if there is some type of
2773 bullying, some type of problem online, you can call an
2774 anonymous line that is funded by the UK government to get
2775 help. Those are the kinds of things I think we should look
2776 at.

2777 *Mr. James. And I think you bring up a very, very good
2778 point, Ms. Kuehn. Not every parent, not every socioeconomic
2779 status has the time in the day to look over their kids'
2780 shoulders 24 hours a day. Sometimes people have to work two
2781 shifts, night shifts, and putting these policies in place
2782 will help put up guardrails so that our kids cannot be
2783 exploited any further.

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2784 Data security impacts everyone in every generation. In
2785 Michigan's 10th Congressional District, home to over 100,000
2786 seniors, roughly 18 percent of my constituents, failure to
2787 create a commonsense data privacy only makes my constituents
2788 more vulnerable. Elder abuse. Can you speak to the damage
2789 that status quo is causing seniors in Michigan and how this
2790 new bill, American Privacy Rights Act, could improve their
2791 lives?

2792 *Ms. Kuehn. The damage is significant. I had _ my
2793 mother had her personal identity stolen in a nursing home.
2794 My father had his identity and his data stolen when he was
2795 suffering from late-stage dementia, and three weeks later we
2796 received a phone call, an erroneous one, that he was told
2797 that his grandson had been kidnapped and he had to put
2798 \$5,000 into an account because they had done hacking onto
2799 social media and they understood what to say to get him to
2800 believe that. It is terrible for seniors.

2801 So what I would say it this, the data minimization and
2802 the consumer control pieces of APRA are great steps forward
2803 to make sure that seniors too simplify language, minimal
2804 data, ability to control what is online as you get older I
2805 think is critical.

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2806 *Mr. James. Mr. Chairman, the Federal Government has a
2807 duty to protect our most vulnerable, and I believe our
2808 seniors and our children are among them. Thank you. I
2809 yield back, sir.

2810 *Mr. Bilirakis. Thank you and thanks for asking that
2811 question with regard to seniors. We appreciate that very
2812 much. Now we will recognize _ the gentleman yields back,
2813 and I will recognize my fellow Florida Gator from the town
2814 that I was born, Gainesville, Florida, Mrs. Cammack. You
2815 are recognized for five minutes.

2816 *Mrs. Cammack. Thank you, Mr. Chairman, and go Gators.
2817 Get _ you better get used to this. Thank you to all our
2818 witnesses and for everyone who is with us today in the room.

2819 I will jump right into it. I know that there is a lot
2820 to cover in this space and a lot already has been covered,
2821 but I want to, for the benefit of folks who are tuning in, I
2822 am going to start with you, Ms., I am going to say it, oof,
2823 Ohlhausen? If I botch it, I am sorry. I think it is
2824 important to understand what data is collected, and
2825 certainly Americans I think are woefully unaware of how much
2826 data is being collected and harvested.

2827 So I want you to describe if you can, and I know you

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2828 can, the type of data that is collected by online platforms
2829 from consumers during a typical user experience,
2830 specifically what is collected, stored, and/or sent to other
2831 entities in the following instances? And these three are
2832 scenarios that are very common everyday for everyday
2833 Americans. So when an individual reads, types, and sends
2834 emails on just say Gmail, that is the first scenario, when
2835 an individual interacts on Facebook, Twitter, or any other
2836 social media application, and when an individual shops
2837 online.

2838 *Ms. Ohlhausen. So the _

2839 *Mrs. Cammack. I know, that's a lot.

2840 *Ms. Ohlhausen. Yeah, yeah. So based on the
2841 information that the Coalition members collect, who are
2842 telecommunication providers ISPs.

2843 *Mrs. Cammack. Mm-hmm.

2844 *Ms. Ohlhausen. All right, so to provide information,
2845 to provide service, right, these services, they may have to
2846 collect a wide variety of data. For content of
2847 communications, they are not necessarily collecting the
2848 content to use for any purpose, you know, for selling.
2849 Certainly as consumers interact or users interact, for

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2850 payment, for payment processing, fraud prevention, things
2851 like that, they may collect a wide _ of a wide variety of
2852 data.

2853 *Mrs. Cammack. Right. And I think what people fail to
2854 realize is that everything is being tracked and we are
2855 consenting to this in those ridiculous long terms of
2856 service, you know, that nobody reads, right. I think they
2857 have even added an option where you can simply press a
2858 button and it takes you right to the very end, you don't
2859 even have to scroll anymore. So the amount of data, it is
2860 staggering, and I know everyone in this room knows this.

2861 But digging more into the legislation, and I would like
2862 to open this up to our witnesses here today, under the
2863 current daft legislation, there expressly names an opt out
2864 mechanism. Now me personally, I am not for an opt out, I
2865 like an opt in because, let's be honest, people are lazy,
2866 right, and so to have to go through the process of having to
2867 opt out and you are automatically opted in, I think that
2868 creates _ that might create some confusion.

2869 So I would like for folks to weigh in, and I am going
2870 to start with you, Ms. Frederick, if you could weigh in on
2871 any thoughts you have on altering that into an opt in

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2872 directive rather than an opt out.

2873 *Ms. Frederick. I think that makes eminent sense in
2874 terms of making sure default settings are the most
2875 stringent. It would certainly hue in that direction, so I
2876 think it is a very interesting consideration for the
2877 discussion draft.

2878 *Mrs. Cammack. Thank you.

2879 *Mr. Jain. I agree, it is an interesting
2880 consideration, and we know about the power of defaults that,
2881 you know, where the user is _ where the settings are set
2882 initially usually are where they stay because people _
2883 because of inertia, people don't have enough time. I think
2884 the one thing to think about in _ is to think about in
2885 particular settings whether the opt out or opt in is the
2886 right mechanism. In other words, there may be certain
2887 settings in which the default, it is okay for people to be
2888 opted in, but we still want to give them the choice to get
2889 themselves out of a particular system. So I think that is
2890 the balance we have to strike.

2891 *Mrs. Cammack. Okay, thank you.

2892 *Ms. Kuehn. I think the option is interesting, but I
2893 think we should look if there is lessons learned from some

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2894 our international counterparts who have already put some
2895 really robust, think about GDPR and others, privacy laws in
2896 place. So we should look at the lessons learned about opt
2897 in versus opt out.

2898 There is also technical ramifications, so for
2899 organizations that are going to have to really hold and
2900 maintain the technical aspect of data privacy, there is big
2901 differences between adopting an opt out, so I would look at
2902 the advice of how from keeping a main baseline of cyber
2903 standard the differences would look.

2904 *Mrs. Cammack. And I know I am leaving you guys here.
2905 I have got 25 seconds and I have another question I got to
2906 get to. Directing to you, do we have _ let me see. Do you
2907 think that it makes sense _ I will say this, do you think it
2908 makes sense to give the FTC data security authority over the
2909 entire economy, the whole of the economy, but leave the FCC
2910 in charge of data breach notification for legacy
2911 communication?

2912 *Ms. Ohlhausen. So the Coalition in its testimony
2913 suggests that data breach notification should also not be
2914 left with the FCC. There _ other concerns have been raised
2915 about that, that it would make sense to have it be unified

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2916 under one agency.

2917 *Mrs. Cammack. I had a feeling you might say that.

2918 Ad I have _ well, no, I am over my time, so I
2919 apologize, Mr. Chairman. To our two remaining witnesses, if
2920 you could submit your answers to the question regarding opt
2921 in/opt out, that would be wonderful. Thank you.

2922 With that, I yield.

2923 *Mr. Bilirakis. Thank you. The gentlelady yields
2924 back, and I will recognize Ms. Schrier for her five minutes
2925 of questioning.

2926 *Ms. Schrier. Thank you, Mr. Chairman, and thank you
2927 to our ranking member for holding this really important
2928 hearing today. I am delighted to wave on to this
2929 subcommittee. As a pediatrician, I have been looking
2930 forward to this hearing for all five years that I have been
2931 in Congress.

2932 I have seen in real time with my patients what
2933 immersion in screen time and social media has done to their
2934 sleep, to their attention spans, to the exposure to
2935 dangerous information and, of course, the rise in mental
2936 illness and eating disorders that we are now seeing at
2937 increasingly younger ages. And I am incredibly concerned

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2938 about the impact that screen time and social media has on
2939 our kids and the dangers that exist online that so many
2940 parents aren't even aware of.

2941 Kids today are exposed to harmful corrosive content at
2942 an early age and can even be exposed to predators, illegal
2943 activity without even realizing it. The Surgeon General
2944 made it a priority and has even issued an advisory on social
2945 media and youth mental health to warn about the risks that
2946 unsafe social media environments pose to our kids.
2947 According to this advisory, 95 percent of all teens age 13
2948 to 17 use social media almost constantly. This is why my
2949 15-and-a-half year old does not have access to social media.

2950 Nearly 40 percent of children age eight to 12 use
2951 social media as well. For teens, this translates, as we
2952 heard, to eight hours a day. I think about eight hours in
2953 school, eight hours on social media, and they are supposed
2954 to sleep nine hours a night, and that does not add up.

2955 And so all of this is happening also at a critical time
2956 for brain remodeling and development for these kids. There
2957 is several studies showing that the brain regions involved
2958 specifically in social development, like the amygdala, the
2959 prefrontal cortex, these undergo extensive change during

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2960 adolescents and social media use is impacting how our kids'
2961 ability to interact with people is developing, and I think
2962 it is so important that we understand the full impact but
2963 that we don't wait until we understand everything to take
2964 action because it feels like we are experimenting on this
2965 generation and it is not looking good.

2966 To combat the risks of unsafe and addictive online
2967 activity, parents should have every tool at their disposal
2968 to keep their children safe and Big Tech companies, as we
2969 have discussed, need to be held accountable. That is why I
2970 am so proud to have worked with my colleagues on this
2971 committee to introduce the Kids Online Safety Act and
2972 Sammy's Law. Both bills provide tools to help protect
2973 children and allow parents to identify and report harmful
2974 behavior or content that their children are exposed to.

2975 Sammy's Law would ensure that third-party apps are able
2976 to responsibly and with guardrails inform parents when their
2977 kids are engaging with dangerous or concerning content,
2978 including around suicidality, mental health concerns,
2979 substance use, eating disorders, and abuse.

2980 And I know that today in this hearing room we have
2981 several parents who have tragically lost children due to

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2982 dangerous and ultimately fatal content online. And I just
2983 want to take a moment to express my deepest condolences and
2984 also to thank them for their advocacy so that no other
2985 parent has to endure this.

2986 The Kids Online Safety Act will make sure that social
2987 media companies are held responsible for ensuring a safe
2988 online environment for kids whenever possible, and it would
2989 require these covered companies to be transparent about the
2990 design features that make these apps so addicting, like
2991 autoplay and rewards for levels of engagement.

2992 Ms. Smithing, I want to thank you for your testimony
2993 and wondered if you could speak to the addictive nature of
2994 these design features, which even the parents of these
2995 children cannot break themselves of, and how we might expect
2996 children to do that?

2997 *Ms. Smithing. Yes. Thank you, Congresswoman. I
2998 think when we are looking at addiction specifically, the
2999 most important thing we can do is data minimize, of course,
3000 but also limit the amount of data that can go into
3001 recommendation algorithms. Opting out of targeted
3002 advertisements is not enough. The cadence at which these
3003 posts are delivered is what makes them addictive, not

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3004 necessarily the content of them. So we can do everything in
3005 our power, but as long as companies can use our personal
3006 data, and what they know we will respond to, and what they
3007 know we won't respond to, use variable reward schedules to
3008 deliver as posts, it won't address the addictiveness.

3009 So as you said _

3010 *Ms. Schrier. Thank you.

3011 *Ms. Smithing. _ an opt in would be perfect, but
3012 allowing people to opt out of these algorithms is very
3013 important.

3014 *Ms. Schrier. Thank you. I so appreciate your answer
3015 and I so appreciate the action that we are taking in this
3016 committee.

3017 I yield back.

3018 *Mr. Bilirakis. I thank the gentlelady, and it is
3019 great to get your perspective being a pediatrician, so very
3020 important, so I feel like we are on the right track. I am
3021 not sure if there is anyone else. I don't think so. So I
3022 think this was a very informative hearing and testimony was
3023 outstanding, it really was. So we are going to get moving
3024 on this, and like you said, for all our constituents but
3025 particularly for our children. So thank you.

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3026 I ask unanimous consent to insert into the record the
3027 documents included on the staff hearing document list.

3028 Without objection, so ordered.

3029 [The information follows:]

3030

3031 *****COMMITTEE INSERT*****

3032

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3033 *Mr. Bilirakis. I remind members that they have 10
3034 business days to submit questions for the record, and I ask
3035 the witnesses to respond to the questions promptly. Members
3036 should submit their questions by the close of business on
3037 May 1st.

3038 So without objection, the subcommittee is adjourned.

3039 [Whereupon, at 12:39 p.m., the subcommittee was
3040 adjourned.]