



Nonprofit Publisher
of Consumer Reports

May 24, 2010

The Honorable Rick Boucher
Chairman, Subcommittee on Communications, Technology and the Internet
House Committee on Energy and Commerce
2187 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Cliff Stearns
Ranking Member, Subcommittee on Communications, Technology and the Internet
House Energy and Commerce Committee
2370 Rayburn House Office Building
Washington, D.C. 20515

Dear Representatives Boucher and Stearns:

Consumers Union,¹ the non-profit publisher of *Consumer Reports*®, strongly supports your commitment to establishing meaningful online privacy standards that would give consumers more control over the way their information is collected, used, and sold over the Internet. We write to engage in a proactive discussion about the provisions of the proposed legislation you recently circulated, outlining privacy rights for online users.

An increasingly larger percentage of consumers today use the net to pay bills, research health concerns, interact with friends, and engage in public discourse. As consumers spend more time online; however, the risks to privacy and security of their personal information have grown exponentially. In Consumers Union recent "State of the Net" survey, researchers determined that as many as 29 percent of Internet users had experienced a spyware infection within the past year, and 16 percent had experienced some form of identity theft related to the use of the Internet. The same survey revealed that among consumers using the Twitter service, 31 percent had taken no measures to protect their privacy.

¹ Consumers Union of United States, Inc., publisher of *Consumer Reports*®, is a nonprofit membership organization chartered in 1936 to provide consumers with information, education, and counsel about goods, services, health and personal finance. Consumers Union's publications and services have a combined paid circulation of approximately 8.3 million. These publications regularly carry articles on Consumers Union's own product testing; on health, product safety, and market place economics; and on legislative, judicial, and regulatory actions that affect consumer welfare. Consumers Union's income is solely derived from the sale of *Consumer Reports*®, its other publications and services, fees, noncommercial contributions and grants. Consumers Union's publications and services carry no outside advertising and receive no commercial support.

Based on these findings, Consumers Union hopes to work together with you in developing a privacy policy that provides individuals with protection, transparency, and control over the collection, use and sharing of information, both online and offline.

The proposed bill recently circulated by your office contains a number of helpful provisions that will increase consumers' awareness and control over data collection online. Specifically, we believe the bill's definition of "covered information" is a helpful starting point, especially with the inclusion of section (H), which encompasses "any unique personal identifier such as a customer number, unique pseudonym or user alias, Internet Protocol address." Consumers Union also agrees that some information should be classified as "sensitive," and is pleased to see "geolocation information" included in the definition, alongside information regarding personal financial records, medical records, race, ethnicity, religious beliefs, and sexual orientation. Although we believe that these definitions will be helpful guidelines for determining what is and is not covered by the Act, Consumers Union strongly urges you not to establish an exhaustive list. The FTC should have the flexibility to bring additional categories of information under the coverage of the bill, based on emerging technology and changing perceptions of sensitive information. Without this flexibility, Congress would have to amend the bill every time a new technology is developed that would give rise to the same privacy concerns.

Consumers Union also supports the bill's requirement that notice and express consent be obtained for any material changes in privacy practices for previously collected information. Consumers should be able to rely on companies' privacy policies, without constantly worrying that these policies will change arbitrarily, without notice. Many individuals and advocates were extremely disturbed by Facebook's recent decision to provide, by default, user preferences to third-party partners. Individuals should be required to give affirmative consent before their information is shared for commercial targeting purposes.

Although Consumers Union believes the bill to be an important step towards generating an extensive public conversation on online privacy, there are certain features of the proposal that cause us concern. First and foremost, the bill appears to exclusively rely on the notice and choice model, which has been shown to be particularly ineffective in protecting consumer privacy online. Consumers Union hopes that as the legislation progresses, it will include other methods of privacy protection, such as principles addressing data collection minimization, data quality, purpose specification, extensive security safeguards, individual participation, and accountability.

In addition, Consumers Union is extremely concerned that the bill creates a loophole for entities selling information to third parties, as long as those partners meet certain minimal requirements, such as purging the information after 18 months and including a symbol on the website explaining why the individual was targeted. We strongly believe that this loophole will permit an enormous percentage of data sale transactions to escape coverage. Consumers should be notified and given the opportunity to expressly consent every time their information is sold to a third party. In addition, Consumers Union does not believe that sensitive information such as an individual's sexual orientation, race, or

religious beliefs should ever be collected by entities, much less sold to unaffiliated third parties.

Consumers Union is also troubled by the bill's specific elimination of any private right of action. Coupled with the bill's lack of meaningful security standards for data breach, this provision removes options from individuals seeking relief if their information has been collected or sold in contravention of the bill's intent. The FTC does not have the resources to pursue all or even most privacy violations occurring on the Internet today. Giving individuals a private right of action against companies who violate the law will have a greater deterrent effect and give individuals some control over the way their personal information is used.

Finally, we wish to raise the importance of preserving the ability of states to continue developing new privacy protections, including restrictions on the collection, use, retention, and methods of storage of data, by avoiding broad federal preemption on the topics covered by the bill. States have pioneered consumer privacy protections, including such important market-shaping examples as notice of security breach laws, the Massachusetts requirements to protect data, and the state security freeze laws. The state breach laws have resulted in both notice to individuals and a heightened corporate focus on protecting data in order to avoid a security breach. The security freeze has become available nationwide without action by Congress. The Massachusetts law is an example of how states can put an issue on the national agenda. Cutting off state laws would delay response to emerging practices in an area where technology, business practices, and criminal techniques all are changing at a very fast pace. As you move forward on this bill, we urge you to construct the federal preemption language as narrowly as possible.

In conclusion, Consumers Union would like to reassert its support for your commitment to developing meaningful privacy standards for the collection, use and sale of personal information online. The current bill will be helpful in focusing attention on Internet privacy, and some of its provisions could be significantly strengthened to provide individuals more control over their private information. We appreciate the opportunity to work with you in the future to develop strong online privacy protections.

Sincerely,

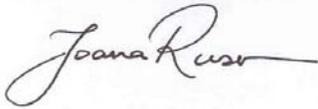
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