

ALA American Library Association

Comments of the American Library Association

Docket No. 180821780-8780-01

Developing the Administration's Approach to Consumer Privacy

November 9, 2018

The American Library Association (ALA) respectfully submits these comments in response to the Request for Public Comment (RFC) issued by the National Telecommunications and Information Administration (NTIA) in regard to the Administration's approach to consumer privacy.

The American Library Association (ALA) is the foremost national organization providing resources to inspire library and information professionals to transform their communities through essential programs and services. For more than 140 years, the ALA has been the trusted voice for academic, public, school, government and special libraries, advocating for the profession and the library's role in enhancing learning and ensuring access to information for all.

The ALA agrees that the framework for consumer privacy should be strengthened. The RFC asks, however, whether any particular outcomes or goals might be ambiguous or whether there are risks from this effort that are not apparent. We believe that there is some risk that a generally applicable commercial privacy framework might be inconsistent with the operation of libraries (and probably other quasi-public institutions). We, therefore, suggest that the following issues that bear on privacy at libraries should be kept in mind.

We focus our comments on the proposed high-level goal of "comprehensive application." As posited in the RFC, the NTIA is suggesting for comment a principle of uniformity – namely that the same rules addressing consumer privacy should "apply to all private sector organizations that collect, store, use or share personal data," premised on the idea that "similar data practices in similar contexts should be treated the same."

The ALA has long supported the concept of nondiscrimination which treats the transmission of all internet content equally. Likewise, we support the concept of uniformity of law as a basic principle undergirding the rule of law. Libraries are at the forefront of providing innovative services and products to our patrons and we support the development of an appropriate privacy framework that enables and supports continued innovation and development.

That having been said, the comprehensiveness principle advanced in the RFC is, in our judgment, inconsistent with the practical situation on the ground. Many libraries are non-public entities, but they are also not traditional commercial institutions. We are concerned that a principle advancing comprehensiveness of application to all non-public organizations would, inadvertently, disregard significant difference between commercial, for-profit entities and those, like libraries that often provide quasi-public services that complement governmental programs. A rule of uniformity that bundles together privacy concerns of for-profit commercial entities with non-profit public service entities would have potential adverse consequences.¹

Libraries as Institutions – Libraries serve a unique function in American life by facilitating freedom of inquiry, free from scrutiny by state or commercial interests. Some libraries are public institutions, operated by state or local governments for the benefit of the local community. Others are public institutions affiliated with centers of learning, like public universities. And still other libraries are privately owned and operated but with the avowed purpose of providing services to the general public.

Libraries are equally diverse in their working partners. In some cases, libraries partner with public agencies to deliver information or services (for example, by providing information and technology assistance to help the public respond to the Census²). In addition, libraries frequently partner with non-profit organizations, like other library consortia and foundations that support library services. In addition, libraries purchase goods and services that support library activities from commercial vendors.

In short, libraries are uniquely structured institutions that have no easy analog in the commercial/non-commercial dichotomy that seems to underlie the premise of the request for comments.

Libraries Serve a Public Function -- To begin with, libraries across the country are prolific providers of content, services and applications on an open and accessible internet. For example, libraries across the country provide the public with access to high quality educational, professional, and recreational online content — at no fee to the patron. In fact, 75 percent of libraries offer access to online databases that include business journals, full-text news articles, and job certification exams. Libraries provide patrons with downloadable and streaming audio and video content, as well as E-books.

¹ The request for comments excludes from its consideration within the proposed framework issues relating to governmental requests for information. We note, however, that 48 states and the District of Columbia have enacted laws protecting the privacy and confidentiality of patrons' circulation records and personal data that prevents disclosure of these records to third parties, including government entities. At a minimum, this broad consensus reflects the point we are making in these comments – that patrons and governments see libraries as unique institutions with distinct privacy concerns that differ from commercial organizations.

² See American Library Association, “Libraries and the 2020 Census,” October 2018, available at <https://bit.ly/CountOnLibraries>.

Likewise, libraries provide services to many patrons. They serve, for example, as a conduit for distance learning services that allow patrons access to educational programs. These range from K-12 offerings, to 2-year public colleges, to online course offerings from major universities like Penn State and MIT. Libraries serve, as well, as access points to repositories for digital data collections housed across the globe, as well as serving as such repositories themselves. To take but one example, the San Francisco Public Library has digitized a collection of more than 250,000 historical photographs and more than 10,000 popular songs from the Dorothy Starr Sheet Music Collection. Additionally, the University of Iowa Digital Library has more than a million digital objects of every conceivable subject matter.

To access these resources, patrons often need not even physically come to the library. Frequently, libraries have developed programs that allow patrons to browse their digital archives from a distance, effectively making libraries a universal source of access to knowledge on a global scale, with patrons who span the world.

Finally, libraries also serve a public function by providing an online library environment that improves community access to resources. Underserved cohorts who lack mobile or online access can connect to outside resources and government services through library-maintained systems. These can range from things as simple as finding government forms to tasks as complex as access to health care or the completion of required tax filings.

Libraries Require Different Privacy Outcomes – We yield to no other organization in our concern for the privacy of our patrons. Libraries have, historically and recently, been at the forefront of efforts to preserve the civil liberties of those who enter our doors. Most libraries are aggressively self-regulating with regard to patron privacy, voluntarily subscribing to a stringent set of ethics and best practices that have been developed by the community.³

Libraries have been aggressive in adopting data minimization and record retention policies as a way of deploying privacy-protective strategies on behalf of our patrons. We have, generally, done so as a matter of good practice without any regulatory mandate. Today, more than ever, libraries join with other public institutions in the belief that the freedom of inquiry, unfettered by concerns with state or commercial scrutiny, lies at the heart of civil society. However, as public and public-serving institutions, libraries face unique privacy issues that differ from those of commercial endeavors. Here are a few examples, from amongst many we might identify:

- Expectations regarding reasonable minimization in the context of potential privacy harm will present challenges to enabling libraries to provide the services and access their patrons seek;
- Principles of control may be difficult to implement in an environment, like a library, where products and services are the result of collaborative efforts with non-library entities.

³ See, for example, the NISO Consensus Principles on Users' Digital Privacy in Library, Publisher, and Software-Provider Systems, <https://www.niso.org/publications/privacy-principles> (accessed on November 9, 2018).

- Likewise, rules about access and correction may be the subject of conflicting laws, guidelines and policies depending on the service being provided and the collaborator with whom a library is working.

None of this is to suggest that libraries will be unable or unwilling to achieve the expected privacy outcomes. Far from it. The members of the ALA are deeply committed to ensuring that we meet the privacy expectations of those whom we serve. We have already adopted privacy guidelines and best practices that are scalable and based on the volume and sensitivity of the personal reading record data that we collect – reflecting our view that the freedom of inquiry is an especially sensitive area of concern where privacy protections should take precedence.

But we do, respectfully, suggest that the dichotomy suggested by the NTIA’s RFP – between government on the one hand, and all other entities, as a unitary group on the other – is too simple and obscures real differences in kind within the non-governmental group.

We therefore, respectfully, urge the NTIA to explicitly recognize a third category – one that encompasses libraries and, possibly, other non-governmental, quasi-public entities who might share these concerns, albeit in different degrees and in different measures depending upon their objectives. This third type of entity would be likely, in our view, to implement a risk-based approach to privacy in a way that is categorically different from that adopted by purely commercial actors.

We thank you for the opportunity to provide these comments.

/s/

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