

Docket No. 180821780-8780-01

NTIA Request for Comment on ways to advance consumer privacy while protecting prosperity and innovation.

To whom it may concern:

I applaud your initiative in trying to address privacy on a Federal level in the United States of America. Two comments related to your request for comment:

- (1) Risk-based approach to privacy.
 - (a) Information security risk should be viewed and assessed from the perspective of the owner of the information, not from the perspective of the organization doing the assessment. An organization “owns” its intellectual property, market strategies, financial information, lists of accounts, etc. An individual person “owns” the information about themselves, including information that can be derived about them by combining pieces of information. This includes information about who they are, where they live, phone number, marital status, gun ownership, identification numbers, financial information, biometric and health care data, religious affiliation, geo location information, travel history, shopping history, photographs and images, etc.

When an organization assesses the risk of their intellectual property being accessed by unauthorized individuals, they largely think of the risk in monetary terms. How much money will they lose if someone steals their secrets?

For an individual’s privacy, risk is about protecting the individual from the harm that could arise from unauthorized disclosure of their information. Risk assessment approaches that are not aligned to the “owner” of the information produce results that are not aligned to the interests of the owner of the information.

Two extreme examples illustrate this point:

- In early Nazi Germany, it would have been much more significant to an individual to have their Jewish religious affiliation disclosed than the possible cost of litigation faced by the organization that disclosed the Jewish religious affiliation. To the individual, the assessed risk is a high probability of loss of life. To the organization who lost the information about the individual’s religious affiliation, it is the probability and impact from litigation that might be filed by the Jewish individual whose information was disclosed.
- When Facebook shared individual information with Cambridge Analytica prior to the last presidential election, Cambridge Analytica used the information through social media to influence voter outcomes. To Facebook, the risk was the sum of user litigation that might arise plus reputational damage. To the individual, the risk was loss of their right to self-determination.

- (b) Organizations today engage third parties for a myriad of reasons to support their business, offering unique products and services, and to support their infrastructure. Through these relationships, confidential consumer information is passed. Any effective risk assessment must include a consideration of the privacy risks that arise through these relationships. Organizations must be accountable for assessing and selecting third parties, and must be accountable for the risk that arises should the privacy of individuals be compromised by way of the third parties that they have engaged.

In summary, privacy should be assessed and managed using a risk based approach but only if it is aligned with the owner of the information. It should also include an assessment of third party relationships of each organization.

- (2) The FTC is not the appropriate agency to administer privacy rights.

- (a) Certain industries, such as Financial Services, already have robust privacy laws (e.g. The Gramm-Leach-Bliley Act) and enforcement is effectively applied through the existing Financial Services Regulators. It's impractical, ineffective, and costly to replace existing Financial Services Regulators with regulators that do not have industry-specific understanding and expertise.
- (b) The FTC has an extremely poor record of administering laws. Every person in the United States that owns a telephone is inundated with "Robocalls". The FTC has been responsible for many years to regulate Robocalls. Yet, the problem only gets worse! If the FTC is unable to address this problem, it is highly unlikely they have the expertise and governance capabilities to address something even more complex, such as privacy.

Thank you for the opportunity to comment on this important legislative initiative.

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